



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

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1203 (as passed by the Senate)
Sponsor: Senator Alan L. Cropsy
Committee: Judiciary

Date Completed: 5-24-06

RATIONALE

Chapter 32 of the Revised Judicature Act governs the foreclosure of mortgages by advertisement (rather than by the commencement of court proceedings). Foreclosure by advertisement requires the mortgagee to publish specified notices in a newspaper and post them on the premises. If the property is sold at a foreclosure sale, the mortgagor (or the mortgagor's heirs, executors, or administrators, or a person lawfully claiming under the mortgagor or one of the other parties) may recover, or "redeem", the property by paying the redemption amount and required fees within a specified period. The redemption period ranges from one month to one year, depending on the size and type of the property, the percentage of the original debt still owed, and whether the property is abandoned. The shortest redemption periods apply to abandoned property, and the Act describes circumstances under which property is conclusively presumed to be abandoned. Originally, under Section 3241, procedures to establish abandonment could be initiated only *before* foreclosure proceedings began (before the required notices were posted and published). This meant that if foreclosure proceedings had begun, the property could lie vacant for up to one year while the redemption period ran. To address this, Public Act 94 of 1986 added Section 3241a, which provides for the presumption of abandonment of residential property *after* foreclosure proceedings have begun. Reportedly, some counties' registers of deeds (who must record various foreclosure documents) interpret Section 3241a as providing for a presumption of abandonment only between the time foreclosure proceedings have begun and the property is sold at a foreclosure sale—but

not between the time of the sale and the expiration of the redemption period.

The shortened redemption periods for abandoned property are considered important because vacant property can contribute to neighborhood deterioration, reduce property values, and provide a venue for criminal activity. It has been suggested that, when foreclosure proceedings have begun, mortgagees should clearly be allowed to establish abandonment after a foreclosure sale. It also has been suggested that the residential property subject to the presumption of abandonment should be expanded, and the timing of a mortgagor's response to notice from the mortgagee should be modified.

CONTENT

The bill would amend Chapter 32 of the Revised Judicature Act to do the following:

- **Provide that, if foreclosure proceedings had been commenced, abandonment would be presumed if the requirements of Section 3241a were satisfied "before the end of the redemption period".**
- **Refer to residential property, rather than residential property not exceeding four units and not more than three acres in size, in several provisions pertaining to the redemption period for abandoned property.**
- **Require a mortgagor to respond to a mortgagee's notice of abandonment within 15 days after that notice was mailed, rather than 15 days after**

receipt, and revise the notice that the mortgagee must provide.

Under Section 3241a, if foreclosure proceedings have been commenced against residential property, not exceeding four units and not more than three acres in size, abandonment is conclusively presumed upon satisfaction of the following requirements:

- The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.
- The mortgagee has posted a notice at the time of making the personal inspection and mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor's last known address, stating that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale unless the mortgagor, the mortgagor's heirs, executor, or administrator, or a person lawfully claiming from or under one of them, provides the notice described below.
- Within 15 days after receipt of the notice from the mortgagee, the mortgagor, the mortgagor's heirs, executor, or administrator, or a person lawfully claiming from or under one of them, does not give written notice by first-class mail to the mortgagee stating that the premises are not abandoned.

Under the bill, abandonment would be conclusively presumed if these requirements were satisfied before the end of the redemption period. The provisions would apply to residential property, rather than residential property not exceeding four units and not more than three acres in size. The notices posted by the mortgagee at the time of the inspection and sent by certified mail would have to state that the mortgagee would consider the property abandoned and the mortgagor would lose all ownership rights either 30 days after the foreclosure sale *or* when the time expired for the mortgagor, his or her heirs, executor, or administrator, or a person lawfully claiming from or under one of them to notify the mortgagee that the premises were not abandoned, whichever was later. The notice from the mortgagor to the mortgagee would

have to be given within 15 days after the notice from the mortgagee was posted and mailed (rather than received).

Section 3240 establishes the redemption periods for property sold at a foreclosure sale under Chapter 32. This section states that if property is abandoned as determined under Section 3241a, the redemption period is 30 days. Under the bill, the redemption period would be 30 days *or* until the time for the mortgagor to give notice (as described above) expired, whichever was later.

Under Section 3240, for a mortgage executed on residential property, not exceeding four units and not more than three acres in size, if the property is presumed to be abandoned under Section 3241 (before foreclosure proceedings have begun), the redemption period is three months, or, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is one month. Under the bill, these provisions would apply to residential property, rather than residential property not exceeding four units and not more than three acres in size.

MCL 600.3240 & 600.3241a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By requiring the criteria for a presumption of abandonment to be met *before the end of the redemption period*, the bill would remove any ambiguity as to whether abandonment may be established after a foreclosure sale, thereby triggering a 30-day redemption period. Under the Act, when property is sold at a foreclosure sale, the purchaser receives a deed of sale, which shows when it will take effect if the premises are not redeemed. The deed must be deposited with the register of deeds, who must endorse and record it. If the premises are not redeemed, the deed becomes operative. Shortening the redemption period, therefore, expedites the transfer of property that has been sold at a foreclosure sale. This can be especially valuable in the case of vacant property, which is a target for

vandals, provides a convenient site for illegal drug activity and violent crime, and generally contributes to urban blight. Section 3241a was enacted in 1986 to address these problems, which can occur whether property is abandoned before or after a foreclosure sale. By clarifying the original language, the bill would help to preserve housing and maintain neighborhoods.

The bill also would contribute to these efforts by removing the size limits on abandoned residential property that is subject to a one-month or three-month redemption period. Currently, this period applies only if the property does not have more than four units and is not over three acres in size. While there may be reasons to have a longer redemption period for larger property that is occupied, abandoned property represents a threat to the neighborhood regardless of its size.

Supporting Argument

Under the Act's procedures to establish abandonment after foreclosure proceedings have begun, the mortgagor has 15 days "after receipt of" the notice from the mortgagee to inform the mortgagee that the property is not abandoned. When premises are vacant, however, no one is present at the property and there is no way to establish receipt of the mortgagee's notice. It would be more appropriate to set an objective deadline of 15 days after the mortgagee's notice was posted and mailed. Reportedly, this change would reflect current practice.

Opposing Argument

The Real Property Law Section of the State Bar of Michigan has raised concerns about this legislation. By expanding the circumstances under which property may be presumed to be abandoned and subject to shortened redemption periods, the bill would exacerbate problems with the existing law. Neither the Act nor the bill provides for any notice to junior lienholders, including lenders holding second mortgages, or other parties with recorded interests in the property, such as condominium associations with liens for unpaid dues, or judgment creditors who have taken the steps required to impose a lien against the mortgagor's real property. Although these parties are entitled to redeem the property, they are not required to be informed that the premises are being presumed abandoned, and their property

interests could be extinguished after a shortened redemption period. At the least, these parties should have an opportunity to determine whether the foreclosing mortgagee's assessment of abandonment is accurate.

This concern could be easily remedied if the law required that parties holding junior interests of record be sent notice by certified mail at the same time that notice must be sent to the mortgagor. In addition to protecting the financial interests of these lenders and other lienholders, this requirement would further the goal of protecting neighborhoods from the problems presented by vacant property. Since junior lienholders are often the true economic stakeholders in property subject to foreclosure, it is not in their interest to let the property become or remain a haven for crime.

In addition, by removing the size limits on property subject to the shortened redemption periods for abandoned property, the bill could lead to an interpretation that these provisions apply to unimproved as well as improved property. According to the Real Property Law Section, the existing language suggests--and the law is generally understood to mean--that the shortened periods apply only to improved property. The legislation should expressly restrict the scope of the provisions to improved real estate.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: David Zin

A0506\s1203a

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.