

HOUSE BILL REPORT

HB 1826

As Passed Legislature

Title: An act relating to the proceeds from foreclosure sales.

Brief Description: Addressing the proceeds from foreclosure sales.

Sponsors: Representatives Rodne, Pedersen and Santos.

Brief History:

Committee Activity:

Judiciary: 2/11/09, 2/12/09 [DP].

Floor Activity

Passed House: 3/3/09, 96-0.

Passed Senate: 4/8/09, 46-0.

Passed Legislature.

Brief Summary of Bill

- Provides that surplus proceeds from a mortgage foreclosure sale must be applied to other interests in or liens or claims against the property before being paid to the mortgage debtor.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Edie Adams (786-7180)

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

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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 land 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.

Summary of Bill:

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.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The mortgage foreclosure statute has no provision to deal with the rights of junior lien holders whose liens are extinguished through the foreclosure process. The bill closes this major loophole by making the statute consistent with the Deed of Trust Act. In order to protect their interests, junior lien holders have to file cross claims or independent lawsuits. These separate procedures require more time, increased legal costs and attorneys' fees and clog up the court system. These costs eventually get passed onto the mortgage debtor, so making this change will increase the amount of surplus funds that are available for the debtor.

(With concerns) As long as the process created by the bill applies only to judicial foreclosures, there are no concerns.

(Opposed) None.

Persons Testifying: (In support) Representative Rodne, prime sponsor; and Brian Sommer.

(With concerns) Melissa Huelsman.

Persons Signed In To Testify But Not Testifying: None.