
SENATE BILL 5191

State of Washington

63rd Legislature

2013 Regular Session

By Senator Honeyford

Read first time 01/23/13. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the owner of a beneficial interest in real
2 property; amending RCW 61.24.030 and 65.08.070; and reenacting and
3 amending RCW 61.24.005.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 61.24.005 and 2011 c 364 s 3 and 2011 c 58 s 3 are
6 each reenacted and amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Affiliate of beneficiary" means any entity which controls, is
10 controlled by, or is under common control with a beneficiary.

11 (2) "Beneficiary" or "owner of the beneficial interest" means the
12 (~~holder~~) owner of the instrument or document, including a promissory
13 note, evidencing the obligations secured by the deed of trust, even if
14 another party or parties are named as the holder, seller, mortgagor,
15 nominee, or agent, excluding persons holding the same as security for
16 a different obligation.

17 (3) "Borrower" means a person or a general partner in a
18 partnership, including a joint venture, that is liable for all or part
19 of the obligations secured by the deed of trust under the instrument or

1 other document that is the principal evidence of such obligations, or
2 the person's successors if they are liable for those obligations under
3 a written agreement with the beneficiary.

4 (4) "Commercial loan" means a loan that is not made primarily for
5 personal, family, or household purposes.

6 (5) "Department" means the department of commerce or its designee.

7 (6) "Fair value" means the value of the property encumbered by a
8 deed of trust that is sold pursuant to a trustee's sale. This value
9 shall be determined by the court or other appropriate adjudicator by
10 reference to the most probable price, as of the date of the trustee's
11 sale, which would be paid in cash or other immediately available funds,
12 after deduction of prior liens and encumbrances with interest to the
13 date of the trustee's sale, for which the property would sell on such
14 date after reasonable exposure in the market under conditions requisite
15 to a fair sale, with the buyer and seller each acting prudently,
16 knowledgeably, and for self-interest, and assuming that neither is
17 under duress.

18 (7) "Grantor" means a person, or its successors, who executes a
19 deed of trust to encumber the person's interest in property as security
20 for the performance of all or part of the borrower's obligations.

21 (8) "Guarantor" means any person and its successors who is not a
22 borrower and who guarantees any of the obligations secured by a deed of
23 trust in any written agreement other than the deed of trust.

24 (9) "Housing counselor" means a housing counselor that has been
25 approved by the United States department of housing and urban
26 development or approved by the Washington state housing finance
27 commission.

28 (10) "Owner-occupied" means property that is the principal
29 residence of the borrower.

30 (11) "Person" means any natural person, or legal or governmental
31 entity.

32 (12) "Record" and "recorded" includes the appropriate registration
33 proceedings, in the instance of registered land.

34 (13) "Residential real property" means property consisting solely
35 of a single-family residence, a residential condominium unit, or a
36 residential cooperative unit.

37 (14) "Senior beneficiary" means the beneficiary of a deed of trust

1 that has priority over any other deeds of trust encumbering the same
2 residential real property.

3 (15) "Tenant-occupied property" means property consisting solely of
4 residential real property that is the principal residence of a tenant
5 subject to chapter 59.18 RCW or other building with four or fewer
6 residential units that is the principal residence of a tenant subject
7 to chapter 59.18 RCW.

8 (16) "Trustee" means the person designated as the trustee in the
9 deed of trust or appointed under RCW 61.24.010(2).

10 (17) "Trustee's sale" means a nonjudicial sale under a deed of
11 trust undertaken pursuant to this chapter.

12 **Sec. 2.** RCW 61.24.030 and 2012 c 185 s 9 are each amended to read
13 as follows:

14 It shall be requisite to a trustee's sale:

15 (1) That the deed of trust contains a power of sale;

16 (2) That the deed of trust contains a statement that the real
17 property conveyed is not used principally for agricultural purposes;
18 provided, if the statement is false on the date the deed of trust was
19 granted or amended to include that statement, and false on the date of
20 the trustee's sale, then the deed of trust must be foreclosed
21 judicially. Real property is used for agricultural purposes if it is
22 used in an operation that produces crops, livestock, or aquatic goods;

23 (3) That a default has occurred in the obligation secured or a
24 covenant of the grantor, which by the terms of the deed of trust makes
25 operative the power to sell;

26 (4) That no action commenced by the beneficiary of the deed of
27 trust is now pending to seek satisfaction of an obligation secured by
28 the deed of trust in any court by reason of the grantor's default on
29 the obligation secured: PROVIDED, That (a) the seeking of the
30 appointment of a receiver shall not constitute an action for purposes
31 of this chapter; and (b) if a receiver is appointed, the grantor shall
32 be entitled to any rents or profits derived from property subject to a
33 homestead as defined in RCW 6.13.010. If the deed of trust was granted
34 to secure a commercial loan, this subsection shall not apply to actions
35 brought to enforce any other lien or security interest granted to
36 secure the obligation secured by the deed of trust being foreclosed;

1 (5) That the deed of trust has been recorded in each county in
2 which the land or some part thereof is situated;

3 (6) That prior to the date of the notice of trustee's sale and
4 continuing thereafter through the date of the trustee's sale, the
5 trustee must maintain a street address in this state where personal
6 service of process may be made, and the trustee must maintain a
7 physical presence and have telephone service at such address;

8 (7)(a) That, for residential real property, before the notice of
9 trustee's sale is recorded, transmitted, or served, the trustee shall
10 have proof that the beneficiary is the owner of any promissory note or
11 other obligation secured by the deed of trust. A declaration by the
12 beneficiary made under the penalty of perjury stating that the
13 beneficiary is the actual holder of the promissory note or other
14 obligation secured by the deed of trust shall be sufficient proof as
15 required under this subsection.

16 (b) Unless the trustee has violated his or her duty under RCW
17 61.24.010(4), the trustee is entitled to rely on the beneficiary's
18 declaration as evidence of proof required under this subsection.

19 (c) This subsection (7) does not apply to association beneficiaries
20 subject to chapter 64.32, 64.34, or 64.38 RCW;

21 (8) That at least thirty days before notice of sale shall be
22 recorded, transmitted or served, written notice of default shall be
23 transmitted by the beneficiary or trustee to the borrower and grantor
24 at their last known addresses by both first-class and either registered
25 or certified mail, return receipt requested, and the beneficiary or
26 trustee shall cause to be posted in a conspicuous place on the
27 premises, a copy of the notice, or personally served on the borrower
28 and grantor. This notice shall contain the following information:

29 (a) A description of the property which is then subject to the deed
30 of trust;

31 (b) A statement identifying each county in which the deed of trust
32 is recorded and the document number given to the deed of trust upon
33 recording by each county auditor or recording officer;

34 (c) A statement that the beneficiary has declared the borrower or
35 grantor to be in default, and a concise statement of the default
36 alleged;

37 (d) An itemized account of the amount or amounts in arrears if the
38 default alleged is failure to make payments;

1 (e) An itemized account of all other specific charges, costs, or
2 fees that the borrower, grantor, or any guarantor is or may be obliged
3 to pay to reinstate the deed of trust before the recording of the
4 notice of sale;

5 (f) A statement showing the total of (d) and (e) of this
6 subsection, designated clearly and conspicuously as the amount
7 necessary to reinstate the note and deed of trust before the recording
8 of the notice of sale;

9 (g) A statement that failure to cure the alleged default within
10 thirty days of the date of mailing of the notice, or if personally
11 served, within thirty days of the date of personal service thereof, may
12 lead to recordation, transmittal, and publication of a notice of sale,
13 and that the property described in (a) of this subsection may be sold
14 at public auction at a date no less than one hundred twenty days in the
15 future, or no less than one hundred fifty days in the future if the
16 borrower received a letter under RCW 61.24.031;

17 (h) A statement that the effect of the recordation, transmittal,
18 and publication of a notice of sale will be to (i) increase the costs
19 and fees and (ii) publicize the default and advertise the grantor's
20 property for sale;

21 (i) A statement that the effect of the sale of the grantor's
22 property by the trustee will be to deprive the grantor of all their
23 interest in the property described in (a) of this subsection;

24 (j) A statement that the borrower, grantor, and any guarantor has
25 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged
26 default on any proper ground;

27 (k) In the event the property secured by the deed of trust is
28 owner-occupied residential real property, a statement, prominently set
29 out at the beginning of the notice, which shall state as follows:

30 **"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR**
31 **LOSING YOUR HOME.**

32 You may be eligible for mediation in front of a neutral third party to
33 help save your home.

34 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**
35 **to assess your situation and refer you to mediation if you might**
36 **benefit. Mediation **MUST** be requested between the time you receive the**

1 Notice of Default and no later than twenty days after the Notice of
2 Trustee Sale is recorded.

3 **DO NOT DELAY.** If you do nothing, a notice of sale may be issued as
4 soon as 30 days from the date of this notice of default. The notice of
5 sale will provide a minimum of 120 days' notice of the date of the
6 actual foreclosure sale.

7 **BE CAREFUL** of people who claim they can help you. There are many
8 individuals and businesses that prey upon borrowers in distress.

9 **REFER TO THE CONTACTS BELOW** for sources of assistance.

10 **SEEKING ASSISTANCE**

11 Housing counselors and legal assistance may be available at little or
12 no cost to you. If you would like assistance in determining your
13 rights and opportunities to keep your house, you may contact the
14 following:

15 The statewide foreclosure hotline for assistance and referral to
16 housing counselors recommended by the Housing Finance Commission

17 Telephone: Web site:

18 The United States Department of Housing and Urban Development

19 Telephone: Web site:

20 The statewide civil legal aid hotline for assistance and referrals to
21 other housing counselors and attorneys

22 Telephone: Web site:"

23 The beneficiary or trustee shall obtain the toll-free numbers and
24 web site information from the department for inclusion in the notice;
25 and

26 (1) In the event the property secured by the deed of trust is
27 residential real property, the name and address of the owner of any
28 promissory notes or other obligations secured by the deed of trust and
29 the name, address, and telephone number of a party acting as a servicer
30 of the obligations secured by the deed of trust; (~~and~~)

31 (9) That, for owner-occupied residential real property, before the
32 notice of the trustee's sale is recorded, transmitted, or served, the
33 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW
34 61.24.163; and

35 (10) That only the owner of the beneficial interest or the
36 authorized agent of the owner of the beneficial interest may foreclose

1 a deed of trust, provided that the owner of the beneficial interest has
2 met the requirements of RCW 65.08.070. The foreclosure must be in the
3 name of the owner of the beneficial interest.

4 **Sec. 3.** RCW 65.08.070 and 2012 c 117 s 208 are each amended to
5 read as follows:

6 (1) A conveyance of real property, when acknowledged by the person
7 executing the same (the acknowledgment being certified as required by
8 law), may be recorded in the office of the recording officer of the
9 county where the property is situated. Every such conveyance not so
10 recorded is void as against any subsequent purchaser or mortgagee in
11 good faith and for a valuable consideration from the same vendor, his
12 or her heirs or devisees, of the same real property or any portion
13 thereof whose conveyance is first duly recorded.

14 (2) Every transfer and assignment of a real property encumbrance
15 must be recorded in the office of the recording officer of the county
16 where the property is situated. The recording must include:

17 (a) A full legal description of the property encumbered, the
18 assessor parcel number, and, if relevant, the reference number of the
19 documents evidencing the original encumbrance; and

20 (b) The full legal name and telephone number of the owner of the
21 beneficial interest, including the physical and electronic address for
22 service of process purposes;

23 (3)(a) The owner of a beneficial interest in real property has:

24 (i) Twenty calendar days to record the transfer or assignment of a
25 real property encumbrance and the information required under subsection
26 (2)(b) of this section; and

27 (ii) Ten business days to provide the purchaser or mortgagee with
28 a copy of the recording at the purchaser's or mortgagee's last known
29 address by both first-class and registered or certified mail, return
30 receipt requested.

31 (b) Failure to record within twenty days under (a)(i) of this
32 subsection results in a fine of ten dollars per day, commencing on the
33 twenty-first day, with a maximum fine of one thousand dollars. The
34 owner of a beneficial interest who fails to record within twenty days
35 may not commence a foreclosure for six months after a recording is
36 perfected.

1 (4) An instrument under this section is deemed recorded the minute
2 it is filed for record.

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