
SENATE BILL 5309

State of Washington

62nd Legislature

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By Senators Kline, Pflug, and Keiser

Read first time 01/20/11. Referred to Committee on Judiciary.

1 AN ACT Relating to modifying certain deeds of trust provisions; and
2 amending RCW 61.24.030, 61.24.050, 61.24.127, 61.24.130, and 61.24.135.

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

4 **Sec. 1.** RCW 61.24.030 and 2009 c 292 s 8 are each amended to read
5 as follows:

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

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

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

15 (3) That a default has occurred in the obligation secured, any
16 forbearance agreement, or a covenant of the grantor, which by the terms
17 of the deed of trust makes operative the power to sell;

18 (4) That no action commenced by the beneficiary of the deed of
19 trust is now pending to seek satisfaction of an obligation secured by

1 the deed of trust in any court by reason of the grantor's default on
2 the obligation secured: PROVIDED, That (a) the seeking of the
3 appointment of a receiver shall not constitute an action for purposes
4 of this chapter; and (b) if a receiver is appointed, the grantor shall
5 be entitled to any rents or profits derived from property subject to a
6 homestead as defined in RCW 6.13.010. If the deed of trust was granted
7 to secure a commercial loan, this subsection shall not apply to actions
8 brought to enforce any other lien or security interest granted to
9 secure the obligation secured by the deed of trust being foreclosed;

10 (5) That the deed of trust, and all assignments, has been recorded
11 in each county in which the land or some part thereof is situated;

12 (6) That prior to the date of the notice of trustee's sale and
13 continuing thereafter through the date of the trustee's sale, the
14 trustee must maintain a street address in this state where personal
15 service of process may be made, and the trustee must maintain a
16 physical presence and have telephone service at such address. If the
17 trustee's office is outside the county where the trustee's sale is
18 scheduled, the notices required under this chapter must also contain an
19 e-mail address and fax number for service of process purposes;

20 (7)(a) That, for residential real property, before the notice of
21 trustee's sale is recorded, transmitted, or served, the trustee shall
22 have proof that the beneficiary is the owner of any promissory note or
23 other obligation secured by the deed of trust. A declaration by the
24 beneficiary made under the penalty of perjury stating that the
25 beneficiary is the actual holder of the promissory note or other
26 obligation secured by the deed of trust shall be sufficient proof as
27 required under this subsection.

28 (b) Unless the trustee has violated his or her duty under RCW
29 61.24.010(4), the trustee is entitled to rely on the beneficiary's
30 declaration as evidence of proof required under this subsection.

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

33 (8) That at least thirty days before notice of sale shall be
34 recorded, transmitted or served, written notice of default shall be
35 transmitted by the beneficiary or trustee to the borrower and grantor
36 at their last known addresses by both first-class and either registered
37 or certified mail, return receipt requested, and the beneficiary or

1 trustee shall cause to be posted in a conspicuous place on the
2 premises, a copy of the notice, or personally served on the borrower
3 and grantor. This notice shall contain the following information:

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

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

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

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

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

18 (f) A statement showing the total of (d) and (e) of this
19 subsection, designated clearly and conspicuously as the amount
20 necessary to reinstate the note and deed of trust before the recording
21 of the notice of sale;

22 (g) A statement that failure to cure the alleged default within
23 thirty days of the date of mailing of the notice, or if personally
24 served, within thirty days of the date of personal service thereof, may
25 lead to recordation, transmittal, and publication of a notice of sale,
26 and that the property described in (a) of this subsection may be sold
27 at public auction at a date no less than one hundred twenty days in the
28 future;

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

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

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

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

4 "You should take care to protect your interest in your home. This
5 notice of default (your failure to pay) is the first step in a process
6 that could result in you losing your home. You should carefully review
7 your options. For example:

8 Can you pay and stop the foreclosure process?

9 Do you dispute the failure to pay?

10 Can you sell your property to preserve your equity?

11 Are you able to refinance this loan or obligation with a new loan
12 or obligation from another lender with payments, terms, and fees that
13 are more affordable?

14 Do you qualify for any government or private homeowner assistance
15 programs?

16 Do you know if filing for bankruptcy is an option? What are the
17 pros and cons of doing so?

18 Do not ignore this notice; because if you do nothing, you could
19 lose your home at a foreclosure sale. (No foreclosure sale can be held
20 any sooner than ninety days after a notice of sale is issued and a
21 notice of sale cannot be issued until thirty days after this notice.)
22 Also, if you do nothing to pay what you owe, be careful of people who
23 claim they can help you. There are many individuals and businesses
24 that watch for the notices of sale in order to unfairly profit as a
25 result of borrowers' distress.

26 You may feel you need help understanding what to do. There are a
27 number of professional resources available, including home loan
28 counselors and attorneys, who may assist you. Many legal services are
29 lower-cost or even free, depending on your ability to pay. If you
30 desire legal help in understanding your options or handling this
31 default, you may obtain a referral (at no charge) by contacting the
32 county bar association in the county where your home is located. These
33 legal referral services also provide information about lower-cost or
34 free legal services for those who qualify. You may contact the
35 Department of Financial Institutions or the statewide civil legal aid
36 hotline for possible assistance or referrals."; (~~and~~))

37 (l) In the event the property secured by the deed of trust is
38 residential real property, the name and address of the owner of any

1 promissory notes or other obligations secured by the deed of trust and
2 the name, address, and telephone number of a party acting as a servicer
3 of the obligations secured by the deed of trust; and
4 (m) A fax number and e-mail address for service of process purposes
5 if the trustee's office is not in the county where the trustee's sale
6 is scheduled.((=))

7 **Sec. 2.** RCW 61.24.050 and 1998 c 295 s 7 are each amended to read
8 as follows:

9 When delivered to the purchaser, the trustee's deed shall convey
10 all of the right, title, and interest in the real and personal property
11 sold at the trustee's sale which the grantor had or had the power to
12 convey at the time of the execution of the deed of trust, and such as
13 the grantor may have thereafter acquired. If the trustee accepts a
14 bid, then the trustee's sale is final as of the date and time of such
15 acceptance if the trustee's deed is recorded within fifteen days
16 thereafter. After a trustee's sale, no person shall have any right, by
17 statute or otherwise, to redeem the property sold at the trustee's
18 sale. However, a court may vacate a void trustee's sale or a trustee's
19 sale procured by fraud.

20 **Sec. 3.** RCW 61.24.127 and 2009 c 292 s 6 are each amended to read
21 as follows:

22 (1) The failure of the borrower or grantor to bring a civil action
23 to enjoin a properly conducted foreclosure sale under this chapter may
24 not be deemed a waiver of a claim for damages asserting:

- 25 (a) Common law fraud or misrepresentation;
- 26 (b) A violation of Title 19 RCW; or
- 27 (c) Failure of the trustee to materially comply with the provisions
28 of this chapter.

29 (2) The nonwaived claims listed under subsection (1) of this
30 section are subject to the following limitations:

- 31 (a) The claim must be asserted or brought within two years from the
32 date of the foreclosure sale or within the applicable statute of
33 limitations for such claim, whichever expires earlier;
- 34 (b) The claim may not seek any remedy at law or in equity other
35 than monetary damages;

1 (c) The claim may not affect in any way the validity or finality of
2 the foreclosure sale or a subsequent transfer of the property;

3 (d) A borrower or grantor who files such a claim is prohibited from
4 recording a lis pendens or any other document purporting to create a
5 similar effect, related to the real property foreclosed upon;

6 (e) The claim may not operate in any way to encumber or cloud the
7 title to the property that was subject to the foreclosure sale, except
8 to the extent that a judgment on the claim in favor of the borrower or
9 grantor may, consistent with RCW 4.56.190, become a judgment lien on
10 real property then owned by the judgment debtor; and

11 (f) The relief that may be granted for judgment upon the claim is
12 limited to actual damages. However, if the borrower or grantor brings
13 in the same civil action a claim for violation of chapter 19.86 RCW,
14 arising out of the same alleged facts, relief under chapter 19.86 RCW
15 is limited to actual damages, treble damages as provided for in RCW
16 19.86.090, and the costs of suit, including a reasonable attorney's
17 fee.

18 (~~(4)~~-(~~3~~)) (3) This section applies only to foreclosures of
19 owner-occupied residential real property.

20 (~~(5)~~-(~~4~~)) (4) This section does not apply to the foreclosure of
21 a deed of trust used to secure a commercial loan.

22 **Sec. 4.** RCW 61.24.130 and 2008 c 153 s 5 are each amended to read
23 as follows:

24 (1) Nothing contained in this chapter shall prejudice the right of
25 the borrower, grantor, any guarantor, or any person who has an interest
26 in, lien, or claim of lien against the property or some part thereof,
27 to restrain, on any proper legal or equitable ground, a trustee's sale.
28 The court shall require as a condition of granting the restraining
29 order or injunction that the applicant pay to the clerk of the court
30 the sums that would be due on the obligation secured by the deed of
31 trust if the deed of trust was not being foreclosed:

32 (a) In the case of default in making the periodic payment of
33 principal, interest, and reserves, such sums shall be the periodic
34 payment of principal, interest, and reserves paid to the clerk of the
35 court every thirty days.

36 (b) In the case of default in making payment of an obligation then

1 fully payable by its terms, such sums shall be the amount of interest
2 accruing monthly on said obligation at the nondefault rate, paid to the
3 clerk of the court every thirty days.

4 In the case of default in performance of any nonmonetary obligation
5 secured by the deed of trust, the court shall impose such conditions as
6 it deems just.

7 In addition, the court may condition granting the restraining order
8 or injunction upon the giving of security by the applicant, in such
9 form and amount as the court deems proper, for the payment of such
10 costs and damages, including attorneys' fees, as may be later found by
11 the court to have been incurred or suffered by any party by reason of
12 the restraining order or injunction. The court may consider, upon
13 proper showing, the grantor's equity in the property in determining the
14 amount of said security.

15 (2) No court may grant a restraining order or injunction to
16 restrain a trustee's sale unless the person seeking the restraint gives
17 (~~five days~~) reasonable notice to the trustee of the time when, place
18 where, and the judge before whom the application for the restraining
19 order or injunction is to be made. This notice shall include copies of
20 all pleadings and related documents to be given to the judge. No judge
21 may act upon such application unless it is accompanied by proof,
22 evidenced by return of a sheriff, the sheriff's deputy, or by any
23 person eighteen years of age or over who is competent to be a witness,
24 that the notice has been served on the trustee.

25 (3) If the restraining order or injunction is dissolved after the
26 date of the trustee's sale set forth in the notice as provided in RCW
27 61.24.040(1)(f), the court granting such restraining order or
28 injunction, or before whom the order or injunction is returnable,
29 shall, at the request of the trustee, set a new sale date which shall
30 be not less than forty-five days from the date of the order dissolving
31 the restraining order. The trustee shall:

32 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
33 (f) at least thirty days before the new sale date; and

34 (b) Cause a copy of the notice of trustee's sale as provided in RCW
35 61.24.040(1)(f) to be published in a legal newspaper in each county in
36 which the property or any part thereof is situated once between the
37 thirty-fifth and twenty-eighth day before the sale and once between the
38 fourteenth and seventh day before the sale.

1 (4) If a trustee's sale has been stayed as a result of the filing
2 of a petition in federal bankruptcy court and an order is entered in
3 federal bankruptcy court granting relief from the stay or closing or
4 dismissing the case, or discharging the debtor with the effect of
5 removing the stay, the trustee may set a new sale date which shall not
6 be less than forty-five days after the date of the bankruptcy court's
7 order. The trustee shall:

8 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
9 (f) at least thirty days before the new sale date; and

10 (b) Cause a copy of the notice of trustee's sale as provided in RCW
11 61.24.040(1)(f) to be published in a legal newspaper in each county in
12 which the property or any part thereof is situated, once between the
13 thirty-fifth and twenty-eighth day before the sale and once between the
14 fourteenth and seventh day before the sale.

15 ~~(5) ((Subsections (3) and (4) of this section are permissive only
16 and do not prohibit the trustee from proceeding with a trustee's sale
17 following termination of any injunction or stay on any date to which
18 such sale has been properly continued in accordance with RCW
19 61.24.040(6)).~~

20 ~~(6))~~ The issuance of a restraining order or injunction shall not
21 prohibit the trustee from continuing the sale as provided in RCW
22 61.24.040(6).

23 (6) If the property is owner-occupied, the court shall not impose
24 a bond that exceeds a five hundred dollar cost to the borrower.

25 **Sec. 5.** RCW 61.24.135 and 2008 c 153 s 6 are each amended to read
26 as follows:

27 It is an unfair or deceptive act or practice under the consumer
28 protection act, chapter 19.86 RCW, for any person, acting alone or in
29 concert with others, to offer, or offer to accept or accept from
30 another, any consideration of any type not to bid, or to reduce a bid,
31 at a sale of property conducted pursuant to a power of sale in a deed
32 of trust or fail to comply with this chapter. The trustee may decline
33 to complete a sale or deliver the trustee's deed and refund the
34 purchase price, if it appears that the bidding has been collusive or
35 defective, or that the sale might have been void. However, it is not
36 an unfair or deceptive act or practice for any person, including a
37 trustee, to state that a property subject to a recorded notice of

1 trustee's sale or subject to a sale conducted pursuant to this chapter
2 is being sold in an "as-is" condition, or for the beneficiary to
3 arrange to provide financing for a particular bidder or to reach any
4 good faith agreement with the borrower, grantor, any guarantor, or any
5 junior lienholder.

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