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BILL ANALYSIS

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Senate Bill 1203 (as enrolled) **PUBLIC ACT 579 of 2006**
Sponsor: Senator Alan L. Cropsey
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 1-25-07

RATIONALE

Chapter 32 of the Revised Judicature Act governs the foreclosure of mortgages by advertisement (rather than by the commencement of court proceedings). Foreclosure by advertisement requires the mortgagee to publish specified notices in a newspaper and post them on the premises. If the property is sold at a foreclosure sale, the mortgagor (or the mortgagor's heirs, executors, or administrators, or a person lawfully claiming under the mortgagor or one of the other parties) may recover, or "redeem", the property by paying the redemption amount and required fees within a specified period. The redemption period ranges from one month to one year, depending on the size and type of the property, the percentage of the original debt still owed, and whether the property is abandoned. The shortest redemption periods apply to abandoned property, and the Act describes circumstances under which property is conclusively presumed to be abandoned. Originally, under Section 3241, procedures to establish abandonment could be initiated only *before* foreclosure proceedings began (before the required notices were posted and published). This meant that if foreclosure proceedings had begun, the property could lie vacant for up to one year while the redemption period ran. To address this, Public Act 94 of 1986 added Section 3241a, which provides for the presumption of abandonment of residential property *after* foreclosure proceedings have begun. Reportedly, some counties' registers of deeds (who must record various foreclosure documents) interpreted Section 3241a as providing for a presumption of abandonment only between the time foreclosure proceedings began and the property was sold at a foreclosure sale—but not between the time of the sale and the expiration of the redemption period.

The shortened redemption periods for abandoned property are considered important because vacant property can contribute to neighborhood deterioration, reduce property values, and provide a venue for criminal activity. It was suggested that, when foreclosure proceedings have begun, mortgagees should clearly be allowed to establish abandonment after a foreclosure sale. It also was suggested that the timing of a mortgagor's response to notice from the mortgagee should be modified.

CONTENT

The bill amended Chapter 32 of the Revised Judicature Act to do the following:

- **Provide that, if foreclosure proceedings have been commenced, abandonment will be presumed if the requirements of Section 3241a are satisfied "before the end of the redemption period".**
- **Require a mortgagor to respond to a mortgagee's notice of abandonment within 15 days after that notice was mailed, rather than 15 days after receipt, and revise the notice that the mortgagee must provide.**
- **Remove the acreage limitation on abandoned residential property subject to a shortened redemption period.**

Under Section 3241a, if foreclosure proceedings have been commenced against residential property, abandonment is conclusively presumed upon satisfaction three requirements (described below). Under the bill, abandonment is conclusively presumed if these requirements are satisfied before the end of the redemption period.

The first requirement is that the mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.

Under the second requirement, the mortgagee must have posted a notice at the time of making the personal inspection and mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor's last know address, stating that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership unless the mortgagor, the mortgagor's heirs, executor, or administrator, or a person lawfully claiming from or under one of them, notifies the mortgagee that the premises are not abandoned (as described below). Previously, the notice from the mortgagee had to state that the mortgagor would lose all rights of ownership 30 days after the foreclosure sale unless the mortgagor (or other specified person) gave the required notice. Under the bill, the mortgagee's notice must state that mortgagee will consider the premises abandoned and the mortgagor will lose all rights of ownership either 30 days after the foreclosure sale *or* when the time expires for the mortgagor to give notice that the premises are not abandoned.

Under the third requirement, the mortgagor, the mortgagor's heirs, executor, or administrator, or a person lawfully claiming from or under one of them, must not have given written notice by first-class mail to the mortgagee stating that the premises are not abandoned. Previously, this notice, if given, had to be mailed within 15 days after receipt of the notice from the mortgagee. The bill changed that deadline to 15 days after the notice from the mortgagee was posted and mailed.

Under the bill, Section 3241a applies to residential property not exceeding four units. Previously, the section applied to residential property not exceeding four units and not more than three acres in size.

Section 3240 establishes the redemption periods for property sold at a foreclosure sale under Chapter 32. Under the bill, if property is abandoned as determined under Section 3241a, the redemption period is 30 days (as previously provided) *or* until expiration of the time for the mortgagor to inform the mortgagee that the premises are not abandoned, whichever is later.

For a mortgage executed on residential property not exceeding four units, if the property is presumed to be abandoned under Section 3241 (before foreclosure proceedings have begun), the redemption period is three months, or, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is one month. Previously, this did not apply to residential property exceeding three acres in size.

The bill took effect on January 3, 2007.

MCL 600.3240 & 600.3241a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By requiring the criteria for a presumption of abandonment to be met *before the end of the redemption period*, the bill removes any ambiguity as to whether abandonment may be established after a foreclosure sale, thereby triggering a 30-day redemption period. Under the Act, when property is sold at a foreclosure sale, the purchaser receives a deed of sale, which shows when it will take effect if the premises are not redeemed. The deed must be deposited with the register of deeds, who must endorse and record it. If the premises are not redeemed, the deed becomes operative. Shortening the redemption period, therefore, expedites the transfer of property that has been sold at a foreclosure sale. This can be especially valuable in the case of vacant property, which is a target for vandals, provides a convenient site for illegal drug activity and violent crime, and generally contributes to urban blight. Section 3241a was enacted in 1986 to address these problems, which can occur whether property is abandoned before or after a foreclosure sale. By clarifying the original language, the bill will help to preserve housing and maintain neighborhoods.

The bill also will contribute to these efforts by removing the acreage limit on abandoned residential property that is subject to a one-month or three-month redemption period. While there may be reasons to have a longer redemption period for large parcels that are occupied, abandoned property can represent a threat to the neighborhood regardless of its size.

Supporting Argument

Under the Act's procedures to establish abandonment after foreclosure proceedings have begun, the mortgagor has 15 days to inform the mortgagee that the property is not abandoned. Previously, the 15 days ran from the time the mortgagor received notice from the mortgagor. When premises are vacant, however, no one is present at the property and there is no way to establish receipt of the mortgagee's notice. It is more appropriate to have an objective deadline of 15 days after the mortgagee's notice was posted and mailed. Reportedly, this change reflects existing practice.

Opposing Argument

The Real Property Law Section of the State Bar of Michigan raised concerns about this legislation. By expanding the circumstances under which property may be presumed to be abandoned and subject to shortened redemption periods, the bill will exacerbate problems with the existing law. Neither the Act nor the bill provides for any notice to junior lienholders, including lenders holding second mortgages, or other parties with recorded interests in the property, such as condominium associations with liens for unpaid dues, or judgment creditors who have taken the steps required to impose a lien against the mortgagor's real property. Although these parties are entitled to redeem the property, they are not required to be informed that the premises are being presumed abandoned, and their property interests could be extinguished after a shortened redemption period. At the least, these parties should have an opportunity to determine whether the foreclosing mortgagee's assessment of abandonment is accurate.

This concern could be easily remedied if the law required that parties holding junior interests of record be sent notice by certified mail at the same time that notice must be sent to the mortgagor. In addition to protecting the financial interests of these lenders and other lienholders, this requirement would further the goal of protecting neighborhoods from the problems presented by vacant property. Since junior lienholders are often the true economic stakeholders in property subject to foreclosure, it is not in their interest to let the property become or remain a haven for crime.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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