
HOUSE BILL 2777

State of Washington

62nd Legislature

2012 Regular Session

By Representative Hudgins

Read first time 02/09/12. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to modifying the penalty for false swearing by a
2 beneficiary; amending RCW 61.24.030, 9.38.020, and 9A.72.040; and
3 prescribing penalties.

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

5 **Sec. 1.** RCW 61.24.030 and 2011 c 58 s 4 are each amended to read
6 as follows:

7 It shall be requisite to a trustee's sale:

8 (1) That the deed of trust contains a power of sale;

9 (2) That the deed of trust contains a statement that the real
10 property conveyed is not used principally for agricultural purposes;
11 provided, if the statement is false on the date the deed of trust was
12 granted or amended to include that statement, and false on the date of
13 the trustee's sale, then the deed of trust must be foreclosed
14 judicially. Real property is used for agricultural purposes if it is
15 used in an operation that produces crops, livestock, or aquatic goods;

16 (3) That a default has occurred in the obligation secured or a
17 covenant of the grantor, which by the terms of the deed of trust makes
18 operative the power to sell;

1 (4) That no action commenced by the beneficiary of the deed of
2 trust is now pending to seek satisfaction of an obligation secured by
3 the deed of trust in any court by reason of the grantor's default on
4 the obligation secured: PROVIDED, That (a) the seeking of the
5 appointment of a receiver shall not constitute an action for purposes
6 of this chapter; and (b) if a receiver is appointed, the grantor shall
7 be entitled to any rents or profits derived from property subject to a
8 homestead as defined in RCW 6.13.010. If the deed of trust was granted
9 to secure a commercial loan, this subsection shall not apply to actions
10 brought to enforce any other lien or security interest granted to
11 secure the obligation secured by the deed of trust being foreclosed;

12 (5) That the deed of trust has been recorded in each county in
13 which the land or some part thereof is situated;

14 (6) That prior to the date of the notice of trustee's sale and
15 continuing thereafter through the date of the trustee's sale, the
16 trustee must maintain a street address in this state where personal
17 service of process may be made, and the trustee must maintain a
18 physical presence and have telephone service at such address;

19 (7)(a)(i) That, for residential real property, before the notice of
20 trustee's sale is recorded, transmitted, or served, the trustee shall
21 have proof that the beneficiary is the owner of any promissory note or
22 other obligation secured by the deed of trust.

23 (ii) A declaration by the beneficiary made under the penalty of
24 perjury stating that the beneficiary is the actual holder of the
25 promissory note or other obligation secured by the deed of trust shall
26 be sufficient proof as required under this subsection. A violation of
27 this subsection (7)(a)(ii) is a class C felony as provided in RCW
28 9A.20.020 and 9A.20.021.

29 (b) Unless the trustee has violated his or her duty under RCW
30 61.24.010(4), the trustee is entitled to rely on the beneficiary's
31 declaration as evidence of proof required under this subsection.

32 (c) This subsection (7) does not apply to association beneficiaries
33 subject to chapter 64.32, 64.34, or 64.38 RCW;

34 (8) That at least thirty days before notice of sale shall be
35 recorded, transmitted or served, written notice of default shall be
36 transmitted by the beneficiary or trustee to the borrower and grantor
37 at their last known addresses by both first-class and either registered
38 or certified mail, return receipt requested, and the beneficiary or

1 trustee shall cause to be posted in a conspicuous place on the
2 premises, a copy of the notice, or personally served on the borrower
3 and grantor. This notice shall contain the following information:

4 (a) A description of the property which is then subject to the deed
5 of trust;

6 (b) A statement identifying each county in which the deed of trust
7 is recorded and the document number given to the deed of trust upon
8 recording by each county auditor or recording officer;

9 (c) A statement that the beneficiary has declared the borrower or
10 grantor to be in default, and a concise statement of the default
11 alleged;

12 (d) An itemized account of the amount or amounts in arrears if the
13 default alleged is failure to make payments;

14 (e) An itemized account of all other specific charges, costs, or
15 fees that the borrower, grantor, or any guarantor is or may be obliged
16 to pay to reinstate the deed of trust before the recording of the
17 notice of sale;

18 (f) A statement showing the total of (d) and (e) of this
19 subsection, designated clearly and conspicuously as the amount
20 necessary to reinstate the note and deed of trust before the recording
21 of the notice of sale;

22 (g) A statement that failure to cure the alleged default within
23 thirty days of the date of mailing of the notice, or if personally
24 served, within thirty days of the date of personal service thereof, may
25 lead to recordation, transmittal, and publication of a notice of sale,
26 and that the property described in (a) of this subsection may be sold
27 at public auction at a date no less than one hundred twenty days in the
28 future;

29 (h) A statement that the effect of the recordation, transmittal,
30 and publication of a notice of sale will be to (i) increase the costs
31 and fees and (ii) publicize the default and advertise the grantor's
32 property for sale;

33 (i) A statement that the effect of the sale of the grantor's
34 property by the trustee will be to deprive the grantor of all their
35 interest in the property described in (a) of this subsection;

36 (j) A statement that the borrower, grantor, and any guarantor has
37 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged
38 default on any proper ground;

1 (k) In the event the property secured by the deed of trust is
2 owner-occupied residential real property, a statement, prominently set
3 out at the beginning of the notice, which shall state as follows:

4 "You should take care to protect your interest in your home. This
5 notice of default (your failure to pay) is the first step in a process
6 that could result in you losing your home. You should carefully review
7 your options. For example:

8 Can you pay and stop the foreclosure process?

9 Do you dispute the failure to pay?

10 Can you sell your property to preserve your equity?

11 Are you able to refinance this loan or obligation with a new loan
12 or obligation from another lender with payments, terms, and fees that
13 are more affordable?

14 Do you qualify for any government or private homeowner assistance
15 programs?

16 Do you know if filing for bankruptcy is an option? What are the
17 pros and cons of doing so?

18 Do not ignore this notice; because if you do nothing, you could
19 lose your home at a foreclosure sale. (No foreclosure sale can be held
20 any sooner than ninety days after a notice of sale is issued and a
21 notice of sale cannot be issued until thirty days after this notice.)
22 Also, if you do nothing to pay what you owe, be careful of people who
23 claim they can help you. There are many individuals and businesses
24 that watch for the notices of sale in order to unfairly profit as a
25 result of borrowers' distress.

26 You may feel you need help understanding what to do. There are a
27 number of professional resources available, including home loan
28 counselors and attorneys, who may assist you. Many legal services are
29 lower-cost or even free, depending on your ability to pay. If you
30 desire legal help in understanding your options or handling this
31 default, you may obtain a referral (at no charge) by contacting the
32 county bar association in the county where your home is located. These
33 legal referral services also provide information about lower-cost or
34 free legal services for those who qualify. You may contact the
35 Department of Financial Institutions or the statewide civil legal aid
36 hotline for possible assistance or referrals"; and

37 (l) In the event the property secured by the deed of trust is
38 residential real property, the name and address of the owner of any

1 promissory notes or other obligations secured by the deed of trust and
2 the name, address, and telephone number of a party acting as a servicer
3 of the obligations secured by the deed of trust; and

4 (9) That, for owner-occupied residential real property, before the
5 notice of the trustee's sale is recorded, transmitted, or served, the
6 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW
7 61.24.163.

8 **Sec. 2.** RCW 9.38.020 and 2000 c 250 s 9A-821 are each amended to
9 read as follows:

10 Every person who shall maliciously or fraudulently execute or file
11 for record any instrument, or put forward any claim, by which the right
12 or title of another to any real or personal property is, or purports to
13 be transferred, encumbered or clouded, shall be guilty of a gross
14 misdemeanor, except for a violation of RCW 61.24.030(7)(a)(ii) which is
15 a class C felony as provided in RCW 9A.020.020 and 9A.20.021.

16 **Sec. 3.** RCW 9A.72.040 and 2011 c 336 s 392 are each amended to
17 read as follows:

18 (1) A person is guilty of false swearing if he or she makes a false
19 statement, which he or she knows to be false, under an oath required or
20 authorized by law.

21 (2) False swearing is a gross misdemeanor, except for false
22 swearing under RCW 61.24.030(7)(a)(ii) which is a class C felony as
23 provided in RCW 9A.20.020 and 9A.20.021.

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