

By: Representative Wooten

To: Banking and Financial Services; Judiciary A

HOUSE BILL NO. 11

1 AN ACT TO ESTABLISH PROCEDURES FOR THE FORECLOSURE OF  
2 MORTGAGES BY ADVERTISEMENT UNDER WHICH A BORROWER MUST BE GIVEN AN  
3 OPPORTUNITY TO MEET WITH A LENDER REGARDING MODIFICATION OF A  
4 MORTGAGE LOAN ON A PRINCIPAL RESIDENCE BEFORE FORECLOSURE  
5 PROCEEDINGS MAY BE BEGUN; TO PROHIBIT A PARTY FROM BEGINNING  
6 FORECLOSURE PROCEEDINGS BY ADVERTISEMENT IF THE PRESCRIBED  
7 PROCEDURES HAVE NOT BEEN FOLLOWED OR THE APPLICABLE TIME LIMITS  
8 HAVE NOT EXPIRED, OR IF THE PARTIES HAVE AGREED TO MODIFY THE LOAN  
9 AND THE BORROWER IS NOT IN DEFAULT; TO REQUIRE A FORECLOSING  
10 PARTY, BEFORE PROCEEDING WITH A FORECLOSURE SALE BY ADVERTISEMENT,  
11 TO MAIL TO THE BORROWER A WRITTEN NOTICE CONTAINING SPECIFIED  
12 INFORMATION, INCLUDING THE NAME OF A DESIGNATED CONTACT PERSON WHO  
13 WILL HAVE THE AUTHORITY TO MAKE MODIFICATION AGREEMENTS AND A LIST  
14 OF APPROVED HOUSING COUNSELORS; TO ALLOW THE BORROWER TO BRING AN  
15 ACTION TO ENJOIN THE FORECLOSURE IF THE REQUIRED NOTICE WAS NOT  
16 SERVED; TO REQUIRE THE BORROWER TO CONTACT A HOUSING COUNSELOR IF  
17 HE OR SHE WISHES TO WORK OUT A MODIFICATION, AND REQUIRE THE  
18 COUNSELOR TO SCHEDULE A MEETING WITH THE DESIGNATED CONTACT  
19 PERSON; TO PROVIDE THAT FORECLOSURE PROCEEDINGS MAY NOT BE BEGUN  
20 UNTIL 90 DAYS AFTER THE NOTICE WAS SENT, IF THE BORROWER REQUESTS  
21 A MEETING; TO REQUIRE THE BORROWER, THE DESIGNATED PERSON, OR THE  
22 HOUSING COUNSELOR TO CALCULATE A MODIFIED PAYMENT IF THE MEETING  
23 DOES NOT RESULT IN AN AGREEMENT; TO REQUIRE THE MISSISSIPPI HOME  
24 CORPORATION TO PREPARE A LIST OF APPROVED HOUSING COUNSELORS; TO  
25 AMEND SECTIONS 89-1-55 AND 89-1-57, MISSISSIPPI CODE OF 1972, TO  
26 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

28 **SECTION 1.** As used in this act, unless the context otherwise  
29 requires:

30 (a) "Borrower" means the mortgagor.



31 (b) "Mortgage holder" means the owner of the  
32 indebtedness or of an interest in the indebtedness that is secured  
33 by the mortgage.

34 (c) "Mortgage servicer" means the servicing agent of  
35 the mortgage.

36 **SECTION 2.** (1) Every mortgage of real estate, which  
37 contains a power of sale, upon default being made in any condition  
38 of the mortgage, may be foreclosed by advertisement, in the cases  
39 and in the manner specified in this act. However, the procedures  
40 set forth in this act shall not apply to mortgages of real estate  
41 held by the Mississippi Home Corporation.

42 (2) Subject to subsection (5) of this section, a party may  
43 foreclose a mortgage by advertisement if all of the following  
44 circumstances exist:

45 (a) A default in a condition of the mortgage has  
46 occurred, by which the power to sell became operative.

47 (b) An action or proceeding has not been instituted, at  
48 law, to recover the debt secured by the mortgage or any part of  
49 the mortgage; or, if an action or proceeding has been instituted,  
50 the action or proceeding has been discontinued; or an execution on  
51 a judgment rendered in an action or proceeding has been returned  
52 unsatisfied, in whole or in part.

53 (c) The mortgage containing the power of sale has been  
54 properly recorded.



55 (d) The party foreclosing the mortgage is either the  
56 owner of the indebtedness or of an interest in the indebtedness  
57 secured by the mortgage or the servicing agent of the mortgage.

58 (3) If a mortgage is given to secure the payment of money by  
59 installments, each of the installments mentioned in the mortgage  
60 after the first shall be treated as a separate and independent  
61 mortgage. The mortgage for each of the installments may be  
62 foreclosed in the same manner and with the same effect as if a  
63 separate mortgage were given for each later installment. A  
64 redemption of a sale by the mortgagor has the same effect as if  
65 the sale for the installment had been made upon an independent  
66 prior mortgage.

67 (4) If the party foreclosing a mortgage by advertisement is  
68 not the original mortgagee, a record chain of title shall exist  
69 before the date of sale under Section 89-1-55 evidencing the  
70 assignment of the mortgage to the party foreclosing the mortgage.

71 (5) A party shall not begin proceedings under this act to  
72 foreclose a mortgage of property described in Section 3(1) of this  
73 act if one or more of the following apply:

74 (a) Notice has not been mailed to the mortgagor as  
75 required by Section 3 of this act.

76 (b) After a notice is mailed to the mortgagor under  
77 Section 3 of this act, the time for a housing counselor to notify  
78 the person designated under Section 3(1)(c) of this act of a



79 request by the mortgagor under Section 4(1) of this act has not  
80 expired.

81 (c) Within fourteen (14) days after a notice is mailed  
82 to the mortgagor under Section 3 of this act, the mortgagor has  
83 requested a meeting under Section 4 of this act with the person  
84 designated under Section 3(1)(c) of this act and ninety (90) days  
85 have not passed after the notice was mailed.

86 (d) The mortgagor has requested a meeting under Section  
87 4 of this act with the person designated under Section 3(1)(c) of  
88 this act, the mortgagor has provided documents if requested under  
89 Section 4(2) of this act, and the person designated under  
90 Section 3(1)(c) of this act has not met or negotiated with the  
91 mortgagor under this act.

92 (e) The mortgagor and mortgagee have agreed to modify  
93 the mortgage loan and the mortgagor is not in default under the  
94 modified agreement.

95 (f) Calculations under Section 5(1) of this act show  
96 that the mortgagor is eligible for a loan modification and  
97 foreclosure under this act is not allowed under Section 5(7) of  
98 this act.

99 (6) Subsection (5) of this section applies only to  
100 proceedings under this act in which the first notice of the  
101 foreclosure sale as provided under Section 89-1-55 is published  
102 after the effective date of this act.



103           SECTION 3. (1) Subject to subsection (6) of this section,  
104 before proceeding with a sale under this act of property claimed  
105 as a principal residence, the foreclosing party shall serve a  
106 written notice on the borrower that contains all of the following  
107 information:

108           (a) The reasons that the mortgage loan is in default  
109 and the amount that is due and owing under the mortgage loan.

110           (b) The names, addresses, and telephone numbers of the  
111 mortgage holder, the mortgage servicer, or any agent designated by  
112 the mortgage holder or mortgage servicer.

113           (c) A designation of one (1) of the persons named in  
114 paragraph (b) of this subsection as the person to contact and that  
115 has the authority to make agreements under Sections 4 and 5 of  
116 this act.

117           (d) That enclosed with the notice is a list of housing  
118 counselors prepared by the Mississippi Home Corporation and that  
119 within fourteen (14) days after the notice is sent, the borrower  
120 may request a meeting with the person designated under paragraph  
121 (c) of this subsection to attempt to work out a modification of  
122 the mortgage loan to avoid foreclosure and that the borrower may  
123 also request a housing counselor to attend the meeting.

124           (e) That if the borrower requests a meeting with the  
125 person designated under paragraph (c) of this subsection,  
126 foreclosure proceedings will not be begun until ninety (90) days  
127 after the date the notice is mailed to the borrower.



128           (f) That if the borrower and the person designated  
129 under paragraph (c) of this subsection reach an agreement to  
130 modify the mortgage loan, the mortgage will not be foreclosed if  
131 the borrower abides by the terms of the agreement.

132           (g) That if the borrower and the person designated  
133 under paragraph (c) of this subsection do not agree to modify the  
134 mortgage loan but it is determined that the borrower meets  
135 criteria for a modification under Section 5(1) of this act and  
136 foreclosure under this act is not allowed under Section 5(7) of  
137 this act, the foreclosure of the mortgage will proceed before a  
138 judge under Sections 11-5-93 through 11-5-117 instead of by  
139 advertisement.

140           (h) That the borrower has the right to contact an  
141 attorney, and the telephone numbers of The Mississippi Bar's  
142 lawyer referral service and of a local legal aid office serving  
143 the area in which the property is situated.

144           (2) A person who serves a notice under subsection (1) of  
145 this section shall enclose with the notice a list prepared by the  
146 Mississippi Home Corporation under Section 6 of this act of the  
147 names, addresses, and telephone numbers of housing counselors  
148 approved by the United States Department of Housing and Urban  
149 Development or the Mississippi Home Corporation.

150           (3) A person shall serve a notice under subsection (1) of  
151 this section by mailing the notice by regular first-class mail and  
152 by certified mail, return receipt requested, with delivery



153 restricted to the borrower, both sent to the borrower's last known  
154 address.

155 (4) Within seven (7) days after mailing a notice under  
156 subsection (3) of this section, the person who mails the notice  
157 shall publish a notice informing the borrower of the borrower's  
158 rights under this section. The person shall publish the  
159 information one (1) time in the same manner as is required for  
160 publishing a notice of foreclosure sale under Section 89-1-55.  
161 The notice under this subsection shall contain all of the  
162 following information:

163 (a) The borrower's name and the property address.

164 (b) A statement that informs the borrower of all of the  
165 following:

166 (i) That the borrower has the right to request a  
167 meeting with the mortgage holder or mortgage servicer.

168 (ii) The name of the person designated under  
169 subsection (1)(c) of this section as the person to contact and  
170 that has the authority to make agreements under Sections 4 and 5  
171 of this act.

172 (iii) That the borrower may contact a housing  
173 counselor by visiting the Mississippi Home Corporation's website  
174 or by calling the Mississippi Home Corporation.

175 (iv) The website address and telephone number of  
176 the Mississippi Home Corporation.



177 (v) That if the borrower requests a meeting with  
178 the person designated under subsection (1)(c) of this section,  
179 foreclosure proceedings will not be begun until ninety (90) days  
180 after the date the notice is mailed to the borrower.

181 (vi) That if the borrower and the person  
182 designated under subsection (1)(c) of this section reach an  
183 agreement to modify the mortgage loan, the mortgage will not be  
184 foreclosed if the borrower abides by the terms of the agreement.

185 (vii) That the borrower has the right to contact  
186 an attorney, and the telephone number of The Mississippi Bar's  
187 lawyer referral service.

188 (5) A borrower on whom notice is required to be served under  
189 this section who is not served and against whom foreclosure  
190 proceedings are begun under this act may bring an action in the  
191 chancery court for the county in which the mortgaged property is  
192 situated to enjoin the foreclosure.

193 (6) If the borrower and the person designated under  
194 subsection (1)(c) of this section have previously agreed to modify  
195 the mortgage loan under Section 4 of this act, this section and  
196 Sections 4 and 5 of this act do not apply unless the borrower has  
197 complied with the terms of the mortgage loan, as modified, for one  
198 (1) year after the date of the modification.

199 **SECTION 4.** (1) A borrower who wishes to participate in  
200 negotiations to attempt to work out a modification of a mortgage  
201 loan shall contact a housing counselor from the list provided





202 under Section 3 of this act within fourteen (14) days after the  
203 list is mailed to the borrower. Within ten (10) days after being  
204 contacted by a borrower, a housing counselor shall inform the  
205 person designated under Section 3(1)(c) of this act in writing of  
206 the borrower's request.

207 (2) After being informed of a borrower's request to meet  
208 under this section, the person designated under Section 3(1)(c) of  
209 this act may request the borrower to provide any documents that  
210 are necessary to determine whether the borrower is eligible for a  
211 modification under Section 5 of this act. The borrower shall give  
212 the person designated under Section 3(1)(c) of this act copies of  
213 any documents requested under this section.

214 (3) A housing counselor contacted by a borrower under this  
215 section shall schedule a meeting between the borrower and the  
216 person designated under Section 3(1)(c) of this act to attempt to  
217 work out a modification of the mortgage loan. At the request of  
218 the borrower, the housing counselor will attend the meeting. The  
219 meeting and any later meetings shall be held at a time and place  
220 that is convenient to all parties, or in the county where the  
221 property is situated.

222 **SECTION 5.** (1) If a borrower has contacted a housing  
223 counselor under Section 4 but the process has not resulted in an  
224 agreement to modify the mortgage loan, the person designated under  
225 Section 3(1)(c) of this act shall work with the borrower to  
226 determine whether the borrower qualifies for a loan modification.



227 Unless the loan is described in subsection (2) or (3) of this  
228 section, in making the determination under this subsection, the  
229 person designated under Section 3(1)(c) of this act shall use a  
230 loan modification program or process that includes all of the  
231 following features:

232 (a) The loan modification program or process targets a  
233 ratio of the borrower's housing-related debt to the borrower's  
234 gross income of thirty-eight percent (38%) or less, on an  
235 aggregate basis. Housing-related debt under this paragraph  
236 includes mortgage principal and interest, property taxes,  
237 insurance, and homeowner's fees.

238 (b) To reach the thirty-eight percent (38%) target  
239 specified in paragraph (a) of this subsection, one or more of the  
240 following features:

241 (i) An interest rate reduction, as needed, subject  
242 to a floor of three percent (3%), for a fixed term of at least  
243 five (5) years.

244 (ii) An extension of the amortization period for  
245 the loan term, to forty (40) years or less from the date of the  
246 loan modification.

247 (iii) Deferral of some portion of the amount of  
248 the unpaid principal balance of twenty percent (20%) or less,  
249 until maturity, refinancing of the loan, or sale of the property.

250 (iv) Reduction or elimination of late fees.



251           (2) In making the determination under subsection (1) of this  
252 section, if the mortgage loan is pooled for sale to an investor  
253 that is a governmental entity, the person designated under Section  
254 3(1)(c) of this act shall follow the modification guidelines  
255 dictated by the governmental entity.

256           (3) In making the determination under subsection (1) of this  
257 section, if the mortgage loan has been sold to a  
258 government-sponsored enterprise, the person designated under  
259 Section 3(1)(c) of this act shall follow the modification  
260 guidelines dictated by the government-sponsored enterprise.

261           (4) This section does not prohibit a loan modification on  
262 other terms or another loss mitigation strategy instead of  
263 modification if the other modification or strategy is agreed to by  
264 the borrower and the person designated under Section 3(1)(c) of  
265 this act.

266           (5) The person designated under Section 3(1)(c) of this act  
267 shall provide the borrower with both of the following:

268                   (a) A copy of any calculations made by the person under  
269 this section.

270                   (b) If requested by the borrower, a copy of the  
271 program, process, or guidelines under which the determination  
272 under subsection (1) of this section was made.

273           (6) Subject to subsection (7) of this section, if the  
274 results of the calculation under subsection (1) of this section  
275 are that the borrower is eligible for a modification, the mortgage



276 holder or mortgage servicer shall not foreclose the mortgage under  
277 this act but may proceed before a judge under Sections 11-5-93  
278 through 11-5-117. If the results of the calculation under  
279 subsection (1) of this section are that the borrower is not  
280 eligible for a modification or if subsection (7) of this section  
281 applies, the mortgage holder or mortgage lender may foreclose the  
282 mortgage under this act.

283 (7) If the determination under subsection (1) of this  
284 section is that the borrower is eligible for a modification, the  
285 mortgage holder or mortgage servicer may proceed to foreclose the  
286 mortgage under this act if both of the following apply:

287 (a) The person designated under Section 3(1)(c) of this  
288 act has in good faith offered the borrower a modification  
289 agreement prepared in accordance with the modification  
290 determination.

291 (b) For reasons not related to any action or inaction  
292 of the mortgage holder or mortgage servicer, the borrower has not  
293 executed and returned the modification agreement within fourteen  
294 (14) days after the borrower received the agreement.

295 (8) If a mortgage holder or mortgage servicer begins  
296 foreclosure proceedings under this act in violation of this  
297 section, the borrower may file an action in the chancery court for  
298 the county where the mortgaged property is situated to convert the  
299 foreclosure proceeding to a judicial foreclosure. If a borrower  
300 files an action under this section and the court determines that



301 the borrower participated in the process under Section 4 of this  
302 act, a modification agreement was not reached, and the borrower is  
303 eligible for modification under subsection (1) of this act, and  
304 subsection (7) of this act does not apply, the court shall enjoin  
305 foreclosure of the mortgage by advertisement and order that the  
306 foreclosure proceed under Sections 11-5-93 through 11-5-117.

307 **SECTION 6.** The Mississippi Home Corporation shall develop  
308 the list of housing counselors approved by the United States  
309 Department of Housing and Urban Development or by the Mississippi  
310 Home Corporation who may perform the duties of housing counselor  
311 under Sections 3 through 5 of this act.

312 **SECTION 7.** Section 89-1-55, Mississippi Code of 1972, is  
313 amended as follows:

314 89-1-55. (1) All lands comprising a single tract, and  
315 wholly described by the subdivisions of the governmental surveys,  
316 sold under mortgages and deeds of trust, shall be sold in the  
317 manner provided by Section 111 of the Mississippi Constitution of  
318 1890 for the sale of lands in pursuance of a decree of court, or  
319 under execution. All lands sold at public outcry under deeds of  
320 trust or other contracts shall be sold in the county in which the  
321 land is located, or in the county of the residence of the grantor,  
322 or one (1) of the grantors in the trust deed, provided that where  
323 the land is situated in two (2) or more counties, the parties may  
324 contract for a sale of the whole in any of the counties in which  
325 any part of the land lies. Sale of \* \* \* those lands shall be



326 advertised for three (3) consecutive weeks preceding \* \* \* the  
327 sale, in a newspaper published in the county, or, if none is so  
328 published, in some paper having a general circulation \* \* \* in the  
329 county, and by posting one (1) notice at the courthouse of the  
330 county where the land is situated, for \* \* \* that time, and \* \* \*  
331 the notice and advertisement shall disclose the name of the  
332 original mortgagor or mortgagors in \* \* \* the deed of trust or  
333 other contract. No sale of lands under a deed of trust or  
334 mortgage, shall be valid unless \* \* \* the sale \* \* \* has been  
335 advertised as \* \* \* provided for in this section, regardless of  
336 any contract to the contrary. An error in the mode of sale such  
337 as makes the sale void will not be cured by any statute of  
338 limitations, except as to the ten-year statute of adverse  
339 possession.

340 (2) This section shall be subject to the provisions of  
341 Sections 1 through 6 of this act.

342 **SECTION 8.** Section 89-1-57, Mississippi Code of 1972, is  
343 amended as follows:

344 89-1-57. (1) If a deed of trust or mortgage, with a power  
345 of sale, \* \* \* is silent as to the place and terms of sale and  
346 mode of advertising, a sale may be made after condition broken,  
347 for cash, upon such notice, and at such time and place as is  
348 required for sheriff's sale of like property. But all \* \* \* of  
349 those sales shall be made in the county where the land is located,  
350 or in the county of the residence of the grantor or one (1) of the



351 grantors, provided that where the land is situated in two (2) or  
352 more counties, the parties may contract for a sale of the whole,  
353 or any part thereof, in either county in which a part of the land  
354 lies.

355 (2) This section shall be subject to the provisions of  
356 Sections 1 through 6 of this act.

357 **SECTION 9.** This act shall take effect and be in force from  
358 and after July 1, 2013.

