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House Bill 5277 (Substitute H-3 as passed by the House)
Sponsor: Representative Mike Callton, D.C.
House Committee: Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 3-13-14

CONTENT

The bill would amend Chapter 32 of the Revised Judicature Act (which provides for foreclosure of mortgages by advertisement) to do the following:

- **Require a purchaser of foreclosed property to issue notice before conducting an interior inspection of the property during the redemption period.**
- **Allow a purchaser to request information on the condition of the interior of any structures on the property.**
- **Require a mortgagor to inform the purchaser of the mortgagor's intent to vacate the foreclosed property after the foreclosure sale.**
- **Specify factors that a court would have to consider in granting a judgment of possession in favor of a purchaser.**
- **Create a rebuttable presumption that a mortgagor would be liable to the purchaser for damage to the property if the mortgagor failed to submit requested information or consent to requested inspections.**
- **Create a rebuttable presumption that a mortgagor would not be liable to the purchaser for damages to the property if mortgagor consented to requested inspections and submitted requested information.**

The bill also would delete provisions and repeal sections related to a loan modification program for residential property, under sections that were previously repealed.

The bill would be effective 30 days after it was enacted.

Notices & Inspections

Chapter 32 sets forth procedures for foreclosure of mortgaged property by advertisement (rather than through the judicial system). After required notices have been given, the property may be sold at a sheriff's sale. After the sale, there is a redemption period (ranging from 30 days to one year, but typically six months) during which the mortgagor (the delinquent borrower) has the opportunity to pay the loan and redeem the property. Periodically, during the redemption period, the purchaser of the property at the sheriff's sale may inspect the property and all ancillary structures.

Under the bill, after a sale, if a purchaser intended to conduct an interior inspection of the property during the redemption period, the purchaser would have to provide an initial notice to the mortgagor and any people having possession of the property. The purchaser would have to provide the notice by certified mail, physical posting on the property, or any other

method reasonably calculated to achieve actual notice. The notice would have to include all of the following information:

- The purchaser's identity.
- The contact information for the purchaser, including business or residential address, mailing address, telephone number, and e-mail address, if applicable.
- The date and amount of the sale, and the estimated expiration date of the redemption period.
- The details of the purchaser's rights of inspection.
- One or more alternative methods for surrendering control of the property.
- A statement that if the mortgagor intended to vacate the property after the sale, he or she would have to notify the purchaser, and if the mortgagor failed to do so, he or she could risk heightened liability for damage to the property.

Another notice would be required before the purchaser conducted an initial inspection of the interior of any structures on the property. This notice would have to be given in the same manner as described above, and at least 72 hours in advance. The inspection would have to be set in the notice at a reasonable time of day in coordination with the mortgagor, if possible.

The purchaser would be allowed to conduct any number of exterior inspections of the property and its structures during the redemption period.

Requests for Evidence or Information

Under the bill, after the initial inspection, the purchaser could request that the mortgagor provide information on, or evidence of, the condition of the interior of any structures on the property in any form reasonably necessary to assess property's condition. A request could only be made once in a calendar month, or a maximum of three times in any six months of the redemption period, unless the purchaser had reasonable cause to believe that damage to the property was imminent or had occurred.

If the mortgagor refused to provide requested information or evidence within five business days, or the information or evidence revealed that damage had occurred or was imminent, the mortgagor could schedule an inspection of the interior of any structure on the property. Notice would have to be given as specified above at least 72 hours in advance. If the information or evidence were provided, and damage had not occurred or did not appear imminent, then the purchaser could not conduct an interior inspection related to the request.

Summary Proceedings

The Act allows a purchaser to commence summary proceedings for possession of the property or to file an action for other relief necessary to protect the property if an inspection is unreasonably refused or if damage to the property is imminent or has occurred. The court may not enter a judgment for possession if, before the hearing for possession, the mortgagor reports any damage to the property. The bill would delete these provisions.

The bill would require the purchaser to provide notice to the mortgagor that the purchaser intended to commence summary proceedings if the damage or condition causing reasonable belief that damage was imminent were not corrected or repaired within seven days. A purchaser could not commence summary proceedings if either of the following conditions existed: a) the damage or condition was repaired or corrected within the seven-day period described in the notice of intent, or b) the mortgagor and purchaser agreed on a procedure and timeline to repair or correct the damage or condition, and the damage or condition was corrected by the agreed-upon date.

The bill would require the court to consider the totality of the circumstances in determining whether to enter judgment for possession in favor of the purchaser, and would prescribe factors that the court would have to consider. These include: a) the cause of the damage or condition, b) whether mortgagor had taken appropriate steps to repair or correct the damage or condition and prevent further damage, c) whether the mortgagor had contacted the purchaser and any property insurer regarding the damage or condition, and d) whether the purchaser caused any delay in repairs or corrections.

As currently provided, if a judgment for possession were entered in favor of the purchaser, the right of redemption would be extinguished and title to the property would vest in the purchaser.

The bill specifies that "damage" would include: a) the failure to comply with local ordinances regarding maintenance of the property or blight prevention, if the failure were the subject of enforcement action by the government unit, b) an exterior condition that presented a significant risk to the security of the property or a significant risk of criminal activity occurring on the property, c) stripped plumbing, electrical wiring, or other metal material, d) missing or destroyed structural aspects or fixtures, e.g., a furnace, water heater, air conditioning unit, cabinetry, flooring, wall, ceiling, roofing, toilet, or any other fixtures, e) deterioration below, or being in imminent danger of deterioration below community standards for public safety and sanitation as established by statute or ordinance, or f) a condition that would justify recovery of the premises under Section 5714(1)(d). (Section 5714(1)(d) allows a person entitled premises to recover possession through summary proceedings if the person in possession willfully or negligently causes a serious and continuing health hazard or physical injury to the premises.)

(This language is similar to the current description of damage.)

The bill also would define "fixtures" as that term is defined in the Uniform Commercial Code: "goods that have become so related to particular real property that an interest in them arises under real property law".

Rebuttable Presumptions

The bill states that if a purchaser provided notice of intent to conduct an interior inspection, and the mortgagor intended to vacate the property at any time after the foreclosure sale, the mortgagor would have to inform the purchaser by electronic or certified mail 10 days before vacating so the property could be secured. If the purchaser provided notice of intent to conduct an interior inspection, there would be a rebuttable presumption that the mortgagor would be liable to the purchaser for all damages that occurred before the redemption period expired if the mortgagor a) failed to consent to an initial or subsequent inspection, if requested, or failed to comply with a request for information, b) failed to provide timely notice to the purchaser of intent to vacate, or c) failed to surrender the property in a manner that reasonably provided the purchaser with the opportunity to secure it.

There would be a rebuttable presumption that a mortgagor was not liable for damages that occurred after surrender if the mortgagor a) consented to initial and subsequent inspections, and complied with a request for information on the condition of the property, b) provided timely notice of intent to vacate, and c) surrendered control of the property in a manner that reasonably provided the purchaser with the opportunity to secure it.

The purchaser would be required to designate one or more alternative methods for surrender of control of the property.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.