
Civil Rights & Judiciary Committee

HB 1637

Brief Description: Prohibiting excessive fees or other charges for locating or recovering foreclosure surplus funds and other unclaimed property.

Sponsors: Representatives Orwall, Pollet and Fitzgibbon.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Prohibits excessive fees for locating or recovering foreclosure surplus funds and other unclaimed property.

Hearing Date: 2/1/23

Staff: Yelena Baker (786-7301).

Background:

Foreclosure Surplus Funds.

Mortgages and deeds of trust are two forms of security interests in real property used for real estate financing. A mortgage is a pledge of real property as security for a debt owed to the lender (mortgagee) and creates a lien on the real property. A deed of trust is created when the borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary). Most loan obligations for residential real property in Washington are secured by deeds of trust.

A mortgage may be foreclosed only through a judicial proceeding according to statutory requirements. Where the proceeds of the foreclosure sale of a mortgaged property are more than sufficient to pay the amount due and costs, the surplus must be applied to all interests in, or liens or claims of liens against, the property in the order of priority that the interest, lien, or claim attached to the property. Any remaining surplus must be paid to the mortgage debtor, or the

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debtor's heirs and assigns. Surplus proceeds are deposited with the clerk of the court and may be disbursed upon court order.

A deed of trust may be foreclosed either through the judicial process or a nonjudicial trustee's sale process pursuant to the Deeds of Trust Act (DOTA), which imposes detailed notice and process requirements for nonjudicial foreclosure. The DOTA requires a trustee to apply the proceeds of the trustee's sale first to the expense of the sale, including a reasonable charge by the trustee and the trustee's attorney, and then to the obligation secured by the deed of trust. Any surplus, less the clerk's filing fee, must be deposited with the clerk of the superior court of the county in which the sale took place. The trustee must mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to the DOTA.

Interests in, or liens or claims of liens against the property eliminated by the trustee's sale under the DOTA attach to the surplus in the order of priority that it had attached to the property, as determined by the court. A party seeking disbursement of the surplus funds must file a motion requesting disbursement and serve notice of the motion to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than 20 days prior to the hearing of the motion. The clerk may not disburse the surplus except upon order of the superior court.

Unclaimed Property.

Enacted in 2022, the Revised Uniform Unclaimed Property Act (RUUPA) updated state law governing the process of distribution and processing of unclaimed property.

Unclaimed property is money or intangible property owed to an individual or business. Property is considered unclaimed after it has been held for a specified period of time and the holder is not able to locate the property owner. Typical unclaimed property includes bank accounts, insurance proceeds, securities, safe deposit box contents, and uncashed checks. Common holders of unclaimed property are banks and financial institutions, businesses, and state and local governments.

With the exception of local governments holding certain types of unclaimed property, all holders must report and deliver unclaimed property to the Department of Revenue (DOR), which administers a public and electronically searchable database of reported names of all apparent owners for whom property is being held by the DOR. The unclaimed property database includes instructions for filing a claim to property with the DOR and a printable claim form with instructions for its use.

The RUUPA permits, but does not require, an apparent owner of unclaimed property to enter into an agreement with another person or entity for the purposes of locating, delivering, or recovering property held by the DOR. Such an agreement is enforceable only if it meets specified requirements and states the amount or value of the property reasonably expected to be recovered, as computed before and after a fee or other compensation to be paid to the person or

entity.

If an agreement to locate and deliver unclaimed property provides for compensation that is unconscionable, the agreement is unenforceable except by the apparent owner. An apparent owner that believes the agreed-upon compensation is unconscionable or the DOR, acting on behalf of an apparent owner, or both, may file an action in superior court to reduce the compensation to the maximum amount that is not unconscionable.

Summary of Bill:

State law governing judicial foreclosure, the DOTA, and the RUUPA are amended to include a prohibition on excessive fees for locating or recovering foreclosure surplus funds and other unclaimed property.

Foreclosure Surplus Funds.

It is unlawful for any person to seek or receive any fee or compensation for locating or purporting to purchase the right to recover foreclosure surplus funds where the fee is in excess of:

- 5 percent of the value of the foreclosure surplus funds returned to the owner; and
- reasonable attorneys' fees and costs, upon a motion and a hearing by a court of competent jurisdiction.

Every contract for any fee or compensation for locating or purporting to purchase the right to recover foreclosure surplus funds must contain a notice that meets specified requirements, including a statement that a homeowner is entitled to cancel the contract within 10 days of signing it.

Unclaimed Property.

It is unlawful for any person to seek or receive any fee in excess of 5 percent of the value of the property or funds returned to the owner as compensation for locating, or purporting to locate:

- any property which the person knows has been reported, paid, or delivered to the DOR pursuant to the RUUPA;
- any funds held by a court or county that are proceeds for a foreclosure for delinquent property taxes, assessments, or other liens; or
- funds that are otherwise held by a county because of a person's failure to claim funds held as reimbursement for unowed taxes, fees, and other government charges.

The prohibition on excessive fees for locating or recovering unclaimed property applies retroactively to January 1, 2023, and prospectively from the effective date of the bill.

Enforcement.

A person who violates the prohibition on excessive fees for locating or recovering foreclosure surplus funds and other unclaimed property is guilty of a misdemeanor and will be fined or imprisoned for not more than 30 days, or both. The fine must be in the amount not less than the

fee or charge the person sought, received, or contracted for, and not more than 10 times such amount.

A violation of the prohibition on excessive fees is a per se violation of the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.