
Judiciary Committee

SSB 5378

Title: An act relating to deeds of trust.

Brief Description: Modifying deeds of trust provisions.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Weinstein, Kline and Rockefeller).

Brief Summary of Substitute Bill
<ul style="list-style-type: none">• Provides that the trustee has a duty of fairness and impartiality, but not a fiduciary duty, to the grantor, beneficiary, and other persons having an interest in the property subject to the deed of trust.• Modifies requirements related to trustee sales.• Defines "residential property."

Hearing Date: 2/26/08

Staff: Sean Gamble (786-5793) and Lara Zarowsky (786-7123).

Background:

Deed of Trust

A deed of trust is, in essence, 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 deed of trust transfers title to the borrower, yet the trustee has a lien against the property until the borrower pays off the obligation in full.

Trustee

The trustee of a deed of trust may be, among others, a domestic corporation that has at least one officer who is a Washington resident; a title insurance company; an attorney; a professional corporation; or a bank or savings and loan association. A trustee may resign or be replaced by the

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beneficiary. The successor trustee has all powers of the original trustee once the appointment of the successor trustee is recorded in each county where the deed of trust is recorded.

Non-judicial Foreclosure

A deed of trust may be foreclosed without a judicial proceeding. If the borrower defaults on the obligation, for example by failing to make a payment under the deed of trust, the trustee may foreclose on the property by conducting a public trustee sale when the required procedural and notice requirements are met.

In order for a deed of trust to be non-judicially 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; (5) no other action is pending to seek satisfaction of an obligation secured by the deed of trust, and (6) the trustee has a street address in the state where personal service of process may be made.

To initiate foreclosure procedures, the trustee must: (1) file a notice of trustee's sale 90 days before the sale; (2) send notice of the sale 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 for specified time periods.

One seeking to stop a commercial or residential foreclosure sale must apply for a preliminary injunction from a court and post a certain amount of security with the court. The challenger or borrower must deposit with the court either the "principal, interest, and reserves" required monthly under the deed, if the borrower is in default of such payment, or the amount of monthly interest required, if the obligation is then payable in full.

Summary of Bill:

"Residential property" is property upon which four or fewer residential units are located and one of the residential units is occupied by the borrower or the borrower's minor or dependent children as their principal residence from and after the date the foreclosure is commenced.

Trustee Duties and Responsibilities

The trustee has no fiduciary duty or fiduciary obligation to the grantor, beneficiary, or any other persons having an interest in the property subject to the deed of trust. The trustee has a duty of fairness and impartiality to the grantor, beneficiary, and any other person with an interest in the property.

The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price if it appears that the bidding has been collusive or defective, or that the sale might have been void.

The trustee must maintain a physical presence and have telephone service at a street address within the state where personal service of process may be made.

Notice of Foreclosure

The required notice of foreclosure issued to the borrower must include the total amount of the obligation due under the deed of trust as of a specified date, including interest, costs and

advances. After the date indicated, the borrower must request the pay-off amount from the trustee in writing, and the trustee must respond within 10 days after receiving the request.

Postponement of Trustee Sale

If the trustee makes an oral proclamation that the foreclosure sale is to be held at a later date, the trustee must provide notice, by first class and registered or certified mail, of the new time and place for the sale to the grantor, beneficiary, holder of a lien subordinate to the deed of trust, the plaintiff in a court action related to the property, anyone who has recorded a request for notice, and the occupants of residential property subject to the foreclosure proceedings. The notice must be mailed at least four days before the new date fixed for the sale if the sale is continued for up to seven days. If the new date is continued for more than seven days, notice must be mailed no more than three days after the date of the continuance.

Security for Injunction or Restraining Order

The right to restrain a trustee may be sought on any proper legal or equitable ground. As a condition of issuing an injunction or restraining order, the court must require the party seeking an injunction to submit security in any amount the court deems proper. The purpose of the security is the payment of costs, damages, or attorney's fees that may be incurred by a party who is found to have been wrongfully enjoined or restrained.

A trustee may postpone the foreclosure sale to a future date according to the statutory procedure despite the issuance of a restraining order or injunction.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.