

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 65

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO NOTICES; AMENDING SECTION 45-1506C, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CERTAIN WEBSITE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 45-1602, IDAHO CODE, TO REVISE PROVISIONS REGARDING A CERTAIN NOTICE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 45-1506C, Idaho Code, be, and the same is hereby amended to read as follows:

45-1506C. SUPPLEMENTAL NOTICE -- OPPORTUNITY TO REQUEST LOAN MODIFICATION. (1) In the case of a loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering a borrower's primary residential property for any noncommercial loan, the notice provided in this section shall accompany the notice of default provided to the grantor. The beneficiary or its agent shall determine whether the subject real property is a borrower's primary residence by searching the county assessor's tax rolls prior to recording a notice of default to confirm whether such real property has been granted a homeowner's property tax exemption pursuant to section 63-602G, Idaho Code. Any property for which a homeowner's property tax exemption has been granted for the year in which the notice of default is recorded shall be deemed to be a borrower's primary residential dwelling. If no homeowner's property tax exemption has been granted for the year in which the notice of default is recorded, the provisions of this section shall not apply. The notice, if required, shall be printed in at least 14-point type and substantially conform to the following form:

IMPORTANT NOTICE:  
YOU ARE IN DANGER OF LOSING YOUR PROPERTY  
IF YOU DO NOT TAKE ACTION IMMEDIATELY

This notice concerns the mortgage loan for your property at (enter the complete address).

You have not fulfilled your contractual obligations under the terms of your mortgage loan. Under Idaho law, the holder of your loan, "the beneficiary," can sell your property to satisfy your obligation.

As of (enter the date), you needed to pay \$(enter the amount owed) to bring your mortgage loan current. That amount may have increased since that date and may include additional costs and fees described in the loan documents.

The beneficiary can provide you with the exact amount that you owe, but you have to ask. Call (enter the toll-free telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to obtain

1 other details about your loan. You also can send a written request for this  
2 information by certified mail to: (enter the complete address).

3 LOAN MODIFICATION ASSISTANCE

4 If you want to save your home from foreclosure but you cannot afford your  
5 current loan payments, you need to contact the beneficiary immediately to  
6 ask about any available loss mitigation programs. You may or may not qualify  
7 for a loan modification or other alternative to foreclosure.

8 You may request to meet with the beneficiary to discuss options for mod-  
9 ifying your loan.

10 IF YOU WANT TO APPLY FOR A MODIFICATION OF YOUR LOAN, YOU MUST COMPLETE AND  
11 RETURN THE ENCLOSED "MODIFICATION REQUEST FORM" BY CERTIFIED MAIL, RETURN  
12 RECEIPT REQUESTED. THE BENEFICIARY MUST RECEIVE THE FORM ON OR BEFORE (enter  
13 the date), WHICH IS THIRTY (30) DAYS AFTER THE DATE BELOW.

14 WARNING: You may get offers from people who tell you they can help you keep  
15 your property. Never pay someone to help you obtain a loan modification.  
16 Help is available for free from housing counselors who are certified through  
17 the department of housing and urban development (HUD). Visit www.hud.gov the  
18 HUD website for a current list of certified housing counselors in Idaho.

19 DATED: (enter the date)  
20 Beneficiary name: (print name)  
21 Beneficiary or beneficiary's agent's signature: (sign name)  
22 Beneficiary's telephone number: (enter the toll-free telephone number)

23 (2) (a) The notice required under subsection (1) of this section must be  
24 accompanied by a form to request a loan modification. The form must in-  
25 clude the address to which and state the date by which the grantor must  
26 return the form. The form may state that the grantor must disclose cur-  
27 rent information about the grantor's income and expenses, the grantor's  
28 address, phone number and electronic mail address and other facts that  
29 may affect the grantor's eligibility for a loan modification.

30 (b) If the trust deed, or any assignments of the trust deed, is in the  
31 Spanish language, the notice required under subsection (1) of this sec-  
32 tion and the form identified in paragraph (a) of this subsection shall  
33 be in the Spanish language.

34 (3) If a grantor returns the form identified in subsection (2) of this  
35 section to the beneficiary by the date specified on the form, the benefi-  
36 ciary or the beneficiary's agent shall review the information the grantor  
37 provided in the form and shall evaluate the grantor's request. The benefi-  
38 ciary or the beneficiary's agent, as soon as reasonably practicable but not  
39 later than forty-five (45) days after receiving the form, shall notify the  
40 grantor in writing whether the beneficiary approves or denies the request or  
41 requires additional information. A trustee's sale for the property subject  
42 to the loan may not occur until after the beneficiary or the beneficiary's  
43 agent timely responds to the grantor. During the forty-five (45) day period,  
44 the beneficiary or the beneficiary's agent may request the grantor to pro-

1 vide additional information required to determine whether the loan can be  
2 modified.

3 (4) (a) Except as provided in paragraph (b) of this subsection, if the  
4 grantor timely requests a meeting with the beneficiary, the benefi-  
5 ciary or the beneficiary's agent shall either meet with the grantor in  
6 person or speak to the grantor by telephone before the beneficiary or  
7 the beneficiary's agent responds to the grantor's request to modify the  
8 loan. If the grantor requests the meeting, the beneficiary or the bene-  
9 fiary's agent shall schedule the meeting by contacting the grantor at  
10 the grantor's last known address or telephone number or at the grantor's  
11 electronic mail address, if the grantor indicates on the loan modifica-  
12 tion form that the beneficiary or the beneficiary's agent can contact  
13 the grantor at the electronic mail address.

14 (b) A beneficiary or the beneficiary's agent complies with the pro-  
15 visions of paragraph (a) of this subsection even if the beneficiary  
16 or the beneficiary's agent does not speak to or meet with the grantor  
17 if, within seven (7) business days after the beneficiary or the bene-  
18 fiary's agent attempts to contact the grantor, the grantor does not  
19 schedule a meeting, or fails to attend a scheduled meeting or telephone  
20 call.

21 (c) The beneficiary or the beneficiary's agent that meets with the  
22 grantor shall have or be able to obtain authority to modify the loan.

23 (5) At least twenty (20) days prior to the date of sale, the trustee  
24 shall file for record in the office of the recorder in each county wherein  
25 the trust property, or some part or parcel, is situated, an affidavit sub-  
26 stantially in the following form from the beneficiary or the beneficiary's  
27 agent which states that the beneficiary or the beneficiary's agent has com-  
28 plied with the provisions of this section. The filing of the following af-  
29 fidavit of compliance is conclusive evidence of compliance with this section  
30 as to any party relying on said affidavit of compliance:

31 AFFIDAVIT OF COMPLIANCE WITH IDAHO CODE /SECTION 45-1506C

32 COMES NOW....., being first duly sworn, de-  
33 poses and says:

34 1. I am the (title -- officer or agent) of (name of beneficiary), the  
35 beneficiary of the Deed of Trust recorded as instrument number (recorder's  
36 instrument number), County of (County), Idaho, the "Deed of Trust."

37 2. Beneficiary or Beneficiary's agent has complied with section  
38 45-1506C, Idaho Code, in by: (a) providing the notice required in section  
39 45-1506C(1), Idaho Code; (b) providing the loan modification request form  
40 required in section 45-1506C(2), Idaho Code; (c) evaluating the request for  
41 modification and providing a written response to the request as required  
42 in section 45-1506C(3), Idaho Code; and (d) scheduling, and if attended by  
43 the grantor of the Deed of Trust, attending, in person or by telephone, the  
44 meeting required in section 45-1506C(4), Idaho Code.

45 .....  
46 SIGNATURE

1 (INSERT NOTARY SUBSCRIPTION FOR STATE IN WHICH AFFIDAVIT IS EXECUTED; IDAHO  
2 FORM OF SUBSCRIPTION IS SET OUT BELOW)

3 STATE OF IDAHO )  
4 )  
5 County of..... )

6 On this..... day of (month), 20.., before me,....., a  
7 Notary Public in and for said state, personally appeared....., known or  
8 identified to me to be the person whose name is subscribed to the foregoing  
9 instrument, and acknowledged to me that such officer or agent executed the  
10 same.

11 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
12 seal the day and year in this certificate first above written.

13 .....  
14 Notary Public for Idaho  
15 Residing at.....  
16 My Commission expires.....

17 (6) Whenever the attorney general has reason to believe that any per-  
18 son has failed to follow the requirements of this section and that proceed-  
19 ings would be in the public interest, he may bring an action in the name of the  
20 state against such person for enforcement of the provisions of this section  
21 with the same procedure and in the same manner as granted the attorney gen-  
22 eral and district court pursuant to section 48-606(1) (a), (b), (d), (e) and  
23 (f) and subsections (2) through (5), Idaho Code, of the Idaho consumer pro-  
24 tection act, chapter 6, title 48, Idaho Code.

25 (7) All penalties, costs and fees received or recovered by the attor-  
26 ney general shall be remitted to the consumer protection ~~account~~ fund and ex-  
27 pended pursuant to section 48-606(5), Idaho Code.

28 SECTION 2. That Section 45-1602, Idaho Code, be, and the same is hereby  
29 amended to read as follows:

30 45-1602. CONTRACT NOTICE. (1) During the foreclosure period described  
31 in section 45-1506, Idaho Code, any contract or agreement with the owner or  
32 owners of record that involves the transfer of any interest in residential  
33 real property, as defined in section 45-525(5) (b), Idaho Code, subject to  
34 foreclosure must be in writing and must be accompanied by ~~and affixed to the~~  
35 following notice in ~~twelve (12)~~ at least 12-point boldface type and on a sep-  
36 ~~arate sheet of paper no smaller than eight and one-half (8 1/2) inches by~~  
37 ~~eleven (11) inches:~~

38 "NOTICE REQUIRED BY IDAHO LAW

39 Mortgage foreclosure is a legal proceeding where a lender termi-  
40 nates a borrower's interest in property to satisfy unpaid debt se-  
41 cured by the property. This can mean that when a homeowner gets be-  
42 hind on his or her mortgage payments, the lender forces a sale of

1 the home on which the mortgage loan is based. Some individuals or  
2 businesses may say they can "save" your home from foreclosure. You  
3 should be cautious about such claims. It is important that you un-  
4 derstand all the terms of a plan to "rescue" you from mortgage fore-  
5 closure and how it will affect you. It may result in your losing  
6 valuable equity that you may have in your home. If possible, you  
7 should consult with an attorney or financial professional to find  
8 out what other options you may have. Do not delay seeking advice,  
9 because the longer you wait, the fewer options you may have.

10 You may find helpful information online. One excellent source  
11 is the Department of Housing and Urban Development (HUD) website  
12 ~~which can be found at "http://www.hud.gov/foreclosure/index.cfm".~~  
13 HUD also maintains on its website a list of approved housing coun-  
14 selors who can provide free information to assist homeowners  
15 with financial problems. Another good source of information is  
16 found at the Office of the Idaho Attorney General's website at  
17 "<http://www2.state.id.us/ag/>".

18 Under Idaho law, you have five (5) days to rescind or undo certain  
19 contracts or agreements that relate to transferring interests in  
20 property or money in a foreclosure situation. An attorney or finan-  
21 cial professional can tell you more about this option."

22 (2) If during the foreclosure period described in section 45-1506,  
23 Idaho Code, any contract or agreement that involves the transfer of any  
24 interest in residential real property, as defined in section 45-525(5) (b),  
25 Idaho Code, was solicited, negotiated, or represented to the consumer in  
26 the Spanish language, the written notice to be provided to the consumer and  
27 set forth in this section shall be in the Spanish language on a form to be  
28 prepared and made available by the office of the attorney general.

29 SECTION 3. An emergency existing therefor, which emergency is hereby  
30 declared to exist, this act shall be in full force and effect on and after  
31 July 1, 2023.