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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/06

SPONSOR Park LAST UPDATED _____ HB 254

SHORT TITLE Amend Deed of Trust Act SB _____

ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General (AGO)

SUMMARY

Synopsis of Bill

House Bill 254 amends various provisions of the Deed of Trust Act and repeals two sections of the act.

- The bill removes certain restrictive language, thus allowing deeds of trust to be used for loans of less than \$500,000 and for single-family and other residential (whether or not designed for low-income households) as well as commercial properties.
- The bill also allows a deed of trust to be used when trust real estate is located both in New Mexico and in one or more other states.
- In addition, the bill shortens the time between notice of sale and actual sale by the trustee, from not less than 180 days to not less than 90 days.
- It removes the requirement that notice of sale be posted on the actual property.
- And, House Bill 254 removes the current 12-month time limit on bringing a civil action to recover deficiency judgment for the balance due.

SIGNIFICANT ISSUES

As explained by the Attorney General's Office (AGO), a deed of trust is a security instrument used for financing the purchase of real estate. In such a transaction, the borrower (grantor or trustor) transfers the legal title for the property to the trustee who holds the property in trust as secu-

rity for the payment of the debt to the lender or “beneficiary.” If the borrower pays the debt as agreed, the deed of trust becomes void. If, however, he defaults in the payment of the debt, the beneficiary directs the trustee to sell the property at a public sale, under the terms of the deed of trust. Deeds of trust avoid judicial foreclosure proceedings and therefore are the favored and customary financing mechanism in many states.

Deeds of trust allow for non-judicial foreclosures in the case of default whereas mortgages require judicial foreclosures. Non-judicial foreclosure is generally more expeditious and less expensive. This bill would effectively allow any real estate sold in New Mexico, including residential property, to be subject to the act.

ML/mt