

By: Representatives Wooten, Banks, Blackmon,
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To: Banking and Financial
Services; Judiciary A

HOUSE BILL NO. 1169

1 AN ACT TO ESTABLISH, AS AN ALTERNATIVE TO ANY OTHER
2 FORECLOSURE PROCEDURE AUTHORIZED BY LAW, PROCEDURES FOR THE
3 FORECLOSURE OF MORTGAGES BY ADVERTISEMENT UNDER WHICH A BORROWER
4 MUST BE GIVEN AN OPPORTUNITY TO MEET WITH A LENDER REGARDING
5 MODIFICATION OF A MORTGAGE LOAN ON A PRINCIPAL RESIDENCE BEFORE
6 FORECLOSURE PROCEEDINGS MAY BE BEGUN; TO PROHIBIT A PARTY FROM
7 BEGINNING FORECLOSURE PROCEEDINGS BY ADVERTISEMENT IF THE
8 PRESCRIBED PROCEDURES HAVE NOT BEEN FOLLOWED OR THE APPLICABLE
9 TIME LIMITS HAVE NOT EXPIRED, OR IF THE PARTIES HAVE AGREED TO
10 MODIFY THE LOAN AND THE BORROWER IS NOT IN DEFAULT; TO REQUIRE A
11 FORECLOSING PARTY, BEFORE PROCEEDING WITH A FORECLOSURE SALE BY
12 ADVERTISEMENT, TO MAIL TO THE BORROWER A WRITTEN NOTICE CONTAINING
13 SPECIFIED INFORMATION, INCLUDING THE NAME OF A DESIGNATED CONTACT
14 PERSON WHO WILL HAVE THE AUTHORITY TO MAKE MODIFICATION AGREEMENTS
15 AND A LIST OF APPROVED HOUSING COUNSELORS; TO ALLOW THE BORROWER
16 TO BRING AN ACTION TO ENJOIN THE FORECLOSURE IF THE REQUIRED
17 NOTICE WAS NOT SERVED; TO REQUIRE THE BORROWER TO CONTACT A
18 HOUSING COUNSELOR IF HE OR SHE WISHES TO WORK OUT A MODIFICATION,
19 AND REQUIRE THE COUNSELOR TO SCHEDULE A MEETING WITH THE
20 DESIGNATED CONTACT PERSON; TO PROVIDE THAT FORECLOSURE PROCEEDINGS
21 MAY NOT BE BEGUN UNTIL 90 DAYS AFTER THE NOTICE WAS SENT, IF THE
22 BORROWER REQUESTS A MEETING; TO REQUIRE THE BORROWER, THE
23 DESIGNATED PERSON, OR THE HOUSING COUNSELOR TO CALCULATE A
24 MODIFIED PAYMENT IF THE MEETING DOES NOT RESULT IN AN AGREEMENT;
25 TO REQUIRE THE MISSISSIPPI HOME CORPORATION TO PREPARE A LIST OF
26 APPROVED HOUSING COUNSELORS; TO AMEND SECTIONS 89-1-55 AND
27 89-1-57, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF
28 THIS ACT; AND FOR RELATED PURPOSES.

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

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



32 (a) "Borrower" means the mortgagor.

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

36 (c) "Mortgage servicer" means the servicing agent of
37 the mortgage.

38 **SECTION 2.** (1) As an alternative to any other foreclosure
39 procedure authorized by law, every mortgage of real estate, which
40 contains a power of sale, upon default being made in any condition
41 of the mortgage, may be foreclosed by advertisement, in the cases
42 and in the manner specified in this act. However, the procedures
43 set forth in this act shall not apply to mortgages of real estate
44 held by the Mississippi Home Corporation.

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

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

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



56 (c) The mortgage containing the power of sale has been
57 properly recorded.

58 (d) The party foreclosing the mortgage is either the
59 owner of the indebtedness or of an interest in the indebtedness
60 secured by the mortgage or the servicing agent of the mortgage.

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

70 (4) If the party foreclosing a mortgage by advertisement is
71 not the original mortgagee, a record chain of title shall be
72 prepared before the date of sale under Section 89-1-55 evidencing
73 the assignment of the mortgage to the party foreclosing the
74 mortgage.

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

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



80 (b) After a notice is mailed to the mortgagor under
81 Section 3 of this act, the time for a housing counselor to notify
82 the person designated under Section 3(1)(c) of this act of a
83 request by the mortgagor under Section 4(1) of this act has not
84 expired.

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

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

96 (e) The mortgagor and mortgagee have agreed to modify
97 the mortgage loan and the mortgagor is not in default under the
98 modified agreement.

99 (f) Calculations under Section 5(1) of this act show
100 that the mortgagor is eligible for a loan modification and
101 foreclosure under this act is not allowed under Section 5(7) of
102 this act.

103 (6) Subsection (5) of this section applies only to
104 proceedings under this act in which the first notice of the



105 foreclosure sale as provided under Section 89-1-55 is published
106 after the effective date of this act.

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

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

114 (b) The names, addresses, and telephone numbers of the
115 mortgage holder, the mortgage servicer, or any agent designated by
116 the mortgage holder or mortgage servicer.

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

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

128 (e) That if the borrower requests a meeting with the
129 person designated under paragraph (c) of this subsection,



130 foreclosure proceedings will not be begun until ninety (90) days
131 after the date the notice is mailed to the borrower.

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

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

144 (h) That the borrower has the right to contact an
145 attorney, and the telephone numbers of The Mississippi Bar's
146 lawyer referral service.

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

153 (3) A person shall serve a notice under subsection (1) of
154 this section by mailing the notice by regular first-class mail and



155 by certified mail, return receipt requested, with delivery
156 restricted to the borrower, both sent to the borrower's last known
157 address.

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

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

167 (b) A statement that informs the borrower of all of the
168 following:

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

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

175 (iii) That the borrower may contact a housing
176 counselor by visiting the Mississippi Home Corporation's website
177 or by calling the Mississippi Home Corporation.

178 (iv) The website address and telephone number of
179 the Mississippi Home Corporation.



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

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

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

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

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

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



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

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

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

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



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

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

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

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

247 (ii) An extension of the amortization period for
248 the loan term, to forty (40) years or less from the date of the
249 loan modification.

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

253 (iv) Reduction or elimination of late fees.



254 (2) In making the determination under subsection (1) of this
255 section, if the mortgage loan is pooled for sale to an investor
256 that is a governmental entity, the person designated under Section
257 3(1)(c) of this act shall follow the modification guidelines
258 dictated by the governmental entity.

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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



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

343 (2) If a mortgage or deed of trust is foreclosed under
344 Sections 1 through 6 of this act, this section shall be subject to
345 the provisions of Sections 1 through 6 of this act.

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

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



354 or in the county of the residence of the grantor or one (1) of the
355 grantors, provided that where the land is situated in two (2) or
356 more counties, the parties may contract for a sale of the whole,
357 or any part thereof, in either county in which a part of the land
358 lies.

359 (2) If a mortgage or deed of trust is foreclosed under
360 Sections 1 through 6 of this act, this section shall be subject to
361 the provisions of Sections 1 through 6 of this act.

362 **SECTION 9.** This act shall take effect and be in force from
363 and after July 1, 2014.

