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Senate Bill 992 (as reported by the Committee of the Whole)  
Sponsor: Senator Arlan Meekhof  
Committee: Economic Development

## **CONTENT**

The bill would create the "Nonrecourse Mortgage Loan Act" to do the following in regard to all nonrecourse loans in existence on or after the bill's effective date:

- Prohibit a post closing solvency covenant from being used as a nonrecourse carveout or as a basis for any claim against a borrower, guarantor, or other surety on a nonrecourse loan.
- Specify that a noncompliant provision in loan documents would be invalid.
- Specify that the Act would not prohibit a loan secured by a mortgage from being fully recourse to the borrower or guarantor, if the loan documents did not contain nonrecourse provisions.

"Nonrecourse loan" would mean a commercial loan secured by a mortgage on real property located in Michigan and evidenced by loan documents that do any of the following:

- Provide that the lender will not enforce the liability or obligation of the borrower by an action or proceeding in which a money judgment is sought against the borrower.
- Provide that any judgment in any action or proceeding on the loan is enforceable against the borrower only to the extent of the borrower's interest in the mortgaged property and other collateral security given for the loan.
- Provide that the lender will not seek a deficiency judgment against the borrower.
- Provide that there is no recourse against the borrower personally for the loan.
- Include any combination of those provisions or any other provisions to the effect that the loan is without personal liability to the borrower beyond the borrower's interest in the mortgaged property and other collateral security given for the loan.

"Nonrecourse carveout" would mean a specific exception, if any, to the nonrecourse provisions set forth in the loan documents for a nonrecourse loan that has the effect of creating personal liability of the borrower or a guarantor or other surety of the loan for all or some amounts owed to the lender, if specified events occur.

"Post closing solvency covenant" would mean any provision of the loan documents for a nonrecourse loan, that relates solely to the solvency of the borrower, including a provision requiring the borrower to maintain adequate capital or have the ability to pay its debts, with respect to any period of time after the date the loan is initially funded. The term would not include a covenant not to file a voluntary bankruptcy or other voluntary insolvency proceeding or not to collude in an involuntary proceeding.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Date Completed: 3-6-12

Fiscal Analyst: Josh Sefton