

SENATE BILL REPORT

SB 6515

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

Title: An act relating to the rescission of a trustee's foreclosure sale.

Brief Description: Concerning the rescission of a trustee's foreclosure sale.

Sponsors: Senators Kline, Hobbs, Kastama, Fain, Litzow and Harper.

Brief History:

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

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6515 be substituted therefor, and the substitute bill do pass.

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

Staff: Alison Mendiola (786-7483)

Background: Under the Deeds of Trust statute, the following may be trustees:

- any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident;
- any title insurance company authorized to insure title to real property under the laws of this state, or any title insurance agent licensed under chapter 48.17 RCW;
- any attorney who is an active member of the Washington State Bar Association at the time the attorney is named trustee;
- any professional corporation incorporated under chapter 18.100 RCW; any professional limited liability company formed under chapter 25.15 RCW; any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys; or any domestic corporation wholly owned by any of the entities under this subsection (1)(d);
- any agency or instrumentality of the United States government; or
- any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the Deeds of Trust statute, the trustee's deed conveys all of the right, title and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust. If a trustee accepts a bid, the trustee's sale is final if it is recorded within 15 days. After a trustee's sale, there is no right by statute or otherwise, to redeem the property sold at the trustee's sale.

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

Summary of Bill (Recommended Substitute): A domestic limited liability corporation incorporated under specific statutes may be a trustee under the Deeds of Trust Act.

Up to 11 days following the trustee's sale, the trustee, beneficiary, or agent for the beneficiary may declare the trustee's sale and trustee's deed void for the following reasons:

- the trustee, beneficiary, or servicer for the beneficiary assert there was an error with the trustee foreclosure sale process, including but not limited to, an erroneous opening bid amount made by or on behalf of the foreclosing beneficiary at the trustee's sale;
- prior the sale, there was an agreement for a loan modification, forbearance plan, or other loss mitigation agreement to postpone or discontinue the trustee's sale; or
- the beneficiary or servicer accepted funds that fully reinstated or satisfied the loan even if they had no legal duty to do so.

The trustee is to refund the bid amount together with interest to the purchaser.

No later than 15 days following the voided trustee's sale, the trustee is to send a notice, as proscribed by statute, to all parties entitled to the notice.

If the rescission is based on an erroneous bid amount or an agreement to postpone the sale, the trustee may set a new sale date at least 45 days following the mailing of the notice of rescission of trustee's sale. The trustee is to:

- comply with the requirements for holding a trustee's sale at least 30 days before the new sale date; and
- publish the Notice of Trustee's Sale as required by statute.

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: PRO: This bill helps when a home that is in foreclosure is sold in error. There may have been an error on the bid price, the borrower could be involved in loss mitigation, and the borrower could have reinstated the loan. Some changes are needed, but this bill is supported.

Persons Testifying: PRO: Brian Sommer, Routh, Crabtree, and Olsen; Bruce Neas, Columbia Legal Services; and Denny Eliason, WA Bankers Assn., United Financial Lobby.