SENATE BILL REPORT
SB 6005

As Reported by Senate Committee On:
Financial Institutions & Insurance, January 25, 2018

Title: An act relating to protecting lienholders' interests while retaining consumer protections.

Brief Description: Protecting lienholders' interests while retaining consumer protections.

Sponsors: Senators Mullet, Angel, Hobbs, Palumbo, Takko, Zeiger and Wilson.

Brief History:
Committee Activity: Financial Institutions & Insurance: 1/18/18, 1/25/18 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Provides that surplus funds from a tax foreclosure sale must be distributed to the those with a lien or a recorded interest in the property, rather than the record owner.
- Provides that the Uniform Unclaimed Property Act's limitation on fees charged for locating unclaimed tax foreclosure proceeds only applies to charging a fee to natural persons who were the record owner of the property at the time the certificate of delinquency was issued.
- Requires the treasurers of the five largest counties in the state to file a report with the Legislature regarding surplus funds from tax foreclosures.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 6005 be substituted therefor, and the substitute bill do pass.
Signed by Senators Mullet, Chair; Angel, Ranking Member; Baumgartner, Fortunato and Hobbs.

Minority Report: Do not pass.
Signed by Senator Kuderer.

Minority Report: That it be referred without recommendation.
Signed by Senator Hasegawa, Vice Chair.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jarrett Sacks (786-7448)

Background: Property Tax Foreclosures. After three years of delinquent property taxes, a county treasurer may begin foreclosure proceedings to recover past due property taxes. During the foreclosure process, a notice of delinquency is filed with the clerk of the court and notice is given to the owners and any person having a recorded interest in, or lien upon, the property. A court examines each application for judgment foreclosing a tax lien, as well as any defenses. Following the court proceedings, the court gives judgment for the taxes, interest, and other costs, and issues an order for the sale of the property.

The county treasurer must sell the property to the highest bidder for cash. The minimum bid is the total amount of taxes, interest, and costs. If the sale is for more than the minimum bid, the excess must be refunded to the record owner of the property if a refund application is made. If the county does not receive the required minimum bid, the county acquires title.

Unclaimed Property. The Uniform Unclaimed Property Act (Act) governs the disposition of property that is unclaimed by its owner. A business that holds unclaimed property must report and transfer the property to the Department of Revenue (DOR) after a holding period set in statute. DOR's duty is to find the rightful owner of the property, if possible.

The Act places limitations on the fees that may be charged for locating abandoned property. It is unlawful for a person to seek or receive a fee or compensation in excess of 5 percent of the value returned to the owner for locating:
- funds held by a county that are proceeds from a foreclosure for delinquent property taxes, or funds that are otherwise held by a county because of a person's failure to claim the funds as reimbursement for unowed taxes, fees, or other governmental charges; or
- any property they know has been reported to the DOR.

Summary of Bill (First Substitute): Property Tax Foreclosures. After the sale of a property foreclosed upon for delinquent property taxes, any surplus funds must be distributed to the persons or entities with a recorded interest in the property, or a lien upon the property, in order of lien priority. Any remaining surplus may be paid to the record owner. Entities must submit claims to the county treasurer to receive payment of the surplus funds. The definition of record owner is revised to mean the person who held title to the property immediately before title transferred to the tax sale purchaser, rather than the person who held title when the certificate of delinquency was issued.

One year after the sale of the property and the recording of the tax deed, if a claim or claims for payment of the surplus funds is submitted, the county treasurer must determine priority to the surplus funds and mail notice to all claimants of the treasurer's intent to distribute the funds. Ninety days after the notice to claimants is sent, the county treasurer must distribute the funds in order of priority. No payments of the surplus funds may be sent earlier than 90 days after the notice is sent to claimants.

No payment of surplus funds may be made sooner than one year following the recording of the tax deed to the purchaser or while an appeal is pending. No claim for surplus funds may be filed more than three years after the sale or after the surplus funds are distributed, whichever is sooner.

Any action to review a decision by a county treasurer distributing surplus funds must be commenced within 90 days of the notice of intent to distribute surplus funds being mailed to claimants and must be filed in the superior court that gave judgment for the taxes that were due on the property.

Unclaimed Property. The Uniform Unclaimed Property Act's limitations on charging fees for locating unclaimed property are amended. A person may not:

- seek or receive any fee for locating, or claiming to locate, surplus property delivered to the DOR in excess of 5 percent of the value returned to the owner;
- seek or receive any fee from a record owner of property who is a natural person for locating, or claiming to locate, tax foreclosure proceeds held by a county in excess of 5 percent of the value returned to the owner; or
- seek or receive any fee for locating, or claiming to locate, other funds held by a county because of the person's failure to claim the funds in excess of 5 percent of the value returned to the owner.

Natural person means a human being. The record owner is the person who held title to the property immediately before title transferred to the tax sale purchaser.

Reporting Requirements. The county treasurers of the five largest counties in the state must submit a report to the Legislature by November 1, 2019. The report must contain the total number of claims filed for payment of surplus funds and the total number of payments made on those claims. The data must be broken down to compare the differences between claims filed and payments received by lien holders compared to title holders.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE (First Substitute): County treasurers, at least 180 days before the issuance of a certificate of delinquency, must provide notice to the record owner of residential property that contains information regarding the potential for the homeowner to access mediation under the Foreclosure Fairness Act. The fee a person may charge a non-natural person to locate abandoned property is 35 percent of the value returned to the owner.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Liens are wiped out in tax foreclosures, which is unfair to the lienholders. The bill protects all lienholders, not just banks. The current system is not fair because the county gets to keep the excess funds. There is no cost to the county because the search they are required to do is already required by law. There is no incentive for banks to let the property go to foreclosure, but when it does, it is not fair that they do not get to recoup anything.

CON: The bill removes the incentive for financers to come to the table to prevent foreclosure. They can just wait for foreclosure and get their money. The existing law protects homeowners and the bill hurts those protections. The bill shifts the burden from lienholders to treasurers and prosecutors and increases the liability for county treasurers. There are already plenty of laws that protect lienholders.

Persons Testifying: PRO: Brent Ludeman, Global Discoveries; Jed Byerly, Global Discoveries, Managing Partner; Mark Skilling, Global Discoveries, General Counsel; Steve Gano, Wells Fargo; Trent House, Washington Bankers Association; Kelsi Hamilton, Washington Collectors Association.

CON: Lili Sotelo, Columbia Legal Services; Denise Rodriguez , Washington Homeownership Resource Center; Arny Davis, Washington State Association of County Treasurers.

Persons Signed In To Testify But Not Testifying: No one.