SENATE BILL REPORT
ESHB 2614

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 22, 2012

Title: An act relating to residual debts following short sales of owner-occupied residential property secured by deeds of trust.

Brief Description: Limiting deficiency judgments pertaining to residual debts following short sales of owner-occupied residential property secured by deeds of trust.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Kenney, Ryu, Hasegawa and Santos).

Brief History: Passed House: 2/13/12, 69-29.
Committee Activity: Financial Institutions, Housing & Insurance: 2/22/12 [DPA].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass as amended.
Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen, Keiser and Litzow.

Staff: Alison Mendiola (786-7483)

Background: A short sale occurs when a seller sells a home for less than is owed and the beneficiary approves of selling the property at a loss. Short sales can occur for a variety of reasons, such as financial hardship of the seller combined with the inability to sell the property for at least as much as is owed to the beneficiary.

Beneficiaries are not required to accept a seller's offer for a short sale, but there can be instances where a short sale is more beneficial than other alternatives, such as when there is the risk of foreclosure.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): If a beneficiary agrees to a short sale of owner-occupied residential property and reserves the right to pursue the outstanding debt, the beneficiary must provide a written notice to the seller. The notice must state the amount of the outstanding debt, the fact that the beneficiary may collect upon the debt for three years

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after releasing it's interest, and that the seller has the ability to negotiate for a full release of the debt.

If a court action is not pursued within three years of releasing its security interest, the beneficiary forfeits the right to collect upon the debt. Similarly, if no written notice is provided, the beneficiary has three years from releasing its security interest to collect upon the debt or that right is forfeited.

These provisions only apply to debts incurred by individuals primarily for personal, family, or household purposes and does not apply to debts for business, commercial, or agricultural purposes.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Amendments): If a beneficiary agrees to a short sale of owner-occupied residential property and reserves the right to pursue the outstanding debt, the beneficiary must provide a written notice to the seller. The notice must state the amount of the outstanding debt, the fact that the beneficiary may collect upon the debt for three years after releasing it's interest, and that the seller has the ability to negotiate for a full release of the debt.

If a court action is not pursued within three years of releasing its security interest, the beneficiary forfeits the right to collect upon the debt. Similarly, if no written notice is provided, the beneficiary has one year from releasing its security interest to collect upon the debt or that right is forfeited.

These provisions only apply to debts incurred by individuals primarily for personal, family, or household purposes and does not apply to debts for business, commercial, or agricultural purposes.

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.

Staff Summary of Public Testimony as Heard in Committee: PRO: Short sales are an alternative to foreclosure. In Washington 17 percent of homes are under water and 40 percent of the listings in the Puget Sound area are short sales. When sellers are looking to alternatives to foreclosure, they should be given all the information up front such as whether the beneficiary will seek the deficiency. Most sellers don't realize this and beneficiaries have six years to collect the outstanding debt. If deficiencies aren't waived, sellers should be advised to not go forward with a short sale. The recovery of the housing market is essential to the country's economic recovery. Foreclosures are stalling the recovery and short sales can be a good alternative which benefits everyone.

CON: A stakeholder group comprised of banks, real estate representatives, and homeowner advocates have been working on this issue. Disclosure to the seller is agreed upon. The issue is waiving the ability to collect upon a deficiency – currently there is six years to collect. Three would be better than one year; if sellers are low or middle income, the bank won't seek a deficiency. Short sales are complicated transactions and one year just isn't enough time. Community banks do not agree with shortening the deficiency timeframe. A short sale is merely a renegotiation of a contract where foreclosure is a formal process.

Persons Testifying: PRO: Representative Kenney, prime sponsor; Senator Frockt; Bruce Neas, Columbia Legal Services; Faye Nelson, Nathan Gorton, WA Realtors.

CON: Denny Eliason, WA Bankers Assn.; Brad Tower, Community Banks of WA.