

Legislative Analysis



MILITARY SERVICE MEMBER MORTGAGE PROTECTION

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Senate Bill 749

Sponsor: Sen. Dennis Olshove

House Committee: Military and Veterans Affairs and Homeland Security

Senate Committee: Senior Citizens and Veterans Affairs

Complete to 5-6-08

A SUMMARY OF SENATE BILL 749 AS PASSED BY THE SENATE 3-11-08

The bill would amend the Revised Judicature Act to do all of the following:

- * Provide for a court to stay mortgage foreclosure proceedings for six months after the end of a defendant's military service, if the defendant were a service member and either had entered into the mortgage or land contract before becoming a service member or were deployed in overseas service. (This refers to a "defendant" in an action to foreclose a mortgage on real estate or a land contract.)
- * Invalidate a foreclosure by advertisement or the sale of mortgaged property under a power of sale during a period of military service or within six months after the end of military service, if the mortgagor were a service member who entered into the mortgage before becoming a service member or is deployed in overseas service.
- * Prohibit a person from selling or foreclosing real estate if the person knew that the foreclosure or sale was invalid under the bill, and prescribe a civil fine of \$2,000 for a violation.
- * Allow the Attorney General to file an action in circuit court to collect a civil fine under the bill, and require civil fine revenue to be deposited into the Military Family Relief Fund as prescribed in Public Act 363 of 2004.

The bill would not apply to a mortgage or land contract entered into before the bill's effective date.

The bill would define "service member" as an individual who is in military service and is a member of the armed services or reserve forces of the United States or a member of the Michigan National Guard. The bill also would define "military service," "active duty," and "period of military service".

MCL: 600.101 et al.

FISCAL IMPACT:

To the extent the bill simply delays foreclosure proceedings, the bill would have no fiscal impact on the judiciary. However, to the extent the additional delay of foreclosure proceedings provided in the bill permits distressed borrowers (service members) to work out their loans with lenders (i.e. loss mitigation efforts aimed at avoiding foreclosure), the bill would have a positive impact on the judiciary (through fewer proceedings) as well as municipalities and the state as a whole (through fewer foreclosures). The bill also imposes a civil fine of \$2,000 for violation of its provisions, and credits any fine revenue collected to the Military Family Relief Fund.

BACKGROUND INFORMATION:

The federal Servicemembers Civil Relief Act (P.L. 108-189, 50 USC App. 533) currently provides that a foreclosure proceeding concerning a service member who entered into a mortgage prior to his or her active military service shall be stayed during the service member's period of active military service and lasting until 90 days after the service member's return, unless it can be shown in court that the member's active military services would not materially affect his or her obligations under the mortgage. In mid-April, the U.S. Senate passed the Foreclosure Prevention Act of 2008 (HR 3221) which, among other things, would extend the 90 day-period in current law to 9 months. In addition to the foreclosure (and other) protections, the SCRA also caps the interest rate charged on debt incurred by service members prior to entering active duty at 6 percent during the period of military service, if the service member's ability to repay the debt is materially affected by their active military service. Any interest at a rate above 6 percent is forgiven and does not accrue to the amount owed by the service member. The Senate-passed version of HR 3221 would extend the 6 percent interest rate cap (as it applies to mortgage interest) to apply to the period of military service and one year after the end of military service. For further information see the following resources:

- The Congressional Research Service summary of the SCRA is available on line at http://assets.opencrs.com/rpts/RL32360_20040420.pdf.
- The CRS also issued a report, entitled *Understanding Mortgage Foreclosure: Recent Events, the Process, and Costs*, which is available on line at: http://assets.opencrs.com/rpts/RL34232_20071105.pdf.
- A recent article in *USA Today* highlights the growing trend of military service members facing foreclosure, as part of the larger credit crisis. http://www.usatoday.com/news/military/2008-04-24-foreclosure_N.htm.

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