HB 67

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 67 (Delegate McConkey)
Environmental Matters

Real Property - Homeowners in Foreclosure Protection Act

This bill makes a number of changes to the foreclosure process in Maryland.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Required Notice Information. The bill amends the content of the notice currently required by law in a foreclosure sale to include a statement with • the phrase "For information on how to reinstate your loan, call the following telephone number…"; and • the name and telephone number of a contact person whom the record owner may call to obtain specific instructions on how to reinstate the mortgage loan. Within one business day after receiving a request for reinstatement instructions from the record owner, the person designated in the notice as the contact person has to inform the record owner of what actions must be taken to reinstate the mortgage loan, including the amount of money that must be tendered.

Notice Timing. The bill specifies that the statutorily required notice that must be provided to a record owner prior to a foreclosure sale must be sent at least 21 days before the date of sale. The bill also states that in the event of a postponement of a foreclosure sale of residential real property to a later date; • new notice must be given to the record owner in accordance with the statutory notice requirements; and • the record owner may not be charged for any costs or expenses resulting from the postponement unless the postponement was caused by the record owner.

Auction Timing. The bill requires that bidding at a foreclosure sale of residential real property commence within one-half hour after the time of the sale specified in the notice required to be published in a newspaper according to the Maryland Rules. If bidding does not commence within this time, the person authorized to make the sale has to publish notice of the new time, place, and terms of sale in a newspaper of general circulation according to the Rules.

Mortgage Reinstatement. In situations involving the foreclosure of residential real property, the bill permits the record owner of such property to reinstate the mortgage loan and prevent the sale or other disposition of the property at any time before the commencement of bidding. The record owner may reinstate the mortgage loan by • curing any existing default under the terms of the mortgage loan, other than the payment of the portion of the principal that would not have been due had no acceleration occurred; and • paying all costs and expenses required by the terms of the mortgage loan to be paid as a result of the default. Upon reinstatement, the mortgage loan remains in full force and effect as if no acceleration or default had occurred.

Applicability. The bill states that its provisions must be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any mortgage loan made before the effective date of the bill.

Current Law: Most mortgage or deeds of trust include a "power of sale" (a provision authorizing a foreclosure sale of the property after a default) or an "assent to decree" (a provision declaring an assent to the entry of an order for a foreclosure sale after a default). When the lien instrument does not contain a power of sale or an assent to a decree, foreclosure requires the filing of a complaint, and process must be served. In this case, the action proceeds as any other civil action. Under the Maryland Rules, however, it is not necessary to serve process or hold a hearing prior to a foreclosure sale pursuant to a power of sale or an assent to a decree.

In these situations, an action to foreclose is commenced by the filing of an order to docket in the circuit court for the county where the property is located. The homeowner is not entitled to be personally served with process. Notice of the filing of the action is required to be sent to the homeowner by certified and first-class mail; however, the lender is not required to show that the notice was actually received. Written notice of the foreclosure sale must also be sent by certified and first-class mail not earlier than 30 days and not later than 10 days before the date of the sale, but actual notice is not required. The homeowner is not entitled to a hearing before the sale – the only recourse under State law to challenge the lender's claim of default is to file a motion for injunction to stay the sale.

Notice of the sale is required to be published in a newspaper of general circulation once a week for three successive weeks before the sale. A sale can conceivably occur within 15 days after the filing of the order to docket, but this rarely occurs in actual practice. The person making the sale must file a report of the sale with the court within 30 days. The homeowner may file exceptions to the ratification of the sale. Objections are generally based on the insufficiency of the sales price. However, the sales price must be so low as to "shock the conscience of the court" in order to set aside the sale.

Background: Maryland's current foreclosure process, from the first foreclosure filing to final sale, is among the shortest in the nation. Maryland is a quasi-judicial state, meaning that the authority for a foreclosure sale is derived from the mortgage or deed of trust, but a court has oversight over the foreclosure sale process. Consumer advocates contend that the short timeframes and weak notice provisions in current law seriously limit a homeowner's options to avoid foreclosure by, for example, working out a payment plan with the lender or selling the house. In addition, filing a request for an injunction is expensive, time consuming, and not a realistic option for most homeowners.

In June 2007, the Governor established the Homeownership Preservation Task Force to develop an action plan to address rising foreclosures and preserve homeownership in Maryland. The Legal and Regulatory Reform Workgroup of the task force reviewed existing laws, regulations, and practices relating to mortgage lending and foreclosures and developed recommendations to promote homeownership. The Attorney General also formed a workgroup to provide input on issues relating to lending practices in Maryland. In addition, the Senate Finance and Judicial Proceedings committees and the House Economic Matters and Environmental Matters committees held hearings during the 2007 interim to examine various aspects of mortgage lending practices and the foreclosure process.

By all accounts, recent changes in the real estate market and the economy in general have led to a marked increase in foreclosure events both nationwide and in Maryland. Many such foreclosures have involved residential properties that have been financed through subprime loans and nonbank loan originators, leading to heightened concern regarding the lending practices that surround these nontraditional financing methods.

Due to good real estate market conditions prior to 2006, the traditional mortgage market has evolved from mortgages primarily originated and provided by local banks and financial institutions to mortgages originated through mortgage brokers for nonbank lenders. Through new products, such as "exotic" and other nontraditional mortgages, lenders began to ease borrowing restrictions to allow lower credit borrowers to qualify for mortgages, greatly expanding the subprime market. Subprime loans, which are higher-cost loans, provide opportunities for a wide range of higher-risk borrowers. Consumers with lower credit scores and higher loan-to-value and debt-to-income ratios found that they qualified for mortgages. Further, lenders made loans to customers based on less stringent or no income and asset verification requirements. With the influx of new loans, lenders began to package the loans and sell them to Wall Street as securities to investors. By packaging risky loans with traditional loans in order to spread the risk, investors found the low-risk securities to be attractive, allowing lenders to make even more loans.

During 2006, the real estate market began a downturn as interest rates increased, housing sales slowed, and home prices declined. Terms of many of the "exotic" and other nontraditional loans included adjustable rates whereby the consumer pays a low interest rate for 2 or 3 years, followed by 27 or 28 years of higher interest rates that are generally tied to the market. As the low interest rate period ended, many borrowers then found that they were unable to make the higher monthly payments due after their interest rates reset. Furthermore, many borrowers also then realized that they were unable to refinance due to prepayment penalties or sell their property due to, in some cases, lower property values or decreased demand. In addition, many investor-owners of rental property found that they were unable to obtain the rent needed to pay their mortgages and were unable to sell due to the depressed resale market.

It is unclear exactly how much of this situation is attributable to unethical lending practices and how much is a result of borrower risk-taking; however, it is evident that many lenders have filed for foreclosure as a result. As foreclosure filings have mounted, lenders have not received all expected payments from borrowers, forcing them to curtail the number of new loans, decrease the products available to borrowers with low credit scores, and tighten overall lending practices and standards. Wall Street investors have also responded by pulling out of the risky mortgage market, and the combination of these and other factors has led to a decrease in overall nationwide housing sales and home equity growth.

Opinions differ regarding the exact number of recent foreclosures in Maryland, as well as the severity of the situation, but all sources report a substantial recent increase in foreclosure activity in the State. For example, in November of 2007, the Homeownership

Preservation Task Force reported that the total of all foreclosure events in the State during the second quarter of 2007 numbered 4,092, an increase of 344% when compared to the 920 events in the second quarter of 2006. According to the task force report, these foreclosure events could be one of three activities: • a notice of default; • a notice of foreclosure sale; or • a foreclosure sale. These data were originally obtained by the Department of Housing and Community Development from the company *RealtyTrac*, a business that sells real estate data to consumers, investors, and real estate professionals seeking to locate, evaluate, purchase, and sell real property. The report also states that these data were analyzed by DHCD's Office of Research in order to remove duplicate foreclosure events that occurred for a single property within reporting quarters.

According to the National Delinquency Survey (NDS) from the Mortgage Banker's Association, in the second quarter of 2007, 4.19% of all mortgage loans for one-to-four unit residential properties reported serviced in Maryland were past due. Furthermore, 1.46% of all loans for similar properties during this period were seriously delinquent, meaning 90 days or more delinquent or in the process of foreclosure. This is an increase from 3.26% past due and 0.96% seriously delinquent in the second quarter of 2006. The NDS comprises of data collected from approximately 120 reporting loan servicers, including mortgage bankers, commercial banks, savings banks, savings and loan associations, and life insurance companies. As of the third quarter of 2007, NDS includes data from over 45 million mortgage loans that relate to residential properties with one to four units.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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