

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 761

(Senator Frosh)

Judicial Proceedings

Environmental Matters and Economic Matters

Real Property - Foreclosure - Protection of Homeowners

This emergency bill (1) requires a person authorized to make a foreclosure sale to include a statement encouraging the record owner to be informed about options in foreclosure; and (2) regulates the activities of foreclosure consultants, foreclosure purchasers, and foreclosure surplus purchasers.

Fiscal Summary

State Effect: Assuming that the Consumer Protection Division receives fewer than 50 complaints per year stemming from this bill, any additional workload could be handled with existing resources. The criminal penalty provisions of this bill are not expected to materially affect State finances or operations.

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: In addition to any other right under law to cancel or rescind a contract, the bill grants a homeowner the right to: (1) rescind a foreclosure consulting contract at any time; and (2) rescind a foreclosure reconveyance at any time before midnight on the third business day after any conveyance or transfer of legal or equitable title to a residence in foreclosure. Rescission occurs when the homeowner gives written notice to the foreclosure consultant as prescribed under the bill. The notice is effective if it indicates the intention of the homeowner to rescind the foreclosure consulting contract or foreclosure reconveyance.

The bill specifies the required contents of a foreclosure consulting contract, including information about the services to be provided and the foreclosure consultant's compensation and a notice about the right to rescind the contract. The bill requires that the foreclosure consultant provide the homeowner a signed and dated copy of the contract, along with the notice, upon execution. The bill limits the amount a foreclosure consultant may charge the homeowner to 8% a year of the amount of any loan that the consultant makes to the homeowner. The consultant may not receive any consideration from a third party in connection with foreclosure consulting services provided to a homeowner unless the consideration is first fully disclosed to the homeowner.

A foreclosure consultant may not demand payment until after having performed all the services promised under the contract. The consultant may not accept a power of attorney from the homeowner for any purpose except to inspect documents.

If a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of the contract, the foreclosure purchaser must provide the homeowner with a document entitled "Notice of Transfer of Deed or Title." The document must contain the entire agreement between the parties, describe the terms of any foreclosure reconveyance, and other specified information required under the bill.

The foreclosure purchaser must also provide the homeowner with a document entitled "Notice of Right to Cancel Transfer of Deed or Title." The document must include specified information, including the right to rescind within three days after transfer, and must be provided to the homeowner immediately on execution of any document that includes a foreclosure reconveyance. If the homeowner rescinds the agreement, the homeowner must repay any money spent on the homeowner's behalf by the purchaser within 60 days, along with 8% annual interest.

A foreclosure purchaser may not enter into, or attempt to enter into, a foreclosure reconveyance with a homeowner unless the purchaser verifies and can demonstrate that the homeowner has or will have a reasonable ability to pay for the subsequent reconveyance of the property back to the homeowner on completion of the terms of the conveyance. Until the homeowner's right to rescind or cancel the transaction has expired, the purchaser may not: (1) record any document signed by the homeowner; or (2) transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to a third party.

The bill establishes a rebuttable presumption that: (1) a homeowner has a reasonable ability to pay for a subsequent reconveyance if the homeowner's payments for primary housing expenses and regular principal and interest on other personal debt, on a monthly

basis, are not more than 60% of the homeowner's monthly gross income; and (2) that the purchaser has not verified reasonable payment ability if the purchaser has not obtained documents other than a statement by the homeowner about the homeowner's assets, liabilities, and income.

The foreclosure purchaser must make a detailed accounting of the basis for the amount of a payment made to the homeowner of a property resold within 18 months after entering into an agreement and must ensure that the homeowner receives at least 82% of the net proceeds of any resale of the property.

A foreclosure surplus acquisition must be in the form of a written contract. The contract must contain specified information about the transaction, including the total consideration to be given to the foreclosure surplus purchaser and a description of any services the purchaser will perform for the homeowner. The contract must be accompanied by a notice of homeowner's right to rescind the contract within 10 days after the auditor states the account of the foreclosure sale. A homeowner who rescinds a contract must repay any consideration received, along with 8% annual interest.

A person may not induce or attempt to induce a homeowner to waive the homeowner's rights under the bill. Any such waiver is void and unenforceable. The Attorney General may seek an injunction to prohibit a person who has violated or is violating the bill from continuing to do so. A court may enter any order or judgment necessary to: (1) prevent the use of any prohibited practice; (2) restore any money or property acquired from a person by means of any prohibited practice; or (3) appoint a receiver in case of a willful violation of the bill. In an action brought by the Attorney General, the Attorney General is entitled to recover the costs of the action for the State's use.

A homeowner may also bring an action for damages incurred as the result of a violation of the bill, including reasonable attorney's fees. If the court finds that the defendant willfully or knowingly violated the bill, the court may award three times the amount of actual damages.

Violation of the bill is a misdemeanor, with maximum penalties of three years' imprisonment and/or a \$10,000 fine.

The Consumer Protection Division is required to maintain a list of nonprofit organizations that: (1) solely offer counseling or advice to homeowners in foreclosure or loan default; and (2) are not related to and do not contract for services with for-profit lenders or foreclosure purchasers. The division must provide the name and telephone number of an organization on the list to a homeowner who contacts the division.

Under the bill, a “foreclosure consultant” is a person who makes a solicitation, representation, or offer to a homeowner at risk of foreclosure to perform, or who performs, one of a number of specified services that the person represents will help the homeowner. A “foreclosure purchaser” is a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance. A “foreclosure surplus purchaser” is a person who acts as the acquirer by assignment, purchase, grant, or conveyance of the surplus resulting from a foreclosure sale.

The bill does not apply to (1) a Maryland attorney while performing an activity related to the attorney’s regular practice of law in the State; (2) a person who holds or is owed an obligation secured by a lien on a residence in foreclosure while providing services in connection with the obligation or lien; (3) banks, trust companies, savings and loan associations, credit unions, or insurance companies; (4) judgment creditors of a homeowner; (5) title insurers; (6) title insurance producers; (7) a licensed mortgage broker or mortgage lender acting while under the license; (8) a licensed real estate broker, associate real estate broker, or real estate salesperson while acting within the scope of the license; or (9) a nonprofit organization that solely offers counseling or advice to homeowners in foreclosure or loan default, if the organization is not directly or indirectly related to and does not contract for services with for-profit lenders or foreclosure purchasers.

The bill also establishes that the entry of an order for resale on default by a purchaser at a foreclosure sale does not affect the prior ratification of the sale and does not restore any right or remedy that was extinguished by the prior sale and extinguishes all interest of the defaulting purchaser.

Current Law: In addition to any other required notice, the person authorized to make a sale in an action to foreclose a mortgage or deed of trust must give written notice of the proposed sale to the record owner of the property to be sold.

Foreclosure consulting services, foreclosure purchasers, and foreclosure surplus purchasers are not specifically regulated by statute.

Additional Information

Prior Introductions: None.

Cross File: HB 1288 (Delegate Niemann) – Environmental Matters and Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division),
Department of Legislative Services

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