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Virginia General Assembly to reconsider foreclosure overhaul bill

By Indira K. Sharma and Kimberly A. Manuelides

SUMMARY

When the Virginia General Assembly reconvenes in January 2012, it will again consider a House Bill aimed at slowing down the foreclosure process for homeowners and imposing penalties for violations of the foreclosure process. The Bill, now House Bill No. 28, was introduced earlier this year and, since then, has faced opposition by banks, which argue that the Bill adds further cost, time and complications to the foreclosure process without changing the outcome.

WHAT IS VIRGINIA HOUSE BILL NO. 28?

House Bill No. 28, previously known as House Bill No. 1506, was introduced to the Virginia General Assembly a year ago in January 2011 by Republican Delegate Robert Marshall as an attempt to slow down the foreclosure process in Virginia and afford homeowners greater protection.

Under the Bill, lenders would be required to provide homeowners with 45 days notice of intent to foreclose before a foreclosure sale could occur. (Current law requires only 14 days notice.) The Bill would also prohibit a foreclosure sale from occurring unless the land records for the property contain a duly recorded assignment to the person who asserts he is the holder of the obligation. Absent proper recordation in the land records, a foreclosure sale could only proceed if (1) the trustee conducting the sale receives an affidavit from the party secured stating that he is, in fact, the party secured by the deed of trust and (2) payment has been made of all fees and taxes for recording the assignment. The Bill further provides that lenders would have no authority to request that a trustee proceed with a foreclosure sale.

Any person who knowingly (1) makes, uses or causes to be made or used a fraudulent document or (2) provides a false affidavit in support of a foreclosure would be liable for a civil penalty of \$5,000 for each violation and attorneys' fees incurred in a civil action brought to recover the

penalty. The Bill also creates a civil cause of action in favor of the owner of the property subject to foreclosure. Under the Bill, the property owner would be entitled to recover compensatory damages in the amount of three times the damages incurred by the owner as a result of the violation and attorneys' fees. The civil penalty provisions in the Bill are in addition to applicable criminal penalties.

WHAT IS THE IMPACT OF THE BILL?

The result of the Bill will be a longer foreclosure process, allowing homeowners additional time to dispute their claims and negotiate with their banks. Banks oppose the Bill because, in most cases, it will only add additional expense, time and complications to the foreclosure process without changing the outcome.

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