



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 introduced 3-30-06)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

Date Completed: 5-3-06

CONTENT

The bill would amend Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act to 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. The bill also would revise requirements for a mortgagee to notify the mortgagor that the mortgagee will consider property abandoned and the mortgagor will lose all ownership rights, and for a mortgagor to respond, after commencement of foreclosure proceedings.

Foreclosure of a mortgage by advertisement (rather than the commencement of court proceedings) requires the mortgagee to publish specified notices in a newspaper and post them on the premises. A party may foreclose by advertisement if a default in a condition of the mortgage has occurred, a suit to recover the debt has not been instituted, and other conditions are met. 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 redeem the property by paying the redemption amount and required fees within a specified period.

The redemption period varies according to the type of property and, in some cases, whether it is abandoned. Property may be conclusively presumed to be abandoned either before or after foreclosure proceedings have been commenced, as provided in Sections 3241 and 3241a. (Under Section 3241, property will be conclusively presumed to be abandoned if the mortgagee, before commencing foreclosure proceedings, sends the mortgagor a notice of default and intent to foreclose by certified mail, and executes and records an affidavit; the mortgagee sends a copy of the affidavit to the mortgagor by certified mail; and the mortgagor, before the redemption period expires, does not give the mortgagee, and record, an affidavit stating that the mortgagor or a person claiming under him or her is occupying or intends to occupy the premises.)

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, 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.

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 know 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 receiving 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, these provisions would apply to residential property, rather than residential property not exceeding four units and not more than three acres in size. In addition, the notices posted by the mortgagee at the time the personal 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).

MCL 600.3240 & 600.3241a

Legislative Analyst: Patrick Affholter
Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: David Zin

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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.