

HOUSE BILL No. 2360

By Committee on Veterans, Military and Homeland Security

2-15

1 AN ACT concerning mortgages of real property; relating to stays of
2 mortgage foreclosure proceedings against servicemembers.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) As used in this section:

6 (1) "Dependent" means a servicemember's spouse or a
7 servicemember's minor child.

8 (2) "Military service" means a servicemember under a call to active
9 service authorized by the president of the United States or the secretary of
10 defense for a period of more than 30 consecutive days.

11 (3) "Servicemember" means any member serving in an active-duty
12 status in the armed forces of the United States, the national guard or the
13 armed forces reserves.

14 (b) This section applies to any civil action or proceeding in which a
15 servicemember or the servicemember's dependent is a defendant and does
16 not make an appearance under applicable court rules or by law. In any
17 action for foreclosure, the court, before entering judgment for the plaintiff,
18 shall require the plaintiff to file with the court an affidavit:

19 (1) Stating whether the defendant is in military service, or is a
20 dependent of a servicemember in military service, and showing necessary
21 facts to support the affidavit; or

22 (2) if the plaintiff is unable to determine whether the defendant is in
23 military service, or is a dependent of a service member in military service,
24 stating that the plaintiff is unable to determine whether the defendant is in
25 military service or is a dependent of a servicemember in military service.

26 (c) (1) To determine whether or not a defendant is a dependent of a
27 servicemember in military service, the plaintiff may serve on or mail via
28 certified mail, return receipt requested, to the defendant a written notice in
29 substantially the following form:

30 "NOTICE: State and federal laws provide protections to defendants
31 who are servicemembers on active duty in the military and to their
32 dependents. Dependents of a servicemember include the servicemember's
33 spouse, minor child and individuals for whom the servicemember provided
34 more than ½ of the individual's support for 180 days immediately
35 preceding an application for relief. One protection provided is the
36 protection against the entry of a default judgment in foreclosure

1 proceedings. If you are the dependent of a servicemember under a call to
2 active service for a period of more than 30 consecutive days, you should
3 notify the plaintiff or the plaintiff's attorney in writing of your status as
4 such within 20 days of receipt of this notice. If you fail to do so, then a
5 court may presume that you are not a dependent of a servicemember under
6 a call to active service and proceed with the entry of an order of default
7 judgment without further proof of your status. Your response to the
8 plaintiff or plaintiff's attorney(s) about your status does not constitute an
9 appearance for jurisdictional purposes in any pending litigation nor a
10 waiver of your rights."

11 (2) Proof of service of the notice mailed to the defendant under
12 subsection (c)(1) may be by the return receipt.

13 (3) If the notice is either served on the defendant 20 or more days
14 prior to an application for an order of default or a default judgment or
15 mailed to the defendant via certified mail and the return receipt is
16 postmarked more than 23 days prior to such application, and the defendant
17 fails to timely respond, then for purposes of entry of an order of default or
18 default judgment, the court may presume that the defendant is not a
19 dependent of a person in military service under this section. Nothing
20 prohibits the plaintiff from allowing a defendant more than 20 days to
21 respond to the notice, or from amending the notice to so provide.

22 (d) If in an action covered by this section it appears that the defendant
23 is in military service or is a dependent of a service member in military
24 service, the court may not enter a judgment until after the court appoints
25 an attorney to represent the defendant. If an attorney appointed under this
26 section to represent a servicemember or a servicemember's dependent
27 cannot locate the servicemember or dependent, actions by the attorney in
28 the case do not waive any defense of the servicemember or dependent or
29 otherwise bind the servicemember or dependent.

30 (e) In a civil action for foreclosure in which the defendant is in
31 military service or is a dependent of a servicemember in military service,
32 the court shall grant a stay of proceedings until 180 days after termination
33 of or release from military service, upon application of defense counsel or
34 on the court's own motion, if the court determines that:

35 (1) There may be a defense to the action, and a defense cannot be
36 presented without presence of the defendant; or

37 (2) after due diligence, counsel has been unable to contact the
38 defendant or otherwise determine if a meritorious defense exists. The
39 defendant's failure to communicate or cooperate with counsel after having
40 been contacted is not grounds to find that counsel has been unable to
41 contact the defendant or that counsel has been unable to determine if a
42 meritorious defense exists.

43 (f) A person who makes or uses an affidavit permitted under this

1 section knowing it to be false, is guilty of a severity level 10 nonperson
2 felony.

3 (g) If a default judgment is entered in an action covered by this
4 section against a servicemember or the servicemember's dependent during
5 the servicemember's period of military service or within 180 days after the
6 termination of or release from military service, the court entering the
7 judgment, upon application by or on behalf of the servicemember or the
8 servicemember's dependent, shall reopen the judgment for the purpose of
9 allowing the servicemember or the servicemember's dependent to defend
10 the action if it appears that:

11 (1) The servicemember or dependent was materially affected by
12 reason of that military service in making a defense to the action; and

13 (2) the servicemember or dependent has a meritorious or legal
14 defense to the action or some part thereof.

15 (h) If a court vacates, sets aside or reverses a default judgment against
16 a servicemember or the servicemember's dependent, and the vacating,
17 setting aside or reversing is because of a provision of this section, that
18 action does not impair a right or title acquired by a bona fide purchaser for
19 value.

20 (i) (1) In any civil action for foreclosure in which a defendant at the
21 time of filing an application under subsection (c) is in military service or is
22 within 180 days after termination of or release from military service and
23 has received actual notice of the action or proceeding, or is a dependent of
24 a servicemember in military service and has received actual notice of the
25 action or proceeding, at any stage before final judgment in a foreclosure
26 proceeding in which a servicemember or the servicemember's dependent is
27 a party, the court may on its own motion or, upon application by the
28 servicemember or the servicemember's dependent, stay the action until 180
29 days after termination of or release from military service.

30 (2) An application for a stay under subsection (i)(1) shall include the
31 following:

32 (A) A letter or other communication setting forth facts stating the
33 manner in which current military duty requirements materially affect the
34 servicemember's or dependent's ability to appear and stating a date when
35 the servicemember or dependent will be available to appear; and

36 (B) a letter or other communication from the servicemember's
37 commanding officer stating that the servicemember's current military duty
38 prevents either the servicemember's or dependent's appearance and that
39 military leave is not authorized for the servicemember at the time of the
40 letter.

41 (j) An application for a stay under subsection (i) does not constitute
42 an appearance for jurisdictional purposes and does not constitute a waiver
43 of any substantive or procedural defense, including a defense relating to

1 lack of personal jurisdiction. If the court refuses to grant a stay of
2 proceedings under subsection (i), the court shall appoint counsel to
3 represent the servicemember or the servicemember's dependent in the
4 action or proceeding.

5 (k) (1) A person, corporation, partnership or other legal entity shall
6 not foreclose or attempt to foreclose with the knowledge that such
7 foreclosure is invalid under this section. Any entity who violates this
8 subsection is subject to a civil fine not to exceed \$10,000.

9 (2) The attorney general may file an action in district court in any
10 county in the state of Kansas to enforce the provisions of this section,
11 including petitioning for injunctive relief or to recover any enforcement
12 costs or damages suffered by the state because of a violation of this
13 section. Each violation of this section constitutes a separate civil violation
14 for which the attorney general may obtain relief. All moneys recovered
15 under this section shall be remitted to the state treasurer in accordance
16 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
17 receipt of each such remittance, the state treasurer shall deposit the entire
18 amount in the state treasury. Of each remittance, the state treasurer shall
19 credit 90% to the servicemember benefit fund of the Kansas commission
20 on veterans affairs and 10% to the court cost fund of the office of the
21 attorney general.

22 (l) (1) There is established in the state treasury the servicemember
23 benefit fund which shall be administered by the Kansas commission on
24 veterans affairs. Expenditures from the fund may be made for the purpose
25 of providing services for any servicemember serving in an active-duty
26 status in the armed forces of the United States, or such servicemember's
27 spouse or minor child. All expenditures shall be authorized by the
28 executive director of the Kansas commission on veterans affairs and made
29 upon warrants of the director of accounts and reports issued pursuant to
30 vouchers approved by the executive director of the Kansas commission on
31 veterans affairs.

32 (2) On or before the 10th of each month, the director of accounts and
33 reports shall transfer from the state general fund to the servicemember
34 benefit fund interest earnings based on:

35 (A) The average daily balance of moneys in the servicemember
36 benefit fund for the preceding month; and

37 (B) the net earnings rate for the pooled money investment portfolio
38 for the preceding month.

39 Sec. 2. This act shall take effect and be in force from and after its
40 publication in the statute book.