

House Bill 819

By: Representatives Lim of the 99th, Mainor of the 56th, and Lopez of the 86th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
2 relating to foreclosure, so as to create a foreclosure resolution program within the
3 Department of Community Affairs; to require the department to adopt rules for the program;
4 to provide for assistance by the Georgia Commission on Dispute Resolution; to require
5 notice of right to participate in foreclosure resolution; to provide for definitions; to provide
6 for an effective date and applicability; to provide for related matters; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to
11 foreclosure, is amended by adding a new part to read as follows:

12 "Part 5

13 44-14-310.

14 As used in this part, the term:

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15 (1) 'Common-interest community' means real property with respect to which a person,
16 by virtue of ownership of a unit, is obligated to pay real-property taxes or insurance
17 premiums or for maintenance, improvement of other real property, or services described
18 in a declaration or other governing document, however denominated. The term includes
19 properties held by a cooperative housing corporation. As used in this paragraph, the term
20 'ownership' includes a leasehold interest if the lease term is at least 20 years, including
21 renewal options.

22 (2) 'Creditor' means a person that is entitled to foreclose a mortgage under this article.

23 (3) 'Department' means the Department of Community Affairs.

24 (4) 'Foreclose' or 'foreclosure' means a process, proceeding, or action to enforce a
25 mortgage by terminating a homeowner's interest in mortgaged property or obtaining
26 possession of mortgaged property. The term does not include a voluntary transfer by the
27 homeowner or a process, proceeding, or action to recover possession of property after a
28 completed foreclosure sale.

29 (5) 'Foreclosure resolution' means a process in which a neutral individual assists a
30 creditor and obligor to exchange information and prepare for and attend an in-person
31 meeting or other communication at which the creditor, obligor, and neutral individual
32 simultaneously can communicate with each other with the objective of reaching an
33 agreement between the parties as an alternative to foreclosure.

34 (6) 'Homeowner' means a person that owns an interest in mortgaged property, other than
35 a mortgage, lien, security interest, easement, servitude, or leasehold with a term of less
36 than 20 years, including renewal options.

37 (7) 'Loss mitigation' means an alternative to foreclosure offered by a creditor to a
38 homeowner in default or facing imminent default.

39 (8) 'Mortgage' means a consensual interest in real property which secures an obligation.
40 The term does not include a lien that secures an obligation owed to a homeowners'
41 association in a common-interest community.

42 (9) 'Mortgage agreement' means a record that creates a mortgage.

43 (10) 'Mortgaged property' means real property improved with not more than four
44 dwelling units which is subject to a mortgage. The term includes:

45 (A) An attached single-family unit;

46 (B) A single-family manufactured-housing unit or a time share in a dwelling unit if
47 either is treated as real property under law of this state other than this part;

48 (C) Real property on which construction of not more than four dwelling units has
49 commenced; and

50 (D) A single-family unit in a common-interest community.

51 The term does not include real property that, when the mortgage being foreclosed was
52 created, was used or intended to be used primarily for nonresidential purposes.

53 (11) 'Neutral individual' means an individual not selected by either party who can
54 reasonably be expected to be impartial in assisting the parties with the objective of
55 reaching an agreement as an alternative to foreclosure.

56 (12) 'Nonjudicial foreclosure' means a foreclosure that proceeds without judicial process
57 under Part 1 of this article.

58 (13) 'Obligation' means a debt or other duty or liability of an obligor secured by a
59 mortgage.

60 (14) 'Obligor' means a person that:

61 (A) Owes payment or performance of an obligation;

62 (B) Has signed a mortgage agreement with respect to mortgaged property; or

63 (C) Is otherwise accountable in whole or in part for payment or performance of the
64 obligation.

65 (15) 'Person' means an individual, estate, business or nonprofit entity, public corporation,
66 government or governmental subdivision, agency, or instrumentality, or any other legal
67 entity.

68 (16) 'Record' means, when used as a noun, information that is inscribed on a tangible
69 medium or is stored in an electronic or other medium and is retrievable in perceivable
70 form.

71 (17) 'Servicer' means a person responsible for servicing an obligation, including a person
72 that holds or owns an obligation or originates a mortgage loan if the person also services
73 the obligation.

74 44-14-311.

75 (a) There is created a foreclosure resolution program to be administered by the department.
76 The department shall adopt rules establishing procedures and standards for the foreclosure
77 resolution program.

78 (b) The Supreme Court, through the Georgia Commission on Dispute Resolution, shall
79 provide assistance to the department in program matters, including:

80 (1) Contract procurement;

81 (2) Performance oversight, such as monitoring compliance with the program
82 requirements; and

83 (3) Management services to oversee any contract between the department and a private
84 organization retained by the department to provide foreclosure resolution services or
85 personnel, including providing the department with monthly status reports and
86 evaluations.

87 (c) The department and the Georgia Commission on Dispute Resolution shall execute a
88 memorandum of understanding that establishes their rights and responsibilities relating to
89 the mortgage foreclosure dispute resolution program, which may be amended from time
90 to time.

91 (d) The department is authorized to contract with local, state, or federal governmental
92 entities, and with private organizations for the performance of any of the functions of this
93 part.

94 44-14-312.

95 (a) Before or at the time of commencing a judicial foreclosure, the creditor shall:

96 (1) Request under subsection (c) of this Code section that the department send the
97 homeowner and obligor, not later than service of the foreclosure complaint on the
98 homeowner, notice of the right to participate in foreclosure resolution; or

99 (2) Send the notice under subsection (d) of this Code section.

100 (b) In a nonjudicial foreclosure, the creditor shall:

101 (1) Not later than 30 days after sending the notice of default required by Code Section
102 44-14-162.2, request under subsection (c) of this Code section that the department send
103 the homeowner and obligor a notice of the right to participate in foreclosure resolution;

104 or

105 (2) Send the notice under subsection (d) of this Code section.

106 (c) If the department establishes a procedure for the department to send the notice required
107 by subsection (a) or (b) of this Code section, the creditor shall request the department to
108 send the notice to the creditor and to each homeowner and obligor and the department
109 promptly shall send the notice. The notice may be sent before or after commencement of
110 a foreclosure action, as provided in department rules, but shall be sent before the creditor
111 may request entry of a default or foreclosure judgment or give notice of a judicial or
112 nonjudicial foreclosure sale.

113 (d) If the department does not establish a procedure for the department to send notice
114 required by subsection (a) or (b) of this Code section, the creditor shall send notice to each
115 homeowner and obligor in the manner required for the notice under Code Section
116 44-14-162.2.

117 (e) A notice under this subsection of the right to participate in foreclosure resolution shall
118 include the following:

- 119 (1) The name, address, and telephone number of each housing-counseling agency,
120 lawyer-referral service, and legal-aid agency serving the geographic area of the
121 mortgaged property, as designated by the department;
- 122 (2) The name, address, telephone number, and email address of the appropriate contact
123 person assigned by the creditor or servicer to the homeowner or obligor under rules of the
124 federal Consumer Financial Protection Bureau;
- 125 (3) A statement that the homeowner or obligor may request a foreclosure-resolution
126 meeting and that the request must be made not later than 30 days after notice is sent;
- 127 (4) The instructions for requesting foreclosure resolution and all eligibility requirements
128 under the department's rules;
- 129 (5) A description of all documents the department rules require the homeowner or
130 obligor to bring to the foreclosure-resolution meeting; and
- 131 (6) A form prescribed by the department for the homeowner or obligor to request
132 foreclosure resolution and to affirm that the homeowner or obligor meets the eligibility
133 requirements of Code Section 44-14-313.

134 44-14-313.

- 135 (a) If a homeowner or obligor, not later than 30 days after the sending of a notice under
136 subsection (c) or (d) of Code Section 44-14-312, makes a request for foreclosure resolution,
137 the department shall schedule a meeting in accordance with its rules and appoint a neutral
138 individual to conduct the meeting. For good cause, the department may schedule the
139 meeting and initiate foreclosure resolution later than 30 days after the sending of the notice.
- 140 (b) If the department schedules a meeting under subsection (a) of this Code section, the
141 creditor and homeowner or obligor shall attend and participate in compliance with
142 department rules and any scheduling or other order made by the neutral individual or the
143 department. Failure to comply with this subsection includes failure:
- 144 (1) Without good cause to timely attend a meeting;

145 (2) Without good cause to provide, before a scheduled meeting, documents and
146 information required by department rules or reasonably requested by the neutral
147 individual;

148 (3) To designate a person with authority to reach a settlement agreement, if the authority
149 exists;

150 (4) Without good cause to pay any required foreclosure resolution fee; and

151 (5) To advise the homeowner, obligor, and neutral individual of any loss-mitigation
152 option that is available to the homeowner or obligor or to consider the homeowner or
153 obligor for the loss-mitigation option before or during foreclosure resolution.

154 (c) A homeowner or obligor is eligible for foreclosure resolution only if the mortgaged
155 property is occupied by the homeowner or obligor. If the mortgaged property contains
156 more than one dwelling unit, foreclosure resolution is available only if at least one dwelling
157 unit is occupied by the homeowner or obligor. With a request for foreclosure resolution,
158 the homeowner or obligor shall submit to the department an affirmation that the mortgaged
159 property is occupied either by a homeowner or obligor. If the department determines that
160 the property is not occupied by a homeowner or obligor, the department may not schedule
161 a meeting under subsection (a) of this Code section and shall permit the creditor to proceed
162 with foreclosure.

163 (d) The department may not initiate a second foreclosure resolution or schedule a second
164 meeting in a foreclosure resolution if an earlier resolution was concluded, unless the parties
165 to the foreclosure resolution consent.

166 44-14-314.

167 (a) A creditor shall inform the homeowner, obligor, and the department of:

168 (1) Any loss-mitigation options available to the homeowner and obligor; and

169 (2) Its willingness or refusal to offer a loss-mitigation option requested by the
170 homeowner or obligor, the reason for any refusal, and the information on which any
171 refusal is based.

172 (b) A creditor may not charge a homeowner or obligor a fee or costs for foreclosure
173 resolution. The department may charge a fee or assess costs for the foreclosure resolution
174 process to either or both parties.

175 (c) A homeowner or obligor that participates in foreclosure resolution shall provide
176 reasonably available financial and other information to enable the creditor to evaluate any
177 loss-mitigation option.

178 (d) This part does not impose a duty on a creditor to provide a specific loss-mitigation
179 option. The department rules may not impose a duty on a creditor to provide any specific
180 loss-mitigation option.

181 (e) A homeowner or obligor may be accompanied at a foreclosure-resolution meeting by
182 an attorney, housing counselor, or other individual, who may participate in the meeting.

183 (f) Personal financial information exchanged during foreclosure resolution is confidential
184 and not subject to disclosure under Article 4 of Chapter 18 of Title 50, relating to open
185 records. Neither the department nor the neutral individual is required to respond to a
186 discovery request in a court proceeding to the extent the request seeks personal financial
187 information or privileged information exchanged during foreclosure resolution.

188 44-14-315.

189 (a) Subject to the laws of this state other than this part, a creditor may commence a
190 foreclosure at the time provided in Code Section 44-14-312. Subject to subsection (c) of
191 this Code section, a creditor may not file a default or dispositive motion in a foreclosure
192 or schedule or cause to be scheduled a foreclosure sale, unless:

193 (1) The notice under Code Section 44-14-312 has been sent;

194 (2) Neither the homeowner nor obligor, not later than 30 days after the notice is sent,
195 requests foreclosure resolution;

196 (3) The department notifies the creditor that:

197 (A) The parties that participated in the meeting required by Code Section 44-14-313
198 have reached an impasse; or

199 (B) The homeowner or obligor has failed to participate in foreclosure resolution,
200 provide required information after a reasonable opportunity to do so, or materially
201 comply with a department rule or order; or

202 (4) The court or department renders an order permitting the creditor to proceed with
203 foreclosure.

204 (b) If the court or department determines that the mortgaged property is not occupied by
205 a homeowner or obligor, the court or department shall render an order permitting the
206 creditor to proceed with foreclosure.

207 (c) A creditor may file a default or dispositive motion in a foreclosure action, or schedule
208 or cause to be scheduled a foreclosure sale, 90 days after the notice required by Code
209 Section 44-14-312 is sent, unless the parties to the foreclosure resolution agree in a record
210 to continue foreclosure resolution or the court or department directs the parties to the action
211 to begin or continue foreclosure resolution.

212 (d) The court or department may render an order imposing appropriate conditions on the
213 parties to foreclosure resolution, including the payment to the department of fees and costs
214 of foreclosure resolution authorized by subsection (b) of Code Section 44-14-313 or the
215 tender of periodic payments by the homeowner or obligor to the creditor.

216 44-14-316.

217 This part does not apply to a foreclosure by a creditor that owns, holds, or services five or
218 fewer mortgages at the time the notice required by Code Section 44-14-312 is sent. The

219 creditor may elect to participate in foreclosure resolution in accordance with this part and
220 department rules."

221 **SECTION 2.**

222 This Act shall become effective on July 1, 2021, and shall apply to foreclosures initiated or
223 after July 1, 2021.

224 **SECTION 3.**

225 All laws and parts of laws in conflict with this Act are repealed.