

HOUSE BILL REPORT

SB 5554

As Passed House-Amended:

April 14, 1997

Title: An act relating to deeds of trusts.

Brief Description: Regulating deeds of trusts.

Sponsors: Senators Johnson, Roach and Finkbeiner.

Brief History:

Committee Activity:

Law & Justice: 3/28/97, 4/1/97 [DPA].

Floor Activity:

Passed House-Amended: 4/14/97, 91-6.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Radcliff; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

Staff: Edie Adams (786-7180).

Background: A deed of trust is a type of security interest in real property. Basically, a deed of trust is a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary).

The major benefit of a deed of trust as opposed to a mortgage is that the deed of trust may be nonjudicially foreclosed whereas a mortgage may only be foreclosed judicially. If the grantor defaults on the loan obligation, the trustee may foreclose on the real property as long as certain procedural and notice requirements are met.

The trustee of a deed of trust may be a domestic corporation, a title insurance company, an attorney, a professional corporation whose shareholders are licensed attorneys, an agency of the United States government, or a bank or savings and loan association. A

trustee must resign at the request of a beneficiary, and the beneficiary may designate a successor trustee.

In order for a deed of trust to be nonjudicially foreclosed, the following requirements must be met: (1) the deed contains a power of sale and provides that the real property is not used principally for agricultural purposes; (2) a default has occurred which makes the power of sale operative; (3) the deed has been recorded; (4) a notice of default is sent at least 30 days before a notice of sale is recorded; and (5) no other action is pending to seek satisfaction of an obligation secured by the deed of trust.

To initiate foreclosure procedures the trustee must (1) file a notice of trustee's sale 90 days before the sale; (2) send by first class and registered or certified mail, a copy of the notice to the grantor, beneficiary, and any other person with a recorded interest in the land; (3) post the notice on the property or personally serve any occupants; and (4) publish the notice of sale in a newspaper twice, once on or between the 32nd and 28th day and once on or between the 11th and seventh day before the sale. A notice of foreclosure must be included in the notice of trustee's sale sent to the grantor. At any time prior to sale, the trustee must provide a written statement of all costs and fees due to any person requesting the information.

The sale may not take place less than 190 days from the date of default. Any person other than the trustee may bid at the sale. After sale of the property there is no right of redemption and no right to a deficiency judgment. However, on commercial obligations, foreclosure on the deed of trust does not preclude a judicial or nonjudicial foreclosure of any other deed of trust, mortgage, or other security interest or lien granted on the obligation.

The proceeds of the foreclosure sale are distributed first to the expenses of sale and the obligation secured by the deed of trust, and the surplus is deposited with the clerk of the court. Any interests or liens on the real property that are eliminated by the sale attach to the surplus proceeds.

The trustee may continue the foreclosure sale for up to 120 days by a proclamation at the scheduled sale, or by notifying everyone who received notice of the original sale at least eight days prior to the scheduled sale.

The grantor or any other person with an interest in the property may seek a judicial restraint on the foreclosure sale by giving five days' notice to the trustee and beneficiary. The court may restrain the sale on any proper ground. If the restraint is subsequently dissolved after the date of the original sale and after the date of any continued sale, the court may set a new sale date not less than 45 days from the date the restraining order is dissolved. The trustee must then comply with notice of sale requirements at least 30 days prior to the new sale date.

Summary of Bill: A number of provisions of the Deed of Trust Act are amended.

The beneficiary of a deed of trust may appoint a successor trustee at any time without having to request the trustee to resign. An appointment of a successor trustee automatically results in the resignation of a predecessor trustee.

The trustee's obligation to provide written information on all costs and fees due at any time prior to sale is limited to those persons entitled to notice of the sale.

The two time periods during which the trustee must publish in a legal newspaper the notice of sale are lengthened to between the 35th and 28th day before the sale and between the 14th and seventh day before the sale.

The beneficiary may credit bid all or any part of the obligation secured by the deed of trust at the sale. The trustee's sale is deemed final when the bidding is closed and either the beneficiary is the successful bidder or the trustee holds cash, a certified or cashier's check, a money order, or funds received by electronic transfer in the amount of the successful bid.

A written notice of any surplus from the proceeds of sale must be mailed, along with the notice of sale and an affidavit of mailing, to each party to whom the original notice of sale was sent. The written notice of surplus must also be deposited, along with the surplus proceeds, with the clerk of the superior court. A party who seeks disbursement of surplus funds must file a motion seeking disbursement with the superior court, and must mail notice of the motion to all parties to whom the trustee mailed the notice of surplus.

Procedures following the dissolving of a restraining order or bankruptcy stay on the foreclosure sale are amended. The specification that the court may set a new sale date if the restraining order or automatic bankruptcy stay is dissolved after the date for continuance is removed. The trustee's publication requirements with respect to the notice of sale are changed from once every week for the three weeks preceding sale to once between the 35th and 28th day before the sale and once between the 14th and seventh day before the sale. A new provision is added that states that the procedures applicable to a new sale ordered by a court upon dissolution of a restraining order or stay are permissive only and do not prohibit the trustee from continuing with a sale on a properly continued sale date.

A crime is created for interfering with the bidding at a foreclosure sale. A person is guilty of a gross misdemeanor offense if the person (1) offers, offers to accept, or accepts from another person consideration of any type not to bid; or (2) fixes or restrains bidding in any manner at a foreclosure sale. It is not unlawful for a person to state that the property is being sold in an "as-is" condition or for the beneficiary to arrange to provide financing for a particular bidder.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is the product of an ad hoc committee of members, including trustees. The bill codifies existing practices where the law is unclear or ambiguous. In addition, the bill streamlines the foreclosure process, decreases costs, and provides additional protections for borrowers.

Testimony Against: This bill is lender's legislation that was drafted without involving all interested parties. There are some beneficial aspects of the bill, but there are many areas of concern as well, such as allowing a beneficiary to reconvey the deed to the grantor, and allowing a guarantor to be sued without notice. There is nothing in the bill that is urgent. The bill should be held, reviewed by practitioners, and reworked.

Testified: Lyle Jacobsen and Gary Fallon, Washington Mortgage Lenders Association (pro); Tom Peterson, attorney (pro, in part); Karen Gibbon, attorney (pro, in part); David Leen, attorney (pro, in part); and John Gose, attorney (con).