

FINAL BILL REPORT

SB 5554

FULL VETO

As Passed Legislature

Brief Description: Regulating deeds of trusts.

Sponsors: Senators Johnson, Roach and Finkbeiner.

Senate Committee on Law & Justice

House Committee on Law & Justice

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 of its own terms provide 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.

Over the years practice in this area has departed somewhat from the strict statutory requirements, resulting in a perceived need to clarify and update the act in order to further streamline the process and preserve the efficiency and cost effectiveness for both parties originally intended.

Summary: The Deed of Trust Act is amended to clarify and modernize its procedures, and reflect current practices. Substitution of a new trustee upon appointment by the beneficiary without requiring resignation of the existing trustee is authorized. The trustee's duty to provide information regarding the costs and fees incurred in connection with a nonjudicial foreclosure is limited to those parties entitled to reinstate the underlying obligation.

The two time periods during which the notice of trustee's sale must be published are lengthened from five to eight days.

A trustee's sale is deemed final as soon as the bidding closes and either the beneficiary is the successful bidder or the trustee has received payment in full.

A trustee may accept a credit bid from the beneficiary up to the amount of the obligation being foreclosed, and may require payment in cash, certified check, or money order for any greater amounts. Notice is required to interested parties that excess proceeds have been

deposited with the court and requires any interested party seeking to receive such proceeds to do so by motion after notice.

The provisions of the act pertaining to restraint of trustees' sales are clarified.

Interference with open and competitive bidding at a trustee's sale is a gross misdemeanor.

Votes on Final Passage:

Senate	48	0	
House	91	6	(House amended)
Senate	44	0	(Senate concurred)