

# SENATE BILL REPORT

## SB 5311

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As Reported by Senate Committee On:  
Judiciary, February 18, 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 [DPS].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5311 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Kohl-Welles and Regala.

**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

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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 (Recommended Substitute):** If the beneficiary fails to request re-conveyance within 60 days and has received payment, a title insurance company, title insurance agent, a 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. A copy of the recorded declaration of payment is required to be sent by certified mail to the last known address of the beneficiary and the trustee of record not later than two business days. The beneficiary or trustee of record has 60 days from the date of recording of the notarized declaration to record an objection, including reference to the recording number of the declaration and original deed of trust in the records where the notarized declaration was recorded. If no objection is filed in the 60-day period, the lien is extinguished.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute as Passed Committee):** Technical changes were made.

**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.

**Staff Summary of Public Testimony on Proposed Substitute as Heard in Committee:**  
PRO: We have dozens of cases every week where a person is trying to refinance or trying to sell their land, but an old mortgage is still showing as unpaid; the record only shows the deed of trust is still outstanding. The fix we have proposed here is that the escrow company that made the pay-off according to the lender's pay-off request, has the authority to act for the borrower to request the trustee to reconvey. Only in the rare case, where the bank is gone and can't initiate and the trustee is gone and can't initiate, then that escrow company could actually record a notice that full payment was made. The safeguard against accidental release where a document is still supposed to be there is the mailing to the last lender. The association of auditors had some objections to the original bill but the bill before you is agreed upon.

**Persons Testifying:** PRO: Dwight Bickel, Gary Kissling, Auditor, WA Land Title Assn.; James McMahan, Auditor, WA Assn. of County Officials.