



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4306 (Substitute H-2 as passed by the House)
Sponsor: Representative Triston Cole
House Committee: Government Operations
Senate Committee: Judiciary and Public Safety

Date Completed: 6-11-19

CONTENT

The bill would amend Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act to require a notice of foreclosure by advertisement to include certain information in addition to that which Chapter 32 currently requires.

Chapter 32 specifies that every mortgage of real estate, which contains a power of sale, upon default of any condition of the mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in Chapter 32. (Chapter 32 does not apply to mortgages of real estate held by the Michigan State Housing Development Authority.)

A party may foreclose a mortgage by advertisement if all of the following circumstances exist:

- A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- A legal action or proceeding has not been instituted to recover the debt secured by the mortgage or any part of the mortgage or, if a legal action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.
- The mortgage containing the power of sale has been properly recorded.
- The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

Notice that a mortgage will be foreclosed by a sale of the mortgaged premises, or part of them, must be given by publishing the notice for four successive weeks at least once each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold are situated. Within 15 days after the first publication, a copy of the notice must be posted in a conspicuous place upon any part of the premises.

A notice of foreclosure by advertisement must include all of the following:

- The names of the mortgagor, original mortgagee, and the foreclosing assignee, if any.
- The date of the mortgage, and the date it was recorded.
- The amount claimed to be due on the mortgage on the date of the notice.
- A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.
- The length of the redemption period.

- A statement that if the property is sold at a foreclosure sale, the borrower will be held responsible to the person who buys the property at the sale or to the mortgage holder for damaging the property during the redemption period.

Under the bill, a notice also would have to contain the following:

- The name, address, and telephone number of the attorney for the party foreclosing the mortgage.
- For a residential mortgage, a statement in a form specified by the bill indicating that if a person were a military service member on active duty whose period of active duty had concluded less than 90 days ago, or if he or she had been ordered to active duty, he or she should contact the attorney for the party foreclosing the mortgage.
- A statement in a form specified by the bill indicating that the property would be foreclosed by sale at a public auction; the location, date, and time of the auction; that the amount due on the mortgage could be greater on the day of the sale; and that placing the highest bid at the sale would not automatically entitle the purchaser to free and clear ownership of the property.
- A description of the property by giving its street address, if any.

The validity of the notice and the validity of any eventual sale would not be affected by the fact that the street address in the notice was erroneous or that the street address was omitted.

The bill would take effect 30 days after its enactment.

MCL 600.3212

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

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

Fiscal Analyst: Michael Siracuse

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