

SENATE BILL 186

By Harper

AN ACT to amend Tennessee Code Annotated, Title 29;
Title 35; Title 45; Title 47 and Title 66, relative to
foreclosures.

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

SECTION 1. Tennessee Code Annotated, Section 35-5-101, is amended by adding the following new subsection (f):

(f)

(1) On or after the effective date of this act, if the debtor or any co-debtor is in default due to any of the circumstances listed in subdivision (f)(2) and the creditor has actual knowledge of such circumstances, the creditor shall conduct an in-person meeting with the debtor or co-debtor to assess the debtor or co-debtor's financial situation, provide the debtor or co-debtor with a list of HUD-certified credit counselors in the debtor or co-debtor's geographic region, and explore options for the debtor or co-debtor to avoid foreclosure. At that meeting, the creditor shall offer, where feasible, restructuring or other options, including forbearance or loan modification, consistent with the creditor's authority to mitigate losses if that mitigation will serve the best interest of the creditor because the debtor or co-debtor is able and willing to pay under the modified terms, and significant financial loss to the creditor is likely to occur without a restructuring or other modification.

(2)

(A) If the creditor has actual knowledge that the debtor or co-debtor is in default due to any of the following circumstances, the creditor must comply with subdivision (f)(1):

(i) The debtor or co-debtor or any immediate family member of the debtor or co-debtor has died or has or is suffering from a catastrophic illness. For purposes of this subdivision (2)(A)(i), "immediate family member" means a spouse, parent, sibling or child;

(ii) The debtor or co-debtor has become unemployed as defined by § 50-7-211 and such unemployment was not caused by the debtor or the co-debtor; or

(iii) The debtor or co-debtor has or is suffering from any catastrophic situation beyond the debtor's control that has caused extreme financial hardship.

(B) If the debtor or co-debtor has sent a certified letter to the creditor prior to the first publication being made pursuant to subsection (b), stating that any of the circumstances listed in subdivision (2)(A) exist, the creditor shall be deemed to have actual knowledge of such circumstances for purposes of this subsection (f).

(3) The in-person meeting shall be conducted no later than ten (10) days after the first publication is made pursuant to this section. The creditor shall include a declaration in the creditor's loan documents that it has met with the debtor or co-debtor or tried with due diligence to contact the debtor or co-debtor to schedule an in-person meeting. The creditor shall also include within that

declaration the terms of the existing loan and the restructuring options that were offered.

(4) If the creditor fails to comply with the provisions of subsection (f), the creditor shall be liable to the same extent as the creditor would be for noncompliance with other parts of this section. However, to establish liability, the debtor or co-debtor must establish that the debtor or co-debtor would have been able to restructure or modify the loan amount at the time the first publication was made pursuant to subdivision (b).

(5) The provisions of this subsection (f) shall only apply to deeds of trust, mortgages or other liens securing the payment of money or thing of value for which an owner-occupied single family residence located in this state is pledged as collateral to secure the debt.

(6) Any creditor under any deed of trust, mortgage or other lien securing the payment of money or thing of value that is entered into prior to the effective date of this act is encouraged to comply with the provisions of this subsection (f).

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.