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BILL ANALYSIS

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Senate Bill 398 (as introduced 5-24-11)
Sponsor: Senator Mike Green
Committee: Banking and Financial Institutions

Date Completed: 6-8-11

CONTENT

The bill would amend Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act to delay for two years, until July 5, 2013, the sunset on sections that provide for the modification of residential mortgage loans.

Under Chapter 32, a mortgage of real property may be foreclosed by advertisement (rather than judicial process) if the mortgage document contains a "power of sale", and notice is posted and published as required. Public Acts 29, 30, and 31 of 2009 amended Chapter 32 to establish procedures under which a borrower must be given an opportunity to meet with the lender regarding modification of a mortgage loan on a principal residence, before the mortgage is foreclosed.

Sections 3205a to 3205d, which were enacted by Public Acts 30 and 31, are scheduled to be repealed on July 5, 2011. The bill would delay the sunset until July 5, 2013.

Public Act 29 amended Section 3204 to prohibit a party from beginning foreclosure proceedings on a primary residence if the required procedures have not been followed, applicable time limits have not expired, or the parties have agreed to modify the loan and the borrower is not in default. These provisions apply only to proceedings in which the first notice of a mortgage sale is published after July 5, 2009 (the Act's effective date) and before July 5, 2011. The bill would extend the provisions to proceedings in which the first notice was published before July 5, 2013.

MCL 600.3204 & 600.3205

BACKGROUND

As indicated above, Public Acts 29, 30, and 31 of 2009 require a borrower to be given an opportunity to meet with the lender regarding modification of a mortgage loan on the borrower's principal residence, and prohibit a party from beginning foreclosure proceedings if the required procedures have not been followed, applicable time limits have not expired, or the parties have agreed to modify the loan and the borrower is not in default.

Before proceeding with a sale of a principal residence under Chapter 32, the foreclosing party is required to give the borrower a notice containing specific information, including the designation of a person who has the authority to make loan modification agreements. The foreclosing party also must send a list of housing counselors (prepared by the Michigan State Housing Development Authority), and inform the borrower that he or she may request a meeting with the lender's designated person and ask a housing counselor to attend. In addition, the borrower must be notified that foreclosure proceedings will not be begun for 90 days if he or she requests such a meeting, and that the mortgage will not be foreclosed if the borrower and the designated person reach a modification agreement and the borrower abides by it.

A borrower who wishes to participate in negotiations to work out a modification must contact a housing counselor within 14 days after the list is mailed to the borrower. The housing counselor then must schedule a meeting between the borrower and the person designated by the foreclosing party.

If the borrower has contacted a housing counselor but the process does not result in an agreement to modify the mortgage loan, the person designated by the lender to work with the borrower must determine whether he or she qualifies for a loan modification. In making this determination, the person must use a program or process that targets a ratio of the borrower's housing-related debt to gross income of 38% or less. To reach the 38% target, the program or process must include specified features pertaining to an interest rate reduction, an extension of the amortization period, deferral of some of the unpaid principal balance, and reduction or elimination of late fees.

If the results of this calculation are that the borrower is eligible for a modification, the mortgage holder or servicer may not foreclose by advertisement under Chapter 32 but may proceed under Chapter 31 (which governs the judicial foreclosure process). If the results are that the borrower is not eligible for a modification, the mortgage may be foreclosed under Chapter 32.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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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.