
ENGROSSED SUBSTITUTE HOUSE BILL 2614

State of Washington

62nd Legislature

2012 Regular Session

By House Judiciary (originally sponsored by Representatives Kenney, Ryu, Hasegawa, and Santos)

READ FIRST TIME 01/31/12.

1 AN ACT Relating to residual debts following short sales of
2 owner-occupied residential property secured by deeds of trust; and
3 amending RCW 61.24.100.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to read
6 as follows:

7 (1)(a) Except to the extent permitted in this section for deeds of
8 trust securing commercial loans, a deficiency judgment shall not be
9 obtained on the obligations secured by a deed of trust against any
10 borrower, grantor, or guarantor after a trustee's sale under that deed
11 of trust.

12 (b) A beneficiary may not obtain a deficiency judgment on the
13 obligations secured by a deed of trust against any borrower, grantor,
14 or guarantor in any case when, as a consequence of or in conjunction
15 with a sale of owner-occupied residential real property resulting in
16 proceeds that were insufficient to pay the obligation in full, the
17 beneficiary reports to the internal revenue service that the
18 beneficiary has canceled all or a portion of the borrower's obligation
19 and the beneficiary provided the borrower written evidence of the

1 beneficiary's report to the internal revenue service. This subsection
2 (1)(b) does not apply: (i) To a deed of trust securing a commercial
3 loan; (ii) to an obligation secured by owner-occupied residential real
4 property when the funds were used to finance a commercial venture; or
5 (iii) when the property sold was not occupied by the borrower as the
6 borrower's principal residence at the time of the sale.

7 (2)(a) Nothing in this chapter precludes an action against any
8 person liable on the obligations secured by a deed of trust or any
9 guarantor prior to a notice of trustee's sale being given pursuant to
10 this chapter or after the discontinuance of the trustee's sale.

11 (b) No action under (a) of this subsection precludes the
12 beneficiary from commencing a judicial foreclosure or trustee's sale
13 under the deed of trust after the completion or dismissal of that
14 action.

15 (3) This chapter does not preclude any one or more of the following
16 after a trustee's sale under a deed of trust securing a commercial loan
17 executed after June 11, 1998:

18 (a)(i) To the extent the fair value of the property sold at the
19 trustee's sale to the beneficiary or an affiliate of the beneficiary is
20 less than the unpaid obligation secured by the deed of trust
21 immediately prior to the trustee's sale, an action for a deficiency
22 judgment against the borrower or grantor, if such person or persons was
23 timely given the notices under RCW 61.24.040, for (A) any decrease in
24 the fair value of the property caused by waste to the property
25 committed by the borrower or grantor, respectively, after the deed of
26 trust is granted, and (B) the wrongful retention of any rents,
27 insurance proceeds, or condemnation awards by the borrower or grantor,
28 respectively, that are otherwise owed to the beneficiary.

29 (ii) This subsection (3)(a) does not apply to any property that is
30 occupied by the borrower as its principal residence as of the date of
31 the trustee's sale;

32 (b) Any judicial or nonjudicial foreclosures of any other deeds of
33 trust, mortgages, security agreements, or other security interests or
34 liens covering any real or personal property granted to secure the
35 obligation that was secured by the deed of trust foreclosed; or

36 (c) Subject to this section, an action for a deficiency judgment
37 against a guarantor if the guarantor is timely given the notices under
38 RCW 61.24.042.

1 (4) Any action referred to in subsection (3)(a) and (c) of this
2 section shall be commenced within one year after the date of the
3 trustee's sale, or a later date to which the liable party otherwise
4 agrees in writing with the beneficiary after the notice of foreclosure
5 is given, plus any period during which the action is prohibited by a
6 bankruptcy, insolvency, moratorium, or other similar debtor protection
7 statute. If there occurs more than one trustee's sale under a deed of
8 trust securing a commercial loan or if trustee's sales are made
9 pursuant to two or more deeds of trust securing the same commercial
10 loan, the one-year limitation in this section begins on the date of the
11 last of those trustee's sales.

12 (5) In any action against a guarantor following a trustee's sale
13 under a deed of trust securing a commercial loan, the guarantor may
14 request the court or other appropriate adjudicator to determine, or the
15 court or other appropriate adjudicator may in its discretion determine,
16 the fair value of the property sold at the sale and the deficiency
17 judgment against the guarantor shall be for an amount equal to the sum
18 of the total amount owed to the beneficiary by the guarantor as of the
19 date of the trustee's sale, less the fair value of the property sold at
20 the trustee's sale or the sale price paid at the trustee's sale,
21 whichever is greater, plus interest on the amount of the deficiency
22 from the date of the trustee's sale at the rate provided in the
23 guaranty, the deed of trust, or in any other contracts evidencing the
24 debt secured by the deed of trust, as applicable, and any costs,
25 expenses, and fees that are provided for in any contract evidencing the
26 guarantor's liability for such a judgment. If any other security is
27 sold to satisfy the same debt prior to the entry of a deficiency
28 judgment against the guarantor, the fair value of that security, as
29 calculated in the manner applicable to the property sold at the
30 trustee's sale, shall be added to the fair value of the property sold
31 at the trustee's sale as of the date that additional security is
32 foreclosed. This section is in lieu of any right any guarantor would
33 otherwise have to establish an upset price pursuant to RCW 61.12.060
34 prior to a trustee's sale.

35 (6) A guarantor granting a deed of trust to secure its guaranty of
36 a commercial loan shall be subject to a deficiency judgment following
37 a trustee's sale under that deed of trust only to the extent stated in
38 subsection (3)(a)(i) of this section. If the deed of trust encumbers

1 the guarantor's principal residence, the guarantor shall be entitled to
2 receive an amount up to the homestead exemption set forth in RCW
3 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid
4 at the foreclosure or trustee's sale accepted by the sheriff or trustee
5 prior to the application of the bid to the guarantor's obligation.

6 (7) A beneficiary's acceptance of a deed in lieu of a trustee's
7 sale under a deed of trust securing a commercial loan exonerates the
8 guarantor from any liability for the debt secured thereby except to the
9 extent the guarantor otherwise agrees as part of the deed in lieu
10 transaction.

11 (8) This chapter does not preclude a beneficiary from foreclosing
12 a deed of trust in the same manner as a real property mortgage and this
13 section does not apply to such a foreclosure.

14 (9) Any contract, note, deed of trust, or guaranty may, by its
15 express language, prohibit the recovery of any portion or all of a
16 deficiency after the property encumbered by the deed of trust securing
17 a commercial loan is sold at a trustee's sale.

18 (10) A trustee's sale under a deed of trust securing a commercial
19 loan does not preclude an action to collect or enforce any obligation
20 of a borrower or guarantor if that obligation, or the substantial
21 equivalent of that obligation, was not secured by the deed of trust.

22 (11) Unless the guarantor otherwise agrees, a trustee's sale shall
23 not impair any right or agreement of a guarantor to be reimbursed by a
24 borrower or grantor for a deficiency judgment against the guarantor.

25 (12) Notwithstanding anything in this section to the contrary, the
26 rights and obligations of any borrower, grantor, and guarantor
27 following a trustee's sale under a deed of trust securing a commercial
28 loan or any guaranty of such a loan executed prior to June 11, 1998,
29 shall be determined in accordance with the laws existing prior to June
30 11, 1998.

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