

SSB 5590 - H COMM AMD

By Committee on Judiciary

ADOPTED 04/05/2011

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. Sec. 1. A new section is added to chapter 61.24 RCW
5 to read as follows:

6 (1) Whenever (a) consummation of a written agreement for the
7 purchase and sale of owner-occupied residential real property would
8 result in contractual sale proceeds that are insufficient to pay in
9 full the obligation owed to a senior beneficiary of a deed of trust
10 encumbering the residential real property; and (b) the seller makes a
11 written offer to the senior beneficiary to accept the entire net
12 proceeds of the sale in order to facilitate closing of the purchase
13 and sale; then the senior beneficiary must, within one hundred twenty
14 days after the receipt of the written offer, deliver to the seller, in
15 writing, an acceptance, rejection, or counter-offer of the seller's
16 written offer. The senior beneficiary may determine, in its sole
17 discretion, whether to accept, reject, or counter-offer the seller's
18 written offer.

19 (2) This section applies only when the written offer to the senior
20 beneficiary is received by the senior beneficiary prior to the
21 issuance of a notice of default. The offer must include a copy of the
22 purchase and sale agreement. The offer must be sent to the address of
23 the senior beneficiary or the address of a party acting as a servicer
24 of the obligation secured by the deed of trust.

25 (3) A seller has a right of action for actual monetary damages
26 incurred as a result of the senior beneficiary's failure to comply
27 with the requirements of subsection (1) of this section.

1 (4) A senior beneficiary is not liable for the actions or
2 inactions of any other lien holder.

3 (5)(a) This section does not apply to deeds of trust: (i) securing
4 a commercial loan; (ii) securing obligations of a grantor who is not
5 the borrower or a guarantor; or (iii) securing a purchaser's
6 obligations under a seller-financed sale.

7 (b) This section does not apply to beneficiaries that are exempt
8 from section 7, chapter ____ (2SHB 1362), laws of 2011, if enacted, or
9 if not enacted, to beneficiaries that conduct fewer than two hundred
10 fifty trustee sales per year.

11 (6) This section does not alter a beneficiary's right to issue a
12 notice of default and does not lengthen or shorten any time period
13 imposed or required under this chapter.

14

15 **Sec. 2.** RCW 61.24.127 and 2009 c 292 s 6 are each amended to read
16 as follows:

17 (1) The failure of the borrower or grantor to bring a civil action
18 to enjoin a foreclosure sale under this chapter may not be deemed a
19 waiver of a claim for damages asserting:

20 (a) Common law fraud or misrepresentation;

21 (b) A violation of Title 19 RCW; (~~(e)~~)

22 (c) Failure of the trustee to materially comply with the
23 provisions of this chapter; or

24 (d) A violation of section 1 of this act.

25 (2) The nonwaived claims listed under subsection (1) of this
26 section are subject to the following limitations:

27 (a) The claim must be asserted or brought within two years from
28 the date of the foreclosure sale or within the applicable statute of
29 limitations for such claim, whichever expires earlier;

30 (b) The claim may not seek any remedy at law or in equity other
31 than monetary damages;

32 (c) The claim may not affect in any way the validity or finality
33 of the foreclosure sale or a subsequent transfer of the property;

34

1 (d) A borrower or grantor who files such a claim is prohibited
2 from recording a lis pendens or any other document purporting to
3 create a similar effect, related to the real property foreclosed upon;

4 (e) The claim may not operate in any way to encumber or cloud the
5 title to the property that was subject to the foreclosure sale, except
6 to the extent that a judgment on the claim in favor of the borrower or
7 grantor may, consistent with RCW 4.56.190, become a judgment lien on
8 real property then owned by the judgment debtor; and

9 (f) The relief that may be granted for judgment upon the claim is
10 limited to actual damages. However, if the borrower or grantor brings
11 in the same civil action a claim for violation of chapter 19.86 RCW,
12 arising out of the same alleged facts, relief under chapter 19.86 RCW
13 is limited to actual damages, treble damages as provided for in RCW
14 19.86.090, and the costs of suit, including a reasonable attorney's
15 fee.

16 (~~((4) [(3)])~~) (3) This section applies only to foreclosures of
17 owner-occupied residential real property.

18 (~~((5) [(4)])~~) (4) This section does not apply to the foreclosure
19 of a deed of trust used to secure a commercial loan.

20
21 **Sec. 3.** RCW 61.24.005 and 2009 c 292 s 1 are each amended to read
22 as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Affiliate of beneficiary" means any entity which controls, is
26 controlled by, or is under common control with a beneficiary.

27 (2) "Beneficiary" means the holder of the instrument or document
28 evidencing the obligations secured by the deed of trust, excluding
29 persons holding the same as security for a different obligation.

30 (3) "Borrower" means a person or a general partner in a
31 partnership, including a joint venture, that is liable for all or part
32 of the obligations secured by the deed of trust under the instrument
33 or other document that is the principal evidence of such obligations,
34

1 or the person's successors if they are liable for those obligations
2 under a written agreement with the beneficiary.

3 (4) "Commercial loan" means a loan that is not made primarily for
4 personal, family, or household purposes.

5 (5) "Fair value" means the value of the property encumbered by a
6 deed of trust that is sold pursuant to a trustee's sale. This value
7 shall be determined by the court or other appropriate adjudicator by
8 reference to the most probable price, as of the date of the trustee's
9 sale, which would be paid in cash or other immediately available
10 funds, after deduction of prior liens and encumbrances with interest
11 to the date of the trustee's sale, for which the property would sell
12 on such date after reasonable exposure in the market under conditions
13 requisite to a fair sale, with the buyer and seller each acting
14 prudently, knowledgeably, and for self-interest, and assuming that
15 neither is under duress.

16 (6) "Grantor" means a person, or its successors, who executes a
17 deed of trust to encumber the person's interest in property as
18 security for the performance of all or part of the borrower's
19 obligations.

20 (7) "Guarantor" means any person and its successors who is not a
21 borrower and who guarantees any of the obligations secured by a deed
22 of trust in any written agreement other than the deed of trust.

23 (8) "Owner-occupied" means property that is the principal
24 residence of the borrower.

25 (9) "Person" means any natural person, or legal or governmental
26 entity.

27 (10) "Record" and "recorded" includes the appropriate registration
28 proceedings, in the instance of registered land.

29 (11) "Residential real property" means property consisting solely
30 of a single-family residence, a residential condominium unit, or a
31 residential cooperative unit.

32 (12) "Senior beneficiary" means the beneficiary of a deed of trust
33 that has priority over any other deeds of trust encumbering the same
34 residential real property."

1 (13) "Tenant-occupied property" means property consisting solely
2 of residential real property that is the principal residence of a
3 tenant subject to chapter 59.18 RCW or other building with four or
4 fewer residential units that is the principal residence of a tenant
5 subject to chapter 59.18 RCW.

6 (~~(13)~~) (14) "Trustee" means the person designated as the trustee
7 in the deed of trust or appointed under RCW 61.24.010(2).

8 (~~(14)~~) (15) "Trustee's sale" means a nonjudicial sale under a
9 deed of trust undertaken pursuant to this chapter."

10

11 Correct the title.

EFFECT: Provides that the requirement for a beneficiary to respond to a short sale offer within 120 days applies to senior beneficiaries of deeds of trusts (as opposed to lien holders of mortgages and real estate contracts). Provides that the requirement applies only when an offer is sent to the senior beneficiary before a notice of default is issued. Requires that the offer include the purchase and sale agreement and be sent to the beneficiary's or servicer's address.

Exempts from the requirement: (a) beneficiaries that do fewer than 250 foreclosures per year; and (b) deeds of trust securing commercial loans, securing obligations of a grantor who is not the borrower or a guarantor, or securing a purchaser's obligations under a seller-financed sale.

Removes the provision making a violation of the bill a Consumer Protection Act violation. Removes the "in good faith" language. Explicitly states that the requirement does not alter a beneficiary's right to issue a notice of default and does not lengthen or shorten any time period imposed by the Deeds of Trust Act. Changes terms to be consistent with terms in the Deeds of Trust Act.

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