Senate Fiscal Agency
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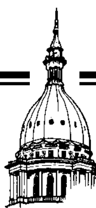
BILL ANALYSIS

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Senate Bill 1172 (Substitute S-1 as passed by the Senate) *(as enrolled)*
Sponsor: Senator Darwin L. Booher
Committee: Banking and Financial Institutions

Date Completed: 11-13-12

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, and continue to be taken, to address this situation. In Michigan, these measures include the enactment of legislation in 2009 to create a residential mortgage loan modification program. This program essentially provides for a 90-day moratorium before a mortgage lender may 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 must 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 Originally, the loan modification program was scheduled to be repealed on January 5, 2012, but the sunset date was delayed to December 31, 2012. Many people believe that the program should again be extended, at least long enough to allow Michigan to respond to Federal rules that are scheduled to be finalized in January 2013.

CONTENT

The bill would amend Chapter 32 of the Revised Judicature Act to delay the sunset on the residential mortgage loan modification program for six months, until June 30, 2013.

Specifically, Sections 3205a to 3205d provide for the mortgage modification program, and are scheduled to be repealed on December 31, 2012. The bill would change that date to June 30, 2013.

Also, Section 3204 prohibits a party from beginning foreclosure proceedings under Chapter 32 if a required notice under the modification program has not been mailed to the borrower, if applicable time limits have not expired, or if the parties have agreed to modify the mortgage loan and the borrower is not in default. This provision applies only to proceedings in which the first notice of foreclosure has been published before December 31, 2012. The bill would change that date to June 30, 2013.

MCL 600.3204 & 600.3205a

BACKGROUND

Mortgage Loan Modification Program

Public Acts 29, 30, and 31 of 2009 established the residential mortgage loan modification program in Chapter 32 of the Revised Judicature Act, with the original sunset date of January 5, 2012. Public Acts 301 and 302 of 2011 postponed the sunset to December 31, 2012, and made various changes to the program.

The statute prescribes procedures under which a borrower must be given an opportunity to work out a modification of his or her mortgage loan on a principal

residence before foreclosure proceedings may be commenced under Chapter 32. These procedures call for the borrower to be given notice containing specified information, including the following:

-- The borrower may request a meeting with someone designated by the foreclosing party to attempt to work out a modification of the mortgage loan to avoid foreclosure.
-- Foreclosure proceedings will not commence until 90 days after notice is mailed if the borrower requests a meeting.
-- If the parties reach a modification agreement, foreclosure proceedings will not be commenced if the borrower abides by the agreement.
-- If the parties do not reach an agreement but the borrower meets certain criteria for modification, the foreclosure will proceed before a judge instead of by advertisement.

The notice also must include a list of approved housing counselors developed by the Michigan State Housing Development Authority. To schedule a meeting with the person designated by the foreclosing party, the borrower may contact that person either directly or through a housing counselor.

As a rule, the modification criteria require the foreclosing party's designee to use a loan modification program or process that targets a ratio of the borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis, applying features specified in the law. If the borrower is eligible for modification according to these calculations, the mortgage holder or servicer typically may not proceed under Chapter 32 but may proceed under Chapter 31, which provides for foreclosure in the circuit court. If the borrower is not eligible for modification, the mortgage holder or servicer may foreclose under Chapter 32.

Federal Rules

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 August 2012, the CFPB issued proposed rules pertaining to mortgage loan servicing. The rules cover nine major topics: periodic billing statements; adjustable-rate mortgage interest rate adjustment notices; prompt payment crediting and payoff payments; force-place insurance (a type of hazard insurance); error resolution and information requests; information management policies and procedures; early intervention with delinquent borrowers; continuity of contact with delinquent borrowers; and loss mitigation procedures.

The period for public comment on the rules ended on October 9, 2012, and final rules are expected to be announced in January 2013.

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

According to the Michigan Foreclosure Task Force, this State experienced 416,000 foreclosure filings between 2005 and 2010, and approximately 60,000 foreclosures annually since 2010. 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.

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, however, many at-risk borrowers were unable to get through to their lenders to discuss foreclosure alternatives, and others never tried to make contact. Since the mortgage loan modification program was

implemented, it has helped thousands of Michigan borrowers become current on their loans and avoid losing their homes. According to a July 2012 survey of housing counselors and legal service attorneys by the Task Force, 60% cited an increase in the previous 12 months in the proportion of their clients who were able to prevent foreclosure through negotiations with their lenders.

Although foreclosure activity appears to have decreased in the past year, at least in some areas, many residents are still struggling to pay their mortgages, often through no fault of their own. By extending the existing program until June 30, 2013, the bill would continue to protect consumers while giving the State almost six months to review and respond to the final rules issued by the Consumer Financial Protection Bureau, assuming the rules are posted in January. Once the Federal requirements are known, Michigan's program could be adjusted as needed, so financial institutions and other mortgage servicers would not be subject to potentially inconsistent regulations.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would 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.