



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1092 (as introduced 4-25-12)
Sponsor: Senator Rick Jones
Committee: Judiciary

(as passed by the Senate)

Date Completed: 4-30-12

CONTENT

The bill would amend Chapter 28 (Judgment Liens) of the Revised Judicature Act (RJA) to do the following:

- **Specify circumstances under which a judgment creditor could foreclose a judgment lien.**
- **Allow a judgment creditor to recover the amount due plus interest and foreclosure costs upon foreclosure.**
- **Specify the process for foreclosure of a judgment lien, including notice and sale requirements.**
- **Allow a register of deeds' fee for recording a notice of judgment lien to be taxed against a judgment debtor.**
- **Require a notice of judgment lien to be served by first-class mail, rather than by certified mail or personally.**
- **Subject the priority of a judgment lien to the bill's provisions for foreclosure of a judgment lien.**
- **Revise requirements pertaining to the partial discharge of a judgment lien.**

Under Chapter 28, "judgment lien" means an encumbrance in favor of a judgment creditor against a judgment debtor's interest in real property. "Judgment" means a final judgment of a Michigan court of record or a U.S. district or bankruptcy court, or a foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act.

Foreclosure of Judgment Lien

Right to Foreclosure. The RJA states that there is no right to foreclose a judgment lien created under Chapter 28. At the time a judgment debtor conveys, sells, or refinances the interest in real property that is subject to a judgment lien, the judgment debtor must pay the amount due to the judgment creditor. Under the bill, there would be no right to foreclose a judgment lien created under Chapter 28, except as described below.

If a judgment debtor conveyed, sold, or refinanced real property encumbered by a judgment lien and did not pay the amount due to the judgment creditor, the judgment lien would continue to encumber the real property with priority over all interests perfected after the judgment lien, including any lien, deed, encumbrance, or mortgage that resulted from the conveyance, sale, or refinancing. The judgment creditor could foreclose the judgment lien on the real property. On foreclosure, the judgment creditor could recover the amount that was due and both of the following:

- Interest on the amount from the date that payment was due at the applicable judgment interest rate.
- Costs incurred in the foreclosure process.

A judgment creditor foreclosing a judgment lien would have to obtain, in the action in which the judgment was entered, a determination of the amount the judgment creditor was entitled to recover through foreclosure because of the nonpayment of the amount due. The judgment creditor also would have to obtain a determination of which interests in the property, recorded before the foreclosure proceeding was begun, were inferior in priority to the foreclosure rights of the judgment creditor. The court's determination of the amount the judgment creditor was entitled to recover through foreclosure and the priority as to other claimants in the property would have to be obtained in a proceeding supplementary to judgment in the same manner as title to property is determined in supplementary proceedings under Chapter 61 (Proceedings Supplementary to Judgment) of the RJA. If the judgment creditor asserted a priority over an interest in the property and the person holding that interest were not a party to the action, the court would have to order the person to be made a party to the action and set the proceeding for an early hearing.

After a determination in favor of a judgment creditor became final, the judgment creditor could proceed with a foreclosure sale by advertisement of the property to collect the amount he or she was entitled to receive, interest, and court and foreclosure costs. The foreclosure sale by advertisement would have to be conducted in the manner provided in the bill, by the sheriff of the county in which the property was located or by another officer from the sheriff's office. For services relating to posting of public notices and conducting a sale of the property, the sheriff or officer could charge the same amounts as allowed for those services in regard to a mortgage sale by foreclosure. A sheriff or other officer who neglected or refused any of the services required by the bill, after fees had been tendered, would be liable to the party injured for all damages he or she sustained because of that neglect or refusal.

Notice. Before the sale of real property in foreclosing a judgment lien, notice that described the real property with common certainty by stating the name or number of the township or city where it was located and the number of the lot, or by other appropriate description of the property, and that gave the time and place of the sale, would have to be given as follows:

- A written or printed notice would have to be displayed in three public places in the township or city where the real property was located, at least six weeks before the sale.
- A copy of the notice would have to be published, once each week for the six weeks before the sale, in a newspaper printed in the county in which the property was located or, if there were no such newspaper, in a newspaper printed in an adjoining county.
- If the sheriff or other officer adjourned the sale for more than one week, he or she would have to give notice in the newspaper in which the original notice was published and continue to publish notices weekly throughout the adjournment.

A sheriff's or other officer's notice of adjournment also would have to be displayed throughout the adjournment at the place where the sale was to be held. If there were an adjournment of one week or less, posting the adjournment at the place of the sale would be sufficient notice of the adjournment.

A person who removed or defaced a notice of sale without authorization would be liable to the judgment creditor for \$50 or more per instance, plus the amount of actual damages sustained by the judgment creditor.

Sale. A sale of real property in foreclosing a judgment lien would have to be by public sale between 9 a.m. and 4 p.m. at the place where the circuit court was located in the county in

which the real property to be sold was located. The property would have to be sold to the highest bidder. The sheriff or other officer conducting the sale could adjourn the sale for reasonable cause and for a reasonable period. Successful bidders would be subject to the requirements for prompt payment of the purchase price by the bidder that apply to mortgage foreclosures by advertisement or execution sales of real property. The judgment creditor, an assignee of the judgment creditor, or a legal representative of the judgment creditor or an assignee could, fairly and in good faith, purchase the real property at the sale. A judgment creditor, assignee, or legal representative who purchased the property could apply the amount determined to be owing to the judgment creditor against the bid made by the judgment creditor, assignee, or legal representative, and would be required to pay money to the sheriff or officer only if the bid exceeded the amount determined to be owing.

Before the date of a scheduled foreclosure sale, the judgment debtor or any person whose interest in the property would be wholly or partially eliminated by a final foreclosure sale could cause the foreclosure sale to be canceled by paying to the judgment creditor or the judgment creditor's attorney, by cashier's check, the amount determined by the court to be owed and interest and costs to the date of the payment.

If real property were sold, the sheriff or other officer conducting the sale would have to pay the proceeds of the sale to the judgment creditor, up to the amount due to the judgment creditor. The sheriff or other officer conducting the sale would have to pay any remaining sale proceeds to the people whose interests in the property had been eliminated by the foreclosure sale, in the order of the priority of their interests.

After the sale, the sheriff or other officer would have to sign as many certificates of the sale as were necessary, that contained all of the following information:

- A particular description of the property sold.
- The price bid for each distinct lot or parcel sold.
- The consideration paid for each lot or parcel.

The sheriff or other officer would have to deliver a certificate to each purchaser at the sale and, within 10 days after the sale, file one of the certificates to be recorded in the office of the register of deeds of the county where the property was located. The register of deeds would have to record the certificate in a book kept for that purpose. The original certificate, a record of the certificate, or a transcript of the record, certified by the register of deeds, would be prima facie evidence of the facts contained in the deed, of the regularity of the sale, and of all proceedings in the action before the sale. Within 10 days after the sale, the sheriff or other officer also would have to give the purchaser a sheriff's deed making a final conveyance of the real property to the purchaser.

Register of Deeds' Fee

Under Chapter 28, a judgment lien attaches to a judgment debtor's interest in real property if a notice of judgment lien is recorded in the land title records of the register of deeds for the county where the property is located.

At the request of the judgment creditor, the bill would require the fee charged by a register of deeds for recording a notice of judgment lien to be taxed and awarded as a cost against the judgment debtor.

Notice of Judgment Lien

Under Chapter 28, a copy of a notice of judgment lien that has been certified must be served by certified mail on the judgment debtor at the judgment debtor's last known

address. If the judgment subject to the lien is for \$25,000 or more, a copy of a notice of judgment lien that has been certified must be personally served on the judgment debtor. The bill, instead, would require a copy of a certified judgment lien to be served by first-class mail.

Priority of Judgment Lien

Chapter 28 specifies that, with certain exceptions, a judgment lien has priority over a lien recorded with the register of deeds after the notice of judgment lien is recorded. Under the bill, those exceptions would be subject to the bill's provisions for foreclosure of a judgment lien.

Partial Discharge of Judgment Lien

Under Chapter 28, if payment on a judgment lien is made from the judgment debtor's equity in property sold or refinanced and is not payment in full, the judgment creditor or the creditor's attorney must record a partial discharge of judgment lien for the amount paid. The bill would require the partial discharge of judgment lien to fully release the parcel or parcels from the lien. The bill also would require the partial discharge to include the legal description of the parcel or parcels sold.

MCL 600.2803 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

S1112\S1092sa.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.