

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7276

BILL NUMBER: SB 390

NOTE PREPARED: Feb 22, 2007

BILL AMENDED: Feb 19, 2007

SUBJECT: Mortgage Rescue Protection Fraud.

FIRST AUTHOR: Sen. Broden

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

Notice of Foreclosures: It establishes notice requirements regarding foreclosures on real property.

Contracts and Agreements Rescinded: The bill provides that a homeowner may rescind: (1) contracts with foreclosure consultants; and (2) foreclosure reconveyance agreements.

Homeowner Repayment: The bill also requires a homeowner who rescinds a contract with a foreclosure consultant or a foreclosure reconveyance agreement to repay amounts paid to the homeowner.

Foreclosure Consultants and Purchasers: It prohibits foreclosure consultants and foreclosure purchasers from certain actions.

Foreclosure Purchasers: It requires foreclosure purchasers to:

- (1) ensure that title to real property has been reconveyed to the homeowner in a timely manner if reconveyance is required;
- (2) make certain payments to the homeowner; and
- (3) make a detailed accounting of the basis for the amount of payment made to the homeowner if the real property is resold within a certain time.

Mortgage Rescue Fraud Laws Violations: The bill allows:

- (1) the Attorney General to seek an injunction;
- (2) a court to enter certain orders or judgments; and
- (3) a homeowner to bring an action for damages;

for a violation of the mortgage rescue protection fraud laws. The bill also allows a court to award treble damages for a willful or knowing violation of the mortgage rescue protection fraud laws.

Attorney General: The bill requires the Attorney General to maintain a list of nonprofit organizations that offer counseling or advice to homeowners on foreclosure or loan defaults.

(Amended) *Exclusions:* The bill excludes certain banks, trust companies, governmental entities, attorneys, and other persons from the law.

Criminal Penalties: It makes a violation of the mortgage rescue protection fraud laws a Class A misdemeanor.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Attorney General:* Costs for the Office of the Attorney General could increase under the bill for (1) prescribing forms concerning the resale of property within 18 months after entering into a foreclosure reconveyance agreement; (2) seeking injunctions to prohibit a person from violating mortgage rescue protection fraud laws; (3) maintaining a list of nonprofit organizations that offer counseling or advice to homeowners in foreclosure and providing names and telephone numbers of those organizations to homeowners upon request; and (4) adopting rules to implement the new article.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Also, the Attorney General's Office is authorized to recover the cost of bringing an action under the bill. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: *Criminal Penalties:* There are no data to indicate how many offenders may be convicted of knowingly or intentionally violating the mortgage rescue protection fraud laws established under this bill. A violation would be subject to a Class A misdemeanor.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Mortgage Rescue Fraud Laws Violations: The bill allows a homeowner to bring an action against a person for violation of mortgage rescue protection fraud laws. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Criminal Penalties:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Criminal Penalties and Mortgage Rescue Fraud Laws Violations:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee (or the \$100 filing fee for civil cases) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Attorney General.

Local Agencies Affected: Trial courts; city and town courts; local law enforcement agencies.

Information Sources:

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