

COMMITTEE ON REAL PROPERTY LAW

S.4744
A.7667

Senator Farley
M. of A. Nolan

THIS BILL IS DISAPPROVED

The Committee on Real Property Law of the Association of the Bar of the City of New York (the “RPC”) has reviewed the proposed home equity theft prevention legislation, Senate Bill No. 4744 and Assembly Bill 7667. While the RPC supports the intent of the Legislation to protect innocent homeowners from the loss of their homes as a result of certain predatory practices, we have a number of concerns about the Legislation, which are set forth below.

1. We have serious concerns about the effect of the Legislation on innocent home buyers. The “equity seller” has a 3-year right to rescind. Title companies will be unwilling to insure against the risk that someone in the chain of title in the 3 years preceding a home purchase, has a right of rescission under the Legislation. Lack of title insurance will impair the ability of purchasers to obtain financing. If a home buyer obtains financing and then loses his or her home to an equity seller in a suit for rescission, the home buyer will bear a very significant loss, including the loss of home, ongoing liability for any financing obtained to purchase the home, litigation costs, and loss of any investment in improvements to the home. Although “bona fide purchasers” are protected under the Act, the definition of a “bona fide purchaser” is too narrow and ambiguous, and is likely to generate litigation.
2. There are multiple references in the Legislation to “knowledge” or “notice,” with no definition of what would constitute such knowledge or notice. The degree of knowledge or notice at issue should be such that it evidences some degree of culpability.
3. Section 7(e), which makes it unlawful for any “person” to, among other things, enter into a transaction involving a property in default if the terms of the transaction are “unconscionable,” may generate substantial litigation; and should be limited in its operation to those in the business of acting as equity purchasers.
4. Courts should be granted discretion to grant the “prevailing party” attorneys’ fees; because there may be situations in which it is not equitable to grant a prevailing party attorneys’ fees.

We support the licensing requirements, and believe that the focus of the Legislation should be on giving “equity sellers” effective recourse against professional “equity purchasers” who, individually or through their entities, engage in prohibited practices.

Although we are sympathetic to the intent of the Legislation to protect homeowners from certain predatory practices, we feel the Legislation casts too wide a net. Accordingly, we hope the legislature will defer consideration of the Legislation until the next legislative session and that we will be given an opportunity to meet with the appropriate parties and provide more detailed comments.