

FINAL BILL REPORT

SSB 5590

C 364 L 11
Synopsis as Enacted

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

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

Senate Committee on Financial Institutions, Housing & Insurance
House Committee on Judiciary

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.

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: 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 senior beneficiary, the senior beneficiary must respond, in good faith, within 120 days with an acceptance, rejection, or counter-offer of the seller's written offer.

If the senior beneficiary acts in bad faith, the seller has a right of action for actual monetary damages. However, a senior beneficiary is not responsible for the actions or inactions of a subsequent lien holder.

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.

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.

These provisions do not apply to beneficiaries that conduct fewer than 250 trustee sales per year.

These provisions do 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 Deeds of Trust Act.

Votes on Final Passage:

Senate	49	0	
House	96	0	(House amended)
Senate	46	0	(Senate concurred)

Effective: July 22, 2011.