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BILL ANALYSIS



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House Bill 4453 (Substitute H-2 as passed by the House)
House Bill 4454 (Substitute H-2 as passed by the House)
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Sponsor: Representative Shanelle Jackson (H.B. 4453)
Representative Andy Coulouris (H.B. 4454)
Representative Bert Johnson (H.B. 4455)
House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 3-17-09

CONTENT

The bills would amend Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act to establish procedures under which a borrower would have to be given an opportunity to work out a modification of a mortgage loan on a principal residence before foreclosure proceedings could be commenced. The bills would do the following:

- Prohibit a party from commencing foreclosure proceedings under Chapter 32 if the prescribed procedures had not been followed or the applicable time limits had not expired, or if the parties had agreed to modify the loan and the borrower were not in default.
- Require a foreclosing party to serve on the borrower a written notice containing specified information and a list of approved housing counselors, before proceeding with a sale under Chapter 32.
- Allow the borrower to bring an action to enjoin the foreclosure if the required notice were not served.
- Require the borrower to contact a housing counselor if he or she wished to work out a modification, and require the counselor to schedule a meeting with a contract person designated by the mortgage holder or servicer.
- Require the parties to calculate a modified payment if the meeting did not result in an agreement.
- Prohibit the mortgage holder or servicer from foreclosing by advertisement if the borrower were eligible for modification, but allow the holder or servicer to proceed with judicial foreclosure.
- Allow a borrower to bring an action to convert the foreclosure by advertisement to judicial foreclosure if the mortgage lender or servicer proceeded with foreclosure by advertisement in violation of these provisions.
- Require the Michigan State Housing Development Authority to prepare a list of approved housing counselors.

All of the bills are tie-barred to each other. The sections proposed by House Bills 4454 (H-2) and 4455 (H-2) would be repealed two years after the effective date of House Bill 4454 (H-2).

House Bill 4453 (H-2)

The bill would prohibit a party from commencing proceedings under Chapter 32 to foreclose a mortgage of a principal residence if one or more of the following applied:

- The foreclosing party had not mailed notice to the borrower (the mortgagor), as required under House Bill 4454 (H-2).
- After notice was mailed to the borrower, the time for a housing counselor to notify the designated contact person of the borrower's request to work out a modification had not expired.
- Within 14 days after notice was mailed to the borrower, he or she had requested a meeting with the designated contact person and 90 days had not passed after the notice was mailed.
- The borrower had requested a meeting with the designated contact person and provided necessary documents if requested, and the designated person had not met or negotiated with the borrower.
- The borrower and mortgagee had agreed to modify the mortgage loan and the borrower was not in default under the agreement.
- Calculations showed that the borrower was eligible for a loan modification without any exception being made.

This prohibition would apply only to proceedings under Chapter 32 in which the first notice of foreclosure under Section 3208 was published within two years after the bill's effective date. (Under Section 3208, notice that a mortgage will be foreclosed by a sale of the premises must be published for four successive weeks at least once a week in a newspaper published in the county where the premises are located, or if no newspaper is published in that county, in a newspaper published in an adjacent county.)

House Bill 4454 (H-2)

Notice to Borrower

The bill would require a foreclosing party to serve a written notice on a borrower before proceeding with a sale under Chapter 32 of property claimed as a principal residence exempt from tax under Section 7cc of the General Property Tax Act (which exempts a principal residence from school operating taxes to the extent provided under the Revised School Code). The required notice would have to contain all of the following:

- The reasons that the mortgage loan was in default and the amount that was due and owing under the loan.
- The names, addresses, and telephone numbers of the mortgage holder, the mortgage servicer, and any agent designated by the mortgage holder or servicer.
- A designation of one of the people named in the previous provision as the person to contact who would have the authority to make modification agreements.
- That if the borrower requested a meeting with the designated contact person, foreclosure proceedings would not be commenced until 90 days after the date the notice was mailed to the borrower.
- That if the borrower and the designated person reached an agreement to modify the mortgage loan, the mortgage would not be foreclosed if the borrower abided by the terms of the agreement.
- That if the borrower and the designated person did not agree to modify the loan but the borrower were determined to meet the criteria for a modification under the FDIC workout program, the foreclosure would proceed before a judge instead of by advertisement.
- That the borrower had the right to contact an attorney, and the telephone numbers of the State Bar of Michigan's Lawyer Referral Service and of a local legal aid office serving the area where the property was located.

(House Bill 4453 (H-2) would define "FDIC workout program" and the Federal Deposit Insurance Corporation (FDIC) mortgage loan modification program for delinquent residential first mortgages, effective on October 6, 2008, proposed by the FDIC to be used for modifications of residential mortgage loans under 12 USC 5220(b).

The bill would define "mortgage holder" as the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage. "Mortgage servicer" would mean the servicing agent of the mortgage.)

In addition, the notice would have to indicate that a list of housing counselors prepared by the Michigan State Housing Development Authority (MSHDA) was enclosed with the notice. It also would have to indicate that, within 14 days after the notice was sent, the borrower could request a meeting with the designated contact person to attempt to work out a modification of the mortgage loan to avoid foreclosure, and could request a housing counselor to attend the meeting.

The person serving the notice would have to enclose with it a list prepared by MSHDA of the names, addresses, and telephone numbers of housing counselors approved by the Authority or by the U.S. Department of Housing and Urban Development. The person would have to serve the notice by first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower, to his or her last known address.

Within seven days after mailing the notice, the person also would have to publish a copy of the notice once in the same manner as required for publishing a notice of foreclosure sale under Section 3208.

A borrower who was required to be served under these provisions, and was not served, and against whom foreclosure proceedings were commenced under Chapter 32, could bring an action to enjoin the foreclosure in the circuit court for the county where the mortgaged property was situated.

If a borrower and a designated contact person had previously agreed to modify the mortgage loan (as described below), the provisions of the bill and House Bill 4455 (H-2) would not apply unless the borrower had complied with the terms of the modified loan for one year after the date of the modification.

Request for Modification; Meeting

Under House Bill 4454 (H-2), if a borrower wished to participate in negotiations to attempt to work out a modification of a mortgage loan, he or she would have to contact a housing counselor from the list prepared by MSHDA within 14 days after it was mailed to the borrower. Within 20 days after being contacted, the housing counselor would have to give written notice of the request to the mortgage holder's or servicer's designated contact person.

The designated person then could request the borrower to provide any documents that were necessary to determine whether he or she was eligible for a modification, without an exception, under the FDIC workout program. The borrower would have to give the designated person copies of any requested documents.

A housing counselor contacted by a borrower would have to schedule a meeting between the borrower and the designated person to attempt to work out a modification of the loan. At the borrower's request, the counselor would attend the meeting. This meeting and any later meetings would have to be held at a time and place convenient to all parties, or in the county where the property was situated.

House Bill 4455 (H-2)

Under the bill, if a borrower had contacted a housing counselor (as provided in House Bill 4454 (H-2)) but the process had not resulted in an agreement to modify the mortgage loan, the borrower, counselor, or designated person would have to calculate a modified payment amount under the FDIC workout program. The designated person would have to give the borrower a copy of any calculation that person made.

If the results of the calculation were that the borrower was eligible for a modification, the mortgage holder or mortgage servicer could not foreclose the mortgage under Chapter 32 but could proceed under Chapter 31 (which governs judicial foreclosure in the circuit court). If the results of the calculation were that the borrower was not eligible for a modification without an exception, the mortgage holder or lender could foreclose the mortgage by advertisement.

If a mortgage holder or servicer began foreclosure proceedings under Chapter 32 in violation of the bill, the borrower could file an action in the circuit court where the property was situated to convert the foreclosure proceedings to a judicial foreclosure. If a borrower did so and the court determined that he or she participated in the modification process (under House Bill 4454 (H-2)), a modification agreement was not reached, and the borrower was eligible for modification under the FDIC workout program, the court would have to enjoin foreclosure by advertisement and order that the foreclosure proceed under Chapter 31.

The Michigan State Housing Development Authority would have to develop the list of housing counselors approved by MSHDA or by the U.S. Department of Housing and Urban Development who could perform the duties of housing counselor under the bills.

MCL 600.3204 et al. (H.B. 4453)

Legislative Analyst: Suzanne Lowe

Proposed MCL 600.3205a & 600.3205b (H.B. 4454)

Proposed MCL 600.3205c-600.3205e (H.B. 4455)

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the State. The bills could result in fewer home foreclosure proceedings or the postponement of foreclosures. If foreclosures were prevented by the process required by the bills, reductions in property values due to foreclosure could be avoided, with the result that local units of government would not lose as much property tax revenue in some cases. The impact would depend on the refinancing options, the value of the home, and other factors.

The Michigan State Housing Development Authority would be required to develop and provide to mortgage lenders a list of approved housing counselors. This new responsibility would require minimal expenditures and would be supported with existing resources.

Fiscal Analyst: Elizabeth Pratt
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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.