

SENATE BILL 223

Introduced by Halligan, et al.

1/29	Introduced
1/30	Referred to Business & Industry
1/30	First Reading
2/05	Hearing
2/15	Tabled in Committee

1 *Senate* BILL NO. *223*
 2 INTRODUCED BY *Wally* *Stacy*
 3 *Margaret* *Stacy* **MERCER**

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
 5 RELATING TO PROCEEDINGS IN FORECLOSURE ACTIONS; AMENDING THE
 6 LAW RELATING TO THE COMPUTATION OF THE AMOUNT OF A
 7 DEFICIENCY JUDGMENT AFTER AN EXECUTION SALE OF PROPERTY UPON
 8 FORECLOSURE; PROVIDING THAT FOR THE PURPOSES OF DETERMINING
 9 THE AMOUNT OF A DEFICIENCY JUDGMENT, THE AMOUNT OF THE
 10 SUCCESSFUL BID MUST BE CONSIDERED TO BE THE FAIR MARKET
 11 VALUE OF THE PROPERTY; CLARIFYING THE MEANING OF THE TERM
 12 "ACTION"; PROVIDING THAT A SALE UPON FORECLOSURE OF A
 13 MORTGAGE IS FINAL AS TO THE FIRST LIENHOLDER; PROVIDING FOR
 14 PROTECTION OF REDEMPTION RIGHTS OF OTHERS; AMENDING SECTION
 15 71-1-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
 16 AN APPLICABILITY DATE."
 17

18 WHEREAS, the Montana Supreme Court in the case of
 19 Trustees of the Washington-Idaho-Montana Carpenters
 20 Employers Retirement Trust Fund v. Galleria Partnership, 239
 21 Mont. 250, 780 P.2d 608 (1989), considered the meaning of
 22 section 71-1-222, MCA, as to the determination of the value
 23 at the time of a forced sale of property subject to
 24 foreclosure for purposes of a deficiency judgment; and

25 WHEREAS, the Supreme Court interpreted section 71-1-222,

1 MCA, to limit a deficiency judgment to the difference
 2 between the fair market value of the secured property at the
 3 time of the foreclosure sale, regardless of a lesser amount
 4 realized at the sale, and the outstanding debt for which the
 5 property was secured; and

6 WHEREAS, the Supreme Court held that the fair market
 7 value of property subject to foreclosure is the intrinsic
 8 value of the real property with its improvements at the time
 9 of sale under judicial foreclosure, without consideration of
 10 the impact of the foreclosure proceedings on the fair market
 11 value; and

12 WHEREAS, the Supreme Court held that the method of
 13 determining fair market value to be used as the basis for
 14 determination of a deficiency judgment is in the discretion
 15 of the District Court and that it is appropriate that each
 16 side may present the opinion of appraisers selected by them
 17 respectively; and

18 WHEREAS, the statute relating to deficiency judgment
 19 after mortgage foreclosure contains no requirement of an
 20 appraisal of the property to be sold, either before or after
 21 the sale; and

22 WHEREAS, the applicable statute, section 71-1-222, MCA,
 23 does not provide for the calculation of a deficiency
 24 judgment by applying a fair market value, as determined by
 25 the District Court, to the amount due, but rather directs



1 that a deficiency judgment should be calculated by applying
2 the proceeds of the sale to the amount due; and

3 WHEREAS, the Legislature intends to clarify section
4 71-1-222, MCA, to overturn the Supreme Court's ruling in the
5 Galleria case, as to the computation of the amount of a
6 deficiency judgment after an execution sale of property upon
7 foreclosure.

8 THEREFORE, it is appropriate that the Legislature amend
9 section 71-1-222, MCA, to establish that for purposes of
10 determining the amount of a deficiency judgment, the amount
11 of the successful bid must be considered to be the fair
12 market value of the property.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 71-1-222, MCA, is amended to read:

16 "71-1-222. Proceedings in foreclosure suits. (1) There
17 is but one action for the recovery of debt or the
18 enforcement of any right secured by mortgage upon real
19 estate, which action must be in accordance with the
20 provisions of this part. In such action the court may, by
21 its judgment, direct:

- 22 (a) a sale of the encumbered property (or so much
23 thereof as may be necessary);
24 (b) the application of the proceeds of the sale; and
25 (c) the payment of the costs of the court, the expenses

1 of the sale, and the amount due the plaintiff.

2 (2) If it appears from the sheriff's return that the
3 proceeds are insufficient and a balance still remains due,
4 judgment can then be docketed for such balance against the
5 defendant or defendants personally liable for the debt, and
6 it becomes a lien upon the real estate of such judgment
7 debtor, as in other cases on which execution may be issued.

8 (3) Absent proof by clear and convincing evidence of
9 collusion or fraud in the bidding at the foreclosure sale,
10 the amount of the successful bid must be considered to be
11 the fair market value of the property for all purposes. A
12 claim of collusion or fraud must be presented to the court
13 within 20 days of the filing of the sheriff's return on the
14 foreclosure sale.

15 (4) For the purposes of this section, "action" means
16 only the filing of a lawsuit to foreclose a mortgage. Action
17 does not include a nonjudicial action undertaken by a
18 secured creditor that may be otherwise authorized by law to
19 levy on collateral or other assets that are not encumbered
20 by a mortgage. A separate action filed and maintained
21 against guarantors of obligations secured by a mortgage may
22 be maintained without the filing of an action to foreclose
23 the mortgage.

24 (5) In a proceeding to foreclose a mortgage or other
25 lien on real estate, the existence of disputes between

1 parties whose interests are inferior, subordinate, or
2 otherwise junior to the foreclosing mortgage holder or
3 lienholder may not preclude the entry of the judgment on the
4 mortgage or lien. The entry of judgment is final for all
5 purposes. The court's foreclosure order must protect all
6 potential redemption rights of parties whose claims have not
7 been fully determined. In addition, the court's order must
8 provide appropriate direction as to both the bidding process
9 at a sheriff's sale and the ultimate determination of all
10 issues that have not been fully adjudicated.

11 {3}(6) No person holding a conveyance from or under the
12 mortgagor of the property mortgaged or having a lien
13 thereon, which conveyance or lien does not appear of record
14 in the proper office at the time of the commencement of the
15 action, need be made a party to such action. The judgment
16 therein rendered and the proceedings therein had are as
17 conclusive against the party holding such unrecorded
18 conveyance or lien as if he had been made a party to the
19 action."

20 NEW SECTION. Section 2. Applicability. [This act]
21 applies to foreclosure sales made after [the effective date
22 of this act].

23 NEW SECTION. Section 3. Effective date. [This act] is
24 effective on passage and approval.

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