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BILL ANALYSIS



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Senate Bill 749 (as introduced 9-6-07)
Sponsor: Senator Dennis Olshove
Committee: Senior Citizens and Veterans Affairs

Date Completed: 2-5-08

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- Provide for a court to stay mortgage foreclosure proceedings for six months after the end of a defendant's military service, if the defendant were a service member.**
- Invalidate a foreclosure by advertisement or the sale of mortgaged property under a power of sale if the mortgagor were a service member, unless the foreclosure or sale were ordered by a court.**
- Prohibit a person from selling or foreclosing real estate if the person knew that the foreclosure or sale was invalid under the bill, and prescribe a civil fine for a violation.**
- Require civil fine revenue to be deposited into the Military Family Relief Fund.**

Specifically, if a defendant in an action to foreclose a mortgage on real estate or a land contract were a service member, the court on its own motion would be permitted, or on the motion of or on behalf of the service member would be required, to do either of the following, unless the court determined that the defendant's ability to comply with the terms of the obligation secured by the mortgage or land contract was not materially affected by the service member's military service:

- Stay proceedings in the action until six months after the end of the service member's period of military service.
- Issue another order that was equitable to conserve the interests of the parties.

If a mortgagor were a service member and the mortgage given by him or her were foreclosed by advertisement or the mortgaged real estate were sold under a power of sale during the service member's period of military service or within six months after that period ended, the foreclosure or sale would be invalid unless it were ordered by a court.

The bill would prohibit a person, individually or acting through another person, from foreclosing, selling, or attempting to foreclose or sell real estate with the knowledge that the foreclosure or sale was invalid under the bill. A person who violated this prohibition would be subject to a civil fine of \$2,000.

The Attorney General could file an action in the circuit court to collect the fine, which would have to be deposited in the Military Family Relief Fund created in the Military Family Relief Fund Act.

The bill would define "service member" as a member of the armed services or reserve forces of the United States or a member of the Michigan National Guard in military service.

"Period of military service" and "military service" would mean those terms as defined in 50 USC App 511. ("Period of military service" means the period beginning on the date on which a service member enters military service and ending on the date on which he or she is released from military service or dies while in military service.

In the case of a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, "military service" means active duty (i.e., full-time duty in the active military service of the United States, including full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school, but not full-time National Guard duty). In the case of a National Guard member, "military service" includes service under a call to active service authorized by the President or the Secretary of Defense for more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by Federal funds. "Military service" also includes any period during which a service member is absent from duty due to sickness, wounds, leave, or other lawful cause.)

Proposed MCL 600.3185 & 600.3285

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on the judiciary, as it would simply postpone foreclosure proceedings.

Any civil fines collected under the bill would be deposited into the Military Family Relief Fund created by Public Act 364 of 2004 for grants to military families in need of financial assistance. The amount of revenue to the Fund would depend on the number of violations. Currently, the Military Family Relief Fund is funded primarily by donations via a check-off on the Michigan income tax return. Since its beginning in tax year 2004, the Fund has received donations totaling \$2,577,000.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.