A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING CHAPTER 31 TO TITLE 37 SO AS TO CREATE THE “FORECLOSURE RESOLUTION PROGRAM” UNDER THE DEPARTMENT OF CONSUMER AFFAIRS, TO REQUIRE THE DEPARTMENT TO ADOPT CERTAIN RULES, TO REQUIRE NOTICE OF RIGHTS TO PARTICIPATE IN FORECLOSURE RESOLUTION, AND TO PROVIDE FOR APPLICABILITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 37 of the S.C. Code is amended by adding:

CHAPTER 31

Foreclosure Resolution Program

Section 37‑31‑110. As used in this chapter:

(1) “Common interest community” means real property with respect to which a person, by virtue of ownership of a unit, is obligated to pay real property taxes or insurance premiums or for maintenance, improvement of other real property, or services described in a declaration or other governing document, however denominated. The term includes properties held by a cooperative housing corporation. As used in this item, the term “ownership” includes a leasehold interest if the lease term is at least twenty years, including renewal options.

(2) “Creditor” means a person that is entitled to foreclose a mortgage under this chapter.

(3) “Department” means the Department of Consumer Affairs.

(4) “Foreclose” or “foreclosure” means a process, proceeding, or action to enforce a mortgage by terminating a homeowner’s interest in mortgaged property or obtaining possession of mortgaged property. The term does not include a voluntary transfer by the homeowner or a process, proceeding, or action to recover possession of property after a completed foreclosure sale.

(5) “Foreclosure resolution” means a process in which a neutral individual assists a creditor and obligor to exchange information and prepare for and attend an in‑person meeting or other communication at which the creditor, obligor, and neutral individual simultaneously can communicate with each other with the objective of reaching an agreement between the parties as an alternative to foreclosure.

(6) “Homeowner” means a person that owns an interest in mortgaged property, other than a mortgage, lien, security interest, easement, servitude, or leasehold with a term of less than twenty years, including renewal options.

(7) “Loss mitigation” means an alternative to foreclosure offered by a creditor to a homeowner in default or facing imminent default.

(8) “Mortgage” means a consensual interest in real property which secures an obligation. The term does not include a lien that secures an obligation owed to a homeowners’ association in a common interest community.

(9) “Mortgage agreement” means a record that creates a mortgage.

(10) “Mortgaged property” means real property improved with not more than four dwelling units which is subject to a mortgage. The term includes:

(a) an attached single‑family unit;

(b) a single‑family manufactured housing unit or a time share in a dwelling unit if either is treated as real property under the law of this State;

(c) real property on which construction of not more than four dwelling units has commenced; and

(d) a single‑family unit in a common interest community.

The term does not include real property that, when the mortgage being foreclosed was created, was used or intended to be used primarily for nonresidential purposes.

(11) “Neutral individual” means an individual not selected by either party who can reasonably be expected to be impartial in assisting the parties with the objective of reaching an agreement as an alternative to foreclosure.

(12) “Nonjudicial foreclosure” means a foreclosure that proceeds without judicial process.

(13) “Obligation” means a debt or other duty or liability of an obligor secured by a mortgage.

(14) “Obligor” means a person that:

(a) owes payment or performance of an obligation;

(b) has signed a mortgage agreement with respect to mortgaged property; or

(c) is otherwise accountable in whole or in part for payment or performance of the obligation.

(15) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(16) “Record” means, when used as a noun, information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

(17) “Servicer” means a person responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.

Section 37‑31‑120. (A) There is created a “Foreclosure Resolution Program” to be administered by the department. The department shall adopt rules establishing procedures and standards for the foreclosure resolution program.

(B) The Supreme Court shall provide assistance to the department in program matters, including:

(1) contract procurement;

(2) performance oversight, such as monitoring compliance with the program requirements; and

(3) management services to oversee any contract between the department and a private organization retained by the department to provide foreclosure resolution services or personnel, including providing the department with monthly status reports and evaluations.

(C) The department shall execute a memorandum of understanding that establishes its rights and responsibilities relating to the mortgage foreclosure dispute resolution program, which may be amended from time to time.

(D) The department is authorized to contract with local, state, or federal governmental entities, and with private organizations for the performance of any of the functions of this chapter.

Section 37‑31‑130. (A) Before or at the time of commencing a judicial foreclosure, the creditor shall:

(1) request under subsection (C) that the department send the homeowner and obligor, not later than service of the foreclosure complaint on the homeowner, notice of the right to participate in foreclosure resolution; or

(2) send the notice under subsection (D).

(B) In a nonjudicial foreclosure, the creditor shall:

(1) not later than thirty days after sending the notice of default, request under subsection (C) that the department send the homeowner and obligor a notice of the right to participate in foreclosure resolution; or

(2) send the notice under subsection (D).

(C) If the department establishes a procedure for the department to send the notice required by subsection (A) or (B), the creditor shall request the department to send the notice to the creditor and to each homeowner and obligor and the department promptly shall send the notice. The notice may be sent before or after commencement of a foreclosure action, as provided in departmental rules, but must be sent before the creditor may request entry of a default or foreclosure judgment or give notice of a judicial or nonjudicial foreclosure sale.

(D) If the department does not establish a procedure for the department to send notice required by subsection (A) or (B), the creditor shall send notice to each homeowner and obligor.

(E) A notice under this subsection of the right to participate in foreclosure resolution shall include the following:

(1) the name, address, and telephone number of each housing counseling agency, lawyer referral service, and legal aid agency serving the geographic area of the mortgaged property, as designated by the department;

(2) the name, address, telephone number, and email address of the appropriate contact person assigned by the creditor or servicer to the homeowner or obligor under rules of the federal Consumer Financial Protection Bureau;

(3) a statement that the homeowner or obligor may request a foreclosure resolution meeting and that the request must be made not later than thirty days after notice is sent;

(4) the instructions for requesting a foreclosure resolution and all eligibility requirements under the department’s rules;

(5) a description of all documents the department rules require the homeowner or obligor to bring to the foreclosure resolution meeting; and

(6) a form prescribed by the department for the homeowner or obligor to request foreclosure resolution and to affirm that the homeowner or obligor meets the eligibility requirements of Section 37‑31‑140.

Section 37‑31‑140. (A) If a homeowner or obligor, not later than thirty days after the sending of a notice under subsection (C) or (D) of Section 37‑31‑130, makes a request for foreclosure resolution, the department shall schedule a meeting in accordance with its rules and appoint a neutral individual to conduct the meeting. For good cause, the department may schedule the meeting and initiate foreclosure resolution later than thirty days after the sending of the notice.

(B) If the department schedules a meeting under subsection (A), the creditor and homeowner or obligor shall attend and participate in compliance with department rules and any scheduling or other order made by the neutral individual or the department. Failure to comply with this subsection includes failure:

(1) without good cause to timely attend a meeting;

(2) without good cause to provide, before a scheduled meeting, documents and information required by department rules or reasonably requested by the neutral individual;

(3) to designate a person with authority to reach a settlement agreement, if the authority exists;

(4) without good cause to pay any required foreclosure resolution fee; and

(5) to advise the homeowner, obligor, and neutral individual of any loss mitigation option that is available to the homeowner or obligor or to consider the homeowner or obligor for the loss mitigation option before or during foreclosure resolution.

(C) A homeowner or obligor is eligible for foreclosure resolution only if the mortgaged property is occupied by the homeowner or obligor. If the mortgaged property contains more than one dwelling unit, foreclosure resolution is available only if at least one dwelling unit is occupied by the homeowner or obligor. With a request for foreclosure resolution, the homeowner or obligor shall submit to the department an affirmation that the mortgaged property is occupied either by a homeowner or obligor. If the department determines that the property is not occupied by a homeowner or obligor, the department may not schedule a meeting under subsection (A) and shall permit the creditor to proceed with foreclosure.

(D) The department may not initiate a second foreclosure resolution or schedule a second meeting in a foreclosure resolution if an earlier resolution was concluded, unless the parties to the foreclosure resolution consent.

Section 37‑31‑150. (A) A creditor shall inform the homeowner, obligor, and the department of:

(1) any loss mitigation options available to the homeowner and obligor; and

(2) its willingness or refusal to offer a loss mitigation option requested by the homeowner or obligor, the reason for any refusal, and the information on which any refusal is based.

(B) A creditor may not charge a homeowner or obligor a fee or costs for foreclosure resolution. The department may charge a fee or assess costs for the foreclosure resolution process to either or both parties.

(C) A homeowner or obligor that participates in foreclosure resolution shall provide reasonably available financial and other information to enable the creditor to evaluate any loss mitigation option.

(D) This chapter does not impose a duty on a creditor to provide a specific loss mitigation option. The department rules may not impose a duty on a creditor to provide any specific loss mitigation option.

(E) A homeowner or obligor may be accompanied at a foreclosure resolution meeting by an attorney, housing counselor, or other individual, who may participate in the meeting.

(F) Personal financial information exchanged during foreclosure resolution is confidential and not subject to disclosure, relating to open records. Neither the department nor the neutral individual is required to respond to a discovery request in a court proceeding to the extent the request seeks personal financial information or privileged information exchanged during foreclosure resolution.

Section 37‑31‑160. (A) Subject to the laws of this State other than this chapter, a creditor may commence a foreclosure at the time provided in Section 37‑31‑130. Subject to subsection (C), a creditor may not file a default or dispositive motion in a foreclosure or schedule or cause to be scheduled a foreclosure sale, unless:

(1) the notice under Section 37‑31‑130 has been sent;

(2) neither the homeowner nor obligor, not later than thirty days after the notice is sent, requests foreclosure resolution;

(3) the department notifies the creditor that:

(a) the parties that participated in the meeting required by Section 37‑31‑140 have reached an impasse; or

(b) the homeowner or obligor has failed to participate in foreclosure resolution, provide required information after a reasonable opportunity to do so, or materially comply with a department rule or order; or

(4) the court or department renders an order permitting the creditor to proceed with foreclosure.

(B) If the court or department determines that the mortgaged property is not occupied by a homeowner or obligor, the court or department shall render an order permitting the creditor to proceed with foreclosure.

(C) A creditor may file a default or dispositive motion in a foreclosure action, or schedule or cause to be scheduled a foreclosure sale, ninety days after the notice required by Section 37‑31‑130 is sent, unless the parties to the foreclosure resolution agree in a record to continue foreclosure resolution or the court or department directs the parties to the action to begin or continue foreclosure resolution.

(D) The court or department may render an order imposing appropriate conditions on the parties to foreclosure resolution, including the payment to the department of fees and costs of foreclosure resolution pursuant to Section 37‑31‑140(B) or the tender of periodic payments by the homeowner or obligor to the creditor.

Section 37‑31‑170. This chapter does not apply to a foreclosure by a creditor that owns, holds, or services five or fewer mortgages at the time the notice required by Section 37‑31‑130 is sent. The creditor may elect to participate in foreclosure resolution in accordance with this chapter and department rules.

SECTION 2. This act takes effect upon approval by the Governor.

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