



**House
Legislative
Analysis
Section**

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House Bill 5676 as introduced
First Analysis (9-26-90)

Sponsor: Rep. Nick Ciaramitaro
Committee: Judiciary

THE APPARENT PROBLEM:

Of the several types of foreclosure available under Michigan statute, the most common by far, at least for residential property, is foreclosure by advertisement, where after four weeks' publication and posting of a foreclosure notice, a sheriff's sale is held. At the sale, the property goes to the highest bidder, who as a rule must pay the amount bid at the time of sale (a mortgagee/lender need only pay the amount in excess of the unpaid balance of the mortgage). Following the sale, the former mortgagor has thirty days to one year, depending on circumstances, during which he or she can redeem the property by paying the sum bid at sale, plus interest, taxes, and fees. The provisions for redemption, combined with the necessity to make full payment at the time of sale, tend to discourage bidders, with the result that most sales are to lenders who simply bid the amount due on the mortgage (or less). The low sales prices commonly paid at foreclosure sales mean that the homeowner loses any equity that might have accumulated.

A related problem with current foreclosure procedures has to do with acceleration of the mortgage when foreclosure is commenced. Most residential mortgages contain clauses that allow the lender to accelerate the debt when the mortgagor defaults on the loan. Apparently, common practice is to initiate foreclosure upon three months' default; the lender accelerates the debt and calls the loan due at the time the foreclosure notice is first published. Thus, from that point on, the homeowner can be required to pay the entire mortgage balance, not just the amount in arrears, in order to avoid foreclosure. Early acceleration, argue consumer advocates, can turn a homeowner's temporary financial problems into a major financial loss.

As a solution to these problems, a new sort of residential mortgage foreclosure has been proposed: one in which the redemption period occurs in effect before the sale, time is given for a bidder to finance the purchase, and time is given to a homeowner to pay arrears between the time of first notice and the time of acceleration of the debt.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to enact alternative mortgage foreclosure provisions to apply to residential property with no more than four units sitting on no more than three acres. Current provisions for foreclosure by advertisement give the former mortgagor a set period of time after the sheriff's sale to pay the debt and reclaim the property; the "redemption period" varies from thirty days to one year, depending on circumstances. Rather than a post-sale redemption period, the bill would provide for a period in advance of the sale in which the debtor could "cure the default" by paying the amount due.

Generally, the bill would require the lender to publish four notices at various points in the process: upon initiating the process, prior to accelerating the debt, and twice prior to

sale. The first notice would also be sent to the debtor and would include an explanation of the debtor's rights and responsibilities under the bill, plus a list of the housing counseling or credit counseling agencies in the area. The debtor's period to cure the default would be the same as the redemption period would have been, and would commence when the first notice was issued. There would be a period of 30 to 100 days after the first notice before the lender could accelerate the loan and require full payment; until that time, the borrower could cure the default by paying the arrearage. Expedited procedures would be available for abandoned property and for chronic or longstanding defaults.

Property foreclosed upon and sold would be sold by sealed bid in which the purchaser provided earnest money of at least five percent of the bid plus a written commitment from a lender to finance the remainder; there would be no right of redemption. The purchase would have to be closed within 60 days after the sale, or the property would go to the next highest bidder. As of the date of sale, the property would be considered foreclosed upon and sold. After satisfying the mortgage and paying foreclosure costs, the sheriff or other person conducting the sale would send any surplus to the mortgagor, unless another claimant sought payment of a lien on the property; in that case, the circuit court would settle the disposition of the surplus.

The bill would delete existing language that provides for varying redemption periods for residential property; the redemption period for foreclosed mortgages other than those specifically described in foreclosure by advertisement provisions would continue to be one year. (The law would continue to specify a six-month redemption period for commercial or industrial property, or multifamily residential property in excess of four units.) The bill also would repeal a section of law that provides for expedited foreclosure by advertisement for abandoned residential property.

MCL 600.3240 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill suggests foreclosure procedures that would benefit both homeowner and lender. With sealed bids at the foreclosure sale, time for a purchaser to complete financial arrangements, and transfer of a clear title following the sale, the property would tend to attract bids that more closely approximated the property's market value, thus allowing the homeowner to recoup any equity he or she might have. With the property going to an outside bidder paying more than the mortgage balance, the lender could recover the balance on the mortgage without the

administrative burdens of maintaining and selling the property. By providing for a period between first notice and acceleration of debt, the bill would help to prevent unnecessary foreclosures; a homeowner would have an opportunity to halt the process by paying the arrearage, and the lender would get the amount due without the expenses attendant on foreclosure.

Response: Section 3201 of the Revised Judicature Act says that every mortgage that contains a power of sale can, upon default, be foreclosed by advertisement. For the bill to replace residential foreclosure by advertisement, rather than serve as an optional alternative, an exception to this provision may be necessary.

Against:

The bill proposes fundamental and sweeping changes in the way residential mortgage foreclosures are performed. Current foreclosure by advertisement procedures call for publication of a notice for four successive weeks prior to the sheriff's sale; the bill's procedures would generally require first notice to be given 30 days to one year before the foreclosure sale could be held. The bill would in effect increase the amount of time between occurrence of a default and the sale; lenders say this could have ramifications for the secondary market (that is, the market in which mortgages are bought and sold). In addition, some lenders might find the bill's notice requirements, which require personal notice and more extensive disclosures than current law, onerous.

POSITIONS:

The Michigan Consumers Council supports the bill. (9-26-90)

The Michigan Credit Union League does not oppose the bill. (9-26-90)

A representative from the Michigan League of Savings Institutions testified in opposition to the bill. (9-19-90)