



Report on Public Policy Position

Name of Section:

Real Property Law Section

Contact Person:

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Bill Number:

SB 1203 (Cropsey) Liens; foreclosure; individuals authorized to foreclose a mortgage; expand and provide certain revisions to redemption period. Amends secs. 3240 & 3241a of 1961 PA 236 (MCL 600.3240 & 600.3241a).

Date position was adopted:

May 10, 2006

Process used to take the ideological position:

Vote of the Council of the Section

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

The 18 members at the meeting all voted in favor of the position

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The Section opposes the proposed legislation, unless (1) it is modified to include notice by certified mail to junior interests, and (2) it is restricted in scope to improved real estate.

Reasons for opposition: The Senate floor analysis summarizes the bill as follows: "If foreclosure proceedings have been commenced against residential property not exceeding four units and not more than three acres in size, abandonment is conclusively presumed if the mortgagee makes a personal inspection and notifies the mortgagor that the mortgagee considers the premises abandoned and the mortgagor will lose all rights of ownership 30 days after the foreclosure sale, unless the mortgagor notifies the mortgagee within 15 days after receiving the notice that the premises are not abandoned. Under the bill, these provisions would apply to all residential property. The notice

given by the mortgagee would have to state that the mortgagee would consider the premises abandoned and the mortgagor would lose all ownership rights either 30 days after the foreclosure sale or when the time expired for the mortgagor to notify the mortgagee that the premises were not abandoned, whichever was later. The mortgagor would have to give this notice within 15 days after the mortgagee's notice was posted and mailed."

The Section opposes the bill in its current form because it fails to provide any notice to junior lien holders or other parties with recorded interests in the property, such as condominium associations with liens for unpaid dues, or judgment creditors who have taken the steps required to impose a lien against the mortgagor's real property. These junior interests are entitled to redeem from the foreclosure, but under the proposed legislation will not be apprised that their redemption rights have been materially shortened. As a result, substantial property interests will be extinguished without any notice whatsoever of the change in circumstances. It is important to note that, where the mortgagor's "equity" in the property is subject to these interests, these junior lien holders have often become the true economic stakeholders in the property. The mortgagor may, in fact, no longer have an equity position, which may be the reason for its "abandonment" in the first place. At a minimum, these parties have a substantial interest in ensuring that the foreclosing mortgagee's assessment of abandonment is accurate. There is no reason to forfeit these recorded interests without notice, particularly when notice by certified mail could be easily sent at the same time it is sent to the mortgagor.

The proposed bill also removes language in the existing statute (residential property "not exceeding 4 units"), which clearly suggests that the foreshortening currently applies only to improved property. The problems identified by the bill's proponents to justify reduction of the redemption period (fire hazards, havens for criminal activity and the like) are all problems closely associated with improved real estate. Because the property interests being foreclosed are substantial, the scope of the act should be narrowly focused to address correspondingly substantial problems.

The Section's concerns can be easily addressed by requiring that junior interests of record be sent notice by certified mail at the same time that notice is sent to the mortgagor and by expressly restricting the scope of the proposed legislation to improved real estate.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

[http://www.legislature.mi.gov/\(uduj2pmgedqqd055t4uxeb55\)/mileg.aspx?page=getObject&objectName=2005-SB-1203](http://www.legislature.mi.gov/(uduj2pmgedqqd055t4uxeb55)/mileg.aspx?page=getObject&objectName=2005-SB-1203)