

# SENATE BILL REPORT

## SHB 1435

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As of March 25, 2013

**Title:** An act relating to clarifying agency relationships in reconveyances of deeds of trust.

**Brief Description:** Clarifying agency relationships in reconveyances of deeds of trust.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Goodman and Nealey).

**Brief History:** Passed House: 3/11/13, 95-0.

**Committee Activity:** Financial Institutions, Housing & Insurance: 3/19/13.

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff:** Alison Mendiola (786-7483)

**Background:** Deeds of Trust. A deed of trust is a type of security interest in real property. A deed of trust is a three-party mortgage; the borrower (grantor) grants a deed creating a lien on the real property to a third party (trustee) who holds the deed in trust as security for an obligation due to the lender (beneficiary).

A trustee must reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto upon:

- written request of the beneficiary; or
- satisfaction of the obligation secured, and written request for reconveyance made by the beneficiary or the person entitled thereto.

The deeds of trust statutes do not specify a particular timeframe for reconveyance. However, unless specifically provided for otherwise, deeds of trust are subject to all the laws relating to mortgages on real property. Under the mortgage laws, when the amount on a mortgage is paid and at the request of any person interested in the property, the mortgagee must execute an instrument in writing acknowledging that the mortgage is satisfied. Upon request, the written instrument must be recorded in the county where the property is located. If a mortgagee fails to acknowledge satisfaction of the mortgage within 60 days from the date of the request, the mortgagee is liable to the mortgagor for damages and a reasonable attorney's fee, to be recovered in court.

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*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.*

Trustee. The following persons and entities may act as a trustee of a deed of trust: title insurance companies; attorneys; a variety of business entities; a variety of banks; and any agency or instrumentality of the federal government.

The trustee may resign at its own election or be replaced by the beneficiary. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary appoints a trustee or a successor trustee. Only upon recording the appointment in each county in which the deed of trust is recorded, does the successor trustee become vested with all powers of an original trustee.

A trustee has no fiduciary duty or obligation to the grantor or other persons having an interest in the property. The trustee does, however, have a duty of good faith to the borrower, beneficiary, and grantor.

**Summary of Bill:** Reconveying a Deed of Trust. Trustee is changed to trustee of record, and it is the trustee of record that has the obligation to reconvey upon: written request of the beneficiary; or satisfaction of the obligation secured, and written request for reconveyance made by the beneficiary or the person entitled thereto.

New provisions are added for situations in which the beneficiary receives payment as set forth in its demand statement but fails to request reconveyance within the 60-day period specified under the mortgage laws. A title insurance company or agent, a licensed escrow agent, or an attorney admitted to practice in Washington, who has paid the demand in full from escrow, may act as agent (agent), for the person entitled to receive reconveyance. Upon receipt of notice of the beneficiary's failure to request reconveyance, the agent may submit proof of satisfaction and request the trustee of record to reconvey the deed of trust.

If the trustee of record is unable or unwilling to reconvey within 120 days following payment to the beneficiary per the beneficiary's demand statement, then the agent may record a notarized Declaration of Payment with each county auditor where the original deed of trust was recorded. The Declaration of Payment must:

- identify the deed of trust, including the original grantor, beneficiary, trustee, loan number if available, and the recording number and date;
- state the amount, date, and name of the beneficiary and means of payment; and
- include a declaration that payment tendered was sufficient to meet the demand and that no written objections have been received.

A copy of the Declaration of Payment must be sent by certified mail to the last known address of the beneficiary and the trustee of record not later than two business days following the date the declaration is recorded. The beneficiary or trustee of record then has 60 days from the date of recording to record an Objection to Declaration of Payment. If no objection is recorded within 60 days following recording of the notarized Declaration of Payment, any lien of the deed of trust against the real property encumbered ceases to exist.

**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: After homeowners pay off their mortgage, their title should be reconveyed by the lender but sometimes the reconveyance does not happen, which creates a cloud on the title. This could prevent the sale of a home. Under this bill, after a homeowner pays off the mortgage, the beneficiary receives notice of the request to reconvey and if they still do not respond, a document is recorded that removes the lien. This helps homeowners. Some lenders go out of business or do not reconvey even though they are supposed to. This bill addresses a specific and real need and will eliminate the number of times of homeowner will need to quiet title to extinguish the lien. This bill is not about foreclosure, it is about homeowners who pay off their mortgage and want the lien on their home removed. The statute does not require an original note. This is not about releasing a note, this about releasing a lien, a security interest on real property. This bill was vetted by reputable stakeholders and provides thoughtful protection for homeowners who pay off their loan. Killing this bill would not help homeowners.

CON: Escrow and title are not bringing the original note to the table. We need a bill that mandates producing the original note, not a copy or an affidavit, before a reconveyance can occur. A homeowner does not know if they are paying off the right bank since the loan is securitized and serviced. This bill will create more red tape for the borrower and cause fraudulent defaults and foreclosure. This is not addressing the real problem, but rather it is covering it up.

**Persons Testifying:** PRO: Representative Goodman, prime sponsor; Jonelle Wheeler, Escrow Assn. of WA; Bob Mitchell, WA Realtors; Denny Eliason, WA Bankers Assn.; Holly Chisa, United Trustees Assn.; Gary Kissling, Dwight Bickel, Stuart Halsan, WA Land Title Assn.

CON: Karen Pooley, Val Renata, Shelley Erickson, Janet Reiner, citizens.