MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Hines

To: Banking and Financial Services; Appropriations

HOUSE BILL NO. 30

AN ACT TO ESTABLISH THE HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE PROGRAM, WHICH SHALL BE ADMINISTERED BY THE MISSISSIPPI HOME CORPORATION; TO AUTHORIZE THE CORPORATION TO MAKE LOANS TO MISSISSIPPI RESIDENTS WHO ARE ELIGIBLE UNDER THIS ACT; TO PROVIDE THAT BEFORE A MORTGAGEE MAY ACCELERATE THE MATURITY OF A MORTGAGE OBLIGATION COVERED UNDER THIS ACT OR BEGIN ANY MORTGAGE FORECLOSURE, CERTAIN NOTICE MUST BE GIVEN TO THE MORTGAGOR AND A DETERMINATION MUST HAVE BEEN MADE ON THE MORTGAGOR'S APPLICATION FOR EMERGENCY MORTGAGE ASSISTANCE PAYMENTS; TO PROVIDE THAT FORECLOSURE ACTIONS ON MORTGAGES COVERED UNDER THIS ACT SHALL BE TEMPORARILY STAYED; TO SPECIFY THE REQUIREMENTS FOR GIVING NOTICE TO THE MORTGAGOR; TO SPECIFY THE REQUIREMENTS FOR ELIGIBILITY FOR ASSISTANCE WITH RESPECT TO A MORTGAGE UNDER THIS ACT; TO PROVIDE THAT THE CORPORATION SHALL PAY TO A MORTGAGEE THE FULL AMOUNT DUE UNDER THE TERMS OF A MORTGAGE OF A MORTGAGOR WHO IS ELIGIBLE FOR ASSISTANCE UNDER THIS ACT; TO PROVIDE THAT THE CORPORATION SHALL ENTER INTO AGREEMENTS WITH MORTGAGORS WHO RECEIVE ASSISTANCE UNDER THIS ACT FOR THE REPAYMENT OF THAT ASSISTANCE; TO REQUIRE ALL MORTGAGORS WHO RECEIVE ASSISTANCE UNDER THIS ACT TO RECEIVE CONSUMER CREDIT COUNSELING; TO CREATE THE HOMEOWNER'S EMERGENCY MORTGAGE ASSISTANCE FUND IN THE STATE TREASURY; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) The Legislature finds that:

(a) The State of Mississippi is facing a large number of homeowners behind on their mortgage payments and facing mortgage foreclosure;

(b) As a result of these adverse economic conditions, the capacity of many homeowners to continue to make mortgage payments has deteriorated and may further deteriorate in the months ahead, leading to the possibility of widespread mortgage foreclosures and distress sales of homes;

(c) Many of these homeowners could retain their homes if they received temporary financial assistance until economic conditions improve; and

(d) A program is needed to prevent similar emergencies in the future.

(2) It is the purpose of this act to improve notice requirements and to establish a program that will, through emergency mortgage assistance payments, prevent widespread mortgage foreclosures and distress sales of homes that result from default caused by circumstances beyond a homeowner's control.

SECTION 2. (1) There is established the Homeowner's Emergency Mortgage Assistance Program. Under the program, the Mississippi Home Corporation, referred to in this act as the "agency," may make loans secured by liens on residential real property located in Mississippi to residents of Mississippi eligible for those loans as described in this act.

(2) The agency shall carry out the Homeowner's Emergency Mortgage Assistance Program established by this act. Within sixty (60) days after the effective date of this act, the agency shall adopt program guidelines for the implementation of this act. The

agency shall report annually to the Legislature on the effectiveness of the program in accomplishing the purposes of this act.

(3) The agency shall develop uniform notices and rules and regulations in order to implement the provisions of this act.

(4) The agency shall designate and approve nonprofit consumer credit counseling agencies in each county to be available to assist the agency in implementing the provisions of this act including, but not limited to, mandated counseling. A "consumer credit counseling agency" is defined for the purpose of this act as a nonprofit consumer credit counseling agency located in Mississippi that is approved by the agency or a housing counseling agency certified by the United States Department of Housing and Urban Development.

SECTION 3. (1) Before any mortgagee may accelerate the maturity of any mortgage obligation covered under this act, begin any legal action including mortgage foreclosure to recover under that obligation, or take possession of any security of the mortgage debtor for that mortgage obligation, the mortgagee shall give the mortgagor notice as described in Section 4 of this act. The notice shall be given in a form and manner prescribed by the agency.

(2) A mortgagee shall not accelerate the maturity of any mortgage obligation covered under this act, begin legal action including mortgage foreclosure to recover under that obligation,

or take possession of any security of the mortgage debtor for that mortgage obligation until a determination has been made on a mortgagor's application for emergency mortgage assistance payments, or the applicable time periods provided for in Section 4 of this act have expired, whichever is earlier.

(3) All pending foreclosure actions by mortgagees or mortgages covered under this act in which foreclosure sales have not been consummated on the effective date of this act shall be temporarily stayed. The notice provided in Section 4 of this act shall be given to all mortgagors against whom those foreclosure actions are pending on the effective date of this act. The stay shall extend until the applicable time limits provided for in Section 4 of this act have expired or a mortgagor's request for assistance has been denied by the agency, whichever is earlier.

SECTION 4. (1) Any mortgagee who desires to foreclose upon a mortgage shall send by registered mail to the mortgagor at his or her last-known address the two (2) notices provided in subsection (2) of this section.

(2) The agency shall prepare uniform notices for the purposes of this section as follows:

(a) When the mortgagor first enters default, the mortgagee shall send to the mortgagor a notice of default, which advises the mortgagor of his or her delinquency or other default under the mortgage and includes the following:

(i) A statement advising the mortgagor of his or her delinquency or other default under the mortgage and information about the nature of the default, when and how to cure the default, and what will happen if the mortgagor does not cure the default;

(ii) Notice that the mortgagor should contact the mortgagee who sent the notice or a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise;

(iii) Contact information for the mortgagee's individual and/or department with authority to design a loss mitigation option for that mortgagor;

(iv) A list of consumer credit counseling agencies with the phone number, mailing address and physical address of each; and

(v) A list of services available to help the mortgagor avoid foreclosure, including loss mitigation options and counseling.

(b) If the mortgagor is at least sixty (60) days contractually delinquent in his or her mortgage payments or is in violation of any other provision of the mortgage, the mortgagee shall send a notice of intention to foreclose to the mortgagor at least ninety (90) days before the scheduled foreclosure sale. The notice to the mortgagor shall include:

(i) A statement advising the mortgagor of his or her delinquency or other default under the mortgage and that the mortgagor has thirty (30) days to have a face-to-face meeting with the mortgagee who sent the notice or a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise;

(ii) A statement that if the mortgagor is unable to resolve the delinquency or default within thirty (30) calendar days of the mortgagor's first contract with either the mortgagee or a consumer credit counseling agency, and unless the agency has published notice that there are no funds in the Homeowner's Emergency Mortgage Assistance Fund, notice that the mortgagor may apply to the agency or its duly authorized agent at the address and phone number listed in the notice in order to obtain an application and information regarding the Homeowner's Emergency Mortgage Assistance Program;

(iii) A list of consumer credit counseling agencies;

(iv) Information about the nature of the default, when and how to cure the default and what will happen if the mortgagor does not cure the default;

(v) A list of services available in addition to the Homeowner's Emergency Mortgage Assistance Program to help the mortgagor avoid foreclosure, including loss mitigation options, counseling programs, and other existing default loan programs;

(vi) Contact information for the mortgagee's individual and/or department with authority to design a loss mitigation option for that mortgagor; and

(vii) Details of the scheduled foreclosure sale, including the date, time and location of the sale.

(3) At least ninety (90) days before the scheduled foreclosure sale, the mortgagee must send a notice of intention to foreclose to all lienholders, cosigners and tenants of the subject property by registered mail to the address(es) of those parties.

(4) If the mortgagor meets with a consumer credit counseling agency, the consumer credit counseling agency shall promptly notify all of the mortgagees secured by the mortgagor's real property, and no mortgagee so notified shall begin any foreclosure action against the mortgagor's real property for a period not to exceed thirty (30) calendar days from the date that the mortgagee first meets with the consumer credit counseling agency. If the mortgagor applies for mortgage assistance payments, the agency shall promptly notify all of the mortgagees secured by the mortgagor's real property. The agency shall make a determination of eligibility within sixty (60) calendar days of receipt of the mortgagor's application. During the time that the application is pending, no mortgagee may begin foreclosure action to foreclose upon its mortgage with the mortgagor.

(5) After the notice of intent to foreclose is sent, if the mortgagor fails to meet with the mortgagee or consumer credit

counseling agency or meet any of the time limitations specified in the notices, or if the mortgagor's application for mortgage assistance payments is denied, the mortgagee may at any time thereafter take any legal action to enforce the mortgage without any further restriction or requirements under this act. Financial institutions shall not be the duly authorized agents of the agency and shall not make the decision on the approval of assistance under this act.

SECTION 5. (1) No assistance may be made with respect to a mortgage under this act unless all of the following are established and documented:

(a) The property securing the mortgage, or other security interest in the case of units in cooperative or condominium projects, is a one-family residence, or two-family owner-occupied residence including one-family units in a condominium project or a membership interest and occupancy agreement in a cooperative housing project, is the principal residence of the mortgagor and is located in this state;

(b) (i) Any mortgagee has indicated to the mortgagor its intention to foreclose; or

(ii) Payments under any mortgage have been contractually delinquent for at least sixty (60) days;

(c) The mortgagor is a permanent resident of this state and is suffering financial hardship due to circumstances beyond the mortgagor's control that render the mortgagor unable to

correct the delinquency or delinquencies within a reasonable time and make full mortgage payments;

(d) The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments after the assistance payment(s) are provided under this act;

(e) The mortgagor has applied to the agency for assistance on an application form prescribed by the agency for this use that includes a financial statement disclosing all assets and liabilities of the mortgagor, whether singly or jointly held, and all household income regardless of source. Any applicant who intentionally misrepresents any financial information in conjunction with the filing of an application for assistance under this act may be denied assistance or required to immediately repay any amount of assistance made as a result of that misrepresentation and the mortgagee may at any time thereafter take any legal action to enforce the mortgage without any further restrictions or requirements under this act;

(f) The mortgagor's household income is one hundred twenty percent (120%) or less of the area median income, as defined by the United States Department of Housing and Urban Development;

(g) The mortgagee is not prevented by law from foreclosing upon the mortgage;

(h) The agency has determined, based on the mortgagor's financial statement, that the mortgagor has insufficient household income or net worth to correct the delinquency or delinquencies within a reasonable period of time and make full mortgage payments;

(i) Except for the current delinquency, the mortgagor has had a favorable residential mortgage credit history for the previous three (3) years. This requirement means that if the mortgagor has been more than three (3) consecutive months in arrears on a residential mortgage within the previous three (3) years, he or she shall be ineligible for assistance, unless the mortgagor can demonstrate that the prior delinquency was the result of financial hardship due to circumstances beyond his or her control;

(j) The mortgagor agrees to participate in required homeowner counseling; and

(k) The mortgagor meets any other procedural requirements established by the agency.

(2) For purposes of this section, in order to determine whether the financial hardship is due to circumstances beyond the mortgagor's control, the agency may consider information regarding the mortgagor's employment record, credit history and current income.

(3) Upon a determination that the conditions of eligibility described in subsection (1) of this section have been met by a

mortgagor and money is available in the Homeowner's Emergency Mortgage Assistance Fund, the mortgagor shall become eligible for the assistance described in Section 6 of this act. If the agency determines that a mortgagor has not met the conditions of eligibility described in subsection (1) of this section, the mortgagor shall be prohibited from reapplying for assistance under this act for a period of six (6) months from the date of that determination unless there is a material change in circumstances. However, nothing in this subsection shall prohibit any mortgagee from beginning foreclosure action to enforce the mortgage without any further restriction or requirement under this act whenever the agency determines that the mortgagor is ineligible for assistance as provided in this section.

SECTION 6. (1) If the agency determines that a mortgagor is eligible for assistance under this act, the agency shall pay directly to each mortgagee secured by the mortgagor's real estate payments on behalf of the mortgagor. The agency shall pay to each mortgagee the full amount then due to that mortgagee under the terms of the mortgage without regard to any acceleration under the mortgage, or the full amount of any alternate mortgage payments agreed to by the mortgagee and mortgagor. This amount shall include, but not be limited to, the amount of principal, interest, taxes, assessment, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums. The payment made by the agency to each mortgagee shall be an amount that makes each

mortgage current and pays reasonable costs and reasonable attorney's fees already incurred by the mortgagee. If the mortgagor is receiving emergency mortgage assistance under a program other than that established in this act, the amount of the payment that he or she is required to make to the agency under this act shall take into consideration the amount of assistance that he or she is receiving under those other programs.

(2) The amount paid by the agency to the mortgagee on behalf of the mortgagor to bring the mortgage current shall be secured by a mortgage lien on the property and by such other obligation as the agency may require. The priority of any lien obtained by the agency under this act shall be determined in the same manner as the lien of a general secured creditor of the mortgagor. The lien or other security interest of the agency shall not be deemed to take priority over any other secured lien or secured interest in effect against the mortgagor's property on the date assistance payments begin. The agency may allow subordination of the mortgage assistance lien if that subordination is necessary to permit the mortgagor to obtain a home improvement loan for repairs necessary to preserve the property. In cases of joint mortgagors who are husband and wife, where only one (1) spouse who is an occupant of the mortgaged premises makes application for and receives assistance under this act, the lien to secure repayment shall be a lien on the property of like, force and effect as a mechanic's lien.

SECTION 7. Upon approval of mortgage assistance, the agency shall enter into an agreement with the mortgagor for repayment of the mortgage assistance made by the agency. All mortgage assistance shall be in the form of a no interest, deferred, forgivable second mortgage loan with a three-year term that requires the mortgagor to maintain the property as his or her principal residence, to participate in required counseling, and to comply with the other requirements of the agreement. If the mortgagor defaults on the loan, the mortgagor will be required to repay a portion of the loan amount.

SECTION 8. All mortgagors who receive emergency mortgage assistance will be required to meet with a consumer credit counseling agency approved by the agency for a period of six (6) months after receiving assistance payment(s) to receive mandated counseling. That counseling must include budget and credit counseling and counseling to address the trigger event(s) that caused the mortgage default. The approved consumer credit counseling agency shall be paid by the agency for their services.

SECTION 9. The Homeowner's Emergency Mortgage Assistance Fund is created as a special fund in the State Treasury for the sole purpose of implementing the provisions of this act. No other agency funds, monies or interest earnings shall be used for the purposes of this act. The Homeowner's Emergency Mortgage Assistance Fund shall only be used by the agency whenever funds

are specifically authorized and appropriated by the Legislature for the purposes provided for in this act.

SECTION 10. The provisions of Sections 5 through 9 of this act shall not be applicable to any mortgage that becomes delinquent at any time when the agency does not have money currently available in the Homeowner's Emergency Mortgage Assistance Fund to approve applications for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved. The State Treasurer shall have the duty to advise the agency not less frequently than once each calendar quarter of the amount available for the purposes of this act. If the funds available to the agency in the Homeowner's Emergency Mortgage Assistance Fund for purposes of this act become insufficient to approve application for emergency mortgage assistance, or to continue making assistance payments on behalf of mortgagors previously approved, the agency shall immediately publish an announcement to that effect.

SECTION 11. Assistance under this act shall extend to all mortgagees secured by a mortgage on the subject property.

SECTION 12. This act shall take effect and be in force from and after July 1, 2021.