



House of Representatives

General Assembly

File No. 337

February Session, 2008

Substitute House Bill No. 5553

House of Representatives, April 1, 2008

The Committee on Planning and Development reported through REP. FELTMAN of the 6th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FORECLOSURE RESCUE TRANSACTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) As used in sections 2 to 5,
2 inclusive, of this act:

3 (1) "Foreclosure rescue transaction" means a transaction (A) by
4 which residential property is conveyed by a homeowner who
5 maintains a legal or equitable interest in such property, including,
6 without limitation, a lease interest, an option to acquire the property,
7 or other interest in the property conveyed, and (B) which is designed
8 or intended by the parties to avoid or delay actual or anticipated
9 foreclosure proceedings against residential property of a homeowner.

10 (2) "Foreclosure-related services" means any goods or services
11 related to, or promising assistance in connection with, (A) avoiding or
12 delaying actual or anticipated foreclosure proceedings concerning
13 residential property, or (B) curing or otherwise addressing a default or

14 failure to timely pay with respect to a residential mortgage loan
15 obligation and includes, but is not limited to, the offer, arrangement or
16 placement of a residential mortgage loan or other loan when those
17 goods or services are advertised, offered or promoted in the context of
18 foreclosure-related services.

19 (3) "Homeowner" means a person with a legal or equitable interest
20 in a building containing one to six dwelling units in which such
21 homeowner resides; and

22 (4) "Residential property" means real property containing one to six
23 dwelling units.

24 Sec. 2. (NEW) (*Effective from passage*) (a) No person shall, for
25 compensation or gain or for potential or contingent compensation or
26 gain whether at the time of the transaction or in the future, engage in,
27 arrange, offer, promote, promise, solicit participation in, or carry out a
28 foreclosure rescue transaction in this state or concerning residential
29 property in this state. The provisions of this subsection shall not be
30 construed to prohibit foreclosure rescue transactions that are not
31 carried out for compensation or gain or for potential or contingent
32 compensation or gain, including, but not limited to, transactions
33 arranged by a bona fide nonprofit organization, as defined in section
34 36a-655 of the general statutes.

35 (b) No person shall solicit, arrange or accept an advance fee in
36 connection with offering, arranging or providing foreclosure-related
37 services, provided this subsection shall not (1) prohibit an attorney
38 licensed to practice law in this state from soliciting, arranging or
39 accepting an advance fee or retainer for legal services in connection
40 with the representation of a client in a bankruptcy petition, state or
41 federal court proceedings, or negotiations in order to avoid, defend or
42 settle a foreclosure if such attorney complies with all applicable laws
43 and regulations pertaining to such fees; or (2) prohibit a mortgage
44 broker or mortgage lender, licensed under sections 36a-485 to 36a-
45 498a, inclusive, of the general statutes or the 2008 supplement to the
46 general statutes, or a financial institution from soliciting, paying or

47 accepting a loan application fee that conforms with all applicable laws
48 and regulations, including any regulations of the Department of
49 Banking, if the foreclosure-related services at issue concern the offer,
50 arrangement or placement of a residential mortgage loan. For purposes
51 of this subsection, "advance fee" means any money or consideration
52 paid in advance of actually receiving services.

53 Sec. 3. (NEW) (*Effective from passage*) (a) No person shall (1)
54 advertise, offer or promote the availability of foreclosure rescue
55 transactions prohibited under section 2 of this act or of services related
56 to such foreclosure rescue transactions; (2) advertise, offer or promote
57 foreclosure-related services if such person intends to provide
58 foreclosure-related services by offering, engaging in, arranging,
59 promoting, promising or soliciting participation in a foreclosure rescue
60 transaction prohibited under section 2 of this act; or (3) advertise, offer
61 or promote foreclosure-related services without disclosing, clearly and
62 conspicuously, (A) the precise goods and services offered and to be
63 provided by the promoter of foreclosure-related services, and (B) a
64 precise description of how the promoter will assist persons in avoiding
65 or delaying foreclosure or curing or otherwise addressing a default or
66 failure to timely pay a residential mortgage loan obligation.

67 (b) No mortgage broker or mortgage lender, licensed under sections
68 36a-485 to 36a-498a, inclusive, of the general statutes or the 2008
69 supplement to the general statutes, shall advertise, offer or promote
70 foreclosure-related services not otherwise prohibited by subsection (a)
71 of this section where the goods or services promoted concern the offer,
72 arrangement or placement of a residential mortgage loan, including,
73 but not limited to, refinancing or replacement financing, without
74 complying with all laws and regulations that apply to the marketing of
75 mortgage loans, including, without limitation, the regulations of the
76 Banking Commissioner.

77 Sec. 4. (NEW) (*Effective from passage*) The Banking Commissioner
78 may adopt regulations pursuant to chapter 54 of the general statutes to
79 implement the provisions of sections 2 and 3 of this act.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Banking Dept.	BF - None	None	None

Note: BF=Banking Fund

Municipal Impact: None

Explanation

Section 4 of the bill which allows the Department of Banking (DOB) to adopt regulations to implement sections 2 and 3 of the bill results in no fiscal impact to the DOB due to the permissive nature of the section.

OLR Bill Analysis

HB 5553

AN ACT CONCERNING FORECLOSURE RESCUE TRANSACTIONS.

SUMMARY:

This bill prohibits people from advertising, offering, arranging, soliciting, promoting, promising, or carrying out foreclosure rescue transactions for profit. It exempts nonprofit organizations from this prohibition.

The bill prohibits the acceptance of advance fees for foreclosure-related services, except in certain cases for licensed attorneys, licensed mortgage brokers and lenders, and other financial institutions. When permitted advance fees are accepted, the bill subjects entities to disclosure regulations.

Under the law, mortgage brokers and lenders must also comply with all rules and regulations governing the marketing of mortgage loans.

The bill also authorizes the banking commissioner to adopt regulations to implement these prohibitions.

The bill applies to transactions involving people with legal or equitable interest in residential property (homeowners) who reside in buildings with one to six units (residential property).

Violations are unfair trade practices and subject to the appropriate civil proceedings under the Connecticut Unfair Trade Practices Act (CUTPA).

EFFECTIVE DATE: Upon passage

FORECLOSURE RESCUE TRANSACTIONS AND FORECLOSURE-RELATED SERVICES

“Foreclosure-rescue transactions” are those where (1) the homeowner transfers residential property ownership to a third party, but maintains a legal and equitable interest in such property, such as a lease interest or an option to re-acquire the property, and (2) the goal is to avoid real or potential foreclosure proceedings of such property.

“Foreclosure-related services” are any goods or services related to, or promising to, (1) avoid real or potential foreclosure proceedings or (2) deal with a missed or late mortgage payment for residential properties.

Affected Transactions

The bill prohibits people who seek real, contingent, or potential profit from engaging in, advertising, arranging, offering, promoting, promising, soliciting participation in, or carrying out a foreclosure rescue transaction. It exempts nonprofit foreclosure rescue transactions, including those carried out by bona fide nonprofit organizations.

The bill also prohibits the solicitation, arrangement, or acceptance of an advance fee for foreclosure-rescue services. However, the bill exempts both licensed attorneys from accepting advance fees or retainers for representation in proceedings related to foreclosure, and licensed mortgage brokers, lenders, and other financial institutions from accepting loan application fees, if the foreclosure-related services in question concern the offer, placement, or arrangement of a residential mortgage loan. Under the law, licensed attorneys, mortgage brokers, lenders, and other financial institutions are subject to the relevant state rules and regulations governing the marketing of mortgage loans, including those of the banking commissioner.

Disclosure

When permitted foreclosure-rescue transactions or services occur, the bill requires the person advertising, promoting, or offering them to

disclose, clearly and conspicuously, (1) the precise goods and services offered and to be provided and (2) a precise description of how foreclosure will be avoided or delayed, or how a missed or late mortgage payment will be addressed. The bill also requires mortgage brokers and lenders to comply with all laws and regulations that apply to the marketing of mortgage loans when advertising, offering, or promoting foreclosure-related services, including refinancing or replacement financing.

Violations

A violation of these prohibitions is an unfair trade practices and subject to the appropriate civil proceedings under CUTPA.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders, award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for each willful violation and \$25,000 for violation of a restraining order.

Related Bills

Several legislative committees have favorably reported bills to the floor broadly addressing residential foreclosure. They are:

Bill No.	Committee	File No.
HB5758	General Law	123
HB 347	Housing	n/a

HB 5577	Banks	114
---------	-------	-----

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Change of Reference

Yea 10 Nay 0 (03/04/2008)

Planning and Development Committee

Joint Favorable

Yea 19 Nay 1 (03/12/2008)