

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 58 (Delegate Barnes) Environmental Matters

Real Property - Foreclosures - Homeowner's Right to Rescind Sales Contract

This bill grants a homeowner the right to rescind a contract for the sale of a residence in foreclosure within three business days after the contract is executed.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations. If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill applies to a homeowner, who is defined as the record owner of a residence in foreclosure, or an individual occupying the residence under a use and possession order at the time an order to docket or a petition to foreclose is filed. A residence in foreclosure is defined as residential real property consisting of not more than four single-family dwelling units, one of which is occupied by the owner, or the owner's spouse or former spouse under a use and possession order, as the individual's principle place of residence and against which an order to docket or a petition to foreclose has been filed.

Under the bill, notice of rescission need not be in a form provided by the sales contract, and such notice is effective, however expressed, if it indicates the intention of the homeowner to rescind the sales contract. Rescission occurs when the homeowner gives written notice to the purchaser at the address specified in the sales contract, or through any facsimile or electronic mail address identified in the sales contract or other materials provided to the homeowner by the purchaser. If given by mail, a notice of rescission is effective when deposited in the U.S. mail, properly addressed, with postage prepaid.

Within 60 days from the date of rescission of a sales contract, the homeowner shall repay any funds advanced by the purchaser together with interest calculated at the rate of 8% per year. The right to rescind may not be conditioned on the repayment of any funds, and any provision in a sales contract that attempts or purports to waive any of the aforementioned rights is void. In addition, any provision in a sales contract that attempts or purports to consent to jurisdiction for litigation or choice of law in a state other than Maryland, consent to venue in a county other than the county in which the property is located, or impose any costs or filing fees greater than the fees required to file an action in a circuit court is also void.

Current Law: State law currently grants property owners a statutory right of rescission with regard to reconveyance of residential property in foreclosure, with numerous exceptions. The Protection of Homeowners in Foreclosure Act defines a “foreclosure reconveyance” as a transaction involving • the transfer of title to real property by a homeowner during or incident to a proposed foreclosure proceeding, either by transfer of interest from the homeowner to another party or by creation of a mortgage, trust, or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain legal or equitable title to all or part of the property; and • the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the homeowner by the acquirer or a person acting in participation with the acquirer that allows the homeowner to possess the real property following the completion of the foreclosure proceeding, including an interest in a contract for deed, purchase agreement, land installment sale, contract for sale, option to purchase, lease, trust, or other contractual arrangement.

Under current law, homeowners have the right to rescind a foreclosure reconveyance within three business days after the transaction. The right to rescind may not be conditioned on the repayment of any funds, but as part of the rescission the homeowner must repay, within 60 days from the date of rescission, any funds paid or advanced by anyone working under the terms of the foreclosure reconveyance, together with interest calculated at the rate of 8% a year.

Background: Chapter 509 of 2005, commonly known as the Protection of Homeowners in Foreclosure Act, or PHIFA, was enacted to address the growing problem of

foreclosure “rescue” scams. In these types of scams, unscrupulous companies and individuals take advantage of homeowners who are facing foreclosure. They search the court records for foreclosure actions and then contact homeowners and offer to help them avoid foreclosure. PHIFA is designed to provide some protection for homeowners who deal with foreclosure “rescuers.” It requires that “foreclosure consultants” enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and afford basic consumer protections such as a three-day rescission period.

The bill grants property owners a three-day rescission period for *all* sales of residences in foreclosure, not just those transactions currently covered by PHIFA.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mcp/jr

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