

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	9 - 0 - 0
Yeas:	Gilliam, Krieger, Matthews, Riley, Smith J., Tomei, Whisnant, Wingard, Holvey
Nays:	0
Exc.:	0
Prepared By:	Patrick Brennan, Administrator
Meeting Dates:	2/3, 2/10

WHAT THE MEASURE DOES: Stipulates that interest in real property covered by a trust deed is terminated and foreclosed as to the person that was given notice of the trustee’s sale. Provides that the bar against action for deficiency applies to property covered by a trust deed, not just property covered by a residential trust deed. Eliminates the requirement that debt evidenced by note, bond or other obligation must be owed to a beneficiary in the residential trust deed that was subject to the trustee’s sale or foreclosure. Declares an emergency and takes effect upon passage.

ISSUES DISCUSSED:

- Increase in multiple mortgage purchases
- Foreclosure process for properties with multiple mortgages
- Appropriate language to capture loans as part of same home purchase
- House Bill 3004 (2009)
- Applicability to family members

EFFECT OF COMMITTEE AMENDMENT: Clarifies that an action for a deficiency may not be brought or a judgment entered on any other note, bond or other obligation secured by a residential trust deed or property subject to the trustee’s sale or judicial foreclosure when it was created on the same day as, and used as part of the same purchase or repurchase transaction as, the one on which the foreclosure action was taken and that it be owed to, or was originated by, the beneficiary or an affiliate of the beneficiary in the foreclosure. Replaces language specifying dates of action to which the measure applies to August 4, 2009, and the effective date of the measure, respectively.

BACKGROUND: With the enactment of House Bill 3004 (2009), homeowners with multiple home loans are protected from being sued by a holder of a second mortgage after the property has been sold at foreclosure for deficiency on the first loan.

When a home buyer does not qualify for a single loan to cover the purchase price of a home, there is an alternative way to structure financing called an “80/20” loan, where the purchase price is secured by two trust deeds. Recent court cases have permitted the junior creditor to sue for remaining deficiencies after the property has been sold at foreclosure.

House Bill 3656-A stipulates that in cases where a second loan was created as part of the same purchase or repurchase transaction as the one on which the foreclosure action was taken, and when it was owed to or originated by the beneficiary of the foreclosure or its affiliate, the holder of the second loan cannot sue for restitution.