

CS/CS/HB 1411 — Foreclosures

by Criminal & Civil Justice Policy Council; Civil Justice & Courts Policy Committee; and Rep. Dorworth (CS/CS/SB 2358 by Judiciary Committee; Regulated Industries Committee; and Senator Gardiner)

The bill provides a nonjudicial process for the foreclosure of liens on timeshare interests, which the bill refers to as a trustee foreclosure process. The bill creates a separate but similar trustee procedure for the foreclosure of liens based on unpaid assessments and for mortgage liens. Each procedure gives the timeshare interest owner (obligor) an opportunity to object to the trustee foreclosure process and to contest the foreclosure through a judicial process. If the owner does not object to the use of the trustee foreclosure procedure, he or she will not be subject to a deficiency judgment even if the proceeds from the sale of the timeshare interest are insufficient to offset the amounts secured by the lien.

The trustee foreclosure process for assessment liens applies to any default that gives rise to an assessment lien after the effective date of the bill. If a timeshare instrument contains a provision that prevents the use of a trustee foreclosure procedure, or if the managing entity determines that the timeshare instrument should be amended to specifically provide for the trustee foreclosure procedure, an amendment to the timeshare instrument must be adopted and recorded prior to using the trustee foreclosure procedure.

The trustee foreclosure process for mortgage liens can only be used if the mortgage, or an amendment to a mortgage executed by the obligor before the effective date of the bill, contains a notice that informs the obligor that the mortgagee (the mortgage lender) has the right to elect to use the nonjudicial or the judicial foreclosure procedure. It also provides that, if the mortgagee elects the nonjudicial procedure, the obligor would have the option to object and proceed with a judicial foreclosure action.

The bill requires the payment of a \$50 administrative fee per trustee deed for each deed recorded pursuant to the trustee foreclosure procedures. The revenues from the administrative fee are to be remitted to the Department of Revenue in the same manner as documentary stamp taxes and deposited in the State Courts Revenue Trust Fund.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 115-0