

SENATE BILL REPORT

SB 5554

As Passed Senate, March 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: 2/11/97 [DP].

Passed Senate, 3/14/97, 48-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

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

Staff: Mal Murphy (786-7412)

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 of Bill: 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.

Reinstatement payments must be in the form of cash or its equivalent. Action may be brought on a guaranty for any portion of the obligation not satisfied at the sale. A reconveyance of the deed of trust may be made by the beneficiary alone.

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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Need to make the process function more smoothly and fill some holes in current statute, such as procedures involving excess proceeds of sale and interference with open bidding process.

Testimony Against: None.

Testified: Gary Fallon, Lyle Jacobson, WA Mortgage Lenders Assn. (pro).

House Amendment(s): The ability of the beneficiary to bring an action against a guarantor of an obligation if the foreclosure sale does not satisfy the obligation is removed. The provision allowing a beneficiary to execute a reconveyance is removed.