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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/06/07

SPONSOR Wirth LAST UPDATED \_\_\_\_\_ HB 641

SHORT TITLE Judicial Foreclosure Redemption Rights SB \_\_\_\_\_

ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 558

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

House Bill 641 amends Section 39-5-18 NMSA 1978 designating priority of redemption rights following a foreclosure sale of real property. HB 641 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. HB 641 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. HB 641 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.

## 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 and the determination and contesting of redemption priorities. 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

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.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 558

## TECHNICAL ISSUES

Page 3, lines 1 through 11, it may have been inadvertently omitted that the former defendant owner's **representatives** may also have first priority of redemption. Representatives of former defendant owners and purchasers are mentioned throughout the statute.

Page 3, lines 18 through 20 reads, “The hearing shall be governed by the rules of civil procedure and shall be set upon the earlier of the filing of a redemption by the former defendant owner or the expiration of the period for filing a redemption.” It is unclear why a hearing would be set if the period for filing a redemption has expired.

## OTHER SUBSTANTIVE ISSUES

The statute, as currently written, allows former defendant owners of real estate certain rights of redemption **after the sale** of the real estate pursuant to judgment or decree of foreclosure. There are two methods that redemption may be exercised, both, within nine months from the date of sale of the real property. New language on page 2 lines 13 and 14 reads, “...filing a petition for the redemption in the pending foreclosure case...” It is unclear if the intent of the word “pending” is to extend the time frame that petitions are allowed to be filed, to a time prior to the sale.

Similarly, new language on page 2 lines 21 through 23 reads, “copies of the petition for redemption shall be served upon the purchaser of the real estate ~~under a~~ at the judicial foreclosure sale...” It would seem difficult to meet this requirement if a petition were filed at a point in time after the sale.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/csd