

SENATE BILL REPORT

SB 6070

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 1, 2012

Title: An act relating to recording residential real property.

Brief Description: Concerning the recording of residential real property.

Sponsors: Senators Kline, Frockt, Harper, Keiser and Shin.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/31/12, 2/01/12 [DPS, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6070 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain and Keiser.

Minority Report: That it be referred without recommendation.

Signed by Senator Haugen.

Staff: Alison Mendiola (786-7483)

Background: Under the recording statute, chapter 65.08 RCW, the term conveyance includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged, or assigned or by which the title to any real property may be affected.

A conveyance of real property may be recorded in the office of the recording officer of the county where the property is located. Any conveyance not recorded is void as to a subsequent purchaser or mortgagee in good faith whose conveyance is first duly recorded.

Deeds of Trust Act. Under the Deeds of Trust Act, in order for a trustee's sale to occur, the deed of trust must be recorded in each county where the land is situation.

Summary of Bill (Recommended Substitute): A stakeholder group comprised of homeowner advocates, lenders and their servicers, representatives of county governments, and representatives of electronic registry systems are to convene to discuss the issue of

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recording deeds of trust of residential property, including assignments and transfers, among other issues. The stakeholder group is to provide at least one specific legislative proposal to the Legislature by December 1, 2012.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): A stakeholder group comprised of homeowner advocates, lenders and their servicers, representatives of county governments, and representatives of electronic registry systems are to convene to discuss the issue of recording deeds of trust of residential property, including assignments and transfers, among other issues. The stakeholder group is to provide at least one specific legislative proposal to the Legislature by December 1, 2012. The original language is struck.

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 Original Bill: PRO: The Mortgage Electronic Registry System (MERS) takes away transparency. Requiring local recording would bring money to the local governments. The inability to find the true lienholder has people who would otherwise invest in foreclosed homes invest money elsewhere resulting in losing homes to fraudulent banks. You basically have to sue MERS to get information that is supposed to be public. This bill makes it known who is the holder of the mortgage in due course, why should anyone be thrown out of their home?

CON: All court cases have so far upheld MERS. Homeowners makes MERS the agent and there is nothing wrong with that. When MERS is the beneficiary, as of July 22, foreclosures are no longer done listing MERS as the beneficiary. Even if you required this recording, it will not accomplish anything. Before MERS, assignments didn't get done and there was a break in the chain of title. The homeowner pays these costs directly or indirectly. There was a time when MERS didn't disclose the holder of the loan and now due to a federal issue, this information is disclosed. MERS brings efficiency to the process. On average loans are sold two to three times and the recording fees each time are \$62. This cost will be passed on to homeowners. Stakeholders are working in good faith on the foreclosure issue and this issue has been not part of the conversation.

Persons Testifying: PRO: Senator Kline, prime sponsor; Karen Poole, Susan Mason, Property Defense Network; Barry Nilsen, Nilsen Development Inc.; Ilene Stohl, WA State Coalition Against Domestic Violence; Daniel L. Fievez, Andrew Peters, Nancy Gibson, citizens; Marliza Melzer, Michelle Darnell, Our Washington; Shawn Newman, St. Martin's University; Josh Auxier, Acres Real Estate; Cheri Carr, Sothebys International Real Estate; Kreg Kendall, Seattle King County Realtors.

CON: Denny Eliason, WA Bankers Assn.; Bill Hiltman, Mortgage Electronic Registry Systems; Holly Chisa, United Trustees Assn.