

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 361 (The Speaker, *et al.*) (By Request – Administration)
 Environmental Matters and Economic Matters Judicial Proceedings

Protection of Homeowners in Foreclosure - Prohibition on Foreclosure Rescue Transactions - Enforcement

This emergency Administration bill alters several provisions of law regarding the protection of homeowners in foreclosure.

Fiscal Summary

State Effect: Special fund expenditures could increase by \$72,900 in FY 2009 for additional investigative staff for the Commissioner of Financial Regulation. Future year expenditure estimates reflect inflation. If the Attorney General’s Office receives fewer than 50 complaints per year stemming from the bill, the additional workload for that office could be handled with existing resources. Potential increase in general fund revenues and expenditures due to the bill’s new provisions being subject to existing penalties.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	-	-	-	-	-
GF Expenditure	-	-	-	-	-
SF Expenditure	72,900	68,600	71,900	75,500	79,100
Net Effect	(\$72,900)	(\$68,600)	(\$71,900)	(\$75,500)	(\$79,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in revenues and expenditures due to the existing penalties for violations of new provisions.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill designates Title 7, Subtitle 3 of the Real Property Article as the Protection of Homeowners in Foreclosure Act and adds it to the list of provisions, the violation of which constitutes unfair or deceptive trade practices, under the Consumer Protection Act. The bill also specifies that it applies to residences in default and not simply residences in foreclosure. A “residence in default” is defined by the bill as residential real property in the State on which the mortgage is at least 60 days in default. The property also must consist of four or fewer single-family dwelling units, one of which is occupied by the owner, the owner’s spouse, or the owner’s former spouse under a use and possession order, as the individual’s principal place of residence.

Prohibitions: The bill prohibits a foreclosure consultant from engaging in, arranging, promoting, promising, soliciting, participating in, assisting with, or carrying out a “foreclosure rescue transaction.” The bill replaces the definition of “foreclosure reconveyance” with a definition of “foreclosure rescue transactions.” A foreclosure rescue transaction is defined as a transaction in which a residence in default is conveyed by a homeowner who retains a legal or equitable interest in all or part of the property and that is designed or intended by the parties to prevent or delay foreclosure proceedings, either actual or anticipated. The interest retained by the homeowner includes an interest under a lease-purchase agreement, an option to reacquire the property, or any other legal or equitable interest in the property conveyed.

Furthermore, a foreclosure consultant may not receive a commission, regardless of how described, for the sale of a residence in default that exceeds 8% of the sales price. The bill also prohibits such consultants from receiving any money to be held in escrow or on a contingent basis on behalf of the homeowner. Provisions relating to foreclosure reconveyances are repealed.

Expanded Applicability: The bill subjects title insurers, licensed title insurance producers, and licensed mortgage brokers to its provisions. A person who holds or services a mortgage loan secured by a residence in default is exempted from the bill’s provisions while the person performs servicing, collection, and loss mitigation activities in regard to that mortgage loan, provided the mortgage loan did not arise as a result of a foreclosure consulting contract. Licensed mortgage lenders are also exempt while acting under the authority of that license in regard to a residence in default; and arranging for a

refinancing of a mortgage loan for the residence in default. A person who is a licensed real estate broker, associate broker, or real estate salesperson is exempt only while the person engages in any licensed activity and does not violate the law; and if the residence in default for which the person is conducting a licensed activity is listed in the local multiple listing service and is sold or transferred through a settlement, including the conveyance or transfer of deed, title, or establishment of equitable interest.

Revised Definitions: The bill updates several definitions in current law for clarity. The bill also requires that a foreclosure consulting contract include a statement of the duty of the foreclosure consultant to provide the homeowner with written copies of any research that the consultant has regarding the value of the residence in default. This research includes any information on the sales of comparable properties or any appraisals. The bill amends the notice required in all foreclosure consulting contracts to state that the required separate explanation of the transaction must include • how much money you must pay; • how much money you will receive, if any; and • how much money the foreclosure consultant will receive from any source. The notice has to inform the homeowner about the right to rescind the contract at any time and the homeowner's liability after rescission. In addition, the bill alters the cancellation period from three to five days after signing. After any such rescission, the homeowner must repay any money spent under the agreement on the homeowner's behalf, within 60 days, along with interest calculated at 8% per year.

Consulting Requirements: The bill requires a foreclosure consultant who provides real estate brokerage services to be licensed as such. The consultant must present a copy of the license to a homeowner before a foreclosure consulting contract is executed. The bill requires a specific notice to be provided to the homeowner along with any contract for the sale or transfer of a residence in default that is included in a foreclosure consulting contract or arranged by a foreclosure consultant. Under the bill, such sale or transfer of a residence in default may not be carried out using a quit claim deed.

Purchasing Requirements: If a tenancy agreement is included in a contract for the sale or transfer of a residence in default, the bill requires a purchaser to provide a homeowner with a specific document about tenancy. This statement about tenancy must • be on a separate sheet of paper attached to the contract; • be dated and personally signed by the homeowner and the purchaser, and be witnessed and acknowledged by a notary public appointed and commissioned by the State; • contain a statement informing the homeowner of the homeowner's right to a copy of a signed lease; and • contain a specific statement about tenancy set forth by the bill. The purchaser must provide the homeowner with a signed and dated copy of the statement about tenancy immediately upon execution of the contract. Under the bill, the time during which the homeowner may cancel the contract does not begin to run until the purchaser has complied with these requirements.

Enforcement: The bill grants the Commissioner of Financial Regulation concurrent jurisdiction with the Attorney General to investigate, enforce, and enjoin action in cases involving violations of the bill. It also requires that the commissioner receive notice containing the name and address of any person convicted under the statute, along with a copy of the judgment, within 30 days of the conviction.

Current Law: Title 7, Subtitle 3 of the Real Property Article contains provisions that regulate foreclosure consultants, foreclosure consulting contracts, and related sales or transfers of residential property.

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.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to • civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

Background: Chapter 509 of 2005 was enacted to address the growing problem of foreclosure “rescue” scams. In these types of scams, unscrupulous companies and individuals take advantage of homeowners who are facing foreclosure. These predators search the court records for foreclosure actions and then contact homeowners and offer to help them avoid foreclosure.

The Financial Regulation Enforcement Unit of the Department of Labor, Licensing, and Regulation has been investigating and unearthing foreclosure “rescue” scams and characterizes the general schemes as follows:

- The Phantom Helper – This scam involves a person who agrees to “negotiate” on behalf of the homeowner for an up-front fee. The fee is paid, the homeowner is told not to contact the lender, and the scammer does nothing and absconds with the fee. The homeowner is then in foreclosure or has lost the home to foreclosure sale.

- The Bait and Switch – The scammer induces the homeowner to sign over title so that the scammer can save the home and promises to return title at a date certain. The former homeowner, now a tenant, is evicted in rent court.
- Lease Buy-back – The scammer induces the homeowner to transfer title to a straw-investor with the promise that they will be able to take back the home after some period. The scammer refinances the mortgage and pulls out 100% of the equity. The homeowner can no longer afford the mortgage. The straw-investor also may be unaware of the refinance and fails to make payment or cannot afford payment, and the home goes to foreclosure on subsequent full mortgage. The initial homeowner loses the home and all equity while the straw-investor ends up with a foreclosure on their credit record.

Chapter 509 of 2005 is designed to provide some protection for homeowners who deal with foreclosure “rescuers.” It requires that “foreclosure consultants” enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and afford basic consumer protections such as a three-day rescission period.

State Revenues: General fund revenues could increase minimally as a result of the new provisions subject to existing monetary penalty provisions from cases heard in the District Court.

State Expenditures: Mortgage special fund expenditures could increase by an estimated \$72,874 in fiscal 2009 which reflects an anticipated July 1, 2008 hiring date. This estimate reflects the cost of hiring one additional mortgage fraud investigator to assist the Commissioner of Financial Regulation in pursuing violations of the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The Department of Labor, Licensing, and Regulation reports that the Mortgage Special Fund balance as of December 2007 was \$6.4 million.

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Salary and Fringe Benefits	\$64,164
Other Operating Expenses	<u>8,710</u>
Total FY 2009 State Expenditures	\$72,874

Future year expenditures reflect ● a full salary with 4.4% annual increases and 3% employee turnover; and ● 2% annual increases in ongoing operating expenses.

General fund expenditures could increase minimally as a result of the new provisions being subject to existing incarceration penalties due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction facilities. The number of people convicted of this proposed crime is expected to be minimal.

Local Revenues: Revenues could increase minimally due to the imposition of existing penalties for violations of new provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally due to the imposition of existing incarceration penalties for violations of new provisions.

Additional Information

Prior Introductions: None.

Cross File: SB 218 (The President, *et al.*) (By Request – Administration) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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Analysis by: Alexander M. Rzasa

Direct Inquiries to:
(410) 946-5510
(301) 970-5510