

113TH CONGRESS
1ST SESSION

S. 361

To require the lender or servicer of a home mortgage, upon a request by the homeowner for a short sale, to make a prompt decision whether to allow the sale.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2013

Ms. MURKOWSKI (for herself, Mr. BROWN, Mr. ENZI, Mr. MENENDEZ, Mr. REED, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require the lender or servicer of a home mortgage, upon a request by the homeowner for a short sale, to make a prompt decision whether to allow the sale.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prompt Notification
5 of Short Sales Act”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the following definitions
8 shall apply:

1 (a) RESIDENTIAL MORTGAGE LOAN.—The term
2 “residential mortgage loan” means any consumer credit
3 transaction that is secured by a mortgage, deed of trust,
4 or other equivalent consensual security interest on a dwell-
5 ing or on residential real property that includes a dwelling,
6 other than a consumer credit transaction under an open
7 end credit plan or an extension of credit relating to a plan
8 described in section 101(53D) of title 11, United States
9 Code.

10 (b) SECURITIZATION VEHICLE.—The term
11 “securitization vehicle” means a trust, special purpose en-
12 tity, or other legal structure that is used to facilitate the
13 issuing of securities, participation certificates, or similar
14 instruments backed by or referring to a pool of assets that
15 includes residential mortgage loans (or instruments that
16 are related to residential mortgage loans, such as credit-
17 linked notes).

18 (c) SERVICER.—The term “servicer” has the same
19 meaning as in section 129A of the Truth in Lending Act
20 (15 U.S.C. 1639a), as so designated by section 1402(a)(1)
21 of Public Law 111–203, except that such term includes
22 a person who makes or holds a residential mortgage loan
23 (including a pool of residential mortgage loans), if such
24 person also services the loan.

1 (d) **SHORT SALE.**—The term “short sale” means the
 2 sale of the dwelling or residential real property that is sub-
 3 ject to the mortgage, deed or trust, or other security inter-
 4 est that secures a residential mortgage loan that—

5 (1) will result in proceeds in an amount that is
 6 less than the remaining amount due under the mort-
 7 gage loan; and

8 (2) requires authorization by the securitization
 9 vehicle or other investment vehicle or holder of the
 10 mortgage loan, or the servicer acting on behalf of
 11 such a vehicle or holder.

12 **SEC. 3. PROMPT NOTIFICATIONS AND DECISION REGARD-**
 13 **ING SHORT SALE.**

14 (a) **REQUIREMENT FOR PROMPT NOTIFICATIONS,**
 15 **DECISIONS.**—

16 (1) **NOTIFICATIONS.**—

17 (A) **IN GENERAL.**—Each servicer shall pro-
 18 vide in writing to a mortgagor of a residential
 19 mortgage loan—

20 (i) an acknowledgment of receipt of a
 21 written request of the mortgagor, not later
 22 than 3 days after the date of such receipt;

23 (ii) a notice of any missing or incom-
 24 plete information required with respect to

1 such request, not later than 5 days after
2 the date of such receipt; and

3 (iii) a definitive response to such re-
4 quest approving or denying such request,
5 not later than 30 days after the date of
6 such receipt.

7 (B) EXCEPTIONAL CIRCUMSTANCES.—In
8 any case in which a servicer is unable to provide
9 a decision with respect to a written request of
10 a mortgagor of a residential mortgage loan dur-
11 ing the 30-day period required by subparagraph
12 (A), such period may be extended to not later
13 than 60 days after the date of receipt of a com-
14 pleted application, except that the servicer shall,
15 verbally or in writing—

16 (i) notify the mortgagor during the
17 initial 30-day period that the application is
18 still under review; and

19 (ii) each week thereafter provide to
20 the mortgagor a status update indicating
21 the reasons why a decision is pending be-
22 yond the required 30-day period.

23 (C) APPLICABILITY.—Subparagraph (A)
24 shall apply, except as provided in subsection
25 (b), and notwithstanding any other provision of

1 law or of any contract, including a contract be-
2 tween a servicer of a residential mortgage loan
3 and a securitization vehicle or other investment
4 vehicle.

5 (D) CONTENT.—A written response by a
6 servicer under subparagraph (A) shall specify a
7 decision on whether such request has been de-
8 nied, approved, or that such request has been
9 approved subject to specified changes.

10 (2) MORTGAGOR SUBMISSION.—Paragraph (1)
11 shall apply in any case in which the mortgagor
12 under a residential mortgage loan submits to the
13 servicer thereof—

14 (A) a written offer for a short sale of the
15 dwelling or residential real property that is sub-
16 ject to the mortgage, deed of trust, or other se-
17 curity interest that secures the mortgage loan;
18 and

19 (B) all information required by the servicer
20 in connection with such a request (including a
21 copy of an executed contract between the owner
22 of the dwelling or property and the prospective
23 buyer that is subject to approval by the
24 servicer).

1 (3) CIVIL ACTIONS AUTHORIZED.—An ag-
2 grieved individual may bring an action in a court of
3 competent jurisdiction, asserting a violation of this
4 Act. Aggrieved individuals may be awarded all ap-
5 propriate relief, including equitable relief, and a
6 monetary award of \$1,000 per violation, plus reason-
7 able attorneys’ fees, or such higher amount as may
8 be appropriate in the case of an established pattern
9 or practice of such failures.

10 (b) INAPPLICABILITY TO CERTAIN EXISTING MORT-
11 GAGES.—Subsection (a) shall not apply with respect to
12 any residential mortgage with respect to which the mort-
13 gagor and the mortgagee or servicer have entered into a
14 written agreement before the date of enactment of this Act
15 explicitly providing a procedure or terms for approval of
16 a short sale.

17 (c) TREATMENT OF OTHER TIME LIMITS.—This sec-
18 tion may not be construed to preempt, annul, or otherwise
19 affect any other provision of law or of any contract or pro-
20 gram that provides a shorter period than is provided under
21 subsection (a) for a decision by the servicer of a residential
22 mortgage loan regarding a short sale of the dwelling or
23 residential real property that is subject to the mortgage,

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- 1 deed or trust, or other security interest that secures the
- 2 mortgage loan.

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