
SUBSTITUTE SENATE BILL 5590

State of Washington

62nd Legislature

2011 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senator Benton)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to lien holder requirements for certain foreclosure
2 sales; amending RCW 61.24.127; and adding a new section to chapter
3 64.04 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW
6 to read as follows:

7 (1) Whenever a written agreement for the purchase and sale of
8 owner-occupied residential real estate, by its existing terms and upon
9 closing, results in contractual sale proceeds that are insufficient to
10 pay in full the obligation owed to a lien holder of a beneficial
11 interest of a mortgage, deed of trust, or real estate contract
12 encumbering the residential real estate and the seller makes a written
13 offer to the lien holder to accept less than the amount the lien holder
14 is owed in order to facilitate closing of the purchase and sale
15 acceptable to the purchaser and seller, the lien holder must in good
16 faith, within one hundred twenty days upon the receipt of a written
17 offer, deliver to the seller, in writing, an acceptance, rejection, or
18 counter-offer of the seller's written offer.

1 (2) A primary lien holder is not liable for the actions or
2 inactions of a junior lien holder.

3 (3) A seller has a right of action for actual monetary damages
4 incurred as a result of the lien holder's failure to comply with the
5 good faith requirements of subsection (1) of this section.

6 (4) The legislature finds that the practices covered by this
7 section are matters vitally affecting the public interest for the
8 purpose of applying chapter 19.86 RCW. A violation of this section is
9 not reasonable in relation to the development and preservation of
10 business and is an unfair or deceptive act in trade or commerce and an
11 unfair method of competition for the purpose of applying chapter 19.86
12 RCW.

13 **Sec. 2.** RCW 61.24.127 and 2009 c 292 s 6 are each amended to read
14 as follows:

15 (1) The failure of the borrower or grantor to bring a civil action
16 to enjoin a foreclosure sale under this chapter may not be deemed a
17 waiver of a claim for damages asserting:

18 (a) Common law fraud or misrepresentation;

19 (b) A violation of Title 19 RCW; (~~(or)~~)

20 (c) Failure of the trustee to materially comply with the provisions
21 of this chapter; or

22 (d) A violation of section 1 of this act.

23 (2) The nonwaived claims listed under subsection (1) of this
24 section are subject to the following limitations:

25 (a) The claim must be asserted or brought within two years from the
26 date of the foreclosure sale or within the applicable statute of
27 limitations for such claim, whichever expires earlier;

28 (b) The claim may not seek any remedy at law or in equity other
29 than monetary damages;

30 (c) The claim may not affect in any way the validity or finality of
31 the foreclosure sale or a subsequent transfer of the property;

32 (d) A borrower or grantor who files such a claim is prohibited from
33 recording a lis pendens or any other document purporting to create a
34 similar effect, related to the real property foreclosed upon;

35 (e) The claim may not operate in any way to encumber or cloud the
36 title to the property that was subject to the foreclosure sale, except

1 to the extent that a judgment on the claim in favor of the borrower or
2 grantor may, consistent with RCW 4.56.190, become a judgment lien on
3 real property then owned by the judgment debtor; and

4 (f) The relief that may be granted for judgment upon the claim is
5 limited to actual damages. However, if the borrower or grantor brings
6 in the same civil action a claim for violation of chapter 19.86 RCW,
7 arising out of the same alleged facts, relief under chapter 19.86 RCW
8 is limited to actual damages, treble damages as provided for in RCW
9 19.86.090, and the costs of suit, including a reasonable attorney's
10 fee.

11 (~~(4)~~ ~~[(3)]~~) (3) This section applies only to foreclosures of
12 owner-occupied residential real property.

13 (~~(5)~~ ~~[(4)]~~) (4) This section does not apply to the foreclosure of
14 a deed of trust used to secure a commercial loan.

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