

Legislative Analysis



FORECLOSURE BY ADVERTISEMENT

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House Bill 5859

Sponsor: Rep. Alexander C. Lipsey

Committee: Commerce

Complete to 5-10-04

A SUMMARY OF HOUSE BILL 5859 AS INTRODUCED 5-6-04

The bill would amend Section 3204 of the Revised Judicature Act (MCL 600.3204 et al), which deals with the foreclosure of mortgages by advertisement, a common method of foreclosure that involves publication and posting of foreclosure and sale notices. The bill would specify that if the party foreclosing a mortgage by advertisement is not the original mortgagee, a chain of title must exist prior to the date of sale under Section 3216, evidencing the assignment of the mortgage to the party foreclosing the mortgage.

Currently, the section says that a party can foreclose by advertisement if, among other things, the mortgage containing the power of sale has been properly recorded and, if the party foreclosing is not the original mortgagee, “a record chain of title exists evidencing the assignment of the mortgage to the party foreclosing the mortgage”. The words in quotation marks would be deleted. (The bill is understood, as a result, to require the chain of title to exist before the sale of the property rather than prior to initiating the foreclosure by advertisement.)

[Section 3216 referred to above addresses the nature of the public sale of mortgaged property being foreclosed on: it must be held between 9 a.m. and 4 p.m. where the circuit court is held in the county in which the premises to be sold are located; and the sale is to the highest bidder.]

The bill also would 1) replace the term “suit” where it appears with the term “action”; and 2) require every notice of foreclosure by advertisement to contain, among other things, the name of the mortgagor, the original mortgagee, and the foreclosing assignee of an assignment of the mortgage (the underlined language would be added).

FISCAL IMPACT:

The bill would appear to have no significant fiscal impact on the judiciary.

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