FINAL BILL REPORT
HB 1826

C 122 L 09
Synopsis as Enacted

Brief Description: Addressing the proceeds from foreclosure sales.

Sponsors: Representatives Rodne, Pedersen and Santos.

House Committee on Judiciary
Senate Committee on Financial Institutions, Housing & Insurance

Background:

Mortgages and deeds of trust are two forms of security interest in real property used for real estate financing. A mortgage is a pledge of real property as security for a debt owed to the lender (mortgagee). A mortgage creates a lien on the real property. A deed of trust is basically a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary).

A mortgage may be foreclosed only through a judicial proceeding according to detailed statutory requirements. Judicial foreclosure allows the mortgagee to obtain a deficiency judgment if the sale does not satisfy the mortgage obligation. In addition, the judicial foreclosure process allows for statutory redemption rights for the mortgage debtor and certain junior lien holders. Statutory redemption rights allow the mortgage debtor and other lien holders a certain period of time after the foreclosure sale to buy the property from the purchaser for the price paid at the sale.

Deeds of trust may be foreclosed either through a judicial process or a non-judicial trustee's sale process. Non-judicial foreclosure does not include the ability to obtain a deficiency judgment or statutory redemption rights.

When a mortgage is foreclosed, a statute provides that any surplus proceeds from the sale that remain after the mortgage obligation has been paid must be disbursed to the mortgage debtor. In contrast, the Deed of Trust Act provides a process for junior liens or interests in the property to attach to the surplus proceeds that remain after the expenses of the sale and the deed of trust obligation are paid. Surplus proceeds are deposited with the clerk of the court and may be disbursed upon court order.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary:

Any surplus proceeds of a mortgage foreclosure sale that remain after the mortgage obligation has been paid must be applied to all other interests in, or liens or claims against, the property in the order of priority that the interest, lien, or claim attached to the property. Any remaining surplus must be paid to the mortgage debtor.

Votes on Final Passage:

House	96	0
Senate	46	0

Effective: July 26, 2009