

# SENATE BILL REPORT

## SB 6383

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As of January 24, 2008

**Title:** An act relating to unlawful detainer actions involving distressed properties under the residential landlord-tenant act.

**Brief Description:** Concerning unlawful detainer actions involving distressed properties under the residential landlord-tenant act.

**Sponsors:** Senators Weinstein, Kauffman, Tom, McAuliffe and Kline.

**Brief History:**

**Committee Activity:** Consumer Protection & Housing: 1/25/08.

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### SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

**Staff:** Alison Mendiola (786-7483)

**Background:** The foreclosure process on residential property occurs when a homeowner defaults on his or her mortgage payments. The foreclosure process is determined by the type of financing the owner received, such as through a mortgage, deed of trust, or real estate contract. In Washington, deeds of trust are the most common and they are generally foreclosed by a non-judicial sale (a sale outside the Court).

If a lender forecloses on a home through a non-judicial proceeding, the lender must provide the homeowner with a notice of default, and then, at least 30 days later, provide the borrower with a Notice of Trustee's Sale and Notice of Foreclosure. Under a non-judicial foreclosure, a homeowner can avoid foreclosure by making the delinquent payments up to 11 days before the sale. The property can not be sold until at least 190 days have passed since the homeowner fell behind in payments; and once the property is sold, the homeowner must move out within 20 days or the purchaser may file an eviction (unlawful detainer) without providing the original homeowner any additional notice.

Foreclosure Rescue Transactions: Homeowners who are late, or at risk of being late in their mortgage payments or have defaulted on their mortgage, may be approached with offers to assist them with their mortgage problems. Several types of assistance may be offered.

First, a person may offer to buy the homeowner's house and allow the homeowner to continue to live there as a tenant. The buyer may make representations before the sale that after a certain period of time, the homeowner will have paid enough rent to get his or her home back. This is commonly referred to as a sale-leaseback transaction.

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Second, a homeowner may be approached with an offer of a "foreclosure surplus sale." When a foreclosed house is auctioned off, the sale may bring more money than is due on the mortgage. That additional money is called "surplus equity." In a foreclosure surplus sale, the homeowner assigns his or her right to the surplus equity to the buyer for a lump sum.

Third, other types of services may be offered to the homeowner. For instance, a person may offer to negotiate with the lender on the homeowner's behalf or offer to arrange a sale of the home that includes an option for the homeowner to repurchase it in the future.

In some circumstances, these transactions may result in the homeowner being misled or defrauded.

**Summary of Bill:** In an unlawful detainer action involving distressed property, the plaintiff (purchaser) must disclose to the court whether the defendant previously held title to the distressed property and explain how the purchaser came to acquire title.

A defendant who previously held title to the distressed property may not be required to escrow any money pending trial when a material question of fact exists as to whether the plaintiff (purchaser) acquired title from the defendant through a distressed property conveyance.

All other related actions are stayed pending the outcome of the unlawful detainer action.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.