



Sheriff's Deed Purchaser's New Rights During Redemption Period

By Tobias Lipski

MCL 600.3240(13), effective January 10, 2014, created a purchaser's right to inspect the interior of the property during the redemption period for a property sold at a sheriff's sale pursuant to a mortgage foreclosure and, if damaged as defined by statute,¹ to seek a judgment extinguishing the redemption period and granting possession to the purchaser. In a signing letter, Governor Snyder stated that MCL 600.3240(13) "must be more specific on a number of points to protect foreclosees, lenders, and the community."² Accordingly, MCL 600.3237 and MCL 600.3238, which took effect on June 19, 2014, and replaced MCL 600.3240(13), delineate the steps a purchaser must take to lawfully inspect the interior of the property and initiate an action for possession.

Existing remedies insufficient

Michigan's abandonment statutes³ provide vehicles for the mortgagee to shorten the redemption period of

a foreclosed property abandoned by the mortgagor. Currently, title insurers interpret those sections to the exclusion of third-party purchasers. Moreover, those sections, arguably, do not provide a mortgagee relief when a property is damaged but the mortgagor has not technically abandoned the property (e.g., the property is listed for sale in its damaged condition). The new sections enable a purchaser to shorten the redemption period for cause if he or she takes the statutory steps and provides sufficient evidence of taking those steps to the district court along with evidence of the damage the mortgagor/occupant failed to repair.

Compliance

The statutory steps are extensive to ensure protection of the interested parties the governor and legislature sought to protect. Specifically, the purchaser must serve the mortgagor and any other person who has possession of the property with a notice that provides the

contact information for the purchaser, the details of the foreclosure sale (date, bid, and redemption expiration date), an explanation of the purchaser's rights of inspection, and one or more alternative methods for surrendering control of the property. In addition, there must be a statement informing the mortgagor of the requirement to notify the purchaser if the mortgagor intends to vacate the property or otherwise be subject to potential heightened liability for damage to the property.

To limit this risk of loss, the purchaser should perform the due diligence necessary to provide actual notice to the mortgagor, any person who has possession of the property, and any listing agent who might be retained during completion of the steps.

Assuming the initial notice does not result in a waiver of redemption agreement or the like, the purchaser must serve the mortgagor with a notice of the purchaser's intent to inspect the property at least 72 hours in advance of the inspection date specified in the notice. The notice must also designate inspection at a reasonable time of day—in coordination with the mortgagor, if possible. If the initial inspection of the interior reveals actual or imminent damage to the property or the inspection is unreasonably refused, the purchaser can begin summary proceedings

for possession of the property (subject to conditions identified in the following paragraph). If the initial interior inspection does *not* reveal damage to the property, the purchaser may serve the mortgagor—no more than once per calendar month and no more than three times per six-month period—with notice requesting that the mortgagor provide information detailing the condition of the property's interior. Only if the mortgagor refuses to sufficiently respond within five business days after *receipt* of the request or the information reveals damage or imminent damage to the property can the purchaser serve the mortgagor with an additional notice of inspection in the manner previously described.

Before beginning summary proceedings for possession, the purchaser must serve the mortgagor with notice that he or she intends to start proceedings unless the property is repaired within seven days after the mortgagor's receipt of notice. If the property is repaired within seven days or the purchaser and mortgagor agree to a repair timeline that the mortgagor satisfies, the purchaser will not begin summary proceedings for possession.

Practical Considerations

To complete all steps, limit the risk of loss, and shorten redemption to the satisfaction of the title insurance industry, the purchaser must perform due diligence. Completing all steps is time consuming and potentially requires the expenditure of legal, service, posting, and inspection fees. The redemption statute does not provide for recoupment of these fees. If the mortgagor redeems right before judgment, the purchaser will forfeit this investment. If the mortgagor remains silent until the date of the hearing and fixes the damage to the satisfaction of the district court judge, the purchaser, again, forfeits any expenditure made in attempting to acquire possession of the damaged property. To limit this risk of loss, the purchaser should perform the due diligence necessary (e.g., skip trace, postal verification,

Fast Facts

A sheriff's sale purchaser who fully complies with Sections 3237 and 3238 may perform an interior inspection of a foreclosed property during the redemption period.

The prior mortgagor is entitled to three separate notices and a right to repair before the sheriff's sale purchaser can initiate summary proceedings for possession of the damaged property.

etc.) to provide actual notice to the mortgagor, any other person who has possession of the property, *and* any listing agent who might be retained (such as for website listings) during completion of the steps.

The purchaser's due diligence should include obtaining both an estimate of the cost of repairing the property and paying any outstanding invoices, fines, and penalties assessed by the local government. The statutory definition of damage includes local ordinance violations subject to enforcement.⁴ Therefore, the purchaser should account for not only the physical condition of the property but also government fines related to those conditions. Moreover, MCL 600.3278 allows the purchaser to join an action for damages with its action for possession. Such due diligence will aid both the claim for possession and the claim for damages.

The purchaser's due diligence should also include a title review. A judgment extinguishing redemption is only as good as the parties against whom the judgment is entered. Therefore, the purchaser needs to know which parties have a right of redemption, including junior lien holders. A title review will provide information about junior lien holders, but some title agents will also contact the local government to retrieve comprehensive information related to outstanding invoices, fines, and penalties. ■



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ENDNOTES

1. MCL 600.3238(11) somewhat modifies the definition of "damage" originally provided in former MCL 600.3240(13) to include the following examples:
 - The failure to comply with local ordinances regarding maintenance of the property or blight prevention if the failure is the subject of enforcement action by the appropriate governmental unit.
 - An exterior condition that presents a significant risk to the security of the property or significant risk of criminal activity occurring on the property.
 - Stripped plumbing, electrical wiring, siding, or other metal material.
 - Missing or destroyed structural aspects or fixtures including, but not limited to, a furnace, water heater, air-conditioning unit, countertop, cabinetry, flooring, wall, ceiling, roofing, toilet, or any other fixtures. As used in this subdivision, "fixtures" means that term as defined in section 9102 of the Uniform Commercial Code, 1962 PA 174, MCL 440.9102.
 - Deterioration below, or being in imminent danger of deteriorating below, community standards for public safety and sanitation that are established by statute or local ordinance.
 - A condition that would justify recovery of the premises under section 5714(1)(d)—a serious and continuing health hazard.
2. Letter from Governor Rick Snyder to members of the Michigan Senate and House of Representatives (July 3, 2013). Governor Snyder further stated, "For instance, the new legislation should clearly state what constitutes a reasonable inspection, including what notice must be given and how frequently such inspections can occur." *Id.*
3. See MCL 600.3241 and MCL 600.3241a.
4. See note 1.

