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FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/07

SPONSOR HJC LAST UPDATED 2/26/07 HB 558 & 641/HJCS

SHORT TITLE Real Estate Deeds of Trust SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Regulation and Licensing Department (RLD)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Judiciary Substitute for House Bills 558 and 641 amends Section 39-5-18 NMSA 1978 designating priority of redemption rights following a foreclosure sale of real property. The substitute provides the redemption procedures to be followed by a former owner of the property, the owner's personal representative or by any junior mortgagee or other junior lien holder whose rights were judicially determined in the foreclosure proceeding. The action to redeem must be undertaken by payment to the purchaser within 9 months from the date of sale, or by filing a petition for redemption in a pending foreclosure case in the district court in which the judgment or decree of foreclosure was entered. The substitute provides that the former owner shall have the first priority to redeem the property, and that if the former owner does not redeem the property, each junior mortgagee or junior lien holder has a right to redeem that must be exercised within statutory time limits. The order of priority shall be the same priority as the underlying mortgages or liens, as set forth in the court order, judgment or decree of foreclosure or as otherwise determined by the court. The substitute prohibits the assignment, transfer or other conveyance of redemption rights. The Act defines "date of sale" to mean the date the district

court order confirming the special master's report is filed in the court clerk's office.

The substitute also amends portions of the Deed of Trust Act, Section 48-10-1 et. seq. NMSA 1978 and related statutory provisions.

Section 1: amends Section 39-5-18 NMSA 1978 to provide that a redemption after a trustee's sale is governed by the Deed of Trust Act.

Section 3: amends Section 48-10-13 NMSA 1978 to remove language relating to the lack of completeness of a sale by public auction if the sale as held is contrary to or in violation of any federal statute because of an unknown or undisclosed bankruptcy.

Section 4: amends Section 48-10-14 NMSA 1978 to remove language providing that the conveyance of a land at a public auction through a trustee's deed shall be without right of redemption.

Section 5: amends Section 48-10-16 NMSA 1978, governing redemption, to provide the following

- The redemption period after a trustee's sale is 9 months, or the period provided in the deed of trust, whichever is the lesser period, and shall begin to run from the date of the trustee's sale. The parties may shorten the redemption period to not less than a month in the deed of trust.
- The trust real estate may be redeemed by the trustor, the trustor's personal representatives, successors or assigns or by any junior encumbrancer by either: (1) paying to the purchaser, purchaser's personal representatives, successors or assigns, at any time within the redemption period, the amount paid plus interest, taxes, penalties and other amounts specified; or (2) by petitioning the district court for a certificate of redemption and by making a deposit of that same amount in cash in the office of the clerk of that district court at any time within the redemption period.
- Upon being served with the petition for redemption of the property, a purchaser of real estate under a trustee's sale must answer the petition within 30 days after service of the petition.
- At a hearing governed by the rules of civil procedure, the judge shall determine the amount of money necessary for redemption, and at the conclusion of the hearing, the district court may order the clerk to issue the certificate of redemption upon such terms and conditions as the district court deems just.
- A junior encumbrancer who does not have actual notice or knowledge of the trustee's sale and who has been otherwise omitted from the trustee's sale proceeding, shall be entitled to redeem the trust real estate by petitioning the district court in the county where the trustee's sale was held and making the appropriate deposit. The purchaser of the trust real estate at the trustee's sale may petition the district court to terminate the right of redemption of an omitted junior encumbrancer. In any action commenced by or against an omitted junior encumbrancer, the redemption period shall begin to run from the date final judgment is entered in the action, or from such later date as may be ordered by a court having jurisdiction if

enforcement of a judgment affecting the redemption is stayed on appeal or for other good cause shown.

Section 6: amends Section 48-10-17 NMSA 1978 to provide that a separate civil action may be commenced within six years after the date of a trustee's sale of trust real estate under a deed of trust as provided in the Deed of Trust Act to recover a deficiency judgment for the balance due on the contract for which the deed of trust was given as security. The bill also provides that no deficiency judgment shall be sought or obtained under any deed of trust securing a residential loan made to a low-income household. HB 558 defines both “low-income household” and “residential loan.” The bill provides that the determination of whether a household is a low-income household and whether a loan is a residential loan shall be made as of the time the loan is made and based on information obtained during the loan application process.

Section 7: provides that the provisions of Laws 2006, Chapter 32 shall apply to deeds of trust executed on or after May 17, 2006, and the provisions of this act shall apply to deeds of trust executed on or after the effective date of the act.

Section 8: contains an emergency clause.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, petitions to the court and hearings before the court. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

This substitute amends Section 48-10-13 NMSA 1978 to remove language relating to the lack of completeness of a sale by public auction if the sale as held is contrary to or in violation of any federal statute because of an unknown or undisclosed bankruptcy.

Subsection C provides that the hearing following filing of a petition for redemption shall be set upon the earlier of the filing for redemption by the former owner or the expiration of the period for filing redemption.

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

OTHER SUBSTANTIVE ISSUES

A “deed of trust” is a deed by a borrower to a trustee for the purposes of securing a debt or the performance of a contract. See NMSA Sections 48-10-3F and 48-10-8. It differs from a mortgage in that it can be foreclosed by a non-judicial sale held by the trustee. It is also possible to foreclose them through judicial proceedings.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/nt