Ohio Legislative Service Commission

Bill Analysis

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H.B. 303

131st General Assembly
(As Introduced)

Reps. Dever and McColley, Antani, Barnes, Burkley, Butler, Conditt, Cupp, Hambley, Koehler, Perales, Sprague, Sweeney, K. Smith

BILL SUMMARY

- Creates the D.O.L.L.A.R. Deed Program to be administered by the Ohio Housing Finance Agency (OHFA).
- Requires a borrower and lender participating in the D.O.L.L.A.R. Deed Program to execute (1) a deed in lieu of foreclosure, (2) a repurchase or refinance agreement, and (3) a lease agreement relating to the real property that is the subject of the mortgage.
- Requires certain terms be included in the above documents.
- Specifies that the lender's mortgage is not extinguished and does not merge with the borrower's interest conveyed because of the execution of the above documents.
- Specifies that the lease agreement is governed by Ohio's Landlord-Tenant Law and the borrower-lessee is subject to certain duties under that Law.
- Establishes certain conditions under which the borrower's right to repurchase or refinance is terminated.
- Requires a person seeking to participate in the D.O.L.L.A.R. Deed Program to submit an application including specified forms to the lender and requires the lender to respond in writing within 30 days of receipt of the application.
- Requires OHFA to adopt rules to implement the Program, including developing standardized forms and eligibility criteria for applicants.

CONTENT AND OPERATION

D.O.L.L.A.R. Deed Program

The bill creates the D.O.L.L.A.R. Deed Program that is administered by the Ohio Housing Finance Agency (OHFA). The Program provides a foreclosure alternative for a borrower who is in default on a mortgage encumbering real property.[1]

Under the Program, a borrower and mortgage lender enter into an agreement where the borrower transfers all of the borrower's interest in the real property to the lender in a deed in lieu of foreclosure. The lender then rents the property back to the borrower for a specified time pursuant to a lease agreement. During the duration of the lease, the borrower retains the right to repurchase or refinance the property.

The bill requires a borrower and lender participating in the Program to execute (1) a deed in lieu of foreclosure, (2) a repurchase or refinance agreement, and (3) a lease agreement. The documents must be provided to the borrower at least 10 business days before the documents are signed by both parties.[2]

Deed in lieu of foreclosure

A "deed in lieu of foreclosure" is a transaction in which a borrower, after default on a mortgage loan borrowed on real property, conveys to the holder of the mortgage note, by deed, title to the real property pledged as security for the indebtedness.[3] The bill requires a borrower and a lender participating in the Program to execute a deed in lieu of foreclosure that transfers to the lender the borrower's right to the property. The deed must include estoppel language specifying that (1) the mortgage and title to the property are not merged and (2) the lender retains its position and right to foreclose on any junior lienholders (such as unpaid contractors who have performed work on the property) after the transfer.[4]

Repurchase or refinance agreement

The bill also requires a borrower and a lender participating in the Program to execute an agreement under which the borrower may repurchase or refinance the

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[1] R.C. 5315.01(B).

[2] R.C. 5315.04(A) and (B).

[3] R.C. 5315.01(A)(2).

[4] R.C. 5315.04(A)(1).

property at a specified price during the life of the lease.[5] If the borrower does not repurchase or refinance the property within the time permitted, the right to repurchase or refinance terminates. However, the parties may renew this right.[6]

Lease agreement

Finally, the bill requires a borrower and lender participating in the Program to execute a lease agreement whereby the lender leases to the borrower the property that is the subject of the default mortgage. The lease term is to be the shorter of (1) the period of time necessary for the borrower to be approved for financing or other mortgage assistance by the Federal Housing Administration, or (2) two years.[7]

Rent calculation

The rental amount under the lease agreement must be calculated on a monthly basis and is to be at least 1/12 of the sum of the following annualized items with respect to the property:

- Real property taxes;
- Homeowner's insurance premiums for homeowner's insurance in the amount required in rules adopted by OHFA;
- Any homeowner's association or condominium dues.[8]

Recording of the lease

If the parties enter into a master lease agreement whereby the borrower is permitted to sublet the property, the lender must file a copy of the lease with the county recorder .[9]

Laws governing the lease agreement

Under the bill, the borrower and the lender who are parties to the lease agreement are governed by Ohio's Landlord-Tenant Law. The borrower-lessee is

[5] R.C. 5315.04(A)(2).

[6] R.C. 5315.04(C).

[7] R.C. 5315.04(A)(3).

[8] R.C. 5315.04(A)(3)(b).

[9] R.C. 5315.04(A)(3)(c).

responsible for all of the duties of a tenant under Ohio's Landlord-Tenant Law, as well as the following duties of a landlord:

- Complying with applicable building, housing, health, and safety codes that materially affect health and safety;
- Keeping the premises in fit and habitable condition;
- Keeping all common areas of the premises in a safe and sanitary condition;
- Maintaining in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances and elevators;
- If the property has more than four dwelling units in the same structure, providing and maintaining appropriate receptacles for the removal of garbage and other waste and arrange for waste removal;
- Supplying running water, reasonable amounts of hot water, and reasonable heat, unless certain conditions are met.[10]

The bill specifies that these duties do not apply to the lender-lessor under the Program.[11]

A borrower-lessee who fails to meet the terms of the lease agreement under the Program forfeits the borrower's right to repurchase or refinance the property and is subject to action under Ohio's Eviction Law.[12]

Title does not merge with mortgage

The bill specifies that the lender's mortgage is not extinguished and does not merge with the borrower's interest conveyed because of the execution of the documents under the Program.[13]

[10] R.C. 5321.04(A)(1) to (6), not in the bill.

[11] R.C. 5315.05(A).

[12] R.C. 5315.05(B).

[13] R.C. 5315.04(D).

Application

The bill requires a person seeking to participate in the Program to submit an application to the loss mitigation department of the holder in due course of the default mortgage. The application must consist of (1) the standard application form adopted by OHFA (see "**OHFA duties**" below) and (2) a Request for Modification and Affidavit form developed under the Federal Housing Authority's Home Affordable Modification Program.[14] To qualify for the Program under the bill, an applicant's front-end and back-end debt-to-income ratios must fall below the current ratios set by the Federal Housing Authority under the Home Affordable Modification Program at the time the application is submitted to OHFA.[15]

The lender must respond to the applicant in writing within 30 days after the date the lender receives the application.[16]

OHFA duties

The bill imposes certain duties on OHFA in implementing the Program. OHFA is required to adopt by rule all of the following:

- Eligibility requirements for the Program. The requirements must specify that an applicant is not required to be eligible for another mortgage loss mitigation alternative or program.
- A standard application form;
- A model for the deed in lieu of foreclosure, repurchase or refinance agreement, and lease agreement required under the Program;

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[14] R.C. 5315.03(A); *See* Making Home Affordable, *Making Home Affordable Program Request for Modification and Affidavit (RMA)*, https://www.missionfed.com/files/RMA_form.pdf (accessed October 16, 2015).

[15] R.C. 5315.03(B). At the time the Making Home Affordable Program was enacted in 2009, the front-end debt-to-income ratio was as close as possible, but not less than, 31% and the back-end debt-to-income ratio could not exceed 55%. U.S. Department of Housing and Urban Development, *Making Home Affordable Program Mortgage Letter 2009-23* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDEQFjAAahUKEwiYvcSgzcfIAhXJjg0KHXQ3D5s&url=http%3A%2F%2Fportal.hud.gov%2Fhudportal%2Fdocuments%2Fhuddoc%3Fid%3D09-23ml.doc&usg=AFQjCNGFPkQelo0OVK9osrYsfbJjnwsb6A&sig2=BJZg7MObA07tj2HAF8eKjQ (accessed October 16, 2015).

[16] R.C. 5315.03(C).

- The levels of homeowner's insurance that may be the basis for determining rent under the lease agreement;
- Any other rules necessary to implement the Program.[17]

Definitions

The bill defines the following terms:

- "Borrower" means the person who receives a mortgage from a lender. "Borrower" includes the original borrower's successor in interest.
- "Lender" means the holder in due course of a mortgage or an agent on behalf of the holder, regardless of whether the holder in due course is the entity that issued the mortgage.
- "Mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien on real property.[18]

HISTORY

ACTION	DATE
Introduced	08-25-15

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[17] R.C. 5315.02.

[18] R.C. 5315.01(A).