

No. 2008-60

AN ACT

SB 486

Amending the act of December 3, 1959 (P.L.1688, No.621), entitled, as amended, "An act to promote the health, safety and welfare of the people of the Commonwealth by broadening the market for housing for persons and families of low and moderate income and alleviating shortages thereof, and by assisting in the provision of housing for elderly persons through the creation of the Pennsylvania Housing Finance Agency as a public corporation and government instrumentality; providing for the organization, membership and administration of the agency, prescribing its general powers and duties and the manner in which its funds are kept and audited, empowering the agency to make housing loans to qualified mortgagors upon the security of insured and uninsured mortgages, defining qualified mortgagors and providing for priorities among tenants in certain instances, prescribing interest rates and other terms of housing loans, permitting the agency to acquire real or personal property, permitting the agency to make agreements with financial institutions and Federal agencies, providing for the purchase by persons of low and moderate income of housing units, and approving the sale of housing units, permitting the agency to sell housing loans, providing for the promulgation of regulations and forms by the agency, prescribing penalties for furnishing false information, empowering the agency to borrow money upon its own credit by the issuance and sale of bonds and notes and by giving security therefor, permitting the refunding, redemption and purchase of such obligations by the agency, prescribing remedies of holders of such bonds and notes, exempting bonds and notes of the agency, the income therefrom, and the income and revenues of the agency from taxation, except transfer, death and gift taxes; making such bonds and notes legal investments for certain purposes; and indicating how the act shall become effective," further providing for general authority, for notice and institution of foreclosure proceedings, for notice requirements, for assistance payments and for repayment; and providing for an ongoing foreclosure study.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 401-C(d) and 402-C(b) of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, added December 23, 1983 (P.L.385, No.91), are amended to read:

Section 401-C. General Authority.—* * *

(d) 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 article, including, but not limited to, mandated counseling. A "consumer credit counseling agency" shall be defined for the purpose of this article as a nonprofit consumer credit counseling agency located in Pennsylvania which is approved by the agency or a housing counseling agency certified by the United States Department of Housing and Urban Development. *The agency shall maintain an up-to-date list of approved consumer credit counseling agencies for each county and publish the list on the agency's Internet website.*

Section 402-C. Notice and Institution of Foreclosure Proceedings.—* * *

(b) A mortgagee shall not accelerate the maturity of any mortgage obligation covered under this article, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation until a determination has been made *by the agency* on a mortgagor's application for emergency mortgage assistance payments or the applicable time periods provided for in section 403-C have expired *without the mortgagor applying for assistance in a timely fashion*, whichever is earlier.

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Section 2. Section 403-C(b) of the act, amended December 21, 1998 (P.L.1248, No.160), is amended to read:

Section 403-C. Notice Requirements.—* * *

(b) (1) The agency shall prepare a notice which shall include all the information required by this subsection and by section 403 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law *and referred to commonly as the Usury Law*. This notice shall be in plain language and specifically state that the recipient of the notice may qualify for financial assistance under the Homeowner's Emergency Mortgage Assistance Program. This notice shall contain the telephone number and the address of a local consumer credit counseling agency. This notice shall be in lieu of any other notice required by law. This notice shall also advise the mortgagor of his delinquency or other default under the mortgage, *including an itemized breakdown of the total amount past due*, and that such mortgagor has thirty (30) days, *plus three (3) days for mailing*, 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. *The mortgagee or other person sending the notice to the mortgagor shall simultaneously send a copy of each notice issued to the agency by regular mail, facsimile, electronic mail or another means of electronic transfer in accordance with agency guidelines. In lieu of sending a copy of each notice, the mortgagee or other person charged with sending the notice may provide the agency, within thirty (30) days of the end of each calendar quarter, a report listing the notices sent during the prior calendar quarter arranged by property address including zip code.*

(2) The notice under paragraph (1) must be sent by a mortgagee at least thirty (30) days before the mortgagee:

- (i) asks for full payment of any mortgage obligation; or
- (ii) begins any legal action, including foreclosure, for money due under the mortgage obligation or to take possession of the mortgagor's security.

(3) The proposed notice under paragraph (1) shall be published by the agency in the Pennsylvania Bulletin within one hundred twenty (120) days of the effective date of this paragraph. The notice actually adopted for use by

the agency shall be promulgated as part of the program guidelines required by section 401-C(b).

(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 commence any legal action against the mortgagor's real property for a period not to exceed thirty (30) calendar days from the date that the mortgagor first meets with the consumer credit counseling agency.

(5) [The notice shall include a statement that, if the mortgagor is unable to resolve the delinquency or default within thirty (30) calendar days of the mortgagor's first contact with either the mortgagee or a consumer credit counseling agency, 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.] *The notice shall include a statement that the mortgagor must have a face-to-face meeting with one of the designated consumer credit counseling agencies within thirty (30) calendar days plus three (3) additional days for mailing.*

(6) 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 commence legal action to foreclose upon its mortgage with the mortgagor. *The agency shall provide notice to the mortgagee if an administrative appeal is filed.*

(7) *An application for mortgage assistance may be submitted to the agency beyond the thirty (30)-day period specified in paragraph (5), and, in such case, the agency shall make a determination within sixty (60) calendar days of receipt of the mortgagor's application. A late application or an administrative appeal will not stay foreclosure proceedings, but, in the event the application is approved by the agency, a commenced foreclosure proceeding shall be stayed unless and until the mortgagor fails to proceed to closing and the agency rescinds its approval.*

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Section 3. Section 405-C(e) of the act, added December 23, 1983 (P.L.385, No.91), is amended and the section is amended by adding subsections to read:

Section 405-C. Assistance Payments.—* * *

(a.1) *A mortgagee entitled to payments under this section shall provide to the agency within thirty (30) days of the agency's request the following documents and information:*

(1) *An itemized statement of the amounts due under the mortgage, including all corporate advances incurred for which reimbursement from the mortgagor is demanded by the mortgagee. Demands for attorney fees,*

court costs and other advances shall be reasonable and shall reflect the amount of work and expenses actually expended and may not include any amounts incurred during any period a stay is in effect under this act.

(2) Copies of the following documents from the original mortgage transaction:

(i) The HUD-1 settlement statement.

(ii) The mortgage and note.

(iii) The appraisal, if an appraisal has been performed during the last five (5) years.

(a.2) Failure to provide in a timely fashion the documents and information required under subsection (a.1) will result in the mortgagee's forfeiture of the right to receive any late fees and attorney fees, costs and expenses.

(a.3) Upon the agency's payment of the initial payment to the mortgagee, including all corporate advances allowed by the agency, the mortgagee shall adjust its accounts to reflect that the mortgage obligation is, as of the date of receipt of such funds, reinstated and current for all purposes. The subsequent imposition by a mortgagee of any charges, fees or other amounts that were paid or disallowed by the agency, or waived by the mortgagee, shall be in violation of the act of December 17, 1968 (P.L.1224, No.387), known as the "Unfair Trade Practices and Consumer Protection Law."

(b.1) In lieu of paying arrearages under subsection (a) or ongoing assistance under subsection (b), the agency may fund a compromise payoff of the balance of the mortgage, if the agency determines that structuring assistance in such a manner would be in the best interest of the agency and the mortgagor, as agreed to by the mortgagor.

*(e) If any mortgagee scheduled to receive **monthly** payments from the agency pursuant to this article fails to receive from the agency the full amount of such **monthly** payment within thirty (30) days of the scheduled due date, or if a mortgagor fails to observe and perform all the terms, covenants and conditions of the mortgage, that mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restriction or requirement under this article.*

Section 4. Section 406-C(5) of the act, amended December 21, 1998 (P.L.1248, No.160), is amended to read:

Section 406-C. Repayment.—Upon approval of mortgage assistance, the agency shall enter into an agreement with the mortgagor for repayment of all mortgage assistance made by the agency plus interest as provided in paragraph (5). The agreement shall provide for monthly payments by the mortgagor and be subject to the following provisions:

(5) Interest shall accrue on all mortgage assistance made by the agency at [the rate of nine (9) percent per annum.] *a rate of interest to be determined by the agency prior to the end of each calendar year for loans closed in the next calendar year, which rate shall not exceed the interest rate established by the Department of Banking pursuant to section 301 of the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law and referred to commonly as the Usury Law.* Interest shall start to accrue whenever the mortgagor begins to make repayment under this section. Interest shall accrue only during the period in which the mortgagor is required to make repayment under this section. When any mortgage for which mortgage assistance was made is paid, interest shall then accrue on all mortgage assistance due and owing at the same rate and on the same basis as the mortgage for which the mortgage assistance was made.

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Section 5. The act is amended by adding a section to read:

Section 412-C. Ongoing Foreclosure Study.—The agency shall monitor foreclosure activity and trends in this Commonwealth, using data and information accumulated from notices and applications for assistance processed under this article, and shall, as appropriate, provide recommendations for addressing any problems identified in this monitoring effort.

Section 6. This act shall take effect in 60 days.

APPROVED—The 8th day of July, A.D. 2008.

EDWARD G. RENDELL