

# Legislative Analysis



## REGISTER OF DEEDS: MORTGAGE REDEMPTION

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**Senate Bill 929 (Substitute H-2)**

**Senate Bills 930 and 931 (Substitutes H-1)**

**Sponsor: Sen. Bev Hammerstrom**

**Senate Committee: Local, Urban, and State Affairs**

**House Committee: Local Government and Urban Policy**

**Complete to 12-8-04**

### A SUMMARY OF SENATE BILLS 929 - 931 AS REPORTED FROM COMMITTEE

Senate Bills 929, 930, and 931 would amend various acts to eliminate the county register of deeds as a payment recipient when a mortgagor (or a successor in interest) redeemed property following a foreclosure sale. Further, the bills specify that the redemption amount for the property would have to be determined by the redeeming party without the assistance of the register of deeds.

Senate Bill 929 would amend the Revised Judicature Act (MCL 600.3140 et al.). Under the act, a mortgagor or the vendee of a land contract, his or her heirs, executors, administrators, or any person lawfully claiming from or under them, may redeem the entire premises sold at a foreclosure sale by paying the amount that was bid plus interest, within six months from the time of the sale, to the purchaser, his or her executors, administrators, or assigns, or the register of deeds in whose office the deed of sale is deposited for the benefit of the purchaser.

Under the bill, the register of deeds would be prohibited from determining the amount necessary for redemption. Further, the bill requires that the purchaser attach an affidavit with the deed to be recorded. That affidavit must state the exact amount required to redeem the property, including any daily per diem amounts. In addition, the date by which the property must be redeemed must be stated on the certificate of auctioneer. The amount stated in the affidavit must be the amount necessary to satisfy the requirements for redemption under this section.

Currently, a purchaser's deed is void if the mortgagor (or any person lawfully claiming under the mortgagor), redeems the entire premises by paying the sum that was bid for the premises within the applicable time period to the purchaser, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser. Under the bill, the mortgagor or his or her successors in interest could no longer redeem the mortgage through payment to the register of deeds. The bill also would increase the fee the register of deeds may charge for the care and custody of the redemption money from \$3 to \$5.

Within one year from the time when sale on execution is made, the real estate sold (or any distinct lot, tract, or portion that is separately sold) may be redeemed by payment to the purchaser, his or her personal representatives or assigns, or the officer who makes the

sale, or the register of deeds in whose office the certificate of sale is recorded for the use of such purchaser. However, under the bill, the register of deeds would be prohibited from determining the amount necessary for redemption. Further, the bill requires that the purchaser attach an affidavit with the deed to be recorded. That affidavit must state the exact amount required to redeem the property, including any daily per diem amounts. In addition, the date by which the property must be redeemed must be stated on the certificate of auctioneer. The amount stated in the affidavit must be the amount necessary to satisfy the requirements for redemption under this section.

The act also provides that certain judgment creditors may acquire the interest of the original purchaser. The amount required to be paid may be paid to the purchaser or creditor, his or her representatives or assigns, the officer who made the sale, or the register of deeds in whose office the certificate of sale is recorded. The bill would remove reference to the register of deeds.

Finally, the bill specifies that if an automation fund is established under the Revised Judicature Act, any fees or charges collected by the register of deeds would be credited to the automation fund.

The bill would repeal Sections 3272 (which requires that the register of deeds give notice of redemption payments received) and 6058 (which provides for payment to the register in certain instances when real estate is redeemed that had previously been contracted to be sold) of the Revised Judicature Act.

Senate Bill 930 would amend the Michigan Estate Tax Act (MCL 205.203). The act authorizes the circuit court to order the sale of property for the nonpayment of inheritance taxes, according to procedures prescribed by the act. The deed is void, however, if the person or persons owning the property or an interest in it, or the person's heirs, executors, administrators, or a person lawfully claiming from or under that person, within six months after the sale, redeems the entire premises sold, by paying to the register of deeds in whose office the deed is deposited for the benefit of the purchaser or the purchaser's executors, administrators, or assigns the amount that was bid plus interest, a \$1 fee for the care and custody of the redemption money, and the recording fee paid by the purchaser.

The bill requires that the redemption amount be determined by the redeeming party without the assistance of the register of deed. Further, the purchaser would be required to attach an affidavit with the deed to be recorded stating the exact amount required to redeem the property, including any daily per diem amounts. The date by which the property must be redeemed would have to be stated in the certificate of the commissioner (or other person making the sale). The amount stated in the affidavit must be the amount necessary to satisfy the requirements for redemption. The bill also specifies that the purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem it. The designee may charge a fee as stated in the affidavit. The bill would require the purchaser to accept the amount computed by the designee.

The bill would eliminate the requirement that the property owner or other person pay the register of deeds to redeem the property. Instead, he or she would have to pay the purchaser or his or her executors, administrators, or assigns the amount that was bid plus interest.

Senate Bill 931 would amend the Michigan State Housing Development Authority Act (MCL 125.1448i & 125.1449j). The act authorizes the circuit court to foreclose mortgages and land contracts held by the authority. A mortgagor or the vendee of a land contract, his or her heirs, executors, or administrators, or any person lawfully claiming from or under the mortgagor or vendee or the heirs, executors or administrators, may redeem the entire premises sold by paying, within six months of the sale, the amount bid plus interest to the purchaser, the purchaser's executors, administrators, or assigns, or the register of deeds in whose office the deed of sale is deposited for the benefit of the purchaser.

The bill would prohibit the register of deeds from assisting the redeeming party when he or she calculated the redemption amount. The bill also would require the purchaser to attach an affidavit with the deed to be recorded that states the exact amount required to redeem the property, including any daily per diem amounts, and the date by which the property must be redeemed also would have to be stated in the certificate of sale. The amount stated in the affidavit must be the amount necessary to satisfy the requirements for redemption. Further, the purchaser could include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee could charge a fee, as stated in the affidavit. Under the bill, the purchaser would be required to accept the amount computed by the designee.

Finally, the bill specifies that if an automation fund is established under the Revised Judicature Act, any fees or charges collected by the register of deeds would be credited to the automation fund.

#### **HOUSE COMMITTEE ACTION:**

The Committee on Local Government and Urban Policy adopted one amendment to Senate Bill 929, and inserted that amendment in three sections. The amendment requires that the amount stated in the affidavit be the amount necessary to satisfy the requirements for redemption.

Three amendments were adopted for Senate Bill 930. They would require 1) that an affidavit be attached to the deed to be recorded, and 2) that the amount stated in the affidavit be the amount necessary to satisfy the requirements for redemption. The third amendment would allow the purchaser to include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee could charge a fee, as stated in the affidavit. And, the purchaser would be required to accept the amount computed by the designee.

Four amendments were adopted for Senate Bill 931, three of them identical to those adopted for Senate Bill 930. The three amendments would require 1) that an affidavit be attached to the deed to be recorded, and 2) that the amount stated in the affidavit be the amount necessary to satisfy the requirements for redemption. The third amendment would allow the purchaser to include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee could charge a fee, as stated in the affidavit. And, the purchaser would be required to accept the amount computed by the designee. Finally, a fourth amendment specifies that the redemption amount would have to be determined by the redeeming party without the assistance of the register of deeds.

**FISCAL IMPACT:**

The bills would have no effect on state revenue. The bills would reduce local government revenue by an indeterminate but insignificant amount.

**POSITIONS:**

The Michigan Association of Registers of Deeds supports the bills. (12-7-04)

The Michigan Association of Counties supports the bills. (12-7-04)

The Michigan Mortgage Brokers Association is neutral on the bills. (12-8-04)

The Michigan Credit Union League is neutral on the bills. (12-8-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.