

Legislative Analysis



MORTGAGE LOAN MODIFICATION; REDEMPTION AFTER SHERIFF'S SALE

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Senate Bill 380 (Substitute H-1)
Sponsor: Sen. Randy Richardville

Senate Bill 383 (Substitute H-1)
Sponsor: Sen. Darwin Booher

House Committee: Financial Services
Senate Committee: Banking and Financial Institutions
Complete to 6-19-13

A SUMMARY OF SENATE BILLS 380 & 383 AS REPORTED FROM HOUSE COMMITTEE

The bills are part of a package of bills that would amend Chapter 32 of the Revised Judicature Act, which deals with the foreclosure of mortgages by advertisement (as contrasted with judicial foreclosure). The bills address the mortgage loan modification program enacted in 2009 and the statutory redemption period. The other bills are House Bill 4765 and 4766, which have already passed the House and are currently on the Senate floor. The bills are all tie-barred to one another, meaning none could take effect unless all are enacted. In brief, the two Senate bills would do the following:

Senate Bill 380 would revise a provision that currently prohibits foreclosure by advertisement under the mortgage loan modification program for proceedings in which the first notice is published before June 30, 2013; the bill would extend that date to January 10, 2014. The bill would amend Section 3204 of the RJA, which prescribes conditions that a party must satisfy to begin proceedings to foreclose a mortgage by advertisement.

[Generally, the loan modification program provides for a 90-day moratorium before a mortgage lender may pursue foreclosure against a delinquent borrower, during which time, the borrower must be given an opportunity to work out a modification with the lender.]

The bill would also, after January 9, 2014, prohibit a party from foreclosing a mortgage of property claimed as a principal residence unless the party had complied with Section 3206. That section would be added by a related bill, House Bill 4766 (currently in the Senate floor).

Section 3206 as added by House Bill 4766 (H-2) would establish requirements for loss mitigation procedures occurring before the foreclosure of a mortgage under Chapter 32. A person foreclosing a mortgage (e.g., lender) would have to meet the requirements if all of the following applied: (1) the mortgaged property was claimed as a principal

residence; (2) the first notice of foreclosure sale was published after January 9, 2014; and (3) the servicing agent was a defendant (or a successor in interest) that entered into a consent judgment in U.S. v. Bank of America.

Under the requirements, the foreclosing party would have to do the following: (1) designate an agent to serve as a contact; (2) authorize the contact to facilitate negotiations and attend meetings with the mortgagor; (3) provide the designated agent's contact information, and a statement that the mortgagor could request a meeting to attempt to work out a modification, in the written notice for late payment as required by 12 CFR 1024.390(b).

If the mortgagor requested a meeting, foreclosure proceedings could not be begun unless the meeting had been held. This would not apply, however, if either (1) the mortgagor (borrower) did not cooperate by scheduling a meeting convenient for all parties, or in the county where the property was located; or (2) the mortgagor failed to attend a scheduled meeting.

Senate Bill 383 would amend Section 3240. This section prescribes the statutory redemption period after foreclosed property is sold at a sheriff's sale; during this period, the delinquent borrower can pay the loan in full to redeem the property. The length of the redemption period varies depending on various circumstances from 30 days to one year, but is typically six months.

In an earlier version, the bill would have reduced the length of redemption periods, as would the introduced House version, House Bill 4767. However, the House substitute for SB 383, as reported from committee, does not contain reduced redemption periods, but instead, generally speaking, allows the right of redemption to be extinguished if a judgment for possession was entered in favor of the purchaser because of the condition of the property.

Specifically, the bill provides that after the sale and periodically throughout the redemption period, the purchaser at the sale could inspect the exterior and interior of the property and all ancillary structures. If inspection was unreasonably refused or if damage to the property was imminent or had already occurred, the purchaser could begin summary proceedings for possession of the property or file an action for any other relief necessary to protect the property from damage.

If a judgment for possession was entered in favor of the purchaser, the right of redemption would be extinguished and full title to the property would vest in the purchaser.

The term "damage" is defined as including (although not limited to) any of the following:

- The failure to comply with local ordinances on maintenance of the property, if the failure was the subject of enforcement action by the appropriate governmental unit.

- A boarded up or closed off window or entrance.
- Multiple broken and unrepaired window panes.
- A smashed through, broken off, or unhinged door.
- Accumulated rubbish, trash, or debris.
- Stripped plumbing, electrical wiring, siding, or other metal material.
- Missing fixtures, including a furnace, water heater, or air conditioning unit, among other fixtures.
- Deterioration below community standards for public safety and sanitation, or being in imminent danger of such deterioration.
- A condition that would justify recovery of the premises under Section 5714 (1)(D) of the RJA. That section address cases where a person willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises.

FISCAL IMPACT:

The bills do not appear to have any direct fiscal impact. A fiscal analysis is in process.

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