
Judiciary Committee

SSB 5590

Title: An act relating to lien holder requirements for certain foreclosure sales.

Brief Description: Concerning lien holder requirements for certain foreclosure sales.

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senator Benton).

<p style="text-align: center;">Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Requires a lien holder of owner-occupied residential real property to respond to a seller's short sale offer within 120 days of the lien holder receiving the offer.

Hearing Date: 3/21/11

Staff: Trudes Tango (786-7384).

Background:

A "short sale" is a real estate transaction in which the proceeds of the sale is insufficient to pay the debts encumbering the property and the seller is unable to pay the difference. Any lender with a security interest in the property must consent to receiving less than they are owed in return for releasing their lien on the property. Depending on the terms of the agreement between the seller and the lender, the seller may or may not be liable for the remaining amounts owed that are not covered by the sale.

Under the Deeds of Trust Act (DOTA), a borrower may bring a court action, within a certain time frame, to try to stop the foreclosure. Failure to bring a court action does not mean the borrower has waived other claims for damages specified under the DOTA, such as claims based on fraud or misrepresentation. Such a claim for damages may be brought within two years of the foreclosure, or within the applicable statutes of limitations, as long as the claim does not affect the validity of the sale or cloud title to the property, among other things.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill:

When a buyer and seller have a written agreement for the sale of owner-occupied residential real estate that would result in the seller receiving insufficient funds to pay the debt in full, and the seller makes a written offer to the lien holder to accept less than the amount the lien holder is owed, then the lien holder must respond in good faith, within 120 days, with an acceptance, rejection, or counter-offer to the seller's written offer. This applies to lien holders of a beneficial interest of a mortgage, deed of trust, or real estate contract encumbering the property.

A seller may bring an action for actual monetary damages incurred as a result of the lien holder's failure to comply with this requirement. The failure of a seller to bring a court action to enjoin a foreclosure sale under the DOTA is not a waiver of a claim for damages against a lien holder for violating the requirement of the bill.

A violation of this requirement constitutes a violation of the Consumer Protection Act. A primary lien holder is not liable for the actions or inactions of a junior lien holder.

Appropriation: None.

Fiscal Note: Not requested.

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