

HOUSE BILL REPORT

HB 3101

As Reported by House Committee On:
Judiciary

Title: An act relating to foreclosures and sales.

Brief Description: Restricting the sale, foreclosure, or seizure of property belonging to a service member on deployment.

Sponsors: Representatives Darneille, Simpson, G., Campbell, Romero, Upthegrove, Ormsby, Morrell, Kenney and O'Brien.

Brief History:

Committee Activity:

Judiciary: 2/5/04 [DPS].

Brief Summary of Substitute Bill

- Amends the Deed of Trust Act to prohibit a foreclosure of a deed of trust, or a trustee's sale, foreclosure, or seizure of property, during or within 90 days after a service member's period of deployment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Moeller, Vice Chair; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Edie Adams (786-7180).

Background:

The federal Servicemember's Civil Relief Act (SCRA) provides a number of protections to military personnel while on active duty. The SCRA was adopted by Congress in 2003, and is a revision of the Soldiers' and Sailors' Civil Relief Act of 1940. The SCRA contains numerous protections for service members whose financial and legal obligations may be adversely impacted by active military duty. These protections include, among others: staying court proceedings if the service member is unable to defend his or her

interests in the proceeding; reducing interest rate obligations on pre-service loans to 6 percent; and restricting the ability of a landlord to evict the service member's family for non-payment of rent in certain situations.

One of the provisions of the SCRA protects service members from foreclosures on property under a mortgage or deed of trust during a period of military service or within 90 days after a period of military service. If the military service affects the service member's ability to meet the mortgage or deed of trust obligation, a court must either: (1) stay any judicial proceeding seeking to enforce the obligation; or (2) adjust the obligation to preserve everyone's interest.

In addition, the SCRA makes invalid a sale, foreclosure, or seizure of property for breach of a mortgage or deed of trust obligation, if it occurs during or within 90 days after a period of military service, unless: (1) there is a court order for foreclosure granted prior to the foreclosure; or (2) the service member waived the protection against foreclosure in writing during or after the period of military service.

Mortgages and deeds of trust are two forms of security interest in real property used for real estate financing. A mortgage is a pledge of real property as security for a debt owed to the debtor (mortgagee). A mortgage creates a lien on the real property. A mortgage may be foreclosed only through a judicial proceeding according to detailed statutory requirements and procedures. A deed of trust is basically a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary).

The major distinction between a deed of trust as opposed to a mortgage is that a deed of trust may be non-judicially foreclosed. If the grantor of a deed of trust defaults on the loan obligation, the trustee may non-judicially foreclose on the real property as long as certain detailed procedural and notice requirements are met.

Summary of Substitute Bill:

A new section is added to the Deed of Trust Act that: (1) Prohibits the foreclosure of a deed of trust during or within 90 days after a service member's deployment; and (2) makes invalid a trustee's sale, foreclosure, or seizure of property made during or within 90 days after a service member's deployment.

This provision applies only to an obligation on real property purchased before the service member's deployment and for which the service member is still obligated.

Service member includes a member of each of the armed forces, national guard and armed forces reserves.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that it is a trustee's sale (as opposed to a sale) that is invalid if made during or within 90 days after a service member's deployment.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: There are thousands of Washington families that will be deployed over the next couple of years. These families will face real economic challenges, including the risk of foreclosure on their property if they are unable to meet their obligations. There is a federal law, the Servicemembers Civil Relief Act (SCRA), that protects service members from judicial foreclosures on mortgages. There is ambiguity as to whether or not the SCRA protects against non-judicial foreclosures of deeds of trust, which is the dominant means of financing in Washington. We need to close this loophole to protect our service member families.

(With concerns) This bill is unnecessary. The federal law already does prohibit foreclosure of both mortgages and deeds of trust. If non-judicial foreclosures are occurring, it is because the parties do not understand the federal act. There is a potential technical problem with the bill that might prohibit members from selling their property upon returning from a period of deployment. We will work to address any specific concerns that come forth because the federal act was not properly applied.

Testimony Against: None.

Persons Testifying: (In support) Timothy Lowenberg, Washington Military Department; and Annie DeAndrea, Washington National Guard Family Programs.

(With concerns) Denny Eliason, Washington Bankers Association; Brad Tower, Washington Independent Community Bankers Association; Stacy Augustine, Washington Credit Union League; and Gary Gardner, Boeing Employees Credit Union.

Persons Signed In To Testify But Not Testifying: None.