

HOUSE BILL REPORT

ESHB 1637

As Passed House:

January 24, 2024

Title: An act relating to prohibiting excessive fees or other charges for locating or recovering foreclosure surplus funds and other unclaimed property.

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

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Orwall, Pollet and Fitzgibbon).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/1/23, 2/10/23 [DPS].

Floor Activity:

Passed House: 1/24/24, 91-0.

Brief Summary of Engrossed Substitute Bill

- Prohibits excessive fees for locating or recovering unclaimed property.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hansen, Chair; Farivar, Vice Chair; Graham, Assistant Ranking Minority Member; Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Cheney.

Staff: Yelena Baker (786-7301).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Enacted in 2022, the Revised Uniform Unclaimed Property Act (RUUPA) repealed and replaced the Uniform Unclaimed Property Act (UUPA), and updated state law governing the process of distribution and processing of unclaimed property.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 Engrossed Substitute Bill:

The RUUPA is amended to include a provision that existed in the repealed UUPA, the previous statute governing unclaimed property, and that prohibits excessive fees for locating or recovering 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 to all civil actions and proceedings commenced prior to January 1, 2023, in which a claim or cause of action was asserted pursuant to the UUPA prior to its repeal. Any such action or proceeding that may have been dismissed as a result of the repeal is saved, and upon a plaintiff's motion the court must reinstate the action and allow the plaintiff to proceed with the action.

Additionally, the prohibition on excessive fees for locating or recovering unclaimed property applies to all claims and causes of action based on conduct that occurred prior to January 1, 2023, and that at that time violated the UUPA. Any such claim or cause of action that could have been commenced under the UUPA and has been extinguished by the repeal may proceed under the bill, provided that the claim or cause of action is not barred by any applicable statute of limitations.

A violation of the prohibition on excessive fees for locating or recovering unclaimed property is a per se violation of the Consumer Protection Act. A person who violates the prohibition on excessive fees 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. The criminal penalties apply prospectively from the effective date of the bill, including in cases where the prohibition applies retroactively.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Washington has laws that help homeowners stay in their homes and protect homeowners during the foreclosure process. Those protections used to include a 5 percent cap on fees charged for locating and recovering surplus funds, which result after a home is sold at foreclosure and the proceeds exceed the amount owed.

In 2022 the RUUPA inadvertently repealed the per se violations for excessive fees or charges relating to the recovery of property held by the state. This opened the door for scammers to prey upon vulnerable homeowners who experience a foreclosure. As home

values rose, foreclosure scams have evolved; they now target homeowners with surplus funds remaining after the payment of liens and are designed to strip homeowners of their hard-earned equity. In one case a company scammed several Washington homeowners out of equity, including a family who would have lost over \$90,000, or 67 percent of their equity in the home, if the Attorney General and the Consumer Protection Division had not stepped in and stopped the scam.

The bill seeks to restore the status quo by reinstating this 5 percent cap on fees and the per se violations. The bill also explicitly applies the 5 percent cap to surplus funds resulting from foreclosures under the DOTA and not just foreclosures of tax liens under the RUUPA. The bill makes it less profitable to scam homeowners who have already lost their homes and ensures that homeowners know their rights with regard to surplus funds.

This bill is instrumental to the Consumer Protection Division's efforts to protect consumers from foreclosure-related scams, and per se violations of the Consumer Protection Act play a key role in holding these types of companies accountable. Relying on the unconscionability standard in the RUUPA requires significant access to lawyers and legal resources that many consumers and homeowners simply do not have. The bill simplifies investigations and litigation of foreclosure-related scams, and makes the Attorney's General efforts to protect consumers more efficient.

Pending cases that have been filed before the repeal of the UUPA are severely affected by the repeal and by the fact that there is no current legislation that prohibits excessive fees. The bill should be amended to ensure that there are remedies available for people who have been affected by these practices before the repeal of the UUPA.

(Opposed) None.

Persons Testifying: Representative Tina Orwall, prime sponsor; Chip Goss; Denise Rodriguez, Washington Homeownership Resource Center; Heidi Anderson, Washington State Attorney General's Office; Guy Beckett, Berry and Beckett, PLLP; and Justin Thomas.

Persons Signed In To Testify But Not Testifying: None.