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BILL



ANALYSIS

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House Bill 4542 (Substitute H-5 as passed by the House)
House Bill 4543 (Substitute H-6 as passed by the House)
House Bill 4544 (Substitute H-3 as passed by the House)
Sponsor: Representative Jeff Farrington (H.B. 4542)
Representative Peter Pettalia (H.B. 4543)
Representative Lisa Lyons (H.B. 4544)
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 12-12-11

CONTENT

House Bills 4542 (H-5) and 4543 (H-6) would amend Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act to change the process for modifying the mortgage on a principal residence, and extend the modification program through 2012. (Under the law, a borrower (mortgagor) must be given an opportunity to meet with the lender regarding modification, and the lender cannot begin 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.)

The bills would do the following:

- Allow a borrower to contact a mortgage holder or servicer directly or through a housing counselor, rather than only through a counselor.
- Require the contact to be made within 30 days, rather than 14, after a notice of foreclosure was mailed to the borrower.
- Require the mortgage holder or servicer to designate a contact person who would attend meetings and facilitate negotiations with the borrower.
- Require the borrower to be informed of the number of days in the

redemption period, if the property were sold at foreclosure.

- Set deadlines for a borrower to provide requested documents and for a designated person to give certain information to the borrower.
- Delete a requirement for publication of a borrower's rights.
- Provide that a borrower would be liable for property damage that he or she caused during the redemption period following a foreclosure sale.
- Make it a misdemeanor for someone to act or represent himself or herself as a housing counselor, if the person were not on a list of approved counselors (subject to an exemption for practicing attorneys).

Sections 3205a to 3205d of the Act, which contain the requirements for the mortgage modification program, are scheduled to be repealed on January 5, 2012. House Bill 4543 (H-6) would delay the repeal until December 31, 2012.

House Bill 4544 (H-3) would amend Chapter 32 to do the following:

- Delete the acreage limit on residential property subject to a six-month redemption period if the amount due exceeds two-thirds of the original indebtedness.

- **Prescribe a one-year redemption period for property used for agricultural purposes.**
- **Establish a rebuttable presumption that property was used for agricultural purposes if certain criteria were met.**

House Bills 4542 (H-5) and 4543 (H-6) would apply to foreclosure proceedings in which the first notice to the borrower was mailed on or after February 1, 2012. House Bill 4544 (H-3) would apply to property sold at a foreclosure sale on or after that date.

All of the bills are tie-barred.

House Bill 4542 (H-5)

Delay of Foreclosure Proceedings

Currently, a party may not begin proceedings under Chapter 32 to foreclose a mortgage on property that is a principal residence if any of the following (or other specified circumstances) apply:

- The foreclosing party has not mailed a notice to the borrower as required by the law.
- After the required notice is mailed, the time for a housing counselor to notify a person designated by the mortgage holder or mortgage servicer of a borrower's request to negotiate, has not expired.
- With 14 days after the required notice is mailed, the borrower has requested a meeting with the designated person and 90 days have not passed since the notice was mailed.

The bill would modify the second and third provisions as follows:

- After the required notice was sent, the time for the borrower to request, directly or through a housing counselor, a meeting with a person designated by the mortgage holder or servicer had not expired.
- Within 30 days after the notice was sent, the borrower had requested a meeting with the designated person and 90 days had not passed since the notice was mailed, unless the borrower had failed to provide documents necessary to determine if he or she qualified for mortgage modification.

The bill also would prohibit a party from beginning foreclosure proceedings if those documents had been requested and the time for producing them had not expired.

Currently, these provisions apply only to proceedings in which the first notice of foreclosure has been published before January 5, 2012. The bill would change that date to December 31, 2012.

Designated Contact of Lender

Under the bill, for a foreclosure proceeding in which the required notice was mailed to the borrower on or after February 1, 2012, a mortgage holder or mortgage servicer would have to designate an individual, department, or unit to serve as a contact during the mortgage modification process. The contact would have to be an individual who was an employee or agent of the mortgage holder, the mortgage servicer, or another entity that was an agent of the mortgage holder or servicer, or a specific department or unit of the mortgage holder or servicer or agent.

The mortgage holder or servicer also would have to authorize the designated individual, or a representative of the designated department or unit, to facilitate negotiations and attend meetings with the borrower.

Borrower's Liability for Damage

The bill would add Section 3278 to provide for the liability of a borrower for property damage during the redemption period following a foreclosure sale under Chapter 32. Specifically, during the redemption period, the borrower and any other person liable on the mortgage would be liable for any physical injury to the property beyond wear and tear resulting from the normal use of the property, if the physical injury were caused by or at the direction of the borrower or other person liable on the mortgage. The borrower or other person would be liable to the purchaser at the sale, or to the mortgagee, payee, or other holder of the obligation secured by the mortgage if that party took or had taken title to the property at the sale directly or indirectly.

In an action for damages under Section 3278, the amount of damages could be determined by any measure applicable under law, including the method provided under Section 5739(2) (i.e., damages for

the cost of repairs based on usual and customary charges).

An action for damages could be joined with summary proceedings to recover possession of the premises.

Chapter 32 lists information that every notice of foreclosure by advertisement must contain. The bill also would require the notice to include a statement regarding the borrower's liability under Section 3278.

House Bill 4543 (H-6)

Notice to Borrower

As noted above, Chapter 32 requires a foreclosing party to mail notice to the borrower before commencing a foreclosure proceeding on a principal residence. This notice must contain information specified in the Act, including contact information for the mortgage holder, the mortgage servicer, or any agent designated by the mortgage holder or servicer, and a designation of one of them as the person to contact who has authority to make modification agreements.

Under the bill, for proceedings in which notice to the borrower was mailed on or after February 1, 2012, the designated person would have to be the individual, department, or unit designated as required by House Bill 4542 (H-5). The notice would have to give the name and address, as well as a dedicated telephone number and dedicated e-mail address, of that individual, department, or unit.

Currently, the notice must indicate that a list of housing counselors prepared by the Michigan State Housing Development Authority is enclosed with the notice, and that within 14 days after the notice is sent, the borrower may request a meeting with the designated person to attempt to work out a modification, and may request a housing counselor to attend the meeting.

The bill, instead, would require the notice to state that within 30 days after it was sent, the borrower could, either by contacting the designated person directly or by contacting a housing counselor from the enclosed list, request a meeting with the designated person.

The bill also would require the notice to contain the following, in addition to the other information that it must include:

- The number of days in the redemption period that would be available to the borrower if the property were eventually sold at a foreclosure sale under Chapter 32, unless the property were abandoned.
- That, if the property were sold at a foreclosure sale, the borrower would be held responsible to the buyer or to the mortgage holder for damaging the property during the redemption period.

Currently, the person who mails the notice, within seven days, must publish a notice informing the borrower of his or her rights under these provisions, in the manner required for publishing a notice of foreclosure sale. The bill would delete this requirement.

Modification Negotiations

Currently, if a borrower wishes to participate in negotiations to work out a mortgage modification, he or she must contact a housing counselor within 14 days after the list of counselors is mailed to the borrower. Within 10 days after being contacted, the housing counselor must inform the person designated by the mortgage holder or servicer of the request.

Under the bill, instead, if a borrower wished to participate in negotiations, he or she would have 30 days either to contact the designated person directly or to contact a housing counselor. After a housing counselor was contacted and within 30 days after the required notice was mailed to the borrower, the counselor would have to inform the designated person of the borrower's request.

Currently, after being informed of the borrower's request, the designated person may request the borrower to provide any documents that are necessary to determine whether he or she qualifies for modification. The borrower must provide copies of those documents.

Under the bill, within 10 days after being contacted by the borrower or housing counselor, the designated person could request the documents, and the borrower would have to provide copies within 60 days

after the required notice was mailed to him or her. If the borrower did not do so, a party entitled to foreclose the mortgage could proceed with the foreclosure.

Currently, a housing counselor contacted by the borrower must schedule a meeting between the borrower and the designated person to attempt to work out a modification. The bill would require the designated person to schedule a meeting, after being informed that the borrower wished to meet.

Determination of Qualification

Under Chapter 32, if the process described above has not resulted in an agreement to modify the mortgage, the person designated by the mortgage holder or servicer must work with the borrower to determine whether he or she qualifies for a modification, using a loan modification program or process that includes features specified in the Act.

The designated person must give the borrower a copy of any calculations made by the person under these provisions and, if requested by the borrower, a copy of the program, process, or guidelines under which the determination was made. The bill would require the person to provide this information before 90 days after the required notice was sent or 10 days after the meeting between the borrower and the designated person, whichever was later.

Housing Counselors

Chapter 32 requires the Michigan State Housing Development Authority to develop a list of approved housing counselors who may perform the duties of housing counselor under the mortgage modification program.

The bill would prohibit a person who was not on the list from performing the duties of housing counselor, or representing that he or she was entitled to perform those duties. A violation would be a misdemeanor punishable by imprisonment for up to 90 days, a maximum fine of \$2,000, or both.

The prohibition would not apply to an attorney who was licensed to practice in Michigan and who provided mortgage assistance relief services as part of his or her practice of law.

House Bill 4544 (H-3)

If property is sold at a foreclosure sale under Chapter 32, the borrower may recover, or "redeem", the property by paying the redemption amount and required fees. 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 (making it subject to a 30-day redemption period).

Unless the property is abandoned, the redemption period is six months for a mortgage on residential property that does not exceed four units and is not more than three acres in size, if the amount claimed to be due is more than 66-2/3% of the original indebtedness. The bill would delete the three-acre limit.

The bill would establish a redemption period of one year for property that is used for agricultural purposes. There would be a presumption that property was used for agricultural purposes if, before the foreclosure sale, the borrower gave the foreclosing party and that party's attorney proof that the borrower filed a Schedule F to his or her Federal income tax form 1040 for the tax year before the year in which the foreclosure proceedings were begun. The borrower also would have to record with the register of deeds an affidavit stating that this proof had been delivered. If the borrower failed to provide proof and record an affidavit before the foreclosure sale, there would be a presumption that the property was not used for agricultural purposes.

The borrower or the party foreclosing the mortgage could file a civil action to produce evidence to rebut a presumption created by these provisions. The action would have to be filed before the expiration of the redemption period that would apply if the property were determined not to be used for agricultural purposes.

MCL 600.3204 et al. (H.B. 4542)
600.3205a et al. (H.B. 4543)
600.3240 (H.B. 4544)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government, apart from the potential impact of the proposed misdemeanor under House Bill 4543 (H-6). Local units would incur the costs of incarceration in local facilities, which vary by county. Public libraries would receive penal fine revenue.

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.