

HOUSE RESEARCH

Bill Summary

FILE NUMBER: H.F. 1209

DATE: March 16, 2007

Version: As introduced

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Subject: Foreclosure Transactions

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Overview

This bill makes several modifications to Chapter 325N, dealing with mortgage foreclosures. Definitions and certain notice requirements are changed, and an automatic stay requirement is imposed in certain court actions. This bill also eliminates the December 31, 2009, expiration date for chapter 325N and other related provisions.

Section

- 1** **Definitions.** Makes a technical modification to the definitions section to clarify that a "foreclosure purchaser," as defined in section 325N.10, is not the same as a "foreclosure consultant."

Incorporates into the definition of "foreclosure reconveyance" a transaction involving the subsequent conveyance of an interest back to the foreclosed homeowner that allows the foreclosed homeowner to possess either the foreclosed residence or other real property.

Modifies the definition of "residence in foreclosure" to mean real property, which may include up to four dwelling units, one of which must be occupied as the owner's principal place of residence, and against which there is a delinquency or default on a loan payment or debt secured by or attached to the property, including contract for deed payments.
- 2** **Contract Notice Requirements.** Modifies the notice requirements that must be included on the contract, and adds that these same notices must also be included on a notice of cancellation. Requires a name and physical address (not a P.O. Box) of the foreclosure

Section

consultant, and permits the additional inclusion of an email address, and the date the owners signed the contract.

Specifies that cancellation occurs when the foreclosed homeowner delivers written notice of cancellation to the address specified in the contract. Delivery is considered effective upon mailing, or if emailed, effective upon transmission.

3 **Violations.** Prohibits a foreclosure consultant from making a loan to a foreclosed homeowner that is secured by the residence in foreclosure or other real or personal property.

4 **Foreclosure Reconveyance.** Confirms the definition of "foreclosure reconveyance" in section 325N.10, regulating foreclosure purchasers, to the definition as modified in section 1 of the bill.

5 **Foreclosure Purchaser.** Modifies the definition of "foreclosure purchaser" to mean a person that has acted as the acquirer in a foreclosure reconveyance, but does not include a natural person not in the business of foreclosure purchasing but who has a prior personal relationship with the foreclosed homeowner.

This definition eliminates the existing definitional requirement that the foreclosure purchaser act as the acquirer in more than one foreclosure reconveyance during any 24-month period.

6 **Residence in Foreclosure.** Establishes a definition of "residence in foreclosure" in section 325N.10, regulating foreclosure purchasers. The definition is consistent with the definition as modified in section 1 of the bill.

7 **Contract Cancellation.** Makes conforming changes to the contract cancellation requirements consistent with the new requirements of a physical address and delivery as provided in section 2 of the bill.

8 **Notice Requirements.** Clarifies that the notice of cancellation must include the date the foreclosed homeowner executed the specific contract at issue.

9 **Prohibited Practices.** Modifies the definition of "closing" for purposes of an exception to the prohibition against a foreclosure purchaser entering into a foreclosure reconveyance with a foreclosed homeowner.

Specifies that an exception to the above mentioned prohibition applies in certain instances where the requirements for disclosure, loan terms and conduct in the federal Home Ownership Equity Protection Act are satisfied.

Specifies that "consideration" may include a penalty imposed by a court for the filing of a frivolous claim.

10 **Stay of Eviction.** Requires a court hearing an eviction action to issue an automatic stay if the defendant has: 1) commenced an action concerning a foreclosure reconveyance, or has asserted certain specified defenses; 2) owned the foreclosed residence; 3) conveyed title to the residence to a third party upon a promise that the defendant would be permitted to occupy the premises; and 4) has continuously occupied the foreclosed residence since the conveyance.

Permits a court to award to a plaintiff a \$500 penalty upon showing that the defendant filed a frivolous claim or asserted a frivolous defense.

Section

An automatic stay expires upon the later of: the failure of the foreclosed homeowner to commence an appropriate action within 90 days after issuance of the stay, or the issuance of a court-ordered lifting of the stay.

After the stay has expired or lifted, the court may impose a sanction against the defendant of \$500 plus reasonable attorney's fees.

11 **Effective Date; Expiration.** Eliminates the December 31, 2009, expiration date for chapter 325N and other related provisions.