MISSISSIPPI LEGISLATURE REGULAR SESSION 2017

By: Representative Wooten

To: Banking and Financial Services

HOUSE BILL NO. 13

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

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

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

(a) "Borrower" means the mortgagor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

foreclosure sale as provided under Section 89-1-55 is published on or after July 1, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Reduction or elimination of late fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. This act shall take effect and be in force from and after July 1, 2017.