

110TH CONGRESS  
1ST SESSION

# S. 2136

To address the treatment of primary mortgages in bankruptcy, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2007

Mr. DURBIN (for himself and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To address the treatment of primary mortgages in bankruptcy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Families Save  
5 Their Homes in Bankruptcy Act of 2007”.

1                   **TITLE I—MINIMIZING**  
2                   **FORECLOSURES**

3 **SEC. 101. SPECIAL RULES FOR MODIFICATION OF LOANS**  
4                   **SECURED BY RESIDENCES.**

5           (a) IN GENERAL.—Section 1322(b) of title 11,  
6 United States Code, is amended—

7               (1) in paragraph (10), by striking “and” at the  
8 end;

9               (2) by redesignating paragraph (11) as para-  
10 graph (12); and

11              (3) by inserting after paragraph (10) the fol-  
12 lowing:

13                   “(11) notwithstanding paragraph (2) and other-  
14 wise applicable nonbankruptcy law—

15                           “(A) modify an allowed secured claim se-  
16 cured by the debtor’s principal residence, as de-  
17 scribed in subparagraph (B), if, after deduction  
18 from the debtor’s current monthly income of  
19 the expenses permitted for debtors described in  
20 section 1325(b)(3) of this title (other than  
21 amounts contractually due to creditors holding  
22 such allowed secured claims and additional pay-  
23 ments necessary to maintain possession of that  
24 residence), the debtor has insufficient remain-  
25 ing income to retain possession of the residence

1 by curing a default and maintaining payments  
2 while the case is pending, as provided under  
3 paragraph (5); and

4 “(B) provide for payment of such claim—

5 “(i) for a period not to exceed 30  
6 years (reduced by the period for which the  
7 loan has been outstanding) from the date  
8 of the order for relief under this chapter;  
9 and

10 “(ii) at a rate of interest accruing  
11 after such date calculated at a fixed an-  
12 nual percentage rate, in an amount equal  
13 to the most recently published annual yield  
14 on conventional mortgages published by  
15 the Board of Governors of the Federal Re-  
16 serve System, as of the applicable time set  
17 forth in the rules of the Board, plus a rea-  
18 sonable premium for risk; and”.

19 (b) CONFORMING AMENDMENT.—Section 1325(a)(5)  
20 of title 11, United States Code, is amended by inserting  
21 before “with respect” the following: “except as otherwise  
22 provided in section 1322(b)(11) of this title,”.

1 **SEC. 102. WAIVER OF COUNSELING REQUIREMENT WHEN**  
2 **HOMES ARE IN FORECLOSURE.**

3 Section 109(h) of title 11, United States Code, is  
4 amended by adding at the end the following:

5 “(5) Paragraph (1) shall not apply with respect to  
6 a debtor who files with the court a certification that a  
7 foreclosure sale of the debtor’s principal residence has  
8 been scheduled.”.

9 **TITLE II—PROVIDING OTHER**  
10 **DEBTOR PROTECTIONS**

11 **SEC. 201. COMBATING EXCESSIVE FEES.**

12 Section 1322(c) of title 11, the United States Code,  
13 is amended—

14 (1) in paragraph (1), by striking “and” at the  
15 end;

16 (2) in paragraph (2), by striking the period at  
17 the end and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(3) to the extent that an allowed secured claim  
20 is secured by the debtor’s principal residence, the  
21 value of which is greater than the amount of such  
22 claim, fees, costs, or charges arising during the  
23 pendency of the case may be added to secured debt  
24 provided for by the plan only if—

1           “(A) notice of such fees, costs or charges  
2 is filed with the court before the expiration of  
3 the earlier of—

4                   “(i) 1 year after the time at which  
5 they are incurred; or

6                   “(ii) 60 days before the conclusion of  
7 the case; and

8           “(B) such fees, costs, or charges are law-  
9 ful, reasonable, and provided for in the under-  
10 lying contract;

11           “(4) the failure of a party to give notice de-  
12 scribed in paragraph (3) shall be deemed a waiver  
13 of any claim for fees, costs, or charges described in  
14 paragraph (3) for all purposes, and any attempt to  
15 collect such fees, costs, or charges shall constitute a  
16 violation of section 524(a)(2) of this title or, if the  
17 violation occurs before the date of discharge, of sec-  
18 tion 362(a) of this title; and

19           “(5) a plan may provide for the waiver of any  
20 prepayment penalty on a claim secured by the prin-  
21 cipal residence of the debtor.”.

22 **SEC. 202. MAINTAINING DEBTORS’ LEGAL CLAIMS.**

23           Section 554(e) of title 11, United States Code, is  
24 amended by adding at the end the following:

1       “(e) In any action in State or Federal court with re-  
 2 spect to a claim or defense asserted by an individual debt-  
 3 or in such action that was not scheduled under section  
 4 521(a)(1) of this title, the trustee shall be allowed a rea-  
 5 sonable time to request joinder or substitution as the real  
 6 party in interest. If the trustee does not request joinder  
 7 or substitution in such action, the debtor may proceed as  
 8 the real party in interest, and no such action shall be dis-  
 9 missed on the ground that it is not prosecuted in the name  
 10 of the real party in interest or on the ground that the  
 11 debtor’s claims were not properly scheduled in a case  
 12 under this title.”.

13 **SEC. 203. RESOLVING DISPUTES.**

14       Section 1334 of title 28, United States Code, is  
 15 amended by adding at the end the following: “Notwith-  
 16 standing any agreement for arbitration that is subject to  
 17 chapter 1 of title 9, in any core proceeding under section  
 18 157(b) of this title involving an individual debtor whose  
 19 debts are primarily consumer debts, the court may hear  
 20 and determine the proceeding, and enter appropriate or-  
 21 ders and judgments, in lieu of referral to arbitration.”.

22 **SEC. 204. ENACTING A HOMESTEAD FLOOR FOR DEBTORS**  
 23 **OVER 55 YEARS OF AGE.**

24       (a) IN GENERAL.—Section 522(b)(3) of title 11,  
 25 United States Code, is amended—



1           (2) in paragraph (9), by striking the period at  
2 the end and inserting “; or”; and

3           (3) by adding at the end the following:

4           “(10) the claim is subject to any remedy for  
5 damages or rescission due to failure to comply with  
6 any applicable requirement under the Truth in  
7 Lending Act (15 U.S.C. 1601 et seq.), or any other  
8 provision of applicable State or Federal consumer  
9 protection law that was in force when the noncompli-  
10 ance took place, notwithstanding the prior entry of  
11 a foreclosure judgment.”.

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