

SENATE BILL REPORT

SB 5590

As of February 7, 2011

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

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

Sponsors: Senator Benton.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/09/11.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: A short sale occurs when a borrower sells a home for less than is owed and the lien holder approves of selling the property at a loss. Short sales can occur for a variety of reasons, such as financial hardship of the borrower (due to job loss or disability) combined with the inability to sell the property for at least as much as is owed.

Consumer Protection Act (CPA). The Office of the Attorney General may bring an action on behalf of persons injured by a violation of the CPA. A private party may also bring an action to enforce the CPA. The CPA allows an injured party to receive treble damages, up to a maximum of \$25,000.

Post-Foreclosure Remedies Under the Deeds of Trust Act. For owner-occupied residential property, the failure of the borrower to bring a civil action to enjoin a foreclosure does not constitute a waiver of a claim for damages asserting common law fraud or misrepresentation, a violation of the CPA, or the failure of the trustee to materially comply with the Deeds of Trust Act. Such a claim may be brought within two years of the foreclosure, or the application statute of limitations, as long as the claim does not affect the validity of the sale or cloud the title of the property, among other things. The relief that may be granted is limited to actual damages, except for a CPA claim.

Summary of Bill: If a seller of owner-occupied residential property and a buyer agree on a purchase price that is insufficient to pay in full the obligation owed, and the seller makes a written offer to the lien holder, the lien holder must respond, in good faith, within 45 days with an acceptance, rejection, or counter-offer of the seller's written offer.

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.

If the lien holder acts in bad faith, the seller has a right of action for actual monetary damages. Furthermore, failing to act in good faith constitutes a Consumer Protection Act violation.

If the property is foreclosed, and the seller (borrower) failed to enjoin the sale based on a lien holder acting in bad faith, the seller is not deemed to have waived his or her claim for damages under the Deeds of Trust Act.

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.