

May 7, 2013

Representative Paul Holvey, Chair  
Members of the House Committee on Consumer Protection & Government Efficiency

**RE: Concerns regarding SB 558A**

Chair Holvey and members of the committee:

The United Trustees Association (UTA) is a national non-profit that provides information, expertise and opinions on trustee issues and practices. UTA membership is comprised of those acting as trustees under real property deeds of trust, including employees of title companies, financial institutions, and independent companies. UTA would like to seek clarification on some of the provision of SB 558A, which would mandate mediation prior to the filing of a judicial foreclosure of a residential trust deed.

First, SB 558A requires a copy of the certificate of compliance to be attached and made part of the complaint when filing for foreclosure, but also sets an expiration date of one year for the certificate of compliance (Section 5(b)). The judicial foreclosure process commonly takes more than one year to complete, and there are circumstances where a judicial foreclosure may be dismissed by order of the court, rather than voluntarily by the plaintiff. Section 5(b) does not adequately address this reality, and is ambiguous in intent and effect.

The verbiage of Section 5(b) can be interpreted in two ways. The first interpretation is that the certificate must be valid at the time the complaint is filed, and must remain so for the duration of the case. If this is the case, the plaintiff would need to start over and go through the mediation process again to get a valid certificate if the judicial foreclosure action were not resolved within a year. The second interpretation is that the certificate must be valid at the time the complaint is filed, and there is no consequence to its expiration regardless of whether it takes a year or more to complete the judicial foreclosure action. If this is the intent, UTA would like to request that the intent be clarified in the bill. However, there are circumstances that would cause the case to be dismissed and refiled, and the plaintiff would have to go through the mediation process again. There seems to be no purpose or benefit to the expiration of the certificate. Expiration only results in delays, and could potentially prejudice the grantor.

Second, SB 558A applies to both judicial and non-judicial foreclosures, but is not clear that non-judicial foreclosures going forward under SB 1552 (2012), will be permitted to continue. UTA would like clarification that foreclosures already underway and in compliance with SB 1552 will be allowed to proceed.

Thank you for considering our comments. We look forward to working with proponents and the committee to address our concerns.

Best regards,

Teresa Shill,  
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