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BILL ANALYSIS

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Senate Bills 380 and 383 (as enacted) **PUBLIC ACTS 103 & 104 of 2013**
House Bills 4765 and 4766 (as enacted) **PUBLIC ACTS 105 & 106 of 2013**
Sponsor: Senator Randy Richardville (S.B. 380)
Senator Darwin L. Booher (S.B. 383)
Representative Jeff Farrington (H.B. 4765)
Representative Mike Calton (H.B. 4766)
Senate Committee: Banking and Financial Institutions (S.B. 380 & 383)
House Committee: Financial Services

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RATIONALE

When the state and national economies went into a severe recession in 2008, Michigan and other states began to experience a mortgage loan foreclosure crisis. This resulted from various factors, including overly aggressive or fraudulent lending practices. As job losses reached historic levels and millions of borrowers fell behind on their mortgages, many financial institutions and other mortgage loan servicers failed to meet the needs of those borrowers. At the state and national levels, steps were taken to address this situation. In Michigan, these measures included the enactment of legislation in 2009 to create a residential mortgage loan modification program. This program essentially provided for a 90-day moratorium before a mortgage lender could pursue foreclosure against a delinquent borrower, when proceeding under Chapter 32 of the Revised Judicature Act (which governs foreclosure by advertisement, rather than through the judicial system). During that time, the borrower had to be given an opportunity to work out a modification with the lender.

Originally, the loan modification program was scheduled to be repealed on January 5, 2012, but the sunset date was delayed to June 30, 2013. Many people believed that the program should again be extended to coincide with Federal rules that were scheduled to take effect on January 10, 2014.

A related issue involves the statutory redemption period after foreclosed property is sold at a sheriff's sale; during this period, the delinquent borrower may pay the loan in full to redeem the property. The length of the redemption period ranges from 30 days to one year depending on various circumstances, but is typically six months. Because some properties suffer damage and neglect during the redemption period, it was suggested that Chapter 32 should give the purchaser of foreclosed property the option, in the case of damage, to seek immediate possession of the property.

CONTENT

The bills amended Chapter 32 of the Revised Judicature Act to extend requirements under the modification program, add new requirements for foreclosure proceedings, and create an exception for the statutory redemption period in the case of property damage.

Senate Bill 380 requires that beginning January 10, 2014, a foreclosing party comply with Section 3206 (added by House Bill 4766), if subject to that section. It also prohibited foreclosure by advertisement under certain circumstances for proceedings

in which the first notice was published before January 10, 2014, rather than before June 30, 2013.

House Bill 4765 delayed the repeal of the mortgage loan modification program for one year, until June 30, 2014.

House Bill 4766 requires a person to follow loss mitigation procedures before foreclosure, if the servicing agent was a party to a national mortgage settlement.

Senate Bill 383 allows the purchaser of foreclosed property to inspect the property, and to bring an action for possession if necessary to protect the property from damage; and requires the court to extinguish the right of redemption if it enters a judgment for possession. The bill also provides for a one-month redemption period for all abandoned residential property with up to four units (regardless of the amount owed on the original loan).

Except for Senate Bill 383, the bills took effect on July 3, 2013. Senate Bill 383 took effect on January 10, 2014.

Senate Bill 380

Section 3204 of the Act prescribes conditions that a party must satisfy to begin proceedings to foreclose on mortgaged property by advertisement.

Under the residential mortgage loan modification program, the Act prohibited a party from beginning proceedings if a required notice had not been mailed to the borrower, if applicable time limits had not expired, or if the parties had agreed to modify the mortgage loan and the borrower was not in default. Under the bill, this provision applied to proceedings in which the first notice of foreclosure was published after July 5, 2009 (as originally provided), and before January 10, 2014. Previously, the ending date was June 30, 2013.

Also, under the bill, beginning January 10, 2014, a party that is subject to Section 3206 (added by House Bill 4766) may not begin foreclosure by advertisement proceedings with regard to a principal residence unless the party complies with that section.

House Bill 4765

Sections 3205a to 3205d of the Revised Judicature Act provided for the mortgage modification program, and were scheduled to be repealed on June 30, 2013. The bill changed that date to June 30, 2014.

Also, under the bill, Sections 3205a to 3205d did not apply to proceedings in which the first notice was published after January 9, 2014.

House Bill 4766

The bill added Section 3206 to establish requirements for loss mitigation procedures occurring before the foreclosure of a mortgage under Chapter 32. A person foreclosing a mortgage is subject to Section 3206 if all of the following apply: 1) the mortgaged property is claimed as a principal residence, 2) the first notice of foreclosure sale is published after January 9, 2014, and 3) the servicing agent is a defendant, or a successor in interest to such a defendant, that entered into a consent judgment in *U.S.* v. *Bank of America*. A person is not a successor in interest under this provision solely because of a transfer of mortgage servicing rights and obligations to the person.

If subject to Section 3206, the foreclosing party must designate an agent to serve as a contact, and authorize the designated agent to facilitate negotiations and attend meetings with the mortgagor (the borrower). Also, in the written notice for late payment required by 12 CFR 1024.39(b), the foreclosing party must provide the designated agent's contact information and a

statement that the mortgagor may, within 30 days, request a meeting with the agent to attempt to work out a modification.

If the mortgagor requests a meeting, foreclosure proceedings may not be commenced unless the meeting has been held. This does not apply, however, if the mortgagor has not cooperated by scheduling a meeting at a time and place convenient for all parties, or in the county where the property is located, or has not attended a scheduled meeting.

Senate Bill 383

Chapter 32 prescribes redemption periods in which a mortgagor may redeem foreclosed real property. The redemption periods range from 30 days to one year, depending on the type of property and the amount of debt owed. A foreclosing party generally does not have the right to possess the foreclosed property until the redemption period has run.

Under the bill, after the foreclosure sale, and periodically throughout the redemption period, the purchaser may inspect the interior and exterior of the property and all ancillary structures. If inspection is unreasonably refused, or if property damage is imminent or has occurred, the purchaser may immediately begin summary proceedings for possession, or file an action for any other relief that is necessary to protect the property from damage.

The court may not enter a judgment for possession in a summary proceedings action if, before the hearing, the mortgagor repairs any damage to the property that is the basis of the action.

If the court enters a judgment for possession in favor of the purchaser, the right of redemption will be extinguished, and full title to the property will vest in the purchaser.

As used in the provisions, "damage" includes, but is not limited to, any of the following: failure to comply with local ordinances regarding maintenance of the property, if the failure is 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; deterioration below, or being in imminent danger of deteriorating below, community standards for public safety and sanitation; and a condition that would justify recovery under Section 5714(1)(d). (That section allows the recovery of premises by summary proceedings when a person in possession 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, that was discovered or should reasonably have been discovered by the party seeking possession not earlier than 90 days before the institution of summary proceedings, and when the person in possession neglects or refuses to deliver possession of, or substantially restore or repair, the premises, for seven days after service of a demand for possession.)

Previously, the redemption period for residential property not exceeding four units, if the requirements for determining that the property was abandoned under Chapter 32 were met, was three months. However, the redemption period was one month for residential property not exceeding four units if the amount owed on the mortgage loan was over two-thirds of the original loan. The bill eliminated the distinction between these categories, and instead set a redemption period of one month for abandoned residential property not exceeding four units.

MCL 600.3204 (S.B. 380)
600.3240 (S.B. 383)
600.3205e (H.B. 4765)
600.3206 (H.B. 4766)

BACKGROUND

In response to the economic crisis that began late in 2007, the U.S. Congress passed and President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Dodd-Frank Act. This law created a new agency, the Consumer Financial

Protection Bureau (CFPB), in order to consolidate most Federal consumer financial protection authority. The CFPB is responsible for supervision and enforcement with respect to the laws governing providers of consumer financial products and services. In January 2013, the CFPB announced rules pertaining to mortgage loan servicing that would be effective on January 10, 2014.

In particular, 12 CFR 1024.39 to 1024.41 include requirements pertaining to policy and procedure for early intervention, continuity of contact, and loss mitigation. The current regulations are described below.

CFR 1024.39: Early Intervention Requirements: A servicer must establish, or make good faith efforts to establish, live contact with a delinquent borrower not later than 36 days after the delinquency, and promptly inform the borrower about loss mitigation options, if appropriate. The servicer also must provide written notice within 45 days of the delinquency. The written notice must contain contact information, a description of loss mitigation options, and information on homeownership counselors.

CRF 1024.40: Continuity of Contact: After providing the written notice required by CFR 1024.39, but not more than 45 days after the borrower's delinquency, a servicer must assign personnel to respond to the borrower's inquiries and assist the borrower with available loss mitigation options.

A servicer must maintain policies and procedures reasonably designed to ensure that assigned personnel can provide the borrower with accurate information about the following:

-- Loss mitigation options available to the borrower.
-- Actions the borrower must take to pursue mitigation options.
-- The circumstances in which the servicer may make a referral to foreclosure.
-- Loss mitigation deadlines established by the owner or assignee of the mortgage loan.

A servicer also must retrieve a complete record of the borrower's payment history in the servicer's records, and all documents that the borrower has submitted in connection with a loss mitigation application, and provide the documents and information to people required to evaluate the borrower for loss mitigation options made available by the servicer.

CFR 1024.41: Loss Mitigation Procedures: If a servicer receives a loss mitigation application at least 45 days before a foreclosure sale, the servicer must promptly review the application to determine if it is complete, and notify the borrower within five days that the servicer has received the application and determined that it is complete or incomplete. If the application is incomplete, the notice must state the additional information and documents the borrower must provide, and the date by which they should be submitted.

If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, the servicer must, within 30 days, evaluate the borrower for all loss mitigation options available to him or her, and notify the borrower in writing of which options the servicer will offer. The notice must include the time the borrower has to accept or reject an offer of a loss mitigation program, and inform the borrower of his or her right to appeal the denial of an option.

If a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application but it remains incomplete for a significant period of time, the servicer may evaluate the incomplete application and offer the borrower a loss mitigation option. A servicer also may offer a short-term payment forbearance program to a borrower based on an evaluation of an incomplete application.

If a borrower's complete application is denied for any trial or permanent loan modification option available to the borrower, the servicer must inform him or her of the specific reasons for the determination.

A servicer may require a borrower to accept or reject an offer of a loss mitigation option within a certain number of days, specified in the regulation. Except as provided with respect to a trial

loan modification plan or the appeal process, a servicer may consider a borrower to have rejected an offer if he or she does not accept it by the deadline.

A servicer may not make the first notice or filing required by law for any judicial or nonjudicial foreclosure process unless 1) a borrower's mortgage loan obligation is more than 120 days delinquent; 2) the foreclosure is based on a borrower's violation of a due-on-sale clause; or 3) the servicer is joining the foreclosure action of a subordinate lienholder.

If a borrower submits a complete loss mitigation application during the preforeclosure review period or before a servicer has made the first notice or filing required for a foreclosure process, the servicer may not make the first notice or filing unless: 1) the servicer has notified the borrower that he or she is not eligible for any loss mitigation option and the appeal process is not applicable, the borrower has not requested an appeal within the applicable time period, or the borrower's appeal has been denied; 2) the borrower rejects all loss mitigation options offered by the servicer; or 3) the borrower fails to perform under an agreement on a loss mitigation option.

If a borrower submits a complete loss mitigation application after the servicer has made the first notice or filing required for a foreclosure process, but more than 37 days before a foreclosure sale, the servicer may not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless one of the three conditions listed above applies.

If a servicer receives a complete loss mitigation application at least 90 days before a foreclosure sale or during the period when the servicer may not make the first notice or filing required for a foreclosure process, the servicer must permit the borrower to appeal its determination to deny a loss mitigation application for any trial or permanent loan modification program available to the borrower.

An appeal must be reviewed by personnel different from those responsible for evaluating the borrower's complete application. Within 30 days after a borrower makes an appeal, the servicer must notify him or her of its determination of whether the servicer will offer a loss mitigation option based on the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer's determination under this provision is not subject to any further appeal.

A servicer is required to comply with these procedures only for a single complete loss mitigation application.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Residential foreclosures not only are devastating to the individuals and families who lose their homes, they also are costly to lenders and harmful to communities. When foreclosed homes remain unoccupied and unmaintained, they contribute to downward pressure on property values, create opportunities for criminal activity, and lead to the deterioration of neighborhoods. According to the Michigan Foreclosure Task Force, the number of vacant homes in Michigan increased by 211,107 (47.1%) between the 2000 census and the 2010 census.

The Task Force also reported that this State experienced 416,000 foreclosure filings between 2005 and 2010. Between 2006 and 2010, the State lost approximately $63.0 billion in residential housing value. Approximately 70,000 foreclosures took place from March 2012 to March 2013, the third-highest number of foreclosures in the nation for that period.

Preventing unnecessary foreclosures is beneficial to both lenders and borrowers. The best way to do so is to require lenders to meet with borrowers, especially before the parties' relationship becomes adversarial. As the foreclosure crisis escalated, many at-risk borrowers were unable to get through to their lenders to discuss foreclosure alternatives, and others never tried to make

contact. After the mortgage loan modification program was implemented, it helped thousands of Michigan borrowers become current on their loans and avoid losing their homes.

Many residents have continued struggling to pay their mortgages, often through no fault of their own. By extending the program until June 30, 2014, the bills retained consumer protections under Michigan law until after the final rules issued by the CFPB became effective. Since that time, borrowers have been protected by the procedures established by the Federal regulations.

In addition, House Bill 4766 requires foreclosing parties to comply with loss mitigation procedures if the property is a principal residence, the first notice of foreclosure sale is published after January 9, 2014, and the servicing agent is a defendant that entered into a consent agreement in *United States* v. *Bank of America*. That is the national mortgage settlement entered into in May 2012 between the nation's five largest mortgage servicers and the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, and 49 state attorneys general. If the bill's criteria are met, the foreclosing party must take steps to ensure that a borrower has an opportunity to work out a modification, and foreclosure proceedings may not be begun until after this has occurred.

Supporting Argument

Authorizing courts to extinguish the right of redemption in situations involving property damage may help maintain the value of homes and neighborhoods, and reduce costs for servicers, borrowers, and communities. Keeping homes in the foreclosure process longer than necessary increases these costs.

During the redemption period, property values can plummet. Some homeowners neglect or intentionally damage homes during the foreclosure process, potentially causing a huge decrease in the value of the home and its neighborhood. Sometimes, for example, fixtures are stolen or destroyed, and copper wires and pipes are stripped out of the walls, potentially resulting in condemnation of the property.

A long redemption period also can lead to abandoned property, which can then contribute to neighborhood crime and blight. As mentioned above, the number of vacant houses in Michigan increased by 47.1% between 2000 and 2010.

When their costs increase, servicers can be forced to impose higher costs on all customers through increased service charges. Servicers can be responsible for property taxes, insurance, maintenance, association fees, and court costs for eviction, among other costs, without having actual possession of the property. Requiring servicers to undergo a long process from borrower delinquency to property possession increases these costs.

Response: Chapter 32 already prescribed a redemption period of only one month for abandoned property with up to four units, if the amount claimed was more than two-thirds of the original debt, and only three months if the amount claimed was two-thirds or less. Under Senate Bill 383, the period is only one month in either case. These provisions attempt to strike a balance between homeowner rights and servicer rights.

Opposing Argument

Senate Bill 383 allows purchasers of foreclosed homes to inspect the property--unannounced--throughout the redemption period, and begin proceedings to take possession if they discover damage or an inspection is "unreasonably" refused. These provisions are vague and could be used to evict a family, and terminate the homeowner's right of redemption, in the expedited time frame allowed under summary proceedings. The law should clearly state what constitutes a reasonable search, including what notice must be given and how frequently inspections may occur. It also should ensure that measures that responsible residents take to protect their property (such as boarding up a window broken by vandals) are distinguished from malicious damage.

Furthermore, "damage", which will be the threshold for a court's elimination of the right of redemption, is not sufficiently defined in the bill. The bill does provide a list of what qualifies as

damage; however, that list is not exhaustive. The bill leaves too much discretion to the courts, and may result in inconsistent rulings.

Opposing Argument

By reducing the redemption period to one month for abandoned residential property not exceeding four units on which two-thirds of the original loan is owed, Senate Bill 383 might benefit servicers that fail to comply with the foreclosure law, to the detriment of responsible homeowners. In order to foreclose by advertisement, a servicer must meet specific requirements. If a servicer fails to comply, or improperly determines that the property is abandoned, the foreclosure is improper, and the homeowner can challenge it. Homeowners deserve the full redemption period to find irregularities in the process and save their homes. A one-month redemption period might expire before the homeowner even has access to the sheriff's deed, servicer documents, and other relevant information needed to combat a fraudulent or mistaken foreclosure.

Various media sources have reported on situations involving servicers that improperly determined properties were abandoned. In some of these cases, servicer agents entered homes while the owners were away, and disposed of all the personal property inside, only to find out later that the property was not abandoned. Some borrowers were not even behind in payments. The hardship on a family in this scenario is high; in these circumstances, money damages cannot fully compensate a family for every lost personal belonging, especially photos and other property that has sentimental value. Servicers' property management agents are paid according to how many homes they designate as abandoned and subsequently manage, which gives these agents an incentive to designate property as abandoned. Reducing the redemption period to one month in the case of abandonment will only exacerbate this situation, and cause further injustice to families.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills will 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.