

SENATE BILL REPORT

SSB 5590

As Amended by House, April 5, 2011

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: Financial Institutions, Housing & Insurance: 2/09/11, 2/16/11 [DPS, w/oRec].

Passed Senate: 3/04/11, 49-0.

Passed House: 4/05/11, 96-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5590 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Minority Report: That it be referred without recommendation.

Signed by Senator Litzow.

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.

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.

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 Substitute 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 120 days with an acceptance, rejection, or counter-offer of the seller's written offer.

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

Staff Summary of Public Testimony on Original Bill: PRO: The challenges of short sales are tremendous, and although there are some procedural issues, the proponents are willing to work on language to improve the bill. What is needed is predictability in the marketplace, and the ability for seller's to know they'll get a response within a specific timeframe would be very helpful. Currently, sellers and real estate agents wait a long time for a response, if any, in a short sale. One seller has waited 18 months and still no response.

CON: Lenders have a series of steps when a short sale is offered including contacting other lien holders and negotiations, which is a complicated process. This bill would lead to premature rejections of offers, especially with the CPA violation language. While the opponents oppose the legislation, they are willing to work on the issue.

Persons Testifying: PRO: Senator Benton, prime Sponsor; Bob Mitchell, Washington Realtors.

CON: Denny Eliason, Washington Bankers Association.

House Amendment(s):

- Provides that the requirement for a beneficiary to respond to a short sale offer within 120 days applies to senior beneficiaries of deeds of trusts (as opposed to lien holders of mortgages and real estate contracts).
- Provides that the requirement applies only when an offer is sent to the senior beneficiary before a notice of default is issued.
- Requires that the offer include the purchase and sale agreement and be sent to the beneficiary's or servicer's address.
- Exempts from the requirement: (a) beneficiaries that do fewer than 250 foreclosures per year; and (b) deeds of trust securing commercial loans, securing obligations of a grantor who is not the borrower or a guarantor, or securing a purchaser's obligations under a seller-financed sale.
- Removes the provision making a violation of the bill a Consumer Protection Act violation.
- Removes the in good faith language.
- Explicitly states that 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 by the Deeds of Trust Act.
- Changes terms to be consistent with terms in the Deeds of Trust Act.