Troy Doucet
On Substitution House Bill 38
House Financial Institutions Committee
Opponent Testimony

Chairman Jordan, Vice Chairman Hillyer, Ranking Member Crossman, and Members of the House Financial Institutions Committee:

My name is Troy Doucet and I am a consumer attorney whose law practice focuses on mortgage-related litigation. My firm employs a team of attorneys who defend foreclosure.

The elimination of Ohio R.C. Section 1349.72 through Sub. H.B. 38 would negatively impact consumers. The code currently requires junior mortgage holders to provide notice to consumers before filing foreclosure or taking action to collect on the debt. This is a positive requirement that helps homeowners who might not realize they are in default, and enable those who are in default to quickly remedy the problem. Without this protection, a homeowner could face foreclosure on a small secondary home loan without notice or knowledge of a default.

A homeowner may not know that they are in default on a junior lien. It is not uncommon for my firm to receive a call from a homeowner confused why a financial institution is foreclosing on a second mortgage *despite the homeowner being current on their loan*. Usually, this is the result of the second mortgage containing a balloon payment that has come due. A balloon payment is common in Home Equity Lines of Credit (HELOCs), which are usually in the junior lien position. Balloons require a lump sum payment of all remaining money then due. These "balloons" generally occur after 10 or 20 years on loans that are amortized on a 30-year term.

Further, due to the frequently in which loans are sold on the secondary market, a consumer may not know the current owner of the loan. If a foreclosure is filed in the name of a foreign company, the consumer may think it is a mistake and not respond. If many years have passed, a consumer (especially if elderly) may no longer recall the obligation. In these instances, determining the validity of the obligation ahead of foreclosure could save a homeowner substantial legal costs through pleading and discovery in litigation.

If a homeowner is provided notice of a default prior to a financial institution filing foreclosure, there may be a cost efficient mechanism to fix the problem before it snowballs. For example, a consumer may be able to refinance the loan quickly before the foreclosure is filed. Getting the loan refinanced prior to foreclosure also saves the consumer thousands of dollars in foreclosure fees added to cover court costs and financial institutions' attorneys' fees.

However, if the foreclosure is filed without giving the homeowner a chance to correct the problem, it can be virtually impossible to obtain a new loan. This is due to the immediate

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damage foreclosure does to credit. In that instance, an Ohio family could lose their home to foreclosure over a relatively small amount of money on an issue that could have been fixed.

The kind of notice requirement currently in the code is *not* novel. In fact, virtually all first mortgages in the United States require the mortgage holder provide notice to a consumer before filing a foreclosure. For example, the Fannie Mae/Freddie Mac uniform security instrument[1] reads as follows at paragraph 22:

> Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, costs of title evidence.

Most "first" mortgages in the United States are insured by Fannie Mae or Freddie Mac, and will contain this language directly into the mortgage (FHA has similar language). Thus, virtually every financial institution already provides notice to a homeowner upon default of a first mortgage. As you can see, the notice required for first mortgages is robust. It requires identifying the alleged default along with a specific dollar amount to cure the default to avoid foreclosure.

Unlike first mortgages, there is no uniform security instrument used throughout Ohio or the nation for junior mortgages (second or third mortgages). Therefore, there may not be any notice requirement. Without a notice requirement, a consumer may not be aware that the financial institution has alleged a default prior to foreclosure.

Requiring that second (or junior) mortgage holders provide basic notice to consumers as in R.C. Section 1349.72 provides an important stop-gap for those who may not be aware of the alleged default on a junior lien, or those whose default can be remedied easily. The notice requirement for junior liens in the code also provides a degree of consumer protection that is not onerous on financial institutions. Again, financial institutions must already provide notice to first-mortgage consumers. Therefore, I respectfully oppose the elimination of Ohio R.C. Section 1349.72.

[1] https://www.fanniemae.com/singlefamily/security-instruments