EXHIBIT 7
DATE 3/20/07
SB 383

Background and Summary of Proposed Legislation (2007) SB 383

A. The Montana Small Tract Financing Act and the Trust Indenture under it:
   1. Limited to parcels of 40 acres or less so cannot be used on sales of larger farms or ranches, or on subdivisions which encompass more than 40 acres.
   2. Foreclosure by power of sale available;
   3. No equity of redemption if the power of sale foreclosure is used;
   4. Judicial foreclosure available; no deficiency judgment on owner occupied single family residence;
   5. The term "Deed of Trust" (used outside of this Act) is considered a Mortgage, so use of that term invokes the right to an equity of redemption.

B. The Montana Contract for Deed - An Archaic Security Interest
   1. Device imported from Midwest in 1800s; used mainly East of the divide and mainly on farm and ranch sales
   2. Elements:
      a. It is essentially a conditional sale, in that title passes only when the purchase price has been paid in full, may be twenty years later. So there is no deed delivered to the Buyer at closing;
      b. The Contract is placed for collection with a bank and the deed is deposited with the bank for delivery at payoff;
      c. A Notice of transaction is recorded at closing to put future transferees and encumbrancers on notice;
      d. The Seller is only required to be able to deliver title at the time of final payoff (maybe twenty years after closing)
      e. Because no deed is delivered at closing:
         (i) Buyer's interest is only <u>equitable;</u>
         (ii) Interests under the Contract are <u>personal property</u>, not real estate;
         (iii) If a Seller moves out of state before full payoff, and dies in his or her new state of domicile, his rights under the Contract for Deed must be probated in the new state, even though it affects Montana land;
      f. Serious risks when 2, 3 or 4 Contracts for Deed are "stacked up" with successive buyers.
         (I) A Montana Supreme Court case recognizes that a successor Contract for Deed may be executed (buyer under first contract reselling to new buyer before first contract fully paid)
         (ii) Risks inherent in this form of transaction:
            (A) Possible bankruptcy by Seller;
            (B) Potential tax liens against Seller;
            (C) Potential of loss of deed by depositary bank

(mergers, etc. over twenty year or longer term);

(D) If Notice is recorded, a new transferee cannot be a bona fide purchaser or bona fide encumbrancer, but the Seller still has the power to convey title to a third party in violation of Contract, with the resultant risk of need for litigation in order to clear title;

(E) The risks are compounded if there are multiple successive Contracts for Deed before the early ones are paid off;

(F) Foreclosure process under Contract for Deed;

(G) Longer term right by defaulting buyer to cure default.

C. The Proposed legislation would, as an alternative to other existing security mechanisms, allow use of the form of Deed of Trust which is used in California, Washington and many other states.

The proposed legislation would not repeal the existing Montana devices for creating security interests in real property. In other words, a seller or lender could still use any of the following:

(I) A Mortgage;
(ii) A Contract for Deed; or
(iii) A Trust Indenture under the Small Tract Financing Act.

It is believed that if the proposed legislation is adopted, it will over time prove itself to be superior to any of the existing security interest devices.

Terminology:

The proposed legislation uses terminology much like that used under the present Small Tract Financing Act:

a. The security interest is called a "Deed of Trust;"
b. The debtor, who signs the Deed of Trust, and the Promissory Note which it secures, is called the "Trustor;"
c. The creditor (seller or lender) to whom the secured debt is owed is called the "Beneficiary;" and
d. An entity (typically a title company) is named under the Deed of Trust as "Trustee." The Trustee is not required to take any action unless and until either (i) the Trustor/debtor defaults; or (ii) the debt is fully paid off, at which time the Deed of trust is reconveyed. (This latter item serves the same purpose as does a Satisfaction of Mortgage, in that when it is recorded it clears the Deed of Trust off

of the record title to the property.) The Deed of Trust would give the Trustee a power of sale (i.e., by advertisement and sale) without any court action.

The proposed Deed of Trust legislation would offer the following advantages:

1. When a sale closed, the Buyer would receive a deed on closing which would be immediately recordable, and title to the property would be insurable by title insurance. If a Seller agreed to provide some of the financing for the sale, the Seller would receive a recordable Deed of Trust which would also be eligible for title insurance.

2. If the transaction were a loan instead of a sale, the Borrower would retain legal title, and the Lender would immediately receive a recordable Deed of Trust on which a Lenders policy of title insurance policy could be issued.

3. There would be no acreage limitation, so this mechanism could be used on sales of, or loans against, parcels of any size, including farms, ranches, subdivisions and commercial developments.

4. The complexities and long delays inherent in the Contract for Deed procedure would be avoided.

5. Because the Deed (on a sale) would be immediately recorded upon closing, the proposed legislation would avoid the risk which is present under a Contract for Deed of a Seller giving a Deed to some third party who could record it before the Deed which was being held by a bank under the Contract for Deed was released for delivery to the contract Buyer.

6. In a foreclosure under the power of sale contained in the Deed of Trust, the defaulting Trustor (debtor) would have a well-defined right to cure a default for 105 (or more) days before a foreclosure sale occurred. If the default were cured, the foreclosure sale would be cancelled, and the Promissory Note which was secured by the Deed of Trust would be reinstated, so the Trustor (debtor) could continue to make regular installment payments. The procedure for giving multiple Notices to the defaulting Trustor (debtor) would be fairer than the present law, and would unquestionably satisfy constitutional requirements.

7. If the defaulting debtor failed to cure the default, the auction process which would be followed on the power of sale foreclosure would optimize the likelihood of obtaining the best available price at the sale. (If the sale price exceeded the total of the debt being foreclosed and the related foreclosure-related expenses, and there were no junior lienholders, any surplus would be paid to the debtor.)

8. Anyone who purchased at the power of sale foreclosure sale, whether it be the Beneficiary (creditor) or a third party bidder, would promptly receive a Deed upon which title insurance could be obtained ; and

9. If the foreclosure sale produced more money than was owed to the Beneficiary (creditor), the proposed legislation would provide a mechanism for obtaining a court decision within no more than 90 days, determining who is entitled to the surplus. (There is presently no mechanism like this under Montana law.)

10. The Beneficiary (Seller on carry back financing, or Lender on a loan transaction) would have the option to conduct the foreclosure either: (i) by exercise of the power of sale (analogous to foreclosure by "advertisement and sale" under the Small Tract Financing Act); or (ii) by judicial foreclosure by court action. The rights would be different, depending on which of the two alternative procedures is used:

    a. If the Beneficiary (creditor) elected to use the power of sale foreclosure [which in other states has been the procedure most frequently used] the Beneficiary (creditor) could not recover any deficiency judgment, but the Trustor (debtor) would have no right of redemption and would be required to surrender possession of the property within ten days after the foreclosure sale;

    b. If the Beneficiary (creditor) elected to pursue judicial foreclosure [which is begun by filing a lawsuit], and if the foreclosure sale did not produce enough to satisfy both the debt being foreclosed and the foreclosure-related expenses, the Beneficiary/Creditor could obtain a deficiency judgment, subject to two limitations:

        (i) No deficiency judgment could be obtained against a residential real property containing not more than four residential units (i.e., a fourplex), providing: (A) the deed of trust was given to secure a loan which was in fact used to pay all or part of the purchase price for that property; and (B) that dwelling is occupied by the purchaser. [Owner must occupy as his primary residence at least one unit in a duplex, triplex or fourplex.] However, a deficiency judgment would be allowed, as under present Montana law, if the loan being foreclosed was made on a commercial property (including rentals other than duplexes, triplexes and fourplexes in which the owner occupies one of the units as his primary residence.) Deficiency judgments would also be allowed on vacation residences which are not the owner's primary residence.

(ii) The court handling the judicial foreclosure would require an independent appraisal to establish the fair market value of the property as of the date of the foreclosure sale, and the deficiency judgment could not exceed the difference between that appraised value and the total of the debt being foreclosed plus all foreclosure-related expenses. The court would also determine the amount of reasonable attorney's or trustee's fees. Any such deficiency judgment would have to be sought within three months after the court-supervised foreclosure sale.

Upon a judicial foreclosure the Trustor (debtor) would not have any right of redemption, and would not be entitled to remain in possession after the sale.

11. This proposed statute also includes a significant benefit to farmers and ranchers, because:

a. Upon foreclosure of a mortgage under existing Montana law, the debtor has a one-year right of redemption. However, the law which so provides (MCA section 71-1-228) incorporates the redemption provisions which apply upon sales under execution. That incorporated law (MCA section 25-13-802) specifies that the amount which the redeeming debtor must pay includes all of the following: (i) the amount (100%) which the buyer at the execution sale paid for the property; (ii) interest thereon as set by the judgment being executed on; (iii) the amount of any assessment or taxes which the

buyer at the execution sale has paid, plus interest on that amount; (iv) the amounts which the buyer has paid for repairs or maintenance on the property, plus interest thereon; and (v) if the buyer also holds a prior lien on the property other than the judgment which was executed on, the redeeming debtor must also pay off that lien, plus interest. Hence the amount of money required to accomplish a redemption is very substantial, and includes as a component 100% of the debt which was foreclosed.

b. This Bill, on the other hand, will allow the debtor who is being foreclosed to cure the default and reinstate the loan to good standing by paying only the installment which is in default (instead of the whole loan), plus the foreclosure-related expenses. (See Bill section 19 in the Notice section on pages 13-14.) The debtor who is curing the defaut must bring taxes and insurance current.

Thus a cure of default under this Bill can be made for a lot less money than is required to redeem under a mortgage foreclosure.