

# SENATE BILL REPORT

## ESHB 2823

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As Reported By Senate Committee On:  
Law & Justice, February 26, 1998

**Title:** An act relating to deeds of trust.

**Brief Description:** Changing statutes affecting deeds of trust.

**Sponsors:** House Committee on Law & Justice (originally sponsored by Representatives Lambert and Constantine).

**Brief History:**

**Committee Activity:** Law & Justice: 2/26/98 [DPA].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Hargrove, Kline, Long, Stevens, Thibaudeau and Zarelli.

**Staff:** David Johnson (786-7754)

**Background:** A deed of trust is a financing tool created by statute which is, in effect, a tri-party mortgage. The real property owner or purchaser (the grantor of the deed of trust) conveys the property to an independent trustee, who is usually a title insurance company, for the benefit of a third party (the lender) to secure repayment of a loan or other debt from the grantor (borrower) to the beneficiary (lender). The trustee has the power to sell the property nonjudicially in the event of default, or, alternatively, foreclose the deed of trust as a mortgage. Nonjudicial foreclosure is not available if the property involved is used principally for agricultural or farming purposes.— Furthermore, the deed of trust must provide its own terms for sale.

The Deed of Trust Act, adopted in 1965, establishes a streamlined, statutory method for foreclosing on deeds of trust. It was designed to avoid time consuming and expensive judicial foreclosure proceedings and to save time and money for both the borrower and lender.

Practice in this area has departed somewhat from the strict statutory requirements, resulting in a perceived need to clarify and update the act. In 1997 the Governor vetoed SB 5554, regulating deeds of trust, for lack of adequate public exposure and comment. This bill is proposed by the Washington State Bar Association.

**Summary of Amended Bill:** The Deed of Trust Act is amended to clarify and modernize its procedures, and reflect current practices. A definition section is added. The list of those who can act as a trustee is revised. Trustees must maintain a street address for personal service.

Notice provisions are revised. New requirements are added to notify more people who are affected by the deed or by a foreclosure and sale. Several types of notices must be more detailed to give more information to the affected parties, including tenants, the borrower, and guarantors (i.e. co-signers). The processes and requirements for giving notice are more streamlined and defined.

Requirements are placed on participants that enhance their accessibility and ease the mechanics of the foreclosure process. The process for giving notice is streamlined and obligations are specifically defined. When a bankruptcy is also occurring, provisions are added to minimize unnecessary delay in a foreclosure sale.

Ambiguities about court involvement and other requirements are clarified, and when a trustee's sale is final is made clear.

Unnecessary involvement by extra parties is eliminated. The beneficiary has more direct power over the trustee.

Sale details and procedures are specified. Consumer Protection Act coverage is added for interfering with a sale. Liability of borrowers and guarantors after sale is defined.

**Amended Bill Compared to Substitute Bill:** The appointment of a receiver is conditioned on the happening of only a single event.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** No one.