

Legislative Analysis



FORECLOSURES: MORTGAGE MODIFICATION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4453 (Substitute H-1)
Sponsor: Rep. Shanelle Jackson

House Bill 4454 (Substitute H-1)
Sponsor: Rep. Andy Coulouris

House Bill 4455 (Substitute H-1)
Sponsor: Rep. Bert Johnson

Committee: Banking and Financial Services

Complete to 3-4-09

A SUMMARY OF PROPOSED SUBSTITUTES FOR HOUSE BILLS 4453-4455

Together, the bills would create a mechanism by which borrowers who are behind on their mortgage payments could negotiate with the lender (or the party holding the mortgage) to modify the mortgage loan and stay a foreclosure while the negotiations were in process.

The bills also would: require a foreclosure to go before a judge in some instances; allow a borrower to seek injunctive relief or to convert a foreclosure to a judicial foreclosure if the lender did not fulfill certain requirements; require MSHDA to develop a list of housing counselors to assist borrowers; and repeal the new process two years after the bills' effective date.

The bills would each amend the Revised Judicature Act (MCL 600.101 et seq.) and are tie-barred to each other, meaning that none could take effect unless all three were enacted.

House Bill 4453 would add new language to the act to specify situations under which a foreclosure proceeding by advertisement on a borrower's principal residence could not go forward. For instance, if a borrower requested a meeting with the mortgage holder or loan servicer, the proceeding would be stayed for 90 days from the date of service of a notice as required under House Bill 4454 from the foreclosing party.

The bill would only apply to those foreclosure proceedings under Chapter 32 (Foreclosure by Advertisement) in which the first notice in a newspaper had been published after the bill's effective date and before two years after the effective date. The bill would also define the terms "borrower," "FDIC workout program," "mortgage holder," and "mortgage servicer."

House Bill 4454 would add two new sections (Section 3205a and 3205b) to require a foreclosing party to serve written notice, as specified in the bill, on the borrower before proceeding with a sale by advertisement of the borrower's principal residence.

Among other things, the notice would have to contain the names and contact information of the mortgage holder and the mortgage servicer along with a statement of which entity to contact with the authority to make agreements under provisions of House Bill 4455. Included with the notice would be a list prepared by the Michigan State Housing Development Authority (MSHDA) of HUD or MSHDA approved housing counselors. A borrower who did not receive the required notice could bring an action in circuit court to enjoin the foreclosure if a foreclosure proceeding had been started.

The bill would also specify the duties and responsibilities of the borrower and housing counselor if the borrower wished to pursue negotiations to modify a loan. These provisions would not apply to a borrower who had previously agreed to a loan modification but had not complied with the modified loan terms for one year after the date of the modification.

House Bill 4455 would also add new sections to the act (Sections 3205c, 3205d, and 3205e). The bill would require a modified payment amount under the FDIC workout program to be calculated if the process established by House Bills 4453 and 4454 did not result in an agreement to modify the mortgage loan.

If the calculation showed the borrower was eligible for a modification, the foreclosing party could not proceed with a foreclosure by advertisement, but could proceed with a judicial foreclosure under Chapter 31 of the act. However, if the calculation showed the borrower was not eligible for a modification without an exception, the mortgage holder or lender could foreclose by advertisement.

If foreclosure proceedings were begun in violation of the above provision, the borrower could file an action in circuit court to convert the foreclosure proceeding to a judicial foreclosure. A court would have to enjoin foreclosure by advertisement and order it to proceed as a judicial foreclosure if the borrower had participated in the negotiating process, a modification agreement could not be reached, and the borrower was eligible for modification under the FDIC workout program.

The above provisions would not apply to a borrower who had previously agreed to a loan modification but had not complied with the modified loan terms for one year after the date of the modification.

Further, the bill would repeal Sections 3205a to 3205d two years after this bill's effective date.

FISCAL IMPACT:

The bills would have no fiscal impact on the Michigan State Housing Development Authority.

The bills would have an indeterminate fiscal impact on the judiciary. Although not all foreclosure proceedings go through a judicial process, the borrower's ability to delay foreclosure proceedings may reduce the number of foreclosure proceedings in the circuit court, thereby reducing the caseload and associated costs. Reduction in the caseload could also reduce revenue received from filing fees paid to the local funding unit and civil filing fee fund.

Because it is not known which properties would benefit, the impact on tax revenue cannot be determined. To the extent that foreclosures and the corresponding reductions in taxable values are averted, property tax revenues (including revenue from the 6-mill State Education Tax that is dedicated to the School Aid Fund) would be higher than what would have otherwise occurred.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf
Jim Stansell
Ben Gielczyk

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.