

CHAPTER 199
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 57
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO FORECLOSURES.

WHEREAS, the federal government and lenders maintain loss mitigation and assistance programs that have the potential to reduce the number of foreclosure filings on residential properties that proceed to judgment and sheriff's sale. Those programs are currently underutilized. It is important to ensure that homeowners facing foreclosure have the opportunity to be considered for such programs where they are eligible; and

WHEREAS, the Delaware State Housing Authority oversees the Delaware Emergency Mortgage Assistance Program that provides emergency loans to certain homeowners facing foreclosure, which program is currently underutilized because too few homeowners are aware that they may be eligible for assistance;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 10, Chapter 49, Subchapter XI (Scire Facias on Mortgage) of the Delaware Code by adding a new Section 5062A to read as follows:

“§5062A. LOSS MITIGATION AFFIDAVIT REQUIRED.

(a) In connection with any mortgage foreclosure action brought under §5061 of this subchapter with respect to an owner-occupied one-to-four family primary residential property, unless the mortgage is held by the seller of the subject property who does not hold more than five such mortgages, the defendant must have an opportunity to apply for relief under a federal loss mitigation program for which the defendant may be eligible including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program, together with any proprietary loss mitigation programs offered by the plaintiff for which defendant may be eligible. A plaintiff in a mortgage foreclosure action may establish that it provided a defendant with the opportunity to apply for relief contemplated by this paragraph if, for example, the plaintiff provides the defendant with a list of the applicable loss mitigation programs in which the plaintiff participates and instructions for how to initiate an application for each such program, which list and instructions may be included in the notice of intent to foreclose required by Section 5062B of this subchapter.

(b) No judgment may be entered in any mortgage foreclosure action brought under §5061 with respect to an owner-occupied one-to-four family primary residential property, and no owner-occupied one-to-four family primary residential property that is the subject of a judgment of foreclosure that has not gone to sheriff's sale as of the effective date of this Act may be sold at sheriff's sale, unless the plaintiff has filed a fully executed affidavit asserting:

(1) that the defendant has been provided with the opportunity to apply for relief under any loss mitigation program for which the defendant may be eligible, as described in paragraph (a), and

(2) that the loan secured by the mortgage for which plaintiff seeks foreclosure is: (i) not subject to a loss mitigation program; or (ii) is ineligible for any applicable loss mitigation program due to the defendant's failure to apply, or failure to provide required information, or failure to complete the requirements of the program; or (iii) is determined by the plaintiff to be otherwise ineligible for any applicable loss mitigation program.

(c) If an affidavit required by paragraph (b) of this subsection is false with respect to the accuracy of any statement required by subparagraphs (b)(1) and (b)(2), the foreclosure action shall be dismissed by the court without prejudice and a complaint may be refiled by the plaintiff, but no fees or other costs shall be charged to the defendant in connection with the dismissed action."

Section 2. Amend Title 10, Chapter 49, Subchapter XI (Scire Facias on Mortgage) of the Delaware Code by adding a new Section 5062B to read as follows:

“§5062B. REQUIRED NOTICES.

(a) (1) Except as provided in paragraph (2) of this subsection, with respect to an owner-occupied one-to-four family primary residential property, a mortgage foreclosure action may not be filed until 45 days after a notice of intent to foreclose is sent in the form and manner required by paragraph (3) of this subsection, which notice may not be sent until the obligor on the loan secured by the mortgage has defaulted on the obligation set forth in the terms of the loan.

(2) The notice of intent to foreclose required under paragraph (1) of this subsection shall not be required if the property subject to the mortgage has been abandoned, if the mortgage is held by the seller of the subject property who does not hold more than five such mortgages, if the obligor on the loan secured by the mortgage has voluntarily surrendered the property to the obligee, or if the default has continued after the automatic stay has been lifted or terminated in a bankruptcy proceeding, or if the default has continued after the bankruptcy proceeding has been dismissed.

(3) (A) The notice of intent to foreclose required under paragraph (1) of this subsection shall be sent:

(i) to the potential defendant by certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service; and

(ii) to the potential defendant by first-class mail.

(B) The notice of intent to foreclose shall:

(i) contain the following heading, in English and in Spanish, in at least 30 point boldface type, at the beginning of the notice:

‘NOTICE REQUIRED BY DELAWARE LAW: TAKE ACTION TO SAVE YOUR HOME FROM FORECLOSURE’

(ii) contain the following statement, in English and in Spanish, in at least 14 point boldface type, immediately following the heading:

‘This is an official notice that the mortgage on your home is in default, and the lender intends to foreclose. Specific information about the nature of the default may be provided in the attached pages.’

Mortgage foreclosure is a complex process. Some people may approach you about ‘saving’ your home. You should be careful about any such promises. The State encourages you to become informed about your options in foreclosure before entering into any agreements with anyone in connection with the foreclosure of your home. There are government agencies and nonprofit organizations that you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please refer to the list later in this notice, call the Delaware Attorney General’s Foreclosure Hotline at 1-800-220-5424, or go to www.DEForeclosureHelp.org. The State does not guarantee the advice of these organizations. Do not delay dealing with the foreclosure because your options may become more limited as time passes.

EMERGENCY FINANCIAL HELP MAY BE AVAILABLE

The Delaware Emergency Mortgage Assistance Program (DEMAP) may be able to help to save your home. DEMAP is a loan program that provides Delaware homeowners with assistance in preventing residential mortgage foreclosures that result from circumstances beyond the homeowner’s control. If you are delinquent on your mortgage, you should meet with an approved DEMAP housing counseling agency as soon as possible, and explore your options with the counseling agency prior to applying to the DEMAP Program. To find a counseling agency, refer to the list later in this notice, call the Delaware Attorney General’s Foreclosure Hotline at 1-800-220-5424, or go to www.DEForeclosureHelp.org. Take this Notice with you when you meet with the counseling agency.’

(iii) contain, in English and in Spanish, in at least 14 point boldface type, the phrase ‘For information on how to reinstate your loan, call the following telephone number: _____.’ and the telephone number of a contact person or department the homeowner may call to obtain specific instructions on how to reinstate the mortgage loan;

(iv) contain a statement, as of the date of the notice, of the nature of the default, the amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees, and any other actions the homeowner must take to cure the default;

(v) contain a list of approved DEMAP housing counseling agencies and the contact information for each listed agency; and

(vi) any other information that the Superior Court shall require.

(4) If the potential defendant may be eligible to apply for assistance through any proprietary loss mitigation program offered by the plaintiff or under any federal loss mitigation program in which the plaintiff participates, including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program, the potential plaintiff shall include a list of the potentially applicable loss mitigation programs, instructions for how to initiate a completed application for each such program, and a telephone number to call to confirm receipt of an application.

(5) The potential plaintiff shall include with the notice of intent to foreclose an accounting of the mortgage obligation covering the twelve-month period prior to the date of the alleged default. The accounting shall include, at a minimum, a history of all payments made during the twelve-month period prior to the date of the alleged default and the potential plaintiff’s allocation of those payments to principal, interest, attorney

fees, other applicable fees, and the allocation of such payments to the payment installments required by the mortgage. The accounting shall also include: (i) the due date for the mortgage, (ii) any other information as the potential plaintiff may be relying upon as the basis for the claim of default; and (iii) a certification by the potential plaintiff that the information contained in the accounting is true and accurate to the best of its knowledge as of the date provided and that the information provided has been relied upon as the basis for the claim of default.

(b) As necessary to reflect changes in law, procedure, or loss mitigation options, the Superior Court may prescribe additional or alternate requirements for the form of a notice of intent to foreclose as described under paragraph (a)(3)(B) of this Section.

(c) The Delaware State Housing Authority shall make available upon request the list of approved DEMAP housing counseling agencies and the contact information for each listed agency required under paragraph (a)(3)(B)(v) of this Section.”

Section 3.

(a) This Act shall take effect 120 days after its enactment into law.

(b) Section 5062A of Title 10 shall apply to: (i) mortgage foreclosure actions commenced from the effective date of this Act to the date that is two years after such date; and (ii) mortgage foreclosure actions commenced prior to the effective date of this Act that are pending in the Superior Court on such date and have not yet gone to judgment or sale.

(c) Section 5062B of Title 10 shall apply to mortgage foreclosure actions commenced after the effective date of this Act.

Approved September 21, 2011