Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 230 (Senator Frosh)
Judicial Proceedings

Real Property - Priority of Refinance Mortgage Over Junior Liens - Amount of Refinance Mortgage

This bill alters the circumstances under which a mortgagor or grantor who refinances the indebtedness secured by a first mortgage or deed of trust on residential property is not required to obtain permission from the holder of a junior lien. The bill also makes a conforming change to the statement required to be included in a refinance mortgage.

The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any refinance mortgage recorded or having an effective date before its October 1, 2014 effective date.

Fiscal Summary

State Effect: Potential minimal revenue decrease from the reduced ability to collect interest and principal payments on Downpayment and Settlement Loan Program (DSELP) loans held by the Department of Housing and Community Development (DHCD). Expenditures are not likely affected.

Local Effect: This bill does not directly affect local governmental finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Under current law, a mortgagor or grantor may refinance the full amount of the unpaid indebtedness secured by a first mortgage or deed of trust on residential property for a lower interest rate than provided for in the evidence of indebtedness secured by the first mortgage or deed of trust without the permission of the holder of a junior lien, if (1) the principal amount secured by the junior lien does not exceed $150,000 and (2) the principal amount secured by the refinance mortgage does not exceed the unpaid outstanding principal balance of the first mortgage or deed of trust plus an amount to pay closing costs of up to $5,000.

The bill alters the second requirement associated with the priority of a refinance mortgage by allowing the refinancing without permission of the junior lien holder if the principal amount secured does not exceed the unpaid *indebtedness* (generally, principal plus interest) of the first mortgage, rather than the unpaid *outstanding principal balance*; the other conditions are unchanged.

A refinance mortgage that meets these conditions, on recordation, has the same lien priority as the first mortgage or deed of trust that it replaces. The refinance mortgage must contain a specified notice. The priorities of two or more junior liens are governed by Title 3 of the Real Property Article.

Background: A refinance mortgage is the repayment of an existing mortgage loan with funds from a new loan using the same property as security. Often, the refinancing of a mortgage can help a homeowner achieve better loan terms, such as lower interest rates. Because a refinance mortgage is a new mortgage, when a first mortgage is refinanced, the holder of an existing junior mortgage is asked to agree to subordinate so that the first loan holder preserves priority. However, the holder of a junior mortgage can refuse to sign the subordination agreement and, thus, block the homeowner's ability to refinance the first mortgage. Even if lenders sign a subordination agreement, it can often take more than a month to approve a request and refinancing homeowners can be required to pay fees to process a subordination request as well as additional fees for a longer interest rate lock-in period or to extend the lock-in period.

Chapter 205 of 2013 eliminated the need to obtain the permission of a junior lien holder if a refinance mortgage meets the conditions described above. Thus, Chapter 205 was projected to reduce special fund revenues by $47,700 in fiscal 2014 and as much as $301,000 in fiscal 2018 as a result of DHCD's inability to collect interest and principal payments on DSELP loans held by the departments. This bill potentially increases the impact of Chapter 205 by allowing the refinancing of an existing mortgage without permission of the junior lien holder if the principal amount secured does not exceed the unpaid indebtedness of the first mortgage, rather than the unpaid outstanding principal balance. In practice, this creates a lower threshold requirement for refinance mortgages to bypass receiving junior lien holder permission.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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