

## Committee on Banking and Insurance

### **SB 220 — Bankruptcy Matters in Foreclosure Proceedings**

by Senators Passidomo and Mayfield

The bill allows a lienholder in a foreclosure proceeding to use documents filed in a defendant's bankruptcy case as admissions against the defendant. A mortgage foreclosure is a legal action by a lender against a debtor to force the sale of real property that secures a defaulted-upon loan. The proceeds of the sale are used to repay the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action and a discharge of the mortgage debt.

In bankruptcy, a debtor must file a statement under penalty of perjury stating his or her intent to retain, redeem, or surrender any property securing a debt. The debtor is supposed to act on that decision as a condition of obtaining a discharge of his or her debts. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings, but later have actively contested the completion of a foreclosure proceeding regarding the property in state court.

The bill allows for documents filed under a penalty of perjury in a bankruptcy case to be filed in a mortgage foreclosure proceeding as admissions against the debtor/mortgagor. The bill also creates a rebuttable presumption that a defendant has waived any defense to a foreclosure action if the lienholder submits documents filed in the defendant's bankruptcy case which:

- Evidence intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Have not been withdrawn by the defendant; and
- Show that a final order that discharges the defendant's debts or confirms the defendant's repayment plan that provides for surrender of the property.

A defendant can still raise a defense based upon the lienholder's action or inaction subsequent to the filing of the document which evidenced the defendant's intent to surrender the property.

The bill also requires a court in foreclosure proceeding, upon the request of a lienholder, to take judicial notice of any order entered in a bankruptcy case.

If approved by the Governor, these provisions take effect October 1, 2018.

*Vote: Senate 35-0; House 111-0*