

# SENATE BILL REPORT

## SB 5311

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As of February 14, 2011

**Title:** An act relating to clarifying agency relationships in reconveyances of deeds of trust.

**Brief Description:** Clarifying agency relationships in reconveyances of deeds of trust.

**Sponsors:** Senators Kline, Conway, Prentice, Chase, Kohl-Welles, Shin, Kastama and Keiser.

**Brief History:**

**Committee Activity:** Judiciary: 2/18/11.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Lidia Mori (786-7755)

**Background:** The function of title companies is to insure the purchasers' clear title. They need a clear chain of title to reduce the risk of an unknown interest. The title is clear if the records show all the transfers from the necessary people, and if clouds such as liens or taxes are resolved.

There are two common methods to finance the purchase of real property: a mortgage or a deed of trust. With a deed of trust, the purchaser borrows from a lender that is called the beneficiary and conveys the property to a trustee (a bank or trust company). The trustee must transfer or re-convey the property back to the purchaser when the debt is paid to the beneficiary (lender). The purchaser can then sell the property.

After the debt is paid, it is sometimes time consuming to get a beneficiary to request re-conveyance from a trustee or get the trustee to re-convey. The statement that the debt has been paid, the notice to the trustee and the failure of the trustee to re-convey or object are all clearly visible on the record. Many title companies insure the title because the risk is now eliminated. When the underlying obligation has been paid and there is no more money owing, the lien of the deed of trust is a hollow lien. It cannot be enforced, and the only thing it does is place a cloud on the title and hinder sales.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** If the beneficiary fails to request re-conveyance within 60 days and has received payment, a title insurance company, title insurance agent, a

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license escrow agent, or an attorney who has paid the demand in full from escrow, upon receiving notice of the beneficiary's failure to request re-conveyance, may submit proof of satisfaction and request the trustee of record to re-convey the deed of trust. If the trustee is unable or unwilling to re-convey the deed of trust within 120 days following payment to the beneficiary, a title insurance company, title insurance agent, a license escrow agent, or an attorney may record with each county auditor where the original deed of trust was recorded, a notarized declaration of payment. The notarized declaration must include certain information, including that the payment tendered was sufficient to meet the beneficiary's demand and that no written objections have been received. The notarized declaration of payment is required to be sent by first class mail to the last known address of the beneficiary and the trustee of record. The beneficiary and the trustee have 60 days after the filing of the declaration of payment and the notice to them to file an objection on the record. If no objection is filed in the 60 day period, the lien is extinguished. The owner can now convey the property and the title insurer will insure it free from the cloud of the hollow lien.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

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