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BILL



ANALYSIS

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Senate Bill 350 (Substitute S-3 as reported)
Sponsor: Senator Nancy Cassis
Committee: Banking and Financial Institutions

Date Completed: 1-5-10

RATIONALE

Under Michigan law, when a property is sold at a foreclosure sale, the mortgagor has the opportunity to recover, or "redeem", the property within a specified time period by paying the redemption amount and certain other costs. Until 2005, when property was foreclosed by advertisement (rather than judicial foreclosure), the county register of deeds typically calculated the required redemption amount upon request and provided that information to the mortgagor, although there was no statutory requirement to do so. Because of the historically low number of foreclosures in a typical year, that practice apparently worked well. As the number of foreclosures increased, however, some registers of deeds evidently became concerned that they would be unable to meet the growing number of requests to calculate redemption amounts. Also, while most mortgages previously were made by local institutions that could easily provide the required information, the rise of national lending institutions made it more difficult to obtain the information needed to make the calculations. In addition, some registers of deeds apparently were concerned about liability if they were unable to calculate the redemption amount or provided information that proved to be inaccurate.

Public Act 538 of 2004 amended the Revised Judicature Act to prohibit a county register of deeds from calculating a redemption amount, and make other changes. Under current law, the purchaser of foreclosed property is required to file with the register of deeds an affidavit that specifies the redemption amount and the period during which the property may be redeemed. If the purchaser paid taxes on the property,

insurance premiums, or other necessary expenses, the purchaser may file an additional affidavit specifying those costs, which must be included in the redemption amount.

There now are concerns that some mortgagors may be losing their homes unnecessarily because they cannot determine the proper redemption amount. To prevent this, it has been suggested that the registers of deeds in certain counties be authorized to calculate redemption amounts upon request.

CONTENT

The bill would amend Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act to require the registers of deeds in Oakland and Macomb Counties to determine the amount necessary to redeem property sold at a foreclosure sale, at the request of a person entitled to redeem the property.

Under Chapter 32, property may be foreclosed by advertisement if the mortgagor defaults on the mortgage. If the property is sold at a foreclosure sale, the mortgagor or the mortgagor's heirs, executors, or administrators may redeem the premises by paying the redemption amount within a specified time period.

The amount required to be paid to redeem the property is the amount that was bid at the foreclosure sale for the entire premises, with interest from the date of sale at the mortgage interest rate, together with a

sheriff's fee and an additional \$5 fee if the payment is made to the register of deeds. The purchaser must attach an affidavit with the deed to be recorded that states the exact amount required to redeem the property, including any per diem amounts.

If, after the sale, the purchaser pays taxes assessed against the property, certain assessments, or insurance premiums that were required under the terms of the mortgage, the redemption must include those amounts with interest from the date of payment to the date of redemption, if an affidavit showing the amount and items paid and other documents are filed with the register of deeds.

The register of deeds may not determine the amount necessary for redemption. The bill would make an exception to that prohibition.

The bill would require the register of deeds of a county with a population of more than 750,000 and less than 1.5 million to determine the amount necessary for redemption, at the request of a person entitled to redeem the property. (Oakland and Macomb Counties are the only counties that currently meet those population criteria, according to data from the U.S. Census Bureau.)

In determining the amount, the register of deeds could consider only the affidavits filed by the purchaser as described above. A county, a register of deeds, or an employee of a county or register of deeds would not be liable for damages proximately caused by an incorrect determination of an amount necessary for redemption.

A register of deeds could charge up to \$50 for determining a redemption amount.

MCL 600.3240

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

A mortgagor whose property has been sold at a foreclosure sale has only a limited period of time to redeem the property, and it is essential that he or she be able to determine the proper redemption amount.

Under the current system, the mortgagor must either calculate the amount himself or herself or request that information from the purchaser. While the calculation may only take a few minutes for trained professionals, it can be complicated for homeowners. Also, there evidently have been problems when mortgagors have tried to obtain the redemption amount from the purchasers. According to testimony before the Senate Banking and Financial Institutions Committee, one homeowner was initially told that it would take up to two months to determine the redemption amount, and received the information only after repeated attempts and consultation with a lawyer. The purchaser, as an interested party in the transaction, may have an incentive to delay the proceedings, inflate the redemption amount, add unnecessary expenses, or charge high fees to make the calculation.

The bill, in some cases, would place the authority to calculate the redemption amount in the hands of a neutral third party. The register of deeds would have to perform the calculation based on information submitted by the purchaser, streamlining the process and giving the mortgagor a reliable way to obtain the correct redemption amount.

While some registers of deeds have expressed reluctance to take on that responsibility, the bill would apply only to the registers of deeds in Macomb and Oakland Counties, two counties where the foreclosure crisis has been particularly severe. The registers of deeds in those counties have said that they are willing to make the necessary calculations as a service to residents. The bill also would include protections against legal liability if an incorrect redemption amount were provided.

To avoid any possibility of unequal treatment or denial of service, the bill would require, rather than allow, an affected register of deeds to calculate a redemption amount upon request. The Macomb and Oakland County registers of deeds reportedly have committed to training an adequate number of employees to make the calculations, so someone would always be available to perform that service.

Opposing Argument

The primary function of a register of deeds is to act as a holder of property records and

make them available to the public. Calculating the redemption amount in case of a foreclosure is beyond that core function. Historically, many registers of deeds performed the calculation as a service to property holders who were in danger of losing their homes, but that was possible only because of the relatively low number of foreclosures. In recent years, foreclosures have become much more common, and registers of deeds do not have the resources to handle the large volume of requests.

In addition, if an employee of a register of deeds miscalculated the redemption amount, the office could be subject to lawsuits to recover damages or otherwise become involved in disputes over the proper redemption amount. Those questions are between the two parties, and the register of deeds should not become involved. While the bill would provide some relief from legal liability, a party still could claim gross negligence on the part of the register of deeds' office.

Also, the bill does not include provisions for resolving disputes over the redemption amount. Although the bill would not require a purchaser to accept the redemption amount determined by the register of deeds, a property owner redeeming property could claim that because he or she relied on the amount provided by the register, that amount should be accepted as the proper payment. In the case of an incorrect calculation or a dispute over the amount, the bill could result in litigation.

Response: Before 2005, registers of deeds frequently calculated redemption amounts, and there are no reported cases of errors or miscalculations. The bill specifically would require a register of deeds to rely on affidavits submitted by the purchaser, and based on that information a trained professional should be able to determine the appropriate amount.

Opposing Argument

The existing redemption process has worked well and should be retained. A property owner already has the necessary information to calculate the redemption amount, based on affidavits submitted by the purchaser to the register of deeds. That information is made available precisely so the mortgagor can calculate the redemption amount, rather than involving a third party. If there is a question about the proper payment, the

purchaser should be the one to do the calculation, to eliminate the possibility of a future disagreement over the amount.

Response: Reportedly, some purchasers of foreclosed property have charged up to \$350 to calculate the redemption amount or have not responded to requests at all. Purchasers also reportedly have given quotes that were far above the actual redemption amount, or have added thousands of dollars to the cost without a detailed explanation. The register of deeds could act as an impartial party to perform the calculation quickly and accurately, at a substantially lower cost.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would increase both local unit revenue and local unit expenses by an unknown amount, depending on the number of foreclosures recorded within affected local units, the number of individuals attempting to redeem their foreclosed property, and how many individuals would elect to have the register of deeds compute the redemption amount.

Fiscal Analyst: David Zin

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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.