

Legislative Analysis



REDEMPTION OF FORECLOSED PROPERTIES: CALCULATION OF REDEMPTION AMOUNT

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House Bill 5267 as passed by the House
Sponsor: Rep. Fred Miller
Committee: Intergovernmental and Regional Affairs

Second Analysis (7-16-10)

BRIEF SUMMARY: The bill would allow (but not require) the registers of deeds in Oakland, Macomb, and Kent counties to calculate the amount of money necessary to redeem a foreclosed property.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governments. There will likely be increased administrative costs associated with the register of deeds determining the amount necessary for redemption. The register of deeds would be allowed to charge up to \$50 for determining the redemption amount, which could offset much, if not all, of the increased costs.

THE APPARENT PROBLEM:

Michigan's suffers the highest unemployment rate in the nation. Nearly a million jobs have been lost during the past decade--tens of thousands in the most recent quarter alone. When workers lose their income they cannot pay-off the debts they have incurred to own their homes.

Michigan is reported to have the sixth highest rate of housing foreclosures in the nation. Thousands of families have lost their homes--8,000 last year in Oakland County alone. The highest foreclosure zip codes in Michigan are located in Wayne, Livingston, Macomb, Oakland, Lapeer, and St. Clair Counties. See *Background Information*.

Those who cannot make their house payments watch as their mortgages are foreclosed by lenders, and then their homes put up for sale at sheriffs' auctions. Following the sheriff's auction, a homeowner has six months to redeem the home. Redemption requires writing a check to the lender for the amount owed--including among other things, back taxes, insurance costs, per diem fees, and interest. That check, tendered at the register of deeds office, preserves the foreclosed-upon homeowner's right to redeem his home.

According to committee testimony, about five percent of those whose homes are foreclosed upon find the money to redeem their homes within the six-month redemption period. Some have missed the six-month window because lenders have not responded at all, or have responded inaccurately, when asked how much is owed. Others report they have been charged fees by the lenders, ranging from \$200 to \$350, in order to learn how much they owe.

County Registers of Deeds have never had the authority under the law to calculate the redemption amount on foreclosed properties. Nonetheless, many county registers did so for more than 50 years, without mishap. When lenders were local to the community, registers typically calculated a redemption amount and informally checked its accuracy with the local banker before sharing it with the foreclosed upon borrower. They seldom charged a fee.

As local banks were subsumed by out-of-state operations and the number of mortgage foreclosures skyrocketed during the economic crisis, the Michigan Register of Deeds Association sought a change in the law that explicitly prohibited registers of deeds from calculating a redemption amount. The association did so to relieve registers from the pressure exerted by lenders and title companies as the number of foreclosures mounted. That prohibition went into effect in 2005.

Two county registers of deeds--those in Oakland and Macomb Counties--would like to once again provide their residents with service that includes the calculation of the amount needed to redeem a property in foreclosure. Legislation has been introduced to allow, but not require, those counties, as well as Kent County, to offer this service.

THE CONTENT OF THE BILL:

House Bill 5267, as amended, would amend Chapter 32 of the Revised Judicature Act, which deals with the foreclosure of mortgages by advertisement, to allow a register of deeds to calculate the amount of money necessary to redeem a foreclosed property; this would apply only in counties with a population of more than 500,000 and less than 1,500,000. (This applies to Kent, Macomb, and Oakland counties.)

Currently under the law, a person can redeem foreclosed property by paying the amount required within the applicable time limits to the purchaser or the purchaser's executors, administrators, or assigns, or to the county register of deeds in whose office the deed is deposited for the benefit of the purchaser. While the law describes the amount that is to be paid (the sale price from the winning bid of the sheriff's sale plus daily interest through the date of redemption based on the mortgage interest, the amount of the sheriff's fee, and an additional \$5 fee if the payment is made to the register of deeds), the law prohibits a county register of deeds from determining the amount of money necessary for the redemption.

House Bill 5267 would allow the appropriate payment to the purchaser or the purchaser's personal representative or assigns, or to the register of deeds. Further, the bill specifies that the register of deeds of a county having a population of more than 500,000 and less than 1,500,000 could determine the amount necessary for redemption. And, the bill specifies that the register of deeds may elect to provide the amount calculated under this subsection only to the person entitled to redeem the property. Under the bill, there would be no liability for damages against a county, a register of deeds, or an employee of a county or of a register of deeds that were caused by an incorrect determination of an amount necessary for redemption. Further, the bill specifies that the purchaser would

have to accept the amount calculated by the register of deeds. Finally, a register of deeds could charge not more than \$50 for determining the amount necessary for redemption.

House Bill 5267 would also require that a purchaser or the purchaser's heirs or representatives who pay back taxes and certain fees and insurance, file their affidavits, receipts, or cancelled checks evidencing payment with the register of deeds 30 days or more before the last day of the applicable redemption period (if the redemption period is more than 30 days) or, 10 days or more before the last day of the redemption period (if the redemption period is less than 30 days).

MCL 600.3240

BACKGROUND INFORMATION:

See on the last page a list of the "Top 50 Foreclosure Rates" in Michigan as published in the *Detroit Free Press* on October 22, 2009. It lists foreclosures by county, city, and zip code.

ARGUMENTS:

For:

Proponents of this bill note that a 2005 law prohibits local Registers of Deeds from providing a redemption amount to homeowners who want to redeem a home from foreclosure. Currently the only way homeowners in a foreclosure crisis can get this amount is by contacting the lender or the lender's agent--an agent who is sometimes of little help because he often has a financial interest in seeing the home foreclosed upon. Consequently, many homeowners who are trying to save their homes have not been able to get the correct amount of money they owe their lenders. Their lenders--often out-of-state now that the banking industry is deregulated and operates across borders and mortgages are routinely sold--have changing telephone numbers, and their phone calls are not returned. Some have missed the six-month window allowed as a redemption period, because lenders have not responded at all, or have responded inaccurately, when asked how much is owed. Others report they have been charged fees by the lenders, ranging from \$200 to \$350, in order to learn how much they owe.

About five percent of those whose homes are foreclosed-upon find the money to redeem their homes within the six-month redemption period. For 50 years, until the 2005 prohibition went into effect, the registers of deeds in Oakland and Macomb counties calculated the redemption amount for their residents, without mishap.

At a time when thousands of Oakland and Macomb county residents are having their mortgages foreclosed, the county commissioners and registers of deeds of both counties would like to offer this service again. This legislation would allow them to do so. They note that the legislation is permissive and not mandatory, and applies to only three counties. They argue that this bill and other bills that will be introduced to solve this

problem statewide are not mutually exclusive. They note that the bills, taken together, will better allow county registers of deeds to serve their communities.

Against:

Although this bill is permissive and applies to only three counties--Oakland, Macomb, and Kent--many registers of deeds throughout the state oppose it. According to committee testimony, they do so because a different three-bill package soon to be introduced in the House and Senate better protects the registers of deeds who would collect thousands of dollars and bear the personal liability in the event of gross negligence, for both that money's safe-keeping, and also the accuracy of their calculations.

Opponents of the bill also argue that the calculations tallied by the registers of deeds would seldom stand up under law, since they would be subject to audit and rejection by the lenders. They note that their calculations would undoubtedly fall short of the amount owed, because the fees charged by the lenders are not known. Further, they ask: What happens when the check written by the foreclosed upon homeowner is rejected by the lender because the amount is inaccurate? And, how is the money that has been collected then returned to the foreclosed-upon homeowner?

Instead of this legislation, opponents favor bills that would allow them to send a letter to the lender to ask, on behalf of the foreclosed-upon homeowner, the precise amount that is owed. They say that lenders should be required to disclose all of their costs and fees associated with the redemption, including insurance, taxes, per diems, and interest. They also favor a bill that sets fines on the lending institutions if their responses to foreclosed-upon homeowners are inaccurate or untimely. They argue that registers of deeds have, historically, served as the disinterested third party in these kinds of transactions between lenders and borrowers. Their office is the place a foreclosed-upon homeowner can tender a check to the lender, in order to preserve the right to redeem a home: no more, no less. This stance of "disinterested third party" is jettisoned when registers of deeds are asked to calculate the amount owed on behalf of the foreclosed-upon homeowner.

Against:

The Michigan Bankers Association opposes the bill because it would set up two different foreclosure redemption systems in Michigan. Under the bill, Oakland, Macomb, and Kent County could adopt a policy allowing their registers of deeds to calculate the amount needed to redeem a foreclosed upon home. According to the association, the two different policies--one allowing calculation of the redemption amount, the other prohibiting it--could lead to confusion for borrowers, and cause banks that do business in several counties to face questions about their compliance with such a law.

Generally, the Michigan Bankers Association observes that "borrowers who are going through the foreclosure process have all the information that they need to determine a redemption amount. But if there is a question, or the borrower does not know the redemption amount, the lender should determine that amount or the register could assist by using the registered document filed when the house is sold."

POSITIONS:

The Oakland County Clerk/Register supports the bill. (10-27-09)

The Macomb County Clerk/Register supports the bill. (10-27-09)

The Oakland County Board of Commissioners supports the bill. (10-27-09)

The Kent County Clerk/Register urges a compromise to serve registers of deeds statewide. (11-10-09)

The Michigan Association of Registers of Deeds opposes the bill. (10-27-09)

The Registers of Deeds in the following counties have expressed opposition to the bill: Livingston, Branch, Ingham, Isabella, Lapeer, Jackson, Montcalm, Barry, Berrien, Eaton, Genesee, Saginaw, Allegan, and Clare. (On 10-27-09 or 11-10-09)

The Michigan Bankers Association opposes the bill. (11-10-09)

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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.

Top 50 Foreclosure Rates in Michigan

<i>County</i>	<i>City</i>	<i>Zip Code</i>	<i>Repossessions</i>	<i>Foreclosure Rate (1 foreclosure per # of households)</i>
Wayne	Detroit	48205	4166	5.23
Wayne	Detroit	48224	3718	5.34
Wayne	Detroit	48228	4407	5.6
Wayne	Detroit	48219	3305	6.9
Livingston	Hamburg	48139	6	7
Wayne	Detroit	48234	2377	7.06
Wayne	Detroit	48235	2816	7.27
Wayne	Detroit	48227	3067	7.34
Wayne	Detroit	48223	1723	7.88
Macomb	Warren	48089	1639	8.15
Oakland	Hazel Park	48030	924	8.21
Macomb	Eastpointe	48021	1623	8.34
Wayne	Detroit	48221	2078	8.36
Oakland	Pontiac	48342	912	8.69
Oakland	Pontiac	48341	898	8.96
Wayne	Redford Twp	48240	806	9.23
Oakland	Southfield	48075	1045	9.3
Oakland	Pontiac	48340	1027	9.98
Oakland	Southfield	48096	1100	9.98
Wayne	Redford Twp	48239	1518	10.04
Wayne	Harper Woods	48225	636	10.4
Macomb	Warren	48091	1286	10.44
Wayne	Inkster	48141	1122	10.71
Wayne	Detroit	48238	1714	10.88
Wayne	Melvindale	48122	438	10.89
Macomb	New Haven	48048	182	11.14
Wayne	Ecorse	48229	430	11.17
Wayne	Detroit	48213	1409	11.18
Wayne	Dearborn	48126	1511	11.19
Wayne	Dearborn Heights	48125	813	11.24
Wayne	River Rouge	48218	363	11.41
Wayne	Romulus	48174	1010	11.52
Wayne	Detroit	48206	1226	11.66
Wayne	Lincoln Park	48146	1427	11.72
Wayne	Highland Park	48203	1589	11.83
Wayne	Detroit	48294	1465	11.93
Macomb	Washington	48094	419	12.09
Lapeer	North Branch	48461	221	12.15
Lapeer	Otter Lake	48464	71	12.15
Livingston	Fowlerville	48836	333	12.45
Wayne	Westland	48186	1168	12.77
Oakland	Oak Park	48237	1006	12.81
Macomb	Roseville	48066	1625	12.92
St. Clair	Capac	48014	101	13.46
Macomb	Mt. Clemens	48043	572	13.54
Wayne	Detroit	48217	316	13.57
Macomb	New Baltimore	48047	908	13.65
Wayne	Detroit	48210	1070	13.71
Wayne	Hamtramck	48212	1251	13.71
Lapeer	Columbiaville	48421	196	13.74