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House Bill 5641 (Substitute H-1)
First Analysis (3-12-96)

Sponsor: Rep. Allen Lowe
Committee: Commerce

THE APPARENT PROBLEM:

Public Act 125 of 1966 regulates persons who lend money for purposes of securing a mortgage on real property, known as "mortgagees," to those who are purchasing such property, known as "mortgagors." The act currently provides that if a mortgagor has paid sufficient funds into an escrow account for purposes of paying property taxes on mortgaged real property, and if the mortgagee "has not paid those property taxes," then the person to whom the mortgagor paid the funds is liable to the mortgagor for any penalties or fees resulting from taxes not being paid on time. Generally speaking, Michigan law requires winter property taxes owed to local taxing units for a given year to be paid by February 14 in order for late penalties to be avoided. However, homeowners who itemize on the federal income tax return usually want their property taxes to be paid before the end of the tax year so they can claim the property taxes as a deduction on their return. While the act makes a mortgagee liable for any penalties or interest that result because taxes are not paid on time, nothing within the act requires payment of taxes before the end of the current tax year. Moreover, sometimes errors are made, either by tax-paying units or by mortgagees, which lead to wrong amounts being paid out of mortgagors' escrows for property taxes. Some people believe these problems could be resolved both by requiring mortgagees to pay property taxes owed by mortgagors by December 31, and by requiring mortgagors to be sent a copy of the tax statement to allow them to determine if the amount to be paid is correct.

THE CONTENT OF THE BILL:

The bill would amend Public Act 125 of 1966 to require a mortgagee to pay the property taxes owed on mortgaged real property no later than the date they were due or December 31 of the year in which they were due, whichever occurred first, if sufficient funds were available in the escrow account to pay them. The bill specifies that no later than 14 days from the date the mortgagee received a tax statement he or she would have to 1) provide a copy of it to the mortgagor, unless the taxing unit also provided the mortgagor with a copy of it, and 2) if sufficient funds were not available in the escrow account to pay the taxes, notify the mortgagor of the amount of the shortage. A mortgagee who violated the bill would be liable to the mortgagor for any penalties, fees, or other damages incurred by the mortgagor due to the violation.

MCL 565.163

FISCAL IMPLICATIONS:

The Financial Institutions Bureau says the bill would not affect state or local budget expenditures. (3-6-96)

ARGUMENTS:

For:

The bill would resolve a problem that some mortgagors occasionally experience regarding payment of their property taxes via the mortgage escrow account. Current law merely requires the mortgage servicer to pay property taxes out of an escrow before they are due, which--in the case of winter property taxes--is February 14. But most homeowners expect the winter property tax bill which mortgagees receive in December to be paid before the end of the calendar year so they can increase their itemized deductions on their federal income tax return. In most cases, mortgage servicers do pay mortgagors' winter property taxes before December 31, but for whatever reason this is not always the case. In other instances, even if winter taxes are paid before the end of the year, the amount paid is wrong due to a mistake on the part of the mortgagee or because the tax-paying unit sent the mortgagee an improper tax bill. The bill should correct these problems by, first, requiring mortgagees to pay the taxes before December 31 and, second, requiring them to send a copy of the tax bill to the mortgagor unless the tax-paying unit already did so. This not only ensures that property taxes would be paid on time, but would give mortgagors the opportunity to review the tax bill to see if the right amount is billed.

Response:

Requiring mortgagees to <u>always</u> pay mortgagors' property taxes before December 31 would not be wise since homeowners occasionally may wish to have their taxes paid in the following year if, for instance, they expect to owe more federal taxes then and want to offset that liability by "bunching" tax deductions into that tax year.

Against:

The bill might solve a problem that a few mortgagors experience regarding the payment of property taxes via their escrow accounts--but at a cost to all mortgage servicers and, ultimately, to their customers. (Mortgagees no doubt would pass their costs to comply with the bill onto mortgagors.) In fact, some problems that the bill intends to resolve are not even the fault of mortgagees. For example, sometimes mortgage servicers do not receive a tax bill from a local taxing unit until late in the month of December, which makes it difficult for them to pay some mortgagors' taxes before the end of that calendar year. Moreover, if an error exists on the tax statement the mortgagee receives from a taxing unit, requiring the mortgagee to then send a copy of the bill to the mortgagor does not guarantee that the mortgagor will notice the error or contact the mortgagee before the escrow payment is made. Other problems could be related to passage of Proposal A in 1994, which generally reduced property taxes; perhaps local governments and mortgagees simply need a little more time to adjust to this change. And finally, maybe some mortgagors need to be more active in advising those who service their mortgages how and when they want property taxes to be paid out of the escrow. The bill, however, implies that mortgagees are entirely responsible for most if not all errors involving the payment of property taxes through escrow accounts; it would not solve the problem and could, in fact, make matters worse by driving mortgagees away from doing business in the state.

Against:

A spokesman for the Financial Institutions Bureau says the bill contains language that may conflict with federal mortgage laws and existing state statutes. For instance, it specifies that a mortgagee, within 14 days of receiving a tax statement, would have to notify the mortgagor of a shortage in the escrow account if "sufficient funds" were not available in it to pay the taxes. According to the bureau, this term has a specific meaning under federal law which may not be reflected in the way the bill proposes to use the term. Furthermore, the bill would require a mortgagee to pay property taxes on December 31 or the date they were "due," whichever was earlier. The "due date" no doubt is intended to mean February 14, the date by which taxes must be paid to avoid any penalties or interest; technically, however, the due date specified in the General Property Tax Act for paying winter property taxes is December 1. Most mortgagees could not possibly meet this deadline. And finally, the bureau indicates the bill in its current form may not apply to out-of-state mortgage servicers.

POSITIONS:

The Michigan Consumers Federation supports the bill. (3-7-96)

The Michigan Bankers Association opposes the bill. (3-11-96)

The Michigan League of Savings Institutions opposes the bill. (3-7-96)

NBD opposes the bill. (3-11-96)

Standard Federal Bank opposes the bill. (3-7-96)

The Financial Institutions Bureau has not yet taken a position on the bill. (3-6-96)