SENATE BILL REPORT
SB 6431

As of January 24, 2008

Title: An act relating to distressed property conveyances.

Brief Description: Concerning distressed property conveyances.

Sponsors: Senators Tom, Hobbs and Delvin; by request of Attorney General.

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

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.

<u>Foreclosure Rescue Transactions:</u> 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.

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

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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: A new chapter is created governing conveyances between a distressed property purchaser (any person acquiring an interest in distressed property) and the owner of residential real property that is distressed (in foreclosure, at risk of loss due to tax delinquency, or security for a loan in which the owner is more than 90 days delinquent).

<u>Distressed Property Conveyance:</u> A distressed property conveyance is a transaction in which: (1) a foreclosed homeowner transfers an interest in the distressed property to a distressed property purchaser (DPP); (2) the DPP allows the foreclosed homeowner to occupy the property; and (3) the DPP or a person acting in participation with the DPP conveys or promises to convey the property to the foreclosed homeowner, or provides the foreclosed homeowner with an option to purchase the property at a later date, or promises the foreclosed homeowner an interest in, or portion of, the proceeds of any resale of the property. Terms of a distressed property conveyance include:

- A written contract is required with clearly disclosed terms completed, signed and dated by the homeowner and purchaser prior to the property's transfer.
- The foreclosed homeowner has a right to cancel the terms of the contract within five business days.
- The purchaser must demonstrate that the foreclosed homeowner is able to meet the terms of the contract including making interest and lease payments and is capable of purchasing the property within the allowable period; and
- The homeowner must receive at least 82 percent of the difference between the property's fair market value and the underlying mortgage in the event of a sale to a third party.

A violation of this law would be a per se violation of the Consumer Protection Act (CPA). In a private right of action under the CPA, the court may double or triple the damages award, subject to the statutory limit. However, if the court determines that the defendant acted in bad faith, the limit for doubling or tripling the damages award may be increased up to 100 thousand dollars. A claim for damages must be commenced within four years after the date of the alleged violation. A CPA action is in addition to any other remedy available. An action under the CPA does not affect the rights in the distressed property held by a distressed property purchaser for value under the act or other applicable law. Any provision in a contract that attempts or purports to require arbitration is void at the option of the foreclosed homeowner. This applies to contracts entered on or after the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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