

FINAL BILL REPORT

ESSB 6191

C 295 L 98

Synopsis as Enacted

Brief Description: Changing statutes affecting deeds of trust.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Johnson, Roach and Fairley).

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 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: 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. It is clarified that a receiver may be appointed for any of the independent reasons listed; more than one is not necessary.

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.

Votes on Final Passage:

Senate	44	0	
House	98	0	(House amended)
Senate	49	0	(Senate concurred)

Effective: June 11, 1998