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BILL ANALYSIS

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Senate Bills 991 and 992 (as introduced 12-1-09)
Sponsor: Senator Cameron S. Brown
Committee: Banking and Financial Institutions

Date Completed: 12-8-09

CONTENT

Senate Bill 991 would amend Chapter 31 (Foreclosure of Mortgages and Land Contracts) and Chapter 32 (Foreclosure of Property by Advertisement) of the Revised Judicature Act to revise the provisions for redeeming property subject to foreclosure.

Senate Bill 992 would amend the State Housing Development Authority Act to revise the provisions for redeeming foreclosed property if the mortgages are held by the Michigan State Housing Development Authority (MSHDA).

The bills would do the following:

- Require a person who redeemed foreclosed property by paying the redemption money to the register of deeds to deliver to the register a notice to the purchaser.
- Require the register of deeds to mail the notice to the purchaser or purchaser's representative.
- Require the purchaser to respond to the notice within 14 days, either by releasing the property or by notifying the payer that the amount was insufficient to redeem the property.
- Establish a \$1,000 fine for a purchaser who failed to respond as required.
- Increase the liability of a person who refuses to acknowledge payment from \$100 to \$1,000.

The bills also would increase the fee that must accompany any redemption payment made to the register of deeds from \$5 to \$10.

The bills are described in detail below.

Senate Bill 991

Chapter 31 establishes procedures for foreclosure by filing an action in the circuit court, if a mortgagor is in default. When a complaint is filed, the court must determine the amount due, and not less than six months after a complaint is filed, the court may order the sale of the premises.

Within six months after the sale, the mortgagor or the mortgagor's heirs, executors, or administrators may redeem the property by paying the amount that was bid for the

property, with interest. The money may be paid either to the purchaser or to the register of deeds in whose office the deed of sale is deposited, for the benefit of the purchaser.

Under Chapter 32, if a mortgagor is in default, the mortgage may be foreclosed by advertisement if the mortgage contains a power of sale. If the property is sold at a foreclosure sale under Chapter 32, the mortgagor or the mortgagor's heirs, executors, or administrators may redeem the property within a specified redemption period, depending on the size and type of the property, the percentage of the original debt still owed, and whether the property is abandoned.

Under the bill, if a person redeemed property under Chapter 31 or Chapter 32 by paying the redemption money to the register of deeds, the person would have to deliver to the register of deeds a notice to the purchaser or purchaser's representative that contained all of the following information:

- The name and address of the purchaser or designee.
- The name and address of the person paying the money to redeem the property.
- The amount paid and the date on which it was paid to the register of deeds.
- The liber and page number, or other unique identifying number, where the deed of sale was recorded.
- A statement of the requirement that the purchaser or designee respond to the notice within 14 days, as described below.

On receiving that notice, the register of deeds would have to record it and mail a copy to the purchaser or the designee by certified mail, return receipt requested.

Within 14 days after receiving the notice, the purchaser or designee would have to respond to the register of deeds as follows.

If the amount paid for redemption were sufficient to redeem the property, the purchaser or designee would have to sign and record a quitclaim deed or other instrument to release the purchaser's interest in the property to the person paying the money.

If the amount paid for redemption were not sufficient to redeem the property, the purchaser or designee would have to notify the person paying the money that the amount was insufficient and advise the person that if he or she believed the amount was sufficient, he or she could seek relief from the court.

A purchaser or designee who failed to respond as required would be liable to the person paying the money for \$1,000.

Under Chapter 31, the court may include in a foreclosure judgment amounts for taxes and insurance premiums paid after foreclosure and before the redemption period expires, if the mortgagor would have been liable for those payments. Proof of the payment may be made by filing with the register of deeds an affidavit of payment by the purchaser or someone on his or her behalf. Under the bill, the purchaser or other person also would have to file an affidavit that included a statement of the exact additional amount required to redeem the property, including any per diem amount, if applicable.

Similarly, under Chapter 32, if the purchaser pays taxes, insurance premiums, amounts necessary to redeem senior liens, or certain assessments that would have been the mortgagor's responsibility, the redemption amount includes those payments if the purchaser or someone on his or her behalf files an affidavit with the register of deeds.

Under the bill, the affidavit would have to include a statement of the exact amount required to redeem the property, including any per diem amount.

If property is redeemed under Chapter 31 or 32, the register of deeds, at the time of destroying the deed, must write on the face of the record the word "Redeemed" with the date the entry is made and the register's official signature. The bill instead would require a register of deeds to note in the index to records the liber and page number or other unique identifying number where the deed was recorded and indexed that the property had been redeemed and the date of the redemption.

Under Chapters 31 and 32, if the redemption payment is made to the register of deeds, the amount must include an additional \$5 fee for the care and custody of the money. The bill would increase that fee to \$10.

Under Chapter 32, if a person who is entitled to receive redemption money refuses to acknowledge payment as required under the Act, the person is liable to the aggrieved party for \$100 in damages, over and above all actual damages sustained. Under the bill, instead, if a person refused to sign and record a quitclaim deed or other instrument sufficient to release the purchaser's interest in the property as required, the person would be liable to the aggrieved party for \$1,000 plus actual damages. As currently provided, the aggrieved person could recover the amount in a civil action.

The bill would repeal Section 3244 of the Act, which requires the register of deeds, after a redemption payment has been made and acknowledged by the recipient, to destroy the deed and enter a memorandum in the margin of the record of the mortgage that the mortgage is satisfied.

Senate Bill 992

The State Housing Development Authority Act establishes procedures for the foreclosure of a mortgage or land contract held by MSHDA. In addition, a mortgage held by MSHDA that contains a power of sale may be foreclosed by advertisement.

If the property is sold at a foreclosure sale under those provisions, the mortgagor or the mortgagor's heirs, executors, or administrators may redeem the property within a specified redemption period.

Under the bill, a person who redeemed property as provided under the Act by paying the redemption money to the register of deeds would have to deliver to the register of deeds a notice to the purchaser or purchaser's representative that contained all of the following information:

- The name and address of the purchaser or designee.
- The name and address of the person paying the money to redeem the property.
- The amount paid and the date on which it was paid to the register of deeds.
- The liber and page number, or other unique identifying number, where the deed of sale was recorded.
- A statement of the requirement that the purchaser or designee respond to the notice within 14 days, as described below.

On receiving that notice, the register of deeds would have to record the notice and mail a copy to the purchaser or the designee by certified mail, return receipt requested.

Within 14 days after receiving the notice, the purchaser or designee would have to respond to the register of deeds as follows.

If the amount paid for redemption were sufficient to redeem the property, the purchaser or designee would have to sign and record a quitclaim deed or other instrument to release the purchaser's interest in the property to the person paying the money.

If the amount paid for redemption were not sufficient to redeem the money, the purchaser or designee would have to notify the person paying the money that the amount was insufficient and advise the person that if he or she believed the amount was sufficient, he or she could seek relief from the court.

A purchaser or designee who failed to respond as required would be liable to the person paying the money for \$1,000.

Under the Act, the court may include in a foreclosure judgment amounts for taxes and insurance premiums paid after foreclosure and before the redemption period expires, if the mortgagor would have been liable for those payments. Proof of the payment may be made by filing with the register of deeds an affidavit of payment by the purchaser or someone on his or her behalf. Under the bill, the purchaser or other person also would have to record an affidavit that included a statement of the exact additional amount required to redeem the property, including any per diem amount.

If property is redeemed under the Act, the register of deeds, at the time of destroying the deed, must write on the face of the record the word "Redeemed" with the date the entry was made and the register's official signature. The bill instead would require a register of deeds to note in the index to records the liber and page number or other unique identifying number where the deed was recorded and indexed that the property had been redeemed and the date of the redemption.

Under the Act, if the redemption payment is made to the register of deeds, the amount must include a \$5 fee for the care and custody of the money. The bill would increase that fee to \$10.

Under the Act, in a foreclosure by advertisement, if a person who is entitled to receive redemption money refuses to acknowledge payment as required, the person is liable to the aggrieved party for \$100 in damages, over and above all actual damages sustained. Under the bill, instead, if a person refused to sign and record a quitclaim deed or other instrument sufficient to release the purchaser's interest in the property as required, the person would be liable to the aggrieved party for \$1,000 plus damages. As currently provided, the aggrieved person could recover the amount in a civil action.

The bill would repeal Section 1449I of the Act, which requires the register of deeds, after a redemption payment has been made and acknowledged by the recipient, to destroy the deed and enter a memorandum in the margin of the record of the mortgage that the mortgage is satisfied.

MCL 600.3130 et al. (S.B. 991)
125.1448g et al. (S.B. 992)

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills would have no affect on State revenue or expenditure. The bills would increase local unit revenue by an unknown amount, depending on how many mortgage redemptions were processed under the affected provisions.

Fiscal Analyst: David Zin

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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.