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1 A bill to be entitled
2 An act relating to mortgage loan servicing; creating
3 the Florida Homeowner Bill of Rights Act; providing
4 definitions; providing procedures, requirements, and
5 limitations with respect to a mortgage servicer's
6 processing of a borrower's application for the
7 modification of a mortgage loan as a foreclosure
8 prevention alternative; requiring a mortgage servicer
9 to provide a single point of contact for a mortgage
10 borrower seeking mortgage modification; requiring a
11 single point of contact to engage in specified
12 activities and perform certain services with respect
13 to borrowers; providing requirements and procedures
14 with respect to a borrower's request for a short sale
15 of the mortgaged property; providing requirements,
16 procedures, and limitations with respect to a mortgage
17 servicer's obtaining of force-placed insurance
18 coverage on the borrower's mortgaged property;
19 defining the term "robo-signed" or "robo-signing";
20 providing for the imposition of civil penalties
21 against any mortgage servicer who engages in robo-
22 signing; providing for private causes of action for
23 material violations of the act by mortgage servicers;
24 providing for statutory and actual damages and
25 attorney fees and costs in such actions; providing an
26 effective date.

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28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Short title.—This act may be cited as the
31 "Florida Homeowner Bill of Rights Act."

32 Section 2. Definitions.—As used in this act, the term:

33 (1) "Borrower" means a person obligated to repay a
34 mortgage loan and includes, but is not limited to, a coborrower
35 or cosignor.

36 (2) "Force-placed insurance" means hazard insurance
37 coverage, as well as flood, excess flood, wind-only, and excess
38 wind-only insurance, when obtained by the mortgage servicer.

39 (3) "Foreclosure prevention alternative" means a loan
40 modification or another available loss mitigation option.

41 (4) "Mortgage servicer" means a person or entity who
42 directly or indirectly services a loan.

43 (5) "Servicing" means the act of managing a loan account
44 and includes acting on behalf of the owner by interacting with
45 the borrower, managing the loan account on a daily basis,
46 including collecting and crediting periodic loan payments,
47 managing any escrow account, monitoring and ensuring payment of
48 insurance and taxes, or enforcing the note and security
49 instrument, as the current owner's authorized agent with the
50 express written authority of the current owner of the promissory
51 note.

52 Section 3. Dual track restricted.—

53 (1) If a borrower submits a complete application for a
54 loan modification offered by, or through, the mortgage servicer
55 of the borrower, a mortgage servicer, mortgagee, or express
56 written authorized agent may not refer the borrower's account to

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57 foreclosure while the borrower's complete application for any
58 loan modification program is pending until any of the following
59 occur:

60 (a) The mortgage servicer makes a written determination
61 that the borrower is not eligible for a loan modification, the
62 borrower is provided an opportunity to appeal the written denial
63 within 30 days after the date of the written denial and to
64 provide evidence that the mortgage servicer's determination was
65 in error, and the mortgage servicer properly responds to the
66 appeal.

67 (b) The borrower does not accept an offered loan
68 modification within 14 days after receipt of the written offer.

69 (c) The borrower accepts a written loan modification, but
70 defaults on, or otherwise breaches the borrower's obligations
71 under, the loan modification.

72 (2) If the borrower's application for a loan modification
73 is denied, the mortgage servicer, mortgagee, or authorized agent
74 may not begin foreclosure until the later of:

75 (a) Thirty-one days after the borrower is notified in
76 writing of the denial if no appeal is filed by the borrower; or

77 (b) If the borrower appeals the denial, the later of 31
78 days after the written denial of the appeal or 31 days after a
79 loan modification is offered after appeal but declined by the
80 borrower, or if a loan modification is offered and accepted
81 after appeal, the date on which the borrower fails to timely
82 submit the first payment or otherwise breaches the terms of the
83 offer.

84 (3) After denial of a loan modification application, the

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85 mortgage servicer must send a written notice to the borrower
86 identifying the reasons for denial, including the following:

87 (a) The amount of time after the date of receipt of the
88 denial letter that the borrower has to request an appeal of the
89 denial, instructions for how to appeal the denial, and how and
90 where to send the request for appeal.

91 (b) If the denial is based on investor disallowance, the
92 specific reasons for the investor disallowance and the name and
93 address of the investor, or investment trust, if applicable, and
94 a quotation or copy of the complete provision upon which the
95 denial was based.

96 (c) If the denial is the result of a net present value
97 calculation, all of the inputs, assumptions, and calculations
98 used to make that determination and a statement that the
99 borrower may obtain all of the inputs used in the net present
100 value calculation upon written request of the mortgage servicer.

101 (d) If applicable, a finding that the borrower was
102 previously offered a loan modification and failed to
103 successfully make payments under the terms of the modified loan.

104 (e) If applicable, a description of other foreclosure
105 prevention alternatives for which the borrower may be eligible,
106 and a list of the steps the borrower must take in order to be
107 considered for those options. If the mortgage servicer has
108 already approved the borrower for another foreclosure prevention
109 alternative, the mortgage servicer must provide information
110 necessary to complete the foreclosure prevention alternative.

111 (4) For purposes of this section, a complete application
112 includes submission of the following:

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113 (a) A completed form that sets forth the borrower's
114 financial, income, and hardship information, such as a uniform
115 borrower assistance form, request for modification and
116 affidavit, or equivalent forms.

117 (b) Income documentation based on income type that is not
118 more than 90 days' old on the date that a complete application
119 is submitted.

120 (c) Hardship documentation based on hardship type.

121 (d) An IRS Form 4506-T-EZ or IRS Form 4506-T signed by the
122 borrower.

123 (5) Before filing the foreclosure, the mortgage servicer
124 must provide the borrower with the following:

125 (a) A copy of the borrower's promissory note or other
126 evidence of indebtedness.

127 (b) A copy of the borrower's deed of trust or mortgage.

128 (c) A copy of any assignment, if applicable, of the
129 borrower's mortgage required to demonstrate the right of the
130 mortgage service to foreclose.

131 (d) All documents that substantiate the servicer's claim
132 of its right to foreclose on behalf of the owner, if applicable.

133 (e) A copy of the borrower's life of loan payment history.

134 Section 4. Single point of contract.—The mortgage servicer
135 must establish an easily accessible and reliable single point of
136 contact for each mortgage borrower promptly after the borrower
137 requests loss mitigation assistance and provide the borrower one
138 or more direct means of communication with the single point of
139 contact.

140 (1) The single point of contact is responsible for:

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141 (a) Communicating information concerning the process
142 available for a borrower to apply for foreclosure prevention
143 alternatives, timelines relating to the process, and the
144 deadlines for any submissions that are required in order for the
145 borrower to be considered for prevention foreclosure
146 alternatives.

147 (b) Coordinating receipt of all documents associated with
148 loan modification or loss mitigation activities and notifying
149 the borrower of any missing documents necessary to complete the
150 application.

151 (c) Having access to current information and personnel
152 sufficient to timely, accurately, and adequately inform the
153 borrower of the current status of the foreclosure prevention
154 alternative.

155 (d) Ensuring the borrower is considered for all
156 foreclosure prevention alternatives offered by, and through, the
157 mortgage servicer, if any.

158 (e) Having access to and open lines of communication with
159 individuals with the ability and authority to stop foreclosure
160 proceedings when necessary.

161 (2) The single point of contact must, at a minimum,
162 provide the following services to the borrower:

163 (a) Contact and notify the borrower of the single point of
164 contact's status as the single point of contact.

165 (b) Explain programs for which the borrower is eligible.

166 (c) Explain the requirements of programs for which the
167 borrower is eligible.

168 (d) Explain program documentation requirements and

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169 timelines.

170 (e) Provide basic information about the status of the
171 borrower's account, including pending loan modification
172 applications, other loss mitigation alternatives, and
173 foreclosure activity.

174 (f) Notify the borrower of missing documents and provide a
175 secure address or secure electronic means for submission of
176 documents by the borrower in order to complete the loan
177 modification application.

178 (g) Communicate any mortgage servicer's decision
179 concerning a loan modification application and other loss
180 mitigation alternatives to the borrower in writing.

181 (h) Assist the borrower in pursuing options other than
182 foreclosure upon denial of a loan modification.

183 (i) If a loan modification is approved, explain the loan
184 modification program to the borrower.

185 (j) Ensure the borrower receives all documents necessary
186 to memorialize the loan modification and ensure the borrower has
187 all information needed to remit the payments due under the loan
188 modification agreement.

189 (k) Provide information regarding credit counseling, if
190 necessary.

191 (l) Facilitate the resolution of any internal processing
192 requirements for the borrower.

193 (m) Have access to individuals with the ability to stop
194 foreclosure proceedings when necessary to comply with the
195 federal Making Home Affordable Program.

196 (3) The single point of contact shall remain assigned to

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197 the borrower's account until the mortgage servicer determines
198 that all loss mitigation options offered by or through the
199 mortgage servicer have been exhausted or the borrower's account
200 becomes current.

201 (4) Mortgage servicers must ensure that a single point of
202 contact has the authority to refer and transfer a borrower to an
203 appropriate supervisor upon request of the borrower.

204 (5) For purposes of this section, "single point of
205 contact" means an individual or team of personnel each of whom
206 has the ability and authority to perform the responsibilities
207 described in subsections (1)-(4).

208 Section 5. Short sale; thirty-day settlement.—The mortgage
209 servicer must send written confirmation acknowledging the
210 borrower's first request for a short sale to the borrower or his
211 or her agent within 10 business days after receipt of the
212 request if the mortgage servicer has been properly authorized in
213 writing by the borrower to communicate with the borrower's
214 agent. The confirmation must include a statement that clearly
215 and conspicuously informs the borrower that the mortgage
216 servicer may demand a deficiency payment if such deficiency
217 claim is permitted by applicable law.

218 (1) The mortgage servicer must send to the borrower at the
219 borrower's address of record or to the borrower's agent timely
220 written notification of any missing documents that are required
221 in order for the consideration of the short sale within 30 days
222 after receiving the borrower's request for a short sale.

223 (2) The mortgage servicer must communicate any disposition
224 of the borrower's request for a short sale within 30 days after

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225 receipt of all the required information and any required third-
226 party consents.

227 Section 6. Force-placed insurance.—

228 (1) The mortgage servicer may not obtain force-placed
229 insurance unless there is a reasonable basis to believe the
230 borrower has failed to comply with the loan contract's
231 requirements to maintain property insurance. For escrowed
232 accounts, the mortgage servicer must continue to advance
233 payments for the homeowner's existing policy unless the borrower
234 or insurance company cancels the existing policy for any purpose
235 other than nonpayment.

236 (2) The mortgage servicer may not impose any charge on any
237 borrower for force-placed insurance with respect to any property
238 securing a mortgage unless:

239 (a) The mortgage servicer has sent, by first-class mail,
240 two written notices, mailed at least 30 days apart, to the
241 borrower containing:

242 1. A reminder of the borrower's obligation to maintain
243 hazard insurance on the property securing the federally-related
244 mortgage.

245 2. A statement that the mortgage servicer does not have
246 evidence of insurance coverage of such property.

247 3. A clear and conspicuous statement of the procedures by
248 which the borrower may demonstrate that the borrower currently
249 has insurance coverage.

250 4. A statement that if the required insurance payments are
251 not made, that the mortgage servicer shall begin paying the
252 insurance premium and bill the borrower for the cost and if the

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253 borrower continues not to pay the premium, that the lender loss
254 payable endorsement and the standard mortgage contract permit
255 the servicer to maintain the policy in effect by paying the
256 premiums.

257 5. A statement that the mortgage servicer may obtain
258 insurance coverage at the borrower's expense if the borrower
259 does not provide sufficient evidence of existing coverage in a
260 timely manner.

261 6. A statement that the cost of such insurance coverage
262 may be significantly higher than the cost of the borrower's
263 coverage.

264 7. For first lien loans on the mortgage servicer's primary
265 servicing system, a statement, if the borrower desires to
266 maintain his or her voluntary policy, that the mortgage servicer
267 shall offer an escrow account and advance the premium due on the
268 voluntary policy if the borrower:

269 a. Accepts the offer of the escrow account.

270 b. Provides a copy of the invoice from the voluntary
271 carrier.

272 c. Agrees in writing to reimburse the escrow advances
273 through regular escrow payments.

274 d. Agrees to escrow and to repay the advanced premium and
275 the future premiums necessary to maintain any required insurance
276 policy.

277 e. Agrees to allow the mortgagor servicer to manage the
278 escrow account in accordance with the loan documents and with
279 state and federal law.

280 8. In the case of single-interest coverage, a statement

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281 that the coverage may only protect the mortgage holder's
282 interest and not the borrower's interest.

283 (b) The mortgage servicer has not received from the
284 borrower written confirmation of insurance coverage for the
285 property securing the mortgage by the end of the 15-day period
286 beginning on the date the second notice required under paragraph
287 (a) was sent by the mortgage servicer.

288 (3) The mortgage servicer must accept any reasonable form
289 of written confirmation from a borrower or the borrower's
290 insurance agent of existing insurance coverage that includes the
291 existing insurance policy number and the identity and contact
292 information for the insurance company or agent.

293 (4) The mortgage servicer may not place insurance on a
294 mortgaged property or require a borrower to obtain or maintain
295 such insurance in excess of 100 percent of the insurable value
296 of the improvements. If the insurance policy purchased by the
297 mortgage servicer on behalf of the borrower is not a single-
298 interest coverage policy and insures the interests of the
299 borrower also, the amount of insurance coverage may equal the
300 amount of the last known property insurance policy voluntarily
301 purchased by the borrower.

302 (5) Within 15 days after receipt of evidence of a
303 borrower's existing insurance coverage by the mortgage servicer,
304 the mortgage servicer must:

305 (a) Terminate the force-placed insurance.

306 (b) Refund to the borrower all force-placed insurance
307 premiums paid by the borrower during any period during which the
308 borrower's insurance coverage and the force-placed insurance

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309 coverage were each in effect at the same time, and any related
310 fees charged to the borrower's account with respect to the
311 force-placed insurance during such period.

312 (6) Any force-placed insurance policy must be purchased
313 for a commercially reasonable price.

314 (7) The mortgage servicer may not request the homeowner to
315 reimburse any portion of the force-placed insurance premium
316 attributable to any commission earned on such policy by the
317 mortgage servicer or any related entity, costs associated with
318 insurance tracking or administration, or any other costs other
319 than the actual cost of the force-placed insurance policy
320 premium.

321 (8) A mortgage servicer or affiliate of the mortgage
322 servicer may not:

323 (a) Accept a rebate, inducement, commission, policyholder
324 dividend, retrospective premium adjustment, profit-sharing, or
325 similar return of premium, or other insurance coverages at
326 inadequate rates from any person that provides the mortgage
327 servicer or the mortgage servicer's affiliate with forced-placed
328 insurance; or

329 (b) Accept insurance tracking or any other services from a
330 person that provides the mortgage servicer or the mortgage
331 servicer's affiliate with force-placed insurance, without paying
332 a fair market price for such services, the cost of which may not
333 be included in the cost of insurance premiums or billed to
334 borrower's account.

335 (9) The mortgage servicer may not charge the borrower for
336 more than 45 days of coverage before the date of the force-

337 | placed insurance placement.

338 | Section 7. Robo-signing.—

339 | (1) For purposes of this section, the term "robo-signed"
 340 | or "robo-signing" means the signing of a document that contains
 341 | information that was not verified for accuracy by the person or
 342 | persons signing, attesting, or swearing to the accuracy of the
 343 | document or statement. Evidence of a failure to verify may
 344 | include, but is not limited to, inaccurate, inconsistent, or
 345 | vague information contained within the document or statement.
 346 | For purposes of this definition, multiple people may verify the
 347 | document or statement so long as the document or statement
 348 | specifies the portions verified by each signer.

349 | (2) Any mortgage servicer that engages in robo-signing
 350 | when filing documents in any court relative to a foreclosure
 351 | proceeding is liable for a civil penalty of up to \$10,000 per
 352 | incident in an action brought by the Department of Legal Affairs
 353 | or Office of Financial Regulation.

354 | Section 8. Private right of action.—

355 | (1) For any material violation of this act by the mortgage
 356 | servicer, the borrower may recover:

357 | (a) Statutory damages of up to \$10,000, but not less than
 358 | \$1,500, from the mortgage servicer.

359 | (b) Actual damages.

360 | (c) Attorney fees and costs.

361 | (2) If the court finds that the material violation was
 362 | intentional or reckless, or resulted from willful misconduct by
 363 | a mortgage servicer, mortgagee, or authorized agent, the court
 364 | may award the borrower the greater of treble actual damages or

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365 | statutory damages of \$50,000.

366 | Section 9. This act shall take effect July 1, 2013.