

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7276

BILL NUMBER: SB 390

NOTE PREPARED: Apr 10, 2007

BILL AMENDED: Apr 5, 2007

SUBJECT: Mortgage Rescue Protection Fraud.

FIRST AUTHOR: Sen. Broden

FIRST SPONSOR: Rep. Bardon

BILL STATUS: As Passed House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: 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Contracts and Agreements Rescinded: The bill provides that a homeowner may rescind: (1) contracts with foreclosure consultants; and (2) foreclosure reconveyance agreements. The bill provides that a homeowner may rescind a foreclosure reconveyance agreement at any time before midnight of the seventh business day after the homeowner's transfer of the interest in the real property that is the subject of the agreement.

Homeowner Repayment: The bill also requires a homeowner who rescinds: (1) a contract with a foreclosure consultant; or (2) a foreclosure conveyance agreement; to repay certain amounts advanced in connection with the contract or the agreement not later than 30 days after the date of rescission

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 is reconveyed to the homeowner in a timely manner if reconveyance is required under a foreclosure reconveyance agreement; or (2) pay the homeowner an amount equal to 66% of the net proceeds from any resale of the property, if the property is sold within 18 months of entering into the agreement. It also requires a foreclosure purchaser to make a detailed accounting of the basis for the amount of payment made to the homeowner if the real property is resold within 18 months.

Attorney General: It provides that a violation of the statute concerning mortgage rescue protection fraud is a deceptive act that is actionable by the Attorney General.

Homeowner Actions: It allows a homeowner to bring an action for damages for a violation of the mortgage rescue protection fraud laws. Allows a court to award treble damages for a willful or knowing violation of the mortgage rescue protection fraud laws.

Indiana Housing and Community Development Authority: It requires the Indiana Housing and Community Development Authority to maintain a list of nonprofit organizations that offer counseling or advice to homeowners in foreclosure or loan defaults.

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: (Revised) *Indiana Housing and Community Development Authority:* The Indiana Housing and Community Development Authority (IHCDA) could incur minimal additional costs to 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.

Background on the Indiana Housing and Community Development Authority: The Authority is a quasi- governmental agency administered by the Lieutenant Governor's Office. The Authority uses federal and state matching dollars along with local dollars to administer financial vehicles and incentives to create affordable housing for rent or purchase as well as supportive facilities.

(Revised) *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) bringing an action to enjoin a deceptive practice, and (3) adopting rules to implement the new article. These costs are expected to be minimal or recoverable if the court finds that an injunction has been violated.

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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