

# HOUSE BILL REPORT

## SSB 5590

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**As Reported by House Committee On:**  
Judiciary

**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).

**Brief History:**

**Committee Activity:**

Judiciary: 3/21/11, 3/24/11 [DPA].

**Brief Summary of Substitute Bill  
(As Amended by House)**

- Requires that under certain circumstances a senior beneficiary of a deed of trust on owner-occupied residential real property must respond to a short sale offer within 120 days of receiving the offer.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Orwall, Rivers and Roberts.

**Minority Report:** Do not pass. Signed by 1 member: Representative Nealey.

**Staff:** Trudes Tango (786-7384).

**Background:**

A "short sale" is a real estate transaction in which the proceeds of the sale are 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

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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.

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### **Summary of Amended Bill:**

When consummation of a written agreement for the purchase and sale of owner-occupied residential real property would result in the seller receiving insufficient funds to pay the debt in full, and the seller makes a written offer to the senior beneficiary to accept the entire net proceeds of the sale, then the senior beneficiary must respond in writing within 120 days after receipt of the offer. The response must be an acceptance, rejection, or counter-offer of the seller's written offer. The senior beneficiary may determine in its sole discretion whether to accept, reject, or counter-offer. This requirement applies only when the seller's written offer is received by the senior beneficiary prior to the issuance of a notice of default. The seller's offer must include a copy of the purchase and sale agreement and must be sent to the beneficiary's or servicer's address.

The requirement does not alter a beneficiary's right to issue a notice of default and does not lengthen or shorten any time period imposed or required under the DOTA. The requirement does not apply to beneficiaries that conduct fewer than 250 foreclosure sales per year. The requirement does not apply to deeds of trust securing commercial loans, obligations of a grantor who is not the borrower or guarantor, or a purchaser's obligation under a seller-financed sale.

A seller has a right of action for actual monetary damages incurred as a result of a senior beneficiary'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 senior beneficiary for violating the requirement of the bill. A senior beneficiary is not liable for the actions or inactions of any other lien holder.

### **Amended Bill Compared to Substitute Bill:**

The amended bill: (1) applies to real estate contracts and mortgages; (2) does not limit the requirement to short sale offers made before a notice of default is issued; (3) does not include language regarding the time periods under the DOTA; (4) does not contain exemptions; (5) applies the Consumer Protection Act (CPA); (6) contains language requiring "good faith" on the part of the lien holder; and (7) does not contain language stating that the beneficiary, in its sole discretion, may determine whether to accept, reject, or counter-offer the short sale offer.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) A number of houses are in foreclosure and people who want to buy those properties in short sales cannot buy those houses. Many realtors will not do short sales because it takes so long and ties up the property and the parties. Banks are not responding in a reasonable time frame to short sale offers. The bill just asks for some kind of response from the banks. Getting an answer, even if it is a "no" is better than nothing because it frees the parties up to move on. If the CPA is a concern, it would be okay to remove it.

(In support with amendments) Short sale transactions are very complicated. It is not just a "yes" or "no" case. The first lien holder and any other parties who might have liens must all agree to a short sale. Each lien holder brings their own different perspectives to the transaction. It is reasonable to want and receive some kind of response. The 120 days is better than the unlimited time frame that exists right now. The substitute bill changing the time frame to 120 days is an improvement, but the CPA violation should be removed. In circumstances when there is uncertainty for the banks, the banks will act cautiously and will more likely say "no" short sale, even in circumstances where a short sale might have been made. If written incorrectly, this bill could get in the way of short sales that could be made. There needs to be an interim dialogue on this issue with banks and realtors.

(Opposed) None.

**Persons Testifying:** (In support) Senator Benton, prime sponsor.

(In support with amendments) Denny Eliason, Washington Bankers Association; and Bob Mitchell, Washington Realtors.

**Persons Signed In To Testify But Not Testifying:** None.