

Judiciary Committee

HB 2367

Title: An act relating to internet notice of a trustee's sale.

Brief Description: Requiring internet notice of a trustee's sale.

Sponsors: Representatives Sawyer, Rodne, Appleton, Kirby, Robinson, Ryu, Hope and Pollet.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none"> • Requires the Department of Commerce to develop and maintain a web site for posting notices of trustees' sales in nonjudicial foreclosures. • Mandates that notices of trustees' sales be posted on the website developed by the Department, in addition to being published in a legal newspaper in the county in which the property is located as is already required.

Hearing Date: 1/21/14

Staff: Cece Clynch (786-7195).

Background:

Notice of Trustee's Sale.

Unlike mortgages, which require judicial foreclosure, deeds of trust may be nonjudicially foreclosed if the borrower defaults on the loan obligation. The deeds of trust statutes establish procedures and timelines that must be followed by beneficiaries, trustees, and borrowers. Three notices are required during the process. The first is the notice of pre-foreclosure options, the second is the notice of default, and the third is the Notice of Trustee's Sale (NOTS).

The form and contents of a NOTS is specified in statute. The notice must include:

- the date, time and place of sale;
- names of the grantor, trustee, and beneficiary;
- information about the deed of trust, including the date, county where recorded, and recording number;

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- details of the default, whether for failure to pay money or otherwise;
- information regarding how and when the default may be cured;
- details regarding notices that have been provided;
- reference to the statute that may be utilized to restrain the sale;
- timeline within which mediation may still be pursued; and
- contact information for seeking assistance

The NOTS must be: (1) recorded; (2) mailed to the grantor and others who have interests in the property; (3) posted on the property or personally served on the occupant; and, (4) published in a "legal newspaper" in each county in which the property is located. Publication must occur once on or between the 35th and 28th day before the date of sale, and once on or between the 14th and 7th day before the date of sale.

In order to qualify as a "legal newspaper," a newspaper must have been published regularly, at least once a week for at least six months, in English, as a newspaper of general circulation in the city or town where it is published at the time of application to be a "legal newspaper." It is the superior court in the county of publication that must approve, via court order, a "legal newspaper." The approval remains effective from the time of entry of the order until and unless it is terminated. Termination is authorized if the newspaper no longer qualifies as a "legal newspaper."

Any summons or notice that must be published in a "legal newspaper" may be published in any daily or weekly legal newspaper published in the county where the action, suit, or proceeding is pending. The plaintiff or the moving party has the exclusive right to designate in which qualified newspaper the publication is to occur.

Department of Commerce.

The Department of Commerce (Department) is a state agency charged with enhancing and promoting sustainable community and economic vitality in Washington. The Department administers a portfolio of more than 100 programs and several state boards and commissions. Among the programs administered by the Department is the Foreclosure Fairness Program created by the Foreclosure Fairness Act. In so doing, the Department collaborates with the Housing Finance Commission, Department of Financial Institutions, Office of the Attorney General, Office of Civil Legal Aid and with Dispute Resolution Centers, mediators, attorneys, and housing professionals.

Summary of Bill:

In addition to publishing the NOTS in a legal newspaper in each county in which the property is situated, the trustee must also post the NOTS on a website to be developed and maintained by the Department. The notice must be posted on or between the 35th and 28th day before the date of sale, and must remain on the web site through the date of sale.

By December 31, 2014, the Department must develop, and thereafter maintain, an internet web site to serve as a statewide portal for the public to find and access NOTS. The web site must:

- allow a trustee, upon payment of a fee, to easily post a NOTS;

- allow the public, for no charge, to easily search notices by name of grantor, name of borrower, real property subject to the deed of trust, auditor's file number assigned to the deed of trust, and any other criteria approved by the Department; and
- allow the public, for no charge, to search and view past, archived NOTS.

The fee to be charged a trustee for posting is to be set by the Department in an amount that covers the Department's costs to post and archive the notices and maintain the web site, specifically including the provision of equipment, resources, and personnel.

It is the responsibility of the trustee to comply with timing and content requirements. It is specifically provided that no liability on the part of, and no cause of action of any nature, may arise against the state, the Department, or their employees or agents for any lawful action taken by them, or any inaction, in the performance of their powers and duties under the section requiring the development and maintenance of the web site.

Appropriation: None.

Fiscal Note: Requested on January 15, 2014.

Effective Date: Section 4 of the bill, tasking the Department of Commerce with developing and maintaining an internet website by December 31, 2014, takes effect 90 days after adjournment of the session in which the bill is passed. Sections 1 through 3, requiring internet posting, take effect January 1, 2015.