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DELAWARE STATE SENATE

146th GENERAL ASSEMBLY

SENATE BILL NO. 42
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO FORECLOSURE CONSULTANTS AND MORTGAGE MODIFICATION SERVICE PROVIDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §2402B(1) of Title 6 of the Delaware Code by striking the phrase “residence in foreclosure” and substituting in lieu thereof the word “residence in default” as it appears in subparagraphs 5., 10., and 11. of paragraph a.

Section 2. Further amend §2402B(1) of Title 6 of the Delaware Code by striking paragraph b. and substituting in lieu thereof :

“b. Systematically contacts owners of residences in default to offer foreclosure consulting services.”

Section 3. Amend §2402B(3) of Title 6 of the Delaware Code by striking the phrase “residence in foreclosure” as it appears in paragraphs a., d., f., g., h., i., and j. and substituting in lieu thereof the phrase “residence in default.”

Section 4. Amend §2402B of Title 6 the Delaware Code by striking paragraph (6) and substituting the following in lieu thereof:

“(6) ‘Homeowner’ means the record owner of a residence in default or a residence in foreclosure.”

Section 5. Further amend §2402B of Title 6 of the Delaware Code by renumbering subsection “(11)” and (12)” as “(12)” and “(13)” and by adding a new subsection “(11)”:

“(11) ‘Residence in default’ means residential real property consisting of not more than 4 single-family dwelling units, 1 of which is occupied by the owner as the individual’s principal place of residence, and on which the mortgage is at least 60 days in default”.

Section 6. Amend §2403B(2) of Title 6 of the Delaware Code by striking the phrase “residence in foreclosure” and substituting in lieu thereof the phrase “residence in default”.

Section 7. Amend §2413B(d) of Title 6 of the Delaware Code by striking the phrase “residence in foreclosure” and substituting in lieu thereof the phrase “residence in default”.

Section 8. Amend §2415B(a)(5) of Title 6 of the Delaware Code by striking the phrase “residence in foreclosure” and substituting in lieu thereof the phrase “residence in default”.

Section 9. Amend Title 6 of the Delaware Code by adding a new Chapter 24C to read as follows:

“CHAPTER 24C. MORTGAGE LOAN MODIFICATION SERVICES

§2400C. Short title.

This chapter may be cited as the Delaware Mortgage Loan Modification Services Act.

§2401C. Purpose.

The purpose of this chapter is to protect homeowners from unfair or deceptive practices by providers of mortgage loan modification services.

§2402C. Definitions.

As used in the chapter, unless the context requires otherwise:

(1) “Commercial Communication” means any written or oral statement, illustration, or depiction in any medium that is designed to effect a sale of or create interest in purchasing, any mortgage modification service.

(2) “Dwelling” means a residential structure containing four or fewer units, whether or not the structure is attached to real property, that is primarily for personal, family, or household use.

(3) “Dwelling Loan” or “Mortgage Loan” means any loan secured by a dwelling, and any associated deed of trust or mortgage.

(4) “Mortgage Loan Modification Services Provider” means any person that provides, offers to provide, or arranges for others to provide, any mortgage modification service but does not include the dwelling loan holder, servicer, or any agent or contractor of such individuals or entities.

(5) “Mortgage Loan Modification Services” means services as an intermediary between an individual and 1 or more dwelling loan creditors for the purpose of obtaining assent to the repayment of a mortgage loan on terms more favorable to the individual than the terms of the original mortgage loan.

(6) "Servicer" means the individual or entity responsible for receiving any scheduled periodic payment from a homeowner pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage modification services or for making the payments of principal and interest and such other payments with respect to the amounts received as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

§2403C. Exemptions.

This chapter does not apply to:

(1) An individual admitted to practice law in this State, who is in an attorney client relationship, while performing any activity related to the individual's regular practice of law in this State;

(2) A person doing business under any law of this State or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies while performing services as part of the person's normal business activities;

(3) A person licensed as a mortgage loan originator, broker or lender under Title 5 of the Delaware Code or as a debt management service provider in Chapter 24A of this Title, while acting under the authority of that license;

(4) A person licensed as a real estate broker or real estate salesperson under Title 24 while negotiating with the mortgage loan holder on a dwelling that is listed for sale by the broker or brokerage organization as long as no additional fee is charged for the negotiation.

(5) A non-profit organization that offers housing counseling or advice to homeowners; or

(6) A public corporation, government or governmental subdivision, agency, or instrumentality.

§2404C. Registration required.

Unless exempted under this chapter, a person may not provide mortgage loan modification services to an individual who it reasonably should know resides in this State at the time it agrees to provide the services, unless the person satisfies the following requirements:

(1) The person registers with, and is issued and maintains a certificate of registration from the Attorney General in accordance with the following requirements:

a. The person shall submit a completed registration application on a form approved by the Attorney General, along with a non-refundable fee of \$1000 which shall be deposited in the State Treasury to the credit of the State Consumer Protection Fund created under §2527 of this title. Funds received pursuant to this chapter may be used to support foreclosure relief programs.

b. The registration form shall be accompanied by a copy of all print or electronic advertising and scripts of telephonic or broadcast advertising.

c. The registration form shall be accompanied by the bond required pursuant to this section.

(2) The person provides an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum of one hundred thousand dollars (\$100,000). The bond shall run to the state for the benefit of the Attorney General and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by such person in the course of its activity authorized by this chapter.

§2405C. Registration.

(a) Except as otherwise provided in subsection (b) of this section, the Attorney General shall register a person in compliance with §2404C of this chapter.

(b) The Attorney General may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, member or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty;

(3) The Attorney General finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, members, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

(c) Registration shall be renewed annually by using an approved form and submitting a renewal fee in the amount of \$500.

§2406C. Form and content of contracts.

(a) A contract for mortgage loan modification services shall be in writing and provided to the homeowner, without changes, alterations, or modification, for review at least 24 hours before it is signed by the homeowner.

(b) A contract for mortgage loan modification services shall be dated and personally signed with each page being initialed, by both the homeowner and the provider.

(b) A contract for mortgage loan modification service shall be printed in at least 12-point type and shall include the name and address of the mortgage modification service provider and the date the homeowner signed the agreement.

(c) A contract for mortgage loan modification service shall fully disclose the exact nature of the modification services to be provided and the total amount and terms of compensation to be received by the mortgage loan modification service provider.

(d) A contract for mortgage loan modification services must include a provision that allows the homeowner to cancel at any time without penalty and a separate, detachable page designated NOTICE OF CANCELLATION containing the name and address of the provider for the use of the homeowner if services are to be cancelled.

§2407C. Required disclosures.

(a) Any commercial communication by a mortgage loan modification services provider shall include the following statements in a clear and prominent format:

(1) “(Name of Company) is not associated with the government, and our service is not approved by the government or your lender.”

(2) “Even if you accept this offer and use our service, your lender may not agree to change your loan.”

(3) “You may stop doing business with us at any time. You may accept or reject any offer of mortgage modification we may obtain from your lender or servicer. If you reject the offer, you do not have to pay us.”

§2408C. Prohibited acts.

(a) A mortgage loan modification services provider may not:

(1) Misrepresent, expressly or by implication, that the provider is affiliated with, endorsed or approved by, or otherwise associated with:

(i) The United States government,

(ii) Any governmental homeowner assistance plan,

(iii) Any Federal, State, or local government agency, unit, or department,

(iv) Any nonprofit housing counselor agency or program,

(v) The maker, holder, or servicer of the dwelling loan, or

(vi) Any other individual, entity or program.

(2) Represent, expressly or by implication, that a homeowner cannot or should not contact or communicate with his or her lender or servicer.

(3) Request or receive payment of any fee or other consideration until the homeowner has executed a written agreement between the homeowner and the dwelling loan holder or servicer incorporating the offer of mortgage modification services obtained by the provider.

§2409C. Enforcement.

(a) The Attorney General shall have the same authority to enforce and carry out this chapter as is granted by Chapter 25 of Title 29 and by §§2511-2527 and 2531-2536 of this title.

(b) If a court or tribunal of competent jurisdiction finds that any person has willfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than \$10,000 per violation pursuant to §2533 of this title. If the violation is against an elderly person or person with a disability, an additional civil penalty of not more than \$10,000 per violation shall be recovered pursuant to §2581 of this title. Each day that a willful violation continues shall be considered a separated violation.

(c) For the purpose of this chapter, a willful violation occurs when the party committing the violation knew or should have known that the party's conduct was of the nature prohibited by this chapter."

Section 10. This Act becomes effective when it is enacted into law except that Section 9 becomes effective 6 months after its enactment into law.