

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7387

BILL NUMBER: SB 492

NOTE PREPARED: Feb 12, 2009

BILL AMENDED: Feb 12, 2009

SUBJECT: Foreclosure of Residential Mortgages.

FIRST AUTHOR: Sen. Tallian

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Presuit Notice*- The bill provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall provide a presuit notice to the debtor that informs the debtor that the creditor intends to initiate foreclosure proceedings, that the debtor may obtain assistance from a foreclosure counselor, and that provides information on how to contact a counselor.

Settlement Conference Notice- The bill provides that, if a creditor files an action for foreclosure, the creditor shall include with the complaint a notice to the debtor of the debtor's right to participate in a settlement conference, and that if the debtor wishes to participate in a settlement conference, the debtor must contact the court not later than 30 days after notice is served. The bill requires the creditor to include with the complaint filed with the court a copy of the presuit notice served on the debtor.

Foreclosure Judgement Conditions- The bill specifies that a court may not issue a judgment of foreclosure unless the creditor has sent the notice of settlement conference to the debtor and: (1) the debtor has not responded within 30 days; or (2) the debtor and creditor are unable to reach an agreement at the settlement conference. The bill provides that a court may not render a judgment of foreclosure until 60 days after the complaint is filed, but permits the court to waive the 60-day period if: (1) the debtor does not respond to the notice of settlement within 30 days and the court is satisfied that the debtor was properly served; (2) the property has been abandoned; or (3) the debtor has defaulted on a previous foreclosure prevention agreement.

Settlement Conference Conduct- The bill specifies that, if a settlement conference is conducted: (1) it must be scheduled between 25 and 60 days after the notice is sent; (2) the debtor must contact a foreclosure counselor before the conference and bring certain documents to the conference; (3) the creditor must bring

a complete transaction history to the conference; and (4) the creditor's agent must have the authority to bind the agent. The bill permits the parties to agree to conduct the conference telephonically.

Filing Foreclosure Prevention Agreement- The bill requires the creditor to file a copy of the foreclosure prevention agreement with the court if the parties reach an agreement.

Other Changes & Conforming Amendments- The bill makes other changes and conforming amendments.

Notice of Foreclosure Requirements- The bill provides that certain notice of foreclosure requirements apply to all mortgagees.

Foreclosure Consultant Records- The bill requires a foreclosure consultant to retain certain records for a specific time.

Licensing Board Provisions- The bill allows certain licensing boards to require practitioners to pay real estate appraisal costs in certain administrative actions. The bill prohibits certain professional licensing boards from accepting the surrender of a practitioner's license if the Attorney General has filed a complaint against the practitioner and opposes the surrender.

Disciplinary Actions- The bill provides that a broker or salesperson licensee who violates the credit services organizations or mortgage rescue protection fraud provisions is subject to certain disciplinary actions.

Prohibitions- The bill prohibits a person from: (1) engaging in real estate transactions or consumer credit mortgage transactions without a permit or license; or (2) misrepresenting certain terms and characteristics of real estate transactions and consumer credit mortgages; and subjects a person who violates any of these prohibitions to certain penalties under the home loan practices law.

Removal of Prohibition of Deceptive Act- The bill removes language prohibiting a person from engaging in a deceptive act in connection with certain loans.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *Licensing Board Provisions-* The state could experience a cost savings if the Professional Licensing Agency via the Board of Appraisers could require a licensee to recoup all or some of the complaint investigation costs incurred by the Attorney General (AG). This provision could also increase the workload of a professional licensing board if action had to be taken against more practitioners.

(Revised) *Prohibitions-* By broadening the scope of the Home Loan Practices Act to include consumer credit mortgages, the AG's Homeowner Protection Unit (HPU) could see an increase in civil litigation, which would increase the AG expenditures. The bill does not make an appropriation; therefore, the AG and HPU would have to accomplish additional cases within their existing level of resources.

Background Information- The AG expended \$250 to \$500 per appraisal complaint investigation and reviewed 130 appraiser cases during 2008. The AG reverted \$173,490 at the close of FY 2008.

Explanation of State Revenues: (Revised) *Foreclosure Consultant Records-* A foreclosure consultant that fails to retain records as required by the bill could be subject to civil penalties for fraudulent acts if brought

by the AG to a court of record. The penalty for an incurable deceptive act under IC 24-5-0.5 is \$500.

(Revised) *Prohibitions*- The bill changes which persons would not be allowed to engage in a real estate transaction or mortgage transaction. Under current law, the person would have to be engaged in a deceptive act. Under the bill, the person would have to be licensed. This provision could increase the number of persons held in violation of the Home Loan Practices Act, under which a person may be charged with a Class A misdemeanor. If a violator faced violation of the Home Loan Practices Act, a civil penalty could be up to \$10,000 per violation.

Explanation of Local Expenditures: *Summary: Courts*- The provision could slow filings of foreclosure actions. However, once an action were allowed to be filed under the bill, courts could see an increase in their case backlog, if these provisions were to slow action proceedings.

Background- During 2007, trial courts had 43,804 new filings, 42,600 cases disposed, and 23,331 cases pending on December 31, 2007, related to mortgage foreclosure.

Explanation of Local Revenues: (Revised) *Prohibitions*- The following fee distributions would apply for additional court actions.

If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Attorney General, professional licensing boards.

Local Agencies Affected: Trial courts.

Information Sources: *2007 Indiana Judicial Service Report*; Matt Light, Deputy Attorney General, Attorney General's Office, 232-4774.

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