

# SENATE BILL REPORT

## SB 5309

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As of January 24, 2011

**Title:** An act relating to modifying certain deeds of trust provisions.

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

**Sponsors:** Senators Kline, Pflug and Keiser.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 1/26/11.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff:** Alison Mendiola (786-7483)

**Background:** Prior to a trustee's sale, there are a number of statutory obligations that must be complied with, including but not limited to:

- a default must occur;
- the deed of trust must be recorded in the county where the land is situated; and
- the trustee must maintain a physical presence in the state and telephone service at the location.

At a trustee's sale, the trustee's deed conveys all of the right, title, and interest in the real property sold at the trustee's sale. If a trustee accepts a bid, then the trustee's sale is final at the time of such acceptance. After a trustee's sale, no person has the right to redeem the property sold at the trustee's sale.

The Deeds of Trust Act, specifically 61.24.127 RCW, specifies that a homeowner's failure to bring a claim to enjoin a foreclosure sale is not a waiver of claims for damages asserting common law fraud or misrepresentation, a violation of the Consumer Protection Act, or failure of the trustee to materially comply with the requirements of the Deed of Trust Act.

No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five-days notice to the trustee of the time; place; and judge before whom the application for the restraining order or injunction is made.

It is a violation of the Consumer Protection Act (CPA) for any person to offer, accept or accept from another, any consideration of any type not to bid, or to reduce a bid at a trustee's

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sale. Under a CPA claim, a judge has the ability to award treble damages up to \$25,000 as well as attorneys' fees

**Summary of Bill:** Changes are made to some of the requirements that must be made before a trustee's sale, including:

- a default in a forbearance agreement has occurred;
- the deed of trust and all assignments must be recorded in each county where the land is situated; and
- if the trustee's office is outside the county where the trustee's sale is scheduled, the notices required must also contain an email address and fax number for service of process purposes.

After a trustee's sale, no person has the right to redeem the property sold, however, a court may vacate a void trustee's sale or a trustee's sale procured by fraud.

A homeowner's failure to bring a claim to enjoin a property conducted foreclosure sale is not deemed a waiver of damages of specified claims.

Language requiring five-days notice to restrain or enjoin a trustee's sale is changed to reasonable notice. Language that is permissive but does not prohibit a trustee from proceeding with a trustee's sale following a termination of any injunction or stay is struck.

It is a violation of the CPA to fail to comply with the Deed of Trust Act.

If the property is owner-occupied, the court must not impose a bond that exceeds a \$500 cost to the borrower.

**Appropriation:** No.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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