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SENATE BILL 5590

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State of Washington

62nd Legislature

2011 Regular Session

By Senator Benton

Read first time 01/31/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to lien holder requirements for certain foreclosure  
2 sales; amending RCW 61.24.127; and adding a new section to chapter  
3 64.04 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW  
6 to read as follows:

7 (1) Whenever a written agreement for the purchase and sale of  
8 owner-occupied residential real estate, by its existing terms and upon  
9 closing, results in contractual sale proceeds that are insufficient to  
10 pay in full the obligation owed to a lien holder of a beneficial  
11 interest of a mortgage, deed of trust, or real estate contract  
12 encumbering the residential real estate and the seller makes a written  
13 offer to the lien holder to accept less than the amount the lien holder  
14 is owed in order to facilitate closing of the purchase and sale  
15 acceptable to the purchaser and seller, the lien holder must in good  
16 faith, within forty-five days upon the receipt of a written offer,  
17 deliver to the seller, in writing, an acceptance, rejection, or  
18 counter-offer of the seller's written offer.

1 (2) A seller has a right of action for actual monetary damages  
2 incurred as a result of the lien holder's failure to comply with the  
3 good faith requirements of subsection (1) of this section.

4 (3) The legislature finds that the practices covered by this  
5 section are matters vitally affecting the public interest for the  
6 purpose of applying chapter 19.86 RCW. A violation of this section is  
7 not reasonable in relation to the development and preservation of  
8 business and is an unfair or deceptive act in trade or commerce and an  
9 unfair method of competition for the purpose of applying chapter 19.86  
10 RCW.

11 **Sec. 2.** RCW 61.24.127 and 2009 c 292 s 6 are each amended to read  
12 as follows:

13 (1) The failure of the borrower or grantor to bring a civil action  
14 to enjoin a foreclosure sale under this chapter may not be deemed a  
15 waiver of a claim for damages asserting:

16 (a) Common law fraud or misrepresentation;

17 (b) A violation of Title 19 RCW; (~~or~~)

18 (c) Failure of the trustee to materially comply with the provisions  
19 of this chapter; or

20 (d) A violation of section 1 of this act.

21 (2) The nonwaived claims listed under subsection (1) of this  
22 section are subject to the following limitations:

23 (a) The claim must be asserted or brought within two years from the  
24 date of the foreclosure sale or within the applicable statute of  
25 limitations for such claim, whichever expires earlier;

26 (b) The claim may not seek any remedy at law or in equity other  
27 than monetary damages;

28 (c) The claim may not affect in any way the validity or finality of  
29 the foreclosure sale or a subsequent transfer of the property;

30 (d) A borrower or grantor who files such a claim is prohibited from  
31 recording a lis pendens or any other document purporting to create a  
32 similar effect, related to the real property foreclosed upon;

33 (e) The claim may not operate in any way to encumber or cloud the  
34 title to the property that was subject to the foreclosure sale, except  
35 to the extent that a judgment on the claim in favor of the borrower or  
36 grantor may, consistent with RCW 4.56.190, become a judgment lien on  
37 real property then owned by the judgment debtor; and

1 (f) The relief that may be granted for judgment upon the claim is  
2 limited to actual damages. However, if the borrower or grantor brings  
3 in the same civil action a claim for violation of chapter 19.86 RCW,  
4 arising out of the same alleged facts, relief under chapter 19.86 RCW  
5 is limited to actual damages, treble damages as provided for in RCW  
6 19.86.090, and the costs of suit, including a reasonable attorney's  
7 fee.

8 ((~~(4)~~—{~~(3)~~})) (3) This section applies only to foreclosures of  
9 owner-occupied residential real property.

10 ((~~(5)~~—{~~(4)~~})) (4) This section does not apply to the foreclosure of  
11 a deed of trust used to secure a commercial loan.

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