



**Hundredth Legislature - First Session - 2007
Committee Statement
LB 123**

Hearing Date: February 12, 2007

Committee On: Banking, Commerce and Insurance

Introducer(s): (Banking)

Title: Adopt the Nebraska Foreclosure Protection Act and change provisions relating to deceptive trade practices

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

8	Yes	Senators Pahls, Langemeier, Carlson, Christensen, Gay, Hansen, Pankonin, Pirsch
	No	
	Present, not voting	
	Absent	

Proponents:

Senator Rich Pahls
John Munn
Robert J. Hallstrom
Leslie Levy
Jared Hollinger

Representing:

Introducer
NE Dept. of Banking and Finance
NE Bankers Association
NE Attorney General’s Office
Homebuyers Inc.

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 123 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Banking and Finance, would enact the Nebraska Foreclosure Protection Act in order to impose legal restrictions and requirements on “foreclosure consultants” and “equity purchasers” who, if uncontrolled, could take advantage of homeowners in financial distress with deceptive or unconscionable business practices to dispossess them or strip the equity from their homes. The bill’s stated purpose is to: curtail and prevent the most deceptive and

unconscionable of these business practices; provide homeowners with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers; provide minimum requirements for contracts between such parties, including rights to cancel such contracts; and ensure and foster fair dealing in the sale and purchase of homes in foreclosure.

The bill would provide, section by section, as follows:

GENERAL PROVISIONS

Section 1 would provide for a named act: the Nebraska Foreclosure Protection Act.

Section 2 would provide for legislative findings.

Section 3 would provide for definitions to be found in sections 4 to 12.

Section 4 would define “associate”.

Section 5 would define “equity purchase contract” as an agreement between an equity purchaser and a homeowner pertaining to acquisition of title to the homeowner’s personal residence.

Section 6 would define “equity purchaser” as a person who, in the course of business, acquires title to a residence in foreclosure, subject to exceptions as set forth.

Section 7 would define “evidence of debt” as a promise to pay or a right to payment of a monetary obligation.

Section 8 would define “foreclosure consultant” as a person who (a) does not take or acquire an interest in or title to a residence in foreclosure and (b) offers, for compensation from the homeowner or from a loan or advance of funds, to: stop or postpone a foreclosure; obtain a forbearance under a deed of trust, mortgage, or other lien; assist the homeowner in exercising a right to cure a default; obtain an extension of the period in which a default may be cured; obtain a waiver of an acceleration clause; assist the homeowner to obtain a loan or an advance of funds; avoid or reduce the impairment of the homeowner’s credit; delay, hinder, or prevent foreclosure; or assist the homeowner in obtaining the remaining or excess proceeds from the foreclosure sale.

Section 9 would define “foreclosure consulting contract” as an agreement between a foreclosure consultant and a homeowner.

Section 10 would define “holder of evidence of debt” and exceptions as set forth.

Section 11 would define “homeowner”.

Section 12 would define “residence in foreclosure”.

FORECLOSURE CONSULTANT CONTRACTS

Section 13 would set out required provisions in a foreclosure consulting contract including the text of a notice to the homeowner and a notice of cancellation of the contract if the homeowner exercises his or her right to cancel the contract.

Section 14 would provide that a homeowner has the right to cancel a foreclosure consulting contract at any time and sets forth the steps to be taken to exercise that right.

Section 15 would provide that certain provisions in a foreclosure consulting contract, as set forth, are void as against public policy.

Section 16 would provide that certain practices, as set forth, if taken by a foreclosure consultant, are prohibited.

Section 17 would provide that a foreclosure consultant may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction and would provide for judicial enforcement.

Section 18 would provide that a foreclosure consulting contract shall be accompanied by a written translation into any other language spoken by the homeowner.

EQUITY PURCHASE CONTRACTS

Section 19 would provide requirements for equity purchase contracts.

Section 20 would set out required provisions in an equity purchase contract including the text of a notice to the homeowner.

Section 21 would provide that a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs the contract or until noon on the day before the foreclosure sale, whichever occurs first and sets forth the steps to be taken to exercise that right.

Section 22 would set out the required provisions in an equity purchase contract of a statement of the homeowner's right to cancel and the required provisions of an accompanying notice of cancellation.

Section 23 would provide that a transaction in which a homeowner purports to grant a residence in a foreclosure to an equity purchaser and in which an option to repurchase is reserved to the homeowner or is given by the equity purchaser to the homeowner is permitted only where conditions, as set forth, have been met.

Section 24 would provide that a provision in an equity purchase contract between an equity purchaser and a homeowner is void if it attempts or purports to do certain things, as set forth.

Section 25 would that (1) the required equity purchase contract provisions shall be provided and completed by the equity purchaser; (2) until the time within which the homeowner

may cancel the transaction has elapsed, the equity purchaser shall not accept or induce a conveyance of the residence in foreclosure; record the equity purchase contract; transfer or encumber an interest in the residence in foreclosure; or pay the homeowner any consideration; (3) within ten days following receipt of a notice of cancellation, the equity purchaser shall return the original equity purchase contract and any other documents signed by the homeowner; and (4) the equity purchaser shall not make any untrue or misleading statements of material fact.

Section 26 would provide that an equity purchaser may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction and would provide for judicial enforcement.

Section 27 would provide that an equity purchase contract shall be accompanied by a written translation into any other language spoken by the homeowner.

GENERAL PROVISIONS

Section 28 would provide that violation of the Nebraska Foreclosure Protection Act is a Class IV felony (maximum: 5 years, \$10,000, or both; minimum: none).

Section 29 would amend section 87-302 of the Uniform Deceptive Trade Practices Act to provide that a violation of the Nebraska Foreclosure Protection Act is a deceptive trade practice under the Uniform Deceptive Trade Practices Act. The Uniform Deceptive Trade Practices Act is enforced by the Attorney General.

MISCELLANEOUS PROVISIONS

Section 30 would provide for repealers of amendatory sections.

Explanation of amendments, if any:

The committee amendments (AM626) would amend section 21 in the equity purchase portion of the bill to change subsection (1) into subdivision (1)(a) and insert the words “last business” so that the subdivision would provide that a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs the contract or until noon on the “last business” day before the foreclosure sale, whichever occurs first.

The committee amendments would amend section 21 to insert a new subdivision (1)(b) and would amend section 22 to insert a new subdivision (1)(c) in order to provide that the homeowner does not have the right to cancel an equity purchase contract executed on or after noon on the last business day before the foreclosure sale if the homeowner first agrees to enter into an equity purchase contract with the equity purchaser on or after noon of the last business day before the foreclosure sale.

The committee amendments would amend subdivision (5) of section 23 in the equity purchase portion of the bill to specify actual costs incurred by the equity purchaser in acquiring the residence in foreclosure which may be included in the acquisition price paid by the equity purchaser. Those costs may include repairs and capital improvements and also below market rent discounts. The equity purchaser would be required to provide the homeowner with

documentation proving such costs and below market rent discounts prior to the homeowner's exercise of the option to purchase. (The new language takes on significance when considered in conjunction with existing provisions of subdivision (5) which provide that a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable.)

Senator Rich Pahls, Chairperson