SB 788

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 788 (Senator Muse, *et al.*)

Judicial Proceedings Rules and Executive Nominations

Real Property - Foreclosed Property Registry

This bill requires the Department of Labor, Licensing, and Regulation (DLLR) to establish and maintain an Internet-based Foreclosed Property Registry for information relating to foreclosure sales of residential property. The bill requires a foreclosure purchaser to submit an initial registration form within 30 days of the sale and a final registration form within 30 days after a deed transferring title to the property has been recorded. The bill also establishes the Foreclosed Property Registry Fund.

The bill requires DLLR to report to the General Assembly by January 1, 2013, on the status of the Foreclosed Property Registry and the Foreclosed Property Registry Fund.

Fiscal Summary

State Effect: Special fund expenditures increase by $204,000 in FY 2013 to establish, administer, and maintain the registry. Special fund revenues increase by $330,000 in FY 2013 to reflect the collection of registration fees from foreclosure purchasers. Out-years reflect annualization and assume no changes in the fee or the number of purchasers who pay the fee.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	$330,000	$660,000	$660,000	$660,000	$660,000
SF Expenditure	$204,100	$174,900	$183,800	$190,400	$197,300
Net Effect	$125,900	$485,100	$476,200	$469,600	$462,700

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal increase in fine revenue if a local jurisdiction imposes a fine for failure to register. Minimal increase in property tax revenue if a local jurisdiction charges the costs incurred to abate a nuisance or maintain the property as part of the property's tax assessment.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines "residential property" as real property improved by four or fewer dwelling units that are designed principally and are intended for human habitation.

The bill requires DLLR to collect a nonrefundable filing fee of $50 from a foreclosure purchaser for an initial registration form, if filed within 30 days of the sale, and $100, if filed after 30 days of the sale. There is no fee for the final registration. The bill authorizes a local jurisdiction to enact a local law that imposes a fine of up to $1,000 for failure to register. Additionally, a local government that abates a nuisance on or maintains a registered property may collect any incurred costs as a charge included on the property's tax bill, as long as specified notice requirements are met.

The bill prohibits DLLR from granting access to the registry to any person or entity other than a local jurisdiction, its agencies or representatives, or a State agency. The Foreclosed Property Registry is not a public record as defined by the State Government Article and is exempt from public access requirements. However, the bill authorizes DLLR to provide information for a specific property in the registry to a person who owns property on the same block or a homeowners association or condominium in which the property is located.

The bill requires DLLR to administer the Foreclosed Property Registry Fund. The fund is a special, nonlapsing fund. The fund consists of filing fee revenue collected by DLLR, the fund's investment earnings, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The purpose of the fund is to support the development, administration, and maintenance of the registry.

The bill establishes that only the State may enact a law requiring a notice to be filed with a governmental unit relating to residential properties that are subject to foreclosure. However, the ability of a unit of government to require a registration or notice to be filed for a purpose other than one relating to foreclosure is not affected or restricted, even if a property to be identified in the registration or notice is subject to foreclosure. Additionally, although the bill repeals provisions of law that authorize a county or municipal corporation to enact a local law requiring notice in foreclosure actions, the bill expresses intent that it does not repeal any local law that was enacted under Chapter 149 of 2009 and that is in effect as of October 1, 2012.

Current Law/Background: State law does not require the registration of foreclosed properties. However, Chapter 149 of 2009 authorized a county or municipal corporation to enact a local law that requires notice to be given to the local government when a foreclosure action is filed on residential property located in the jurisdiction.

Prince George's County law requires the registration of residential or commercial property located in the county within five calendar days after an order to docket or a complaint to foreclose a mortgage or deed of trust is filed by the person authorized to make the sale. The notice must contain specified identifying information and may provide the county with the contact information of a person authorized to manage and maintain the property after the sale.

The State's multifaceted approach to the foreclosure crisis has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. Legislation passed during the 2008, 2009, 2010, and 2011 sessions (1) created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute; (2) tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan; (3) prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers; (4) reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold; (5) required additional notices to be given to residential tenants renting properties pending foreclosure; (6) required a lender, under specified circumstances, to provide to a borrower a specified written notice regarding homebuyer education or housing counseling in connection with specified mortgage loans; (7) required the secured party to file a specified final loss mitigation affidavit and send to the mortgagor or grantor a copy of the affidavit and a request for foreclosure mediation form; and (8) lengthened the time period within which a homeowner may elect to participate in foreclosure mediation. Consumer outreach efforts include statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project.

Due to a multitude of factors, including the State's new foreclosure mediation process, consumer outreach efforts, and legal issues surrounding many banks and mortgage companies' foreclosure practices, the number of foreclosure events decreased significantly from 50,563 in 2010 to 16,049 in 2011. Foreclosure events encompass real estate-owned (REO) purchases, notice of foreclosure sales, and notices of mortgage loan default. REO property is property acquired by a financial institution as a result of an unsuccessful foreclosure sale on the property. This type of acquisition often occurs when the amount of the outstanding loan owed to the financial institution is greater than the value of the property. The low level of foreclosure events seems to be holding, though the fourth quarter of 2011 was the first increase in the number of foreclosure events from the previous quarter since the second quarter of 2010.

The Governor convened the Maryland Foreclosure Task Force in the fall of 2011. The task force included DLLR, the Department of Housing and Community Development, members of the General Assembly, the Judiciary, and representatives from private industry. In January 2012, the task force issued its report, including 12 recommendations aimed at addressing the foreclosure crisis in Maryland.

According to the task force, the period of time between a foreclosure sale and the recordation of a deed transferring title to the property is estimated to range from 9 to 18 months. During this "limbo period," it is difficult for local governments to know who to contact about issues that may arise with the property. This is of special concern when the property is vacant. Local governments have experienced increased costs for code enforcement relating to securing and maintaining vacant foreclosure property. One of the task force's recommendations was the creation of a registry in order to allow government officials to identify parties responsible for the maintenance of foreclosed property during this limbo period.

State Fiscal Effect: DLLR advises that two staff are necessary to administer and maintain the registry. The Department of Legislative Services concurs.

Despite the bill's October 1, 2012 effective date, DLLR advises the registry will not be operational until January 1, 2013. Given the complexity of the registry and DLLR's prior experience with similar databases, this start date is reasonable. Therefore, the additional staff is not necessary until January 1, 2013, when it is expected that the registry will accept registrations. Thus, special fund expenditures increase by $204,084 in fiscal 2013. This estimate reflects the cost of hiring one administrator and one administrative office assistant to oversee maintenance of the online registry system, review initial and final registration forms, collect registration fees, and handle an anticipated significant number of inquiries regarding foreclosure properties. The increase in expenditures includes an estimate from DLLR's Information Technology unit of $130,000 for the creation of the registry. The estimate is based on the actual cost of creating and maintaining the similarly complex database used to track Notices of Intent to Foreclose. The expenditures also include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Total Positions (full-time equivalent)	2
Salaries and Fringe Benefits	$63,429
Registry Development	130,000
Other Operating Expenses	10,655
Total FY 2013 Expenditures	**$204,084**

Future year expenditures reflect full salaries with annual increases, employee turnover, annual increases in ongoing operating expenses, and $40,000 annually for registry maintenance.

Special fund revenues increase by $330,000 in fiscal 2013 to reflect the collection of registration fees from foreclosure purchasers and the anticipated January 1, 2013 start date for the registry. The bill requires a foreclosure purchaser to submit a registration form and the $50 registration fee within 30 days of a foreclosure sale. A registration form submitted after 30 days must be accompanied by a $100 registration fee. DLLR expects to receive 1,000 registration forms per month, including 100 filed past the 30-day time limit. In 2011, there were approximately 14,000 foreclosure sales in the State. Based on the number of foreclosure sales in 2011, this estimate is reasonable. The estimate assumes no changes in the fee or the number of forms registered.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 1373 (Chair, Environmental Matters (By Request – Departmental – Labor, Licensing, and Regulation) – Environmental Matters) is identical.

Information Source(s): Baltimore, Caroline, Carroll, Cecil, Harford, Howard, Montgomery, Prince George’s, and St. Mary’s counties; Baltimore City; cities of Frederick and Havre de Grace; 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; Maryland Association of Counties; Department of Legislative Services

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