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FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/17

SPONSOR Sanchez LAST UPDATED _____ HB _____

SHORT TITLE Rights Of Redemption For Property Debtors SB 467

ANALYST Clark

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
No Fiscal Impact						

Parenthesis () indicate revenue decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

Senate Bill 467 amends Section 39-5-18 NMSA 1978 of the foreclosure laws and Section 48-10-16 NMSA 1978 of the Deed of Trust Act to eliminate assignees from the list of persons entitled to exercise a right of redemption after sale of real estate in a foreclosure proceeding or after a trustee's sale.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

The Administrative Office of the Courts (AOC) provided the following analysis.

Redemption statutes protect debtors by giving them more time (1) to secure financing, which protects debtors from disruption and allows individuals facing temporary hardships to recover and reclaim their properties; and (2) to convince the lender that the default is not permanent and possibly renegotiate the terms of the loan. *Brown v. Trujillo*, 2004-NMCA-040, 135 N.M. 365 at {26}, 88 P.3d 881, cert. denied, 2004-NMCERT-004, 135 N.M. 562, 91 P.3d 603.

Generally, statutory redemption schemes of other states “allow transfer of the right of redemption . . . by assignment.” 3 Richard R. Powell, *Powell on Real Property* Para. 470, at 37-365 (Patrick J. Rohan rev. ed. 1994). *W. Bank v. Malooly*, 119 N.M. 743, 895 P.2d 265 (Ct. App. 1995).” *Brown* at {9}.

However, redemption is a statutory right to be narrowly construed. *Brown* at {14}, citing *Union Esperanza Mining Co. v. Shandon Mining Co.*, 18 N.M. 153, 165, 135 P. 78, 80 (1913) (characterizing redemption as “a statutory right that is not to be enlarged by judicial interpretation”) and 30 Am. Jur. 2d Executions and Enforcement of Judgments ' 434 (1994) (“the right of redemption is recognized as a substantive right to be exercised in strict compliance with statutory terms”).

An expression of the Legislature’s power to re-define the right of redemption, this bill limits the current owner/trustor (debtor) right of redemption by eliminating the debtor’s first priority if the right of redemption is assigned to a third party; the debtor’s priority is cut off by the assignment. Exercise of redemption rights by the original debtor in New Mexico is rare because the debtor rarely is in the position to pay the required redemption amount or the debtor would not have been in trouble in the first place. By contrast, these debtors who generally are not able to re-purchase their home can currently sell their redemption right for some amount of money, thereby improving their personal financial situation. The assignees are often developers/remodelers who might perform a facelift of the property and then “flip” or sell it for a profit.

While the traditional rationale for redemption statutes concentrates on the debtor’s personal situation with the goal of allowing the debtor to keep or re-purchase the property through extra time to secure financing or to re-negotiate the original terms, a new goal has emerged as a result of the tremendous spike in foreclosure in recent years due to the recession: lenders prefer that someone be in the house and paying something on the loan, or that the property be sold to a new buyer, as opposed to having vacant “ghost” houses in their inventory. The bill would make reconveyance of the property more difficult by cutting off the debtor’s option of selling the redemption right to an assignee that has a profit motive derived from the debtor’s priority of redemption. This limitation also stands in contrast to the usual mortgage owner’s ability to freely buy or sell the loan without the debtor’s knowledge or approval. The mortgage usually limits the debtor’s ability to convey the mortgage without lender approval, but redemption statutes currently do not limit the debtor’s ability to assign the redemption right, which only is available after the foreclosure process is complete.

On the other hand, the redemption rights purchasing company might well pay the defendant homeowner only a small amount of the money owed. The company often doesn’t come to the sale where nearly no one bids and where the home is usually bought by the bank for a minimal amount. The redemption rights holder essentially has a free pass to pay the low sale price of the home and obtains the home, often as an investment property. In this scenario, the homeowner debtor does not end up with the property, but only a small amount of money; the assignee profits from the situation and the house may remain vacant.

TECHNICAL ISSUES

The Office of the Attorney General reports neither “assigns” nor “successors” are defined in Chapter 39, Judgments, Costs, Appeals, leaving some uncertainty as to what is intended by this amendment. Similarly, Chapter 48, Liens and Mortgages, does not define “assigns” or “successors”, leaving some uncertainty, again, as to what is intended by this amendment. As defined by Black’s Law Dictionary, the terms are similar. An assignee is “one to whom property rights or powers are transferred by another”; a successor is “one who follows another in ownership or control of property”. An assignment may have some limitation whereas a successor presumptively takes the same interest as his/her predecessor. It is unclear what these amendments are intended to achieve, given the lack of definition of the deleted terms.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted:** The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted:** The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent:** The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable:** The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective:** The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions “but for” the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure Policy Principle	Met?	Comments
Vetted	✓	
Targeted Clearly stated purpose Long-term goals Measurable targets	✓ ✓ ✗	
Transparent	✓	
Accountable Public analysis Expiration date	✗ ✓	
Effective Fulfills stated purpose Passes “but for” test	✓ ?	
Efficient	✗	
Key: ✓ Met ✗ Not Met ? Unclear		

JC/sb