

AG Mills Summary of Foreclosure Legislation

Part A - Transfer Tax Loophole

- Reports by the Bureau of Consumer Credit Protection indicated that transfer tax revenues were lagging behind expectations – reducing funding available for mortgage counseling services. BCCP reports indicated that a part of the reason for the lagging revenues was because some lenders and servicers were avoiding the tax by transferring properties to entities other than the mortgagee, such as to the servicer or to the owner of the loan.
 - Normally when a property is sold, the buyer and the seller each pay half of the transfer tax.
 - The 2009 foreclosure legislation removed exemptions for transfers of foreclosed property from a mortgagee to itself or as part of a deed-in-lieu of foreclosure.
 - During the Foreclosure Study, we learned that plaintiffs were also avoiding the tax by skipping the deed at the foreclosure sale and, instead, assigning the rights as high bidder at the foreclosure sale to a third party. The assignee then had the property deeded to it, which qualified as a deed to a third party, and escaped the tax.
 - A new type of assignment has recently surfaced in which the plaintiff assigns the foreclosure judgment itself to a third party, along with “all its right, title and interest by virtue of [the judgment] in and to the real estate”.
- LD 1389 proposed closing this loophole regarding transfers between servicers and mortgagees.
- This proposed amendment addresses the issue of “assignments” as well.

Part B – Order of Abandonment for Residential Properties in Foreclosure

- Foreclosures take a long time – even when the property is abandoned and no one has expressed an interest in retaining the property. The Judiciary presented data that showed that some of the longest foreclosures are uncontested cases.
 - Part B seeks to establish an expedited procedure for properties which are abandoned in uncontested foreclosure cases.
 - Part B establishes a new Section of Title 14.
 - If a plaintiff produces clear and convincing evidence of abandonment AND the case is uncontested – the court may expedite the case on the docket and the redemption period is shorted from 90 days to 45 days.
 - The statute suggests indicia of abandonment, but does not direct the court to limit its finding to these factors.
- Rather than focus on how long a foreclosure can or should take, let’s focus on quickly returning a property to the market if it has truly been abandoned.

Part C – Adjournments of public sales of abandoned and foreclosed properties

- I heard during the foreclosure study that banks or servicers will sometimes postpone foreclosure sales repeatedly. Such postponements, or “adjournments”, may serve a useful purpose if the bank or servicer is continuing to negotiate with the homeowner.
- However, we heard that such postponements also happen with abandoned property, which have no homeowner returning to it. These postponements can keep such properties abandoned and deteriorating longer than necessary – harming the interests of municipalities and neighborhoods.
 - Part C proposes to limit adjournments to only one for properties determined by a court to be abandoned.
 - The court may permit additional adjournments if the bank or servicer can demonstrate good cause for the adjournment.

Part D – Challenge period for tax-acquired property

- When a property is acquired by a municipality for unpaid taxes, the new owner does not obtain marketable title until 15 years has passed from the foreclosure.
- This length of time affects the marketability of the properties and discourages investment in the property, which harms municipalities and neighborhoods.
 - The proposal is to shorten the challenge period from the current 15 years to 5 years.
 - Existing claims expire the sooner of 15 years or on October 13, 2019.

Part E – Surplus Proceeds from Municipal Foreclosures

- This proposal revises LD 851 –to allow the return of excess proceeds in tax lien foreclosures to the prior homeowner.
- The earlier bill was vetoed by the Governor, and overridden in the House, but was just shy in the Senate. The Governor stated in his veto message that he wanted all of the proceeds returned to the homeowner. This proposal would provide additional funding for housing counselors to prevent foreclosures.
 - Part E gives municipalities the option of adopting an ordinance establishing a process for the return of surplus proceeds to homeowners.
 - Part E gives the former homeowner 90 days to apply for the return of half of the net proceeds from the sale of the home in a tax lien foreclosure. If they do not apply for the funds, those funds are sent to the Bureau of Consumer Credit Protection for its foreclosure diversion program.
 - In any scenario the municipality keeps half of the net proceeds.
 - This section sunsets in 5 years – anticipating that our foreclosure crises will have ebbed in that time.

Part F – Authority of the BCCP to regulate Property Preservation Companies

- The language of Part F is borrowed from Sections 9, 10, and 11 of the original version of LD 1389.
- My Office heard numerous instances of problems with property preservation companies that were hired to secure and winterize foreclosed properties by banks and servicers. Examples include breaking into currently occupied houses, locking out current occupants and securing the wrong property.
 - Part F would permit the BCCP to regulate property preservation activities.

Part G – Qualifications and Training of the Judiciary’s Foreclosure Diversion Program Mediators

- The foreclosure study highlighted the value of highly qualified mediators who are trained in the latest foreclosure prevention regulations. The Judiciary is working hard to recruit and train its mediators. These additional standards will ensure that mediators can recognize when a servicer has complied with its obligations under the National Mortgage Settlement, the CFPB Regulations, and other requirements. This will help mediations conclude more quickly and efficiently.
- This language is borrowed from the language that was originally proposed in Section 7 of LD 1389.
 - This requires greater detail of the commitments the parties make in mediation and whether they fulfilled them.
 - In the event of non-compliance with requirement to mediate in good faith, the report must detail the reason for non-compliance.

Action items that do not require legislation

- Pre-foreclosure Mediation
 - No additional statutory authority is required for parties to engage in mediation prior to a foreclosure filing.
 - I recommend the Committee send a letter to the Judiciary asking them to make the roster of mediators available and that they encourage mediators to consider prior negotiations and mediations between the parties.
 - Good Faith Standards for mediation. The mediators and the courts should examine and strengthen these and encourage uniformity.
 - Municipal Registries of Abandoned Properties