

REDEMPTION PERIOD AFTER SHERIFF'S SALE: PROPERTY INSPECTIONS BY PURCHASER AND SUMMARY PROCEEDINGS FOR POSSESSION

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House Bill 5277

Sponsor: Rep. Mike Callton, D.C.

Committee: Financial Services

Complete to 2-7-14

A SUMMARY OF HOUSE BILL 5277 AS INTRODUCED 2-4-14

House Bill 5277 would amend Chapter 32 of the Revised Judicature Act, which deals with the foreclosure of mortgages by advertisement (as contrasted with judicial foreclosure). Section 3240 of the RJA provides for a statutory redemption period after foreclosed property is sold at a sheriff's sale; during this period, the delinquent borrower can pay the loan in full to redeem the property. The length of the redemption period varies depending on various circumstances from 30 days to one year, but is typically six months.

Among other things, House Bill 5277 would rewrite recently enacted provisions (in Public Act 104 of 2013) that allow the delinquent borrower's right of redemption to be extinguished and the rights to the property to be vested in the purchaser when damage to the property has occurred or is imminent.

Currently, the purchaser of the property may carry out inspections of the property during the redemption period to guard against damage to the property. When certain kinds of specified damage have occurred or are imminent, the purchaser can begin summary proceedings for possession of the property or file an action for any other relief necessary to protect the property from damage. If a judgment for possession is entered in favor of the purchaser, the right of redemption is extinguished and full title to the property vests in the purchaser. House Bill 5277 would retain the main elements of the current provisions but, generally speaking, would impose more restrictions on inspections, provide more notice to mortgagors before interior inspections, and offer more opportunities for mortgagors (borrowers) to repair or correct damage to property or deteriorating conditions.

Purchaser inspections of property

Under House Bill 5277, after a sheriff's sale, and periodically throughout the redemption period, the purchaser could inspect the property, including the exterior and interior of any structures on the property. With certain exceptions, the purchaser could not enter any structure to inspect the interior more often than once per calendar month and not more often than three times in any six months of the redemption period. The purchaser would have to give the mortgagor (borrower) at least 72 hours' notice before an inspection of the

interior and conduct the inspection at a reasonable time of day as prearranged with the mortgagor.

The restrictions on the frequency of inspections and the requirement of 72 hours' notice would not apply if the purchaser had reasonable cause to believe that damage to the property is imminent or has occurred.

Notification of intent to inspect

A purchaser that intends to inspect the property (as described above) would be required to notify the mortgagor and any other person that has possession of the property of all of the following in writing: (1) the identity of the purchaser; (2) the residence or business address, mailing address, telephone number, and, if applicable, electronic mail address at which the purchaser can be contacted; and (3) the details of the purchaser's rights of inspection (as delineated in the bill).

Summary proceedings for possession

If an inspection is unreasonably refused or if damage is imminent or has occurred, the purchaser could immediately begin summary proceedings for possession of the property or file an action for any other relief necessary to protect the property from damage. (The definition of the term "damage" is provided later in the summary.)

Before beginning summary proceedings for possession, the purchaser would have to provide notice to the mortgagor (borrower) by certified mail, physical posting on the property, or in any other manner reasonably calculated to achieve actual notice, that the purchaser intends to begin summary proceedings if the damage or condition is not repaired or corrected within seven days.

A purchaser could not begin summary proceedings if (1) the damage or condition is repaired or corrected within the seven-day period or (2) the mortgagor and purchaser agree on procedures and a timeline to repair the damage or correct the condition and the procedures are completed by the original date agreed to or by an agreed-upon extended date.

Right to redemption extinguished

In deciding whether to enter judgment for possession in favor of the purchaser, the judge would have to consider the totality of the circumstances surrounding the damage or condition, including the cause; whether the mortgagor has taken appropriate steps to repair the damage or correct the condition and to secure the property from further damage; whether the mortgagor has promptly contacted the purchaser and any property insurer regarding the damage or condition; and whether any delay in repairs or corrections is affirmatively caused by the purchaser or property insurer.

If a judgment for possession was entered in favor of the purchaser, the right to redemption would be extinguished and full title to the property would vest in the purchaser.

Definition of "damage"

The bill contains a definition of "damage" that is similar to that found in existing law; "damage" would be defined as including (although not limited to) any of the following:

- The failure to comply with local ordinances on maintenance of the property or blight prevention, if the failure was the subject of enforcement action by the appropriate governmental unit.
- A boarded up or closed off window or entrance.
- Multiple broken and unrepaired window panes.
- A smashed through, broken off, or unhinged door.
- Accumulated rubbish, trash, or debris.
- Stripped plumbing, electrical wiring, siding, or other metal material.
- Missing or destroyed structural aspects or fixtures, including a furnace, water heater, air conditioning unit, countertop, cabinetry, flooring, wall, ceiling, roofing, and toilet, among other fixtures.
- Deterioration below community standards for public safety and sanitation, or being in imminent danger of such deterioration.
- A condition that would justify recovery of the premises under Section 5714 (1)(D) of the RJA. That section address cases where a person willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises.

Rebuttable presumptions about liability for damage

There would be a rebuttable presumption that the mortgagor (borrower) is liable to the purchaser for all damage to the property that occurs during the redemption period if the mortgagor does any of the following: (1) fails to consent to an inspection of the property; (2) fails to provide timely notice to the purchaser of the mortgagor's intent to move from the property (as described later); or (3) fails to surrender control of the property in a manner that reasonably provides the purchaser with an opportunity to secure it.

Regarding requirement (2) above, the bill would require a mortgagor who intends to move from the property at any time after the foreclosure sale to inform the purchaser at least 10 days before vacating the property so that the property could be secured.

There would be a rebuttable presumption that the mortgagor is not liable for damage to the property that occurs after the mortgagor surrenders control of the property if the mortgagor consents to inspections, provides timely notice of the intent to move, and surrenders control in a manner that reasonably provides the purchaser with the opportunity to secure the property.

Repealers

The bill would repeal Sections 3205, 3205e, and 3206. Sections 3205 and 3205e contain provisions relating other section that have already been repealed. Section 3206 is a section added in 2013 that applies to loss mitigation procedures that occur before the foreclosure of a mortgage in certain specified circumstances that are related to mortgages where the servicing agent was a defendant that entered into a consent judgment in United

States of America, et al. v Bank of America Corp., et al. Also, the bill would strike language in Section 3204 that refers to other sections that are either already repealed or to be repealed.

FISCAL IMPACT:

The bill does not appear to have any direct fiscal impact on state and local government. A fiscal analysis is in process.

Legislative Analyst: Chris Couch

■ 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.