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## **OLR Bill Analysis**

### **sHB 6351 (as amended by House "A")\***

#### ***AN ACT CONCERNING FORECLOSURE MEDIATION.***

##### **SUMMARY:**

This bill makes changes in several programs and laws related to foreclosure as well as other banking- and housing-related issues.

The bill makes various changes in the judicial branch's foreclosure mediation program, including (1) extending the program's sunset date by two years, until July 1, 2014, for foreclosure actions with return dates on or after July 1, 2009; (2) extending the program to properties owned by religious organizations; (3) generally prohibiting the parties from making motions, other than those related to the mediation, for the eight months following the return date; and (4) increasing documentation requirements (§§ 1-4).

The bill creates a task force to study the Connecticut Housing Finance Authority's loss mitigation programs (§ 5).

The bill excludes from the state's overtime pay requirements mortgage loan originators designated as highly compensated employees under federal regulations, other than originators who work solely from an employer's office (§ 6).

The bill codifies into state law the federal Protecting Tenants at Foreclosure Act, with a sunset date of December 31, 2017, that extends its protections beyond the federal act's December 31, 2014 expiration (§§ 7-8).

The bill prohibits a general-use prepaid card from including an expiration date for the underlying funds redeemable through its use, but it allows an expiration date for the card itself if certain requirements are met. It also explicitly excludes general-use prepaid

cards from the definition of “gift certificate,” but it applies to them the same prohibition on inactivity charges, fees, or penalties and exemption from state escheat provisions as apply to gift certificates (§§ 9-12).

PA 09-144 created a registration system for tracking the owners of uninhabited one-to-four family residential property obtained through foreclosure. The bill establishes a new registration requirement that applies to a broader class of buildings when the foreclosure process begins, and expands the scope of the existing registration requirement. It provides civil penalties for violations. It also makes other changes to the mechanics of the registration process (§§ 13-15).

The bill also makes minor, technical, and conforming changes.

\*House Amendment “A” strikes the underlying bill, which made changes to the foreclosure mediation program. It adds several provisions related to the program, including those (1) extending the program’s sunset date and (2) increasing documentation requirements. It deletes other provisions, such as those (1) extending the program to properties occupied by nonprofit charitable organizations and (2) eliminating the 30-day limit for extending the mediation period. It changes provisions concerning motion practice while the mediation is ongoing. The amendment also adds the provisions on topics other than the mediation program.

EFFECTIVE DATE: Various; see below.

## **§§ 1-4 — FORECLOSURE MEDIATION PROGRAM**

### ***Extension of Program Sunset Date***

The bill extends the judicial foreclosure mediation program by two years, until July 1, 2014, for foreclosure actions with return dates on or after July 1, 2009. It retains the current program end date (July 1, 2012) for foreclosure actions with return dates from July 1, 2008 to June 30, 2009.

### ***Extension to Religious Organizations***

The bill extends the foreclosure mediation program to religious

organizations that own real property, starting with foreclosures with return dates on or after October 1, 2011. It defines “religious organizations” as organizations that meet the religious purposes test to be tax exempt under the Internal Revenue Code.

To be eligible for the program, as is the case with current requirements for residential owners, the religious organization must be the borrower on a mortgage encumbering the property, and the property must be located in Connecticut. By law, to participate in the program, a residential owner must be the owner-occupant of a one-to-four family property that is his or her primary residence.

Current law requires the loan that is the subject of the foreclosure action to be primarily for personal, family, or household purposes. The bill specifies that the loan may also be primarily for religious purposes.

***Changes to Mediation Process: Actions on or After July 1, 2009***

Except as specified below, the following changes apply to residential foreclosures with return dates on or after July 1, 2009 and foreclosures of properties owned by religious organizations with return dates on or after October 1, 2011.

***Mediation Information Form and Other Documents.*** By law, when bringing a foreclosure action, the mortgagee (i.e., the lender, servicer, or successor or assignee) must provide the mortgagor (i.e., borrower) with a (1) notice of foreclosure mediation; (2) foreclosure mediation certificate; and (3) blank appearance form. The bill adds to the required information that a mortgagee must provide a residential mortgagor for foreclosures with return dates on or after October 1, 2011. For such foreclosure actions, the bill requires mortgagees to provide the mortgagor with a (1) mediation information form and (2) notice containing contact information for consumer credit counseling agencies that the Connecticut Housing Finance Authority (CHFA) approves. As is the case with the documents described above, these must be attached to the front of the foreclosure writ, summons, and complaint and must be in a chief court administrator-prescribed form.

The mediation information form must be designed to elicit current financial information and other nonfinancial information from the mortgagor that will be useful in mediation, as the chief court administrator determines in consultation with banking industry representatives and consumer advocates. The form's instructions must explain that the completed form, plus any accompanying documents reasonably requested in the instructions, must be delivered to the mortgagee's counsel within 15 business days before the first mediation session. The bill specifies that the mediation information form and accompanying documentation must not be made publicly available, unless the mortgagor explicitly agrees in writing to make them public.

By law, the court must issue a notice of foreclosure mediation to the mortgagor within three business days of the mortgagee returning the writ to the court. Under the bill, the notice must remind the mortgagor to deliver the completed mediation information form and the accompanying documents. The notice must also encourage the mortgagor to deliver the form and accompanying documents earlier than the law requires him or her to do so.

The bill requires the notice to be accompanied by chief court administrator-prescribed materials from the banking department, which describe community-based resources available to the mortgagor. These resources must include CHFA-approved housing counseling agencies that may help the mortgagor (1) prepare the mediation information form and (2) apply for mortgage assistance programs.

***First Mediation Session.*** The bill provides that on or after October 1, 2011, the first mediation session must be held within 35 calendar days, rather than 15 business days, of the court sending the notice to each appearing party scheduling the first mediation session.

***Account History and Contact Information.*** Under the bill, on and after October 1, 2011, the mortgagee must deliver to the mortgagor an account history identifying all credits and debits assessed to the mortgagor's loan account in the immediately preceding 12 months.

The mortgagee must do so within 15 business days of the first session.

During this same time frame, the mortgagee must also provide the mortgagor with specified contact information for an individual able to process requests to refinance or modify the mortgage or take other action to avoid foreclosure. The required contact information is the person's name, business mailing address, electronic mail address, facsimile number, and direct telephone number. The bill requires mortgagees, with reasonable promptness, to provide the mortgagors or their counsel with updates to this contact information.

***Prohibition on Motions and Judgments.*** Under existing law, when the mediation period is required and available, a court cannot enter a judgment of strict foreclosure or foreclosure by sale until the mediation period has expired or otherwise ends, whichever is earlier. The bill extends this restriction to 15 days after the mediation period has ended, if it ends fewer than eight months after the action's return date.

The bill further limits what can transpire during the litigation for a period up to eight months from the return date. During this time frame, the parties cannot make a motion, request, or demand with respect to each other, other than those relating to the mediation. The bill specifies that this restriction does not apply to a mortgagor's motion to dismiss that challenges the court's jurisdiction, or to a mortgagee's response to such a motion. The bill also specifies that if the mortgagor makes any other type of motion, request, or demand with respect to the mortgagee within the eight-month period, the restriction during this period no longer applies to either party.

The bill specifies that these provisions do not affect any motions made on or before June 30, 2011, or defaults or judgments entered on or before that date.

Under the bill, in foreclosure actions with return dates on or after July 1, 2011, after the eight-month or 15-day periods described above, mortgagees may file simultaneously (1) a motion for default and (2) a motion for judgment of strict foreclosure or for judgment of

foreclosure by sale with respect to the mortgagor. This applies despite any contrary law.

**Failure Regarding Documents.** The bill specifies that either party's failure to comply with any of the law's documentation requirements for the foreclosure mediation program is not grounds for ending the mediation period before a second session has been conducted.

**Changes to Mediation Process: All Eligible Actions**

These changes apply to all foreclosure actions eligible for the mediation program – i.e., residential foreclosures with return dates on or after July 1, 2008 and foreclosures of properties owned by religious organizations with return dates on or after October 1, 2011.

**Parties' Appearance at Mediation.** By law, the mortgagor and mortgagee must appear in person at each mediation session and must have authority to agree to a proposed settlement. Under current law, the mortgagee's attorney can appear instead if he or she has the authority to agree to a proposed settlement and the mortgagee is available by telephone. Under the bill, if a mortgagee's attorney is appearing on behalf of the mortgagee, the mortgagee must also be available to participate in the mediation session by speakerphone, as long as there is an opportunity for the mortgagee and its counsel to engage in confidential discussions.

The bill also provides that when there are multiple mortgagors, only one must appear at mediation sessions after the first session, unless there is good cause for all to appear. If only one mortgagor appears, the others must be available during the session to participate by speakerphone, as long as they and their attorney have the opportunity to engage in confidential discussions.

By law, a court may not award attorney's fees to a mortgagee for time spent in a mediation session if it does not comply with the requirements for personal appearance or attorney appearance as specified above, unless the court finds reasonable cause for the failure.

**Referral to CHFA Mortgage Assistance Programs.** By law, the

mediator can refer the mortgagor to certain CHFA mortgage assistance programs at any time during the mediation. The bill specifies that this only applies to residential mortgagors, not religious organizations.

EFFECTIVE DATE: July 1, 2011, except a conforming change is effective October 1, 2011.

#### **§ 5 — TASK FORCE ON CHFA LOSS MITIGATION PROGRAMS**

The bill establishes a task force to review and evaluate the loss mitigation programs that CHFA administers. The members are the following, or their designees:

1. the governor,
2. the six legislative leaders,
3. the chairpersons of the banks and housing committees,
4. the banking commissioner, and
5. CHFA's chief housing officer.

Under the bill, the task force must elect a chairperson from among its members. The chairperson must schedule the first meeting, which must be within 60 days of the bill's passage. The bill requires the Banks Committee's administrative staff to also serve in that capacity for the task force.

The bill requires the task force to submit a report on its findings and recommendations by January 1, 2012 to the Banks Committee. The task force terminates when it submits its report or on January 1, 2012, whichever is later.

EFFECTIVE DATE: Upon passage

#### **§ 6 — MORTGAGE LOAN ORIGINATORS – EXCLUSION FROM OVERTIME REQUIREMENTS**

The bill excludes from the state's overtime pay requirements (time and one-half after 40 hours a week) mortgage loan originators considered to be highly compensated employees under federal

regulations, except for people who perform the functions of an originator solely from their employer's office. It specifies that for this purpose, an originator's home office is not considered an employer's office.

The bill applies the banking statute's existing definition of mortgage loan originator (see BACKGROUND).

Under federal regulations, someone with total annual compensation of at least \$100,000, whose primary duty includes office or non-manual work, and who customarily and regularly performs exempt duties or responsibilities of an executive, administrative, or professional employee as identified by regulation, is exempt from the minimum wage and overtime pay requirements of the federal Fair Labor Standards Act (29 C.F.R. § 541.601). The bill specifies that starting on October 1, 2012, the total annual compensation of a mortgage loan originator for this purpose must be increased annually, effective each October 1. The increase must be based on the year-to-year percentage increase in the average of all workers' weekly earnings as the labor commissioner determines under law.

EFFECTIVE DATE: Upon passage

## **§§ 7-8 — PROTECTIONS FOR TENANTS OF FORECLOSED HOMES**

The bill provides protections for certain tenants of foreclosed homes. These provisions are nearly identical to those in the federal Protecting Tenants at Foreclosure Act. The federal act is set to expire on December 31, 2014. The bill's provisions regarding tenants of foreclosed homes will sunset on December 31, 2017.

### ***Tenants of Foreclosed Homes***

The following provisions apply to foreclosures with return dates on or after passage through December 31, 2017. The foreclosure must be on a federally related mortgage loan or on any dwelling or residential property. Under the bill, a "federally related mortgage loan" has the same meaning as in the federal Real Estate Settlement Procedures Act of 1974 (see BACKGROUND).

Under the bill, an immediate successor in interest to any such foreclosed property takes the property subject to the rights of bona fide tenants, as specified below, as of the date absolute title vests in the successor in interest. A successor in interest must provide tenants with a notice to vacate 90 days before the notice is effective.

Generally, the bill provides that tenants with a lease entered into before the successor takes absolute title must be allowed to remain until the end of the lease term. Despite a lease, tenants can be evicted on 90 days' notice as provided above if (1) the successor in interest sells the unit to a buyer who will occupy it as his or her primary residence or (2) the lease was terminable at will. Tenants who did not have leases can also be evicted on 90 days' notice.

These protections apply only to "bona fide" leases or tenancies. These are those (1) in which the mortgagor or the mortgagor's child, spouse, or parent is not the tenant; (2) that were the result of an arms-length transaction; and (3) that require rent that (a) is not substantially less than fair market rent for the property or (b) is reduced or subsidized due to a federal, state, or local subsidy.

The bill specifies that these provisions do not affect the termination requirements for any federal- or state-subsidized tenancy (see below for changes regarding section 8 tenancies). They also do not affect any state or local laws that provide tenants with longer time periods or additional protections.

The bill specifies that for these purposes, the date of a notice of foreclosure is the date when complete title to a property is transferred to a successor entity or person under a court order or under the provisions in a mortgage, deed of trust, or security deed.

### ***Section 8 Tenants***

The bill also provides protections for tenants who are receiving assistance under the federal Housing Choice Voucher Program (i.e., section 8 tenants).

The bill limits the circumstances in which an owner who is an

immediate successor in interest to a property following foreclosure may terminate the lease of a section 8 tenant. On or before December 31, 2017, the bill allows the owner to terminate the tenancy on the date of taking ownership if the owner (1) will occupy the unit as his or her primary residence and (2) has provided the tenant a notice to vacate at least 90 days before the notice's effective date. Otherwise, the bill specifies that vacating the property before sale cannot be considered good cause for terminating the tenant's lease.

Under the bill, on or before December 31, 2007, for foreclosures involving federally-related mortgage loans (as specified above) or any residential property occupied by a section 8 tenant, the immediate successor in interest takes the property subject to the (1) lease between the tenant and prior owner and (2) housing assistance payments contract between the prior owner and the public housing agency.

The bill specifies that all of these provisions related to section 8 tenants do not affect any state or local law that provide tenants with longer time periods or other protections.

EFFECTIVE DATE: Upon passage

## **§§ 9-12 — GENERAL-USE PREPAID CARDS**

### ***Definition***

The bill specifically excludes general-use prepaid cards from the definition of gift certificate. A "general-use prepaid card" is a card, code, or other device issued to a consumer in exchange for payment, on a prepaid basis and in a specific amount, primarily for personal, family, or household purposes. It is redeemable when presented at multiple, unaffiliated merchants for goods or services, and can be used at automated teller machines.

By law, a "gift certificate" is a record evidencing a promise, made for consideration, by the seller or issuer of the record that goods or services will be provided to the owner of the record to the value shown in the record, including (1) a prefunded record containing a microprocessor chip, magnetic strip, or other means to store

information and for which an amount is deducted from the stored value upon each use; (2) a gift card or electronic gift card; and (3) a stored-value card or certificate, among others. It does not include prepaid calling cards or prepaid commercial mobile radio services (CGS § 3-56a(5)).

Current law prohibits gift certificates from having a dormancy, abandoned property, unclaimed property, escheat, or inactivity fee or charge or any similar charge, fee, or penalty for inactivity. Suggestive language on them or in any agreement relating to them that there is a charge, fee, or penalty for inactivity, is also prohibited. Gift certificates are exempted from state escheat provisions. The bill explicitly applies these fee, charge, and penalty prohibitions and the escheat exemption to general-use prepaid cards.

### ***Expiration Date Requirements***

Under the bill, a general-use prepaid card can include an expiration date if it provides the following information:

1. that the underlying funds do not expire and a consumer can obtain a replacement general-use prepaid card from the issuer and
2. a toll-free telephone number and an Internet website address, if one is available, that a holder of a general-use prepaid card can use to replace it after it expires.

This information must be in writing. An issuer can satisfy this disclosure requirement by providing disclosures consistent with federal regulation (see BACKGROUND). The disclosure that the underlying funds do not expire and a replacement general-use prepaid card can be obtained must be made with equal prominence and in close proximity to the expiration date on the general-use prepaid card.

The bill also prohibits a general-use prepaid card from including an expiration date if a fee or charge is imposed on the holder for replacing it or providing the holder with its remaining balance, so long as it has not been lost or stolen. It requires the seller of a general-use prepaid

card with an expiration date to have policies and procedures that give consumers a reasonable opportunity to purchase a card with at least five years remaining until it expires.

EFFECTIVE DATE: October 1, 2011

## **§§ 13-15 — REGISTRATION REQUIREMENTS FOR FORECLOSURES**

### ***Properties Subject to Registration Requirement***

Under current law, the registration requirement applies only to one-to-four family residential properties. The bill requires registration of all buildings containing at least one dwelling unit, including commercial buildings. Under the bill, a dwelling unit is a house, building, or portion of either that is occupied or designed to be occupied, or is rented, leased, or hired out to be occupied, exclusively as a home or residence for at least one person.

The bill excludes properties where the mortgage being foreclosed is held by an individual. It also specifies that any individual or entity, including a government entity, that meets the bill's requirements must register subject properties.

As explained further below, the registration requirement applies when such properties are in foreclosure or someone takes title to such properties after foreclosure.

### ***Registration Requirement***

***Registration by Plaintiffs in Foreclosure Action.*** The bill requires registration by people or entities who, on or after October 1, 2011, bring a foreclosure action concerning a subject property.

The required registration information at this stage is generally similar to that required under current law and the bill for registration by those who take title to foreclosed properties (see below).

Anyone subject to this requirement must register the property with the town clerk in the municipality where the property is located. They must do so at the time and place that the notice of *lis pendens* regarding

the property is recorded, according to the law's requirements for such a notice. The bill specifies that the municipality must maintain the registration separate from the land records.

The bill requires the registration to contain the name, address, telephone number, and electronic mail address ("contact information") of the plaintiff in the foreclosure action. Plaintiffs must indicate on the registration whether they prefer to be contacted by first class or electronic mail and the preferred addresses for such communications.

If the plaintiff is an individual or entity residing out of state, it must provide contact information for a direct contact in Connecticut, if such a contact is available.

The bill requires plaintiffs to also provide contact information for the local property maintenance company or other person or entity serving as the plaintiff's contact with the municipality for matters concerning the property.

The registration must contain the following heading, in at least 10-point, boldface capital letters: NOTICE TO MUNICIPALITY: REGISTRATION OF PROPERTY BEING FORECLOSED.

Under the bill, plaintiffs must report to the town clerk any change in the information provided on the registration within 30 days following the change. They may do so by mail or other form of delivery.

The bill also requires plaintiffs, when registering, to pay a land record filing fee to the municipality as specified in existing law.

**Registration by Owners After Title Vests.** Current law requires anyone in whom title to a subject property has vested after October 1, 2009, through a foreclosure action (whether strict foreclosure or foreclosure by sale) to register the property with the town clerk of the municipality where the property is located or with the Mortgage Electronic Registration Systems (MERS), an online system the real estate finance industry created for originating, selling, and servicing rights.

The bill modifies the registration requirement on anyone taking title to such a property following foreclosure on or after October 1, 2011, but the mechanics of the registration differ in some respects. Under the bill, registration must be with the municipality, not MERS. The registration must be mailed or delivered to the town clerk. Under current law, the registration deadline is ten days after the property becomes vacant. The bill instead requires registration within 15 days of absolute title vesting in the person.

If the registering owner was also the plaintiff in the foreclosure action, rather than registering anew, the person must update its prior registration with any change needed to comply with the bill's requirements for other registrants who take title to foreclosed property, as specified below. This update must occur within 15 days of absolute title vesting in the person. The updated registration must include, in at least 10-point boldface capital letters, the following heading: NOTICE TO MUNICIPALITY: UPDATED REGISTRATION FOR PROPERTY ACQUIRED THROUGH FORECLOSURE.

Current law requires a corporation or individual residing out of state who registers with a municipality (but not with MERS) to provide contact information for a direct contact in Connecticut. The bill extends this requirement to any out-of-state registrant (not just individuals or corporations), as long as an in-state direct contact is available.

Current law requires registrants to also provide contact information for the local property maintenance company responsible for the property's security and maintenance (or maintenance only if registration is with MERS), if there is one. The bill requires such information, and specifies that the responsible person or entity need not be a property maintenance company.

The registration must indicate the date when absolute title vested in the registrant. It must also contain the following heading, in the same form as the headings described above: NOTICE TO MUNICIPALITY: REGISTRATION OF PROPERTY ACQUIRED THROUGH FORECLOSURE.

Current law requires those who register with a municipality, but not with MERS, to pay a \$100 fee to the municipality. The bill instead requires all registrants (including those who were plaintiffs in the foreclosure action and are updating their prior registration) to pay to the municipality a land record filing fee as specified by law.

The bill also requires registrants, by mail or other delivery form, to report to the town clerk any change in registration information within 30 days of the change. Current law requires those who register with municipalities to update their information within 10 days.

Current law requires those registering with municipalities to indicate their preferred contact method and address. The bill eliminates this requirement (but as described above, it imposes the requirement on registering plaintiffs to foreclosure actions).

### ***Violation Notices***

Under current law, if a registrant violates any state law or municipal ordinance on the repair or maintenance of real estate, the municipality can issue a notice citing the violating conditions. The bill permits a municipality to issue such a notice only for registrations after title has vested following foreclosure, including updated registrations by those who previously registered as plaintiffs, as specified above.

By law, violation notices must be sent by first class or electronic mail, or both, to the registrant. Current law also requires a copy of the notice to be sent by first class or electronic mail to the identified local property maintenance company, if there is one. The bill instead requires a copy to be sent to the property maintenance company or other person or entity designated on the registration as responsible for the property's security and maintenance. By law, the notice must also meet the same standards as notices to remedy a health, housing, or safety code violation (i.e., notice must be sent to the lienholder).

Current law requires the notice to provide a date by which the registrant may remedy the conditions in question. The bill instead requires a date by which the registrant must do so. As under current

law, the date must be reasonable under the circumstances. Current law also provides that if the registrant or property maintenance company fails to remedy the violating conditions, the municipality can enforce its rights under the relevant statute or ordinance. The bill deletes this reference to property maintenance company and allows the municipality to enforce its rights if the registrant, or its contact or agent, fails to remedy the violation.

***Restriction on Other Registration Requirements***

By law, municipalities are prohibited from imposing registration requirements outside of these requirements unless they were in effect before the passage of PA 09-144 (the act that instituted the registration requirements that this bill amends). The bill specifies that this prohibition applies in the same manner regarding other requirements for plaintiffs in foreclosure actions whom the bill requires to register.

***Civil Penalties***

The bill provides civil penalties for anyone who fails to register as required by the bill. For foreclosing plaintiffs, the penalty is \$100 per violation, up to a maximum of \$5,000. For those who take title to foreclosed properties and who fail to register within 30 days of doing so, the penalty is \$250 per violation, up to a maximum of \$25,000. In either case, the bill specifies that each property for which someone fails to register is a separate violation.

The bill permits authorized municipal officials to bring a civil action to collect the penalties, which are payable to the municipality's treasurer.

The bill specifies that these penalties do not create or constitute a lien against the property. It also provides that registration by a foreclosing party, or such a party's failure to register, does not imply or create any legal obligation on that party to repair, maintain, or secure the property before that party takes title to the property.

***Municipal Authority to Recover Expenses***

By law, municipalities may recover from a property owner expenses

incurred for the inspection, repair, demolition, maintenance, removal, or other disposition of real estate to secure the property, make it safe and sanitary, or remedy a blighted condition. The law allows the municipality to place a lien on the owner's interest in the real estate or on an insurance policy covering the real estate, but limits the insurance provisions to property other than single- or two-family dwellings. Under current law, the limitation does not apply to vacant residential properties subject to the registration requirements outlined above. The bill deletes the current requirement that the properties be vacant in order for the limitation not to apply.

EFFECTIVE DATE: October 1, 2011

## **BACKGROUND**

### ***Mortgage Loan Originators***

The banking law defines "mortgage loan originator" as an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for or with the expectation of compensation or gain. The law specifically excludes:

1. an individual engaged solely as a loan processor or underwriter, except those acting as independent contractors;
2. a person who only performs real estate brokerage activities and is licensed under the statutes governing real estate brokers and salespersons, unless the person is compensated by a mortgage lender, correspondent lender, broker, or other originator or by one of their agents;
3. a person solely involved in extensions of credit relating to timeshare plans; or
4. any individual who only renegotiates terms for existing mortgages and does not otherwise act as an originator, unless the U. S. Department of Housing and Urban Development (HUD) or a court of competent jurisdiction determines the individual needs to be licensed under the federal S.A.F.E. Act (CGS § 36a-485(15)).

***Federally Related Mortgage Loan Under RESPA***

Under section 3 of the federal Real Estate Settlement Procedures Act (RESPA) of 1974 (12 USC § 2602), a “federally related mortgage loan” includes any loan, other than temporary financing such as a construction loan, which is secured by a first or subordinate lien on residential property (including units of condominiums and cooperatives) designed principally for one-to-four family occupancy, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property. The loan must also meet one of the following four criteria:

1. be made in whole or part by any lender (a) whose deposits or accounts are insured by a federal agency or (b) that is federally regulated;
2. be made in whole or part, or insured, guaranteed, supplemented, or assisted in any way, by the HUD secretary or any other federal officer or agency, or under or in connection with a housing or urban development program administered by the HUD secretary or a housing or related program administered by any other federal officer or agency;
3. be intended to be sold by the originating lender to the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or a financial institution from which it is to be purchased by Freddie Mac; or
4. be made in whole or in part by any creditor, as defined in federal law regarding consumer credit disclosure, who makes or invests in residential real estate loans totaling more than \$1 million annually, except “creditor” does not include any state agency or instrumentality.

***Related Federal Law—General-Use Prepaid Cards***

Federal regulations establish disclosure requirements for selling or issuing a general-use prepaid card with an expiration date (12 CFR

205.20). In general, they require:

1. an expiration date for underlying funds or a statement that the underlying funds do not expire;
2. a toll-free number and website address, if one is maintained, that a consumer can use to obtain a replacement card after it expires if underlying funds are available; and
3. a statement that (a) the card expires but the underlying funds do not or expire later than card itself and (b) the consumer can contact the issuer for a replacement card.

These disclosures must be provided on the card.

### ***Related Bills***

sSB 957 as amended by Senate Amendment "A," passed by the Senate on May 20, 2011, contains identical provisions concerning registration requirements for foreclosed properties.

sSB 1078 as amended by Senate Amendment "A," passed by the Senate on May 12, 2011, contains identical provisions concerning general-use prepaid cards.

sSB 1212 (File 734) allows certain tenants who live in multi-family buildings that have been foreclosed upon to continue to live there unless (1) the foreclosing party has entered into an agreement to sell the building in which the buyer requires the building to be vacant as a condition of sale or (2) there is good cause to evict the tenant.

sHB 6454 (File 288) exempts highly compensated mortgage loan originators from the state's overtime pay requirements.

sHB 6650 as amended by Senate Amendment "A," passed by the Senate on May 27, 2011 and the House on May 31, 2011, extends the judicial foreclosure mediation program by two years, until July 1, 2014, for foreclosure actions with return dates on or after July 1, 2009.

### **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 14 Nay 3 (03/15/2011)

Judiciary Committee

Joint Favorable

Yea 19 Nay 4 (05/31/2011)