



Foreclosed Property Purchaser Rights to Inspect Property after Notice

Benjamin J. Price

Foster Swift Finance, Real Estate & Bankruptcy News

June 12, 2014

AUTHORS/ CONTRIBUTORS

Benjamin J. Price

PRACTICE AREAS

Finance, Real Estate & Bankruptcy
Law

Foreclosure

Real Estate Law

INTRODUCTION

Effective June 19, Michigan Public Act Number 125 (the "Act") will substantially change the rights afforded to purchasers of properties foreclosed under a power of sale.[1] Purchasers who provide proper notice to mortgagors and other persons in possession of a purchased property are entitled to one or more interior inspections of the property, and may also request that mortgagors furnish information about a purchased property's condition. The Act also establishes litigation tools for such purchasers in the event mortgagors fail to comply. Specifically, purchasers in such circumstances may begin summary proceedings for possession of the purchased property, and also enjoy a rebuttable presumption that the mortgagor is responsible for all damage to the property that occurs before the expiration of the statutory redemption period. This article will briefly outline the Act's more notable provisions.

§ 3237 - PURCHASER NOTICE[2]

To trigger the rights and legal remedies established by the Act against a mortgagor, the purchaser of a property foreclosed under a power of sale must provide the mortgagor, and any other person that has possession of the property, with proper notice. Such notice must provide:

1. The name and contact information of the purchaser;
2. The date and purchase price of the foreclosure sale;
3. An estimated date for when the statutory redemption period expires;
4. Details of the purchaser's rights of inspection provided by the Act; and

5. A statement that, pursuant to the Act, the mortgagor must notify the purchaser if the mortgagor intends to vacate the property after sale, and that failure to do so may result in heightened liability of the mortgagor to the purchaser.[3]

§ 3238 - PURCHASER'S INSPECTION RIGHTS[4]

1. Initial Inspection Right and Right to Request Property Condition Information

After providing the notice outlined above, a purchaser is entitled to an initial inspection of the interior of any structures on the purchased property.[5] A purchaser intending to exercise this right must, however, provide the mortgagor and any other person in possession of the property with at least 72 hours' notice of the date and time of the initial inspection[6]

After the initial inspection, a purchaser may request information or evidence about the condition of the interior of the property from the mortgagor.[7] The purchaser may request this information no more than once each month, and no more than three times during the entire statutory redemption period.[8] If the mortgagor fails to provide this requested information within five business days, the purchaser is entitled to schedule another inspection, after giving the mortgagor and other persons in possession of the property 72 hours' notice.[9] The purchaser is also entitled to an inspection when the information provided by the mortgagor reveals that damage to the property has occurred or is imminent.[10]

1. Mortgagor's Failure to Comply and Proceedings for Possession of Property

If the mortgagor "unreasonably" refuses to comply with the purchaser's inspections, or when damage to the property is imminent or has occurred, a purchaser may commence summary proceedings before the end of the statutory redemption period for possession of the purchased property or file an action for other relief that is necessary to prevent damage to the property.[11] The purchaser must, however, provide actual notice to the mortgagor that the purchaser intends to initiate such proceedings if the actual or imminent damage is not repaired or prevented.[12] If, within seven days of the notice, the mortgagor corrects the damage or the mortgagor and purchaser agree on a procedure to correct the damage, then the purchaser may not initiate summary proceedings.[13]

§ 3278 – ENHANCED MORTGAGOR LIABILITY FOR PROPERTY DAMAGE UPON MOVE[14]

The Act provides for the liability and obligations of the mortgagor to the purchaser generally, and increases that liability where the purchaser has provided the mortgagor the notice described in § 3237. Generally, the mortgagor is liable to the holder of the obligation secured by the mortgage for "any physical injury to the property beyond wear and tear resulting from the normal use of the property [that is] caused by or at the direction of the mortgagor or other person liable on the mortgage." [15] If the purchaser provided a mortgagor with the proper notice described in § 3237, the Act requires the mortgagor to inform the purchaser at least 10 days in advance that he or she intends to vacate the property.[16]



Perhaps more significantly, when the purchaser provides the notice described in § 3237, the Act establishes two rebuttable presumptions regarding the mortgagor's liability for damage to the property.[17] First, the Act creates a rebuttable presumption that the mortgagor is responsible for all damage to the property that occurs before the end of the statutory redemption period if the mortgagor:

1. Fails to comply with the purchaser's right to inspections and information requests provided by § 3238;
2. Fails to notify the purchaser that he or she intends to move from the property at least 10 days in advance of such a move; or
3. Vacates the property without affording the purchaser a "reasonable opportunity to secure it." [18]

Second, there is a rebuttable presumption that the mortgagor is *not* liable for damage to the property occurring after the mortgagor's move if the mortgagor complies with § 3238, notifies the purchaser that he or she intends to move 10 days in advance of such move, *and* affords the purchaser a reasonable opportunity to secure the property upon vacating.. [19] It is important to note that, when determining that the mortgagor did not afford the purchaser a reasonable opportunity to secure the property, the purchaser must have provided the mortgagor with at least one method for surrendering control of the property in advance. [20]

CONCLUSION

Purchasers of non-judicially foreclosed properties should familiarize themselves with the Act, which is set to take effect on June 19th. Its provisions afford purchasers substantial rights to inspect purchased properties, gather information on property condition, and to hold mortgagors accountable for damage to the property that occurs before the end of the statutory redemption period, provided purchasers follow the requirements of the Act.

[1] See generally Mich. Pub. Act No. 125.

[2] See § 3237.

[3] §§ 3237(1)(a)-(f).

[4] See §§ 3238(1)-(5).

[5] The Act provides that purchasers may inspect the exterior of structures on the property at any time during the statutory redemption period. See § 3238(3).

[6] § 3238(2).

[7] § 3238(4).

[8] Id.



[9] § 3238(5).

[10] Id.

[11] § 3238(6).

[12] § 3238(7).

[13] § 3238(8).

[14] See § 3278.

[15] § 3278(1).

[16] § 3278(2).

[17] §§ 3278(2)(a)-(b).

[18] §§ 3278(2)(a)(i)-(iii).

[19] §§ 3278(2)(b)(i)-(iii).

[20] § 3278(3).
