

# FINAL BILL REPORT

## SSB 5378

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### C 153 L 08

Synopsis as Enacted

**Brief Description:** Modifying deeds of trust provisions.

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

**Senate Committee on Judiciary**  
**House Committee on Judiciary**

**Background:** A deed of trust is a document in which a borrower incurs a debt obligation in exchange for real estate. 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. 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 sale. The Deeds of Trust Act (Act) currently does not specify what fiduciary duties, or duties of care, the trustee owes to the lender versus the borrower of a deed of trust.

Trustees must disclose to the borrower the amount required to reinstate the promissory note and deed of trust. Trustees currently have no obligation to timely disclose the amount necessary to satisfy the full amount required. Trustees also have no obligation to provide written notice concerning postponement of a foreclosure sale; currently they may orally postpone the sale. The Act permits agents of title companies to be trustees, so long as one officer of the title company is a Washington resident, and the trustee has a Washington street address.

**Summary:** A trustee has no fiduciary obligation to any persons having an interest in the property subject to the deed of trust. The trustee or successor trustee must act impartially between the borrower, grantor, and beneficiary. The trustee may decline to complete a foreclosure 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.

Trustees must disclose the amount necessary to satisfy the obligation in full, and to provide such disclosure within 10 days of receiving a written request for such. As to notice of postponed sale, a trustee must submit written notice no less than four days before the new date and time of sale, when the new sale occurs within seven days of the postponement. When the sale is postponed to a date beyond seven days into the future, the trustee must submit written notice within three days of postponement. The trustee must provide such notice to the borrower, grantor, and junior lien holders. Such notice is necessary only if the sale is postponed to any day after the originally scheduled date. A trustee must maintain physical presence and telephone service at a Washington address.

**Votes on Final Passage:**

Senate	48	0	
House	93	0	(House amended)
Senate	46	0	(Senate concurred)

**Effective:** June 12, 2008