

SENATE BILL REPORT

SHB 2876

As of February 24, 2016

Title: An act relating to the foreclosure of deeds of trust.

Brief Description: Addressing the foreclosure of deeds of trust.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Kirby and Griffey).

Brief History: Passed House: 2/16/16, 97-0.

Committee Activity: Financial Institutions & Insurance: 2/24/16.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Shani Bauer (786-7468)

Background: Foreclosure of a Trust Deed. When a borrower under a trust deed fails to make loan payments as required and a default occurs, the beneficiary of the trust deed - or trustee or servicer acting on behalf of the beneficiary - must satisfy due diligence requirements in attempting to contact the borrower and providing information to the borrower including options that may be available to avoid foreclosure and how to contact a housing counselor. If the borrower does not respond to the beneficiary within 30 days, the beneficiary may send a written notice of default to the borrower. If the borrower does not pay outstanding amounts within 30 days of the issuance of the notice of default, the beneficiary may authorize the trustee to issue a notice of trustee's sale. The trustee must send written notice of trustee's sale to the borrower and any other lien holders of record and record the notice with the county auditor. The notice must be recorded at least 90 days prior to the sale date. Unless the borrower cures the default before 11 days of the sale or the sale is postponed for other reasons, the trustee may conduct the sale. A Trustee's Deed is recorded soon afterwards and the successful bidder becomes the owner.

Foreclosure Fairness Act. In 2011, the Legislature enacted the Foreclosure Fairness Act (FFA). The FFA is designed to help homeowners and their lenders explore possible alternatives to foreclosure and reach a resolution when possible. Lenders must notify borrowers prior to initiating the foreclosure of the availability of foreclosure counseling and the potential for foreclosure mediation.

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.

The FFA also created the Foreclosure Fairness Account to provide funding for free homeownership counseling, attorneys to prosecute violations of the Washington Consumer Protection Act, and foreclosure prevention outreach. The account is funded through fees paid by trust deed beneficiaries based on the number of notices of default issued in the last quarter for owner-occupied residential properties. Federally insured beneficiaries conducting more than 250 foreclosures in Washington State in the previous year pay \$250 for each notice of default issued. The fees are deposited into the Foreclosure Fairness Account and distributed as follows:

- no less than 71 percent for the purposes of providing housing counseling services, except the amount may be reduced to meet funding levels for the attorney general or Commerce;
- the greater of 6 percent or \$650,000 to the office of the Attorney General to be used by the consumer protection division;
- up to 2 percent to the office of civil legal aid to provide legal representation for homeowners in foreclosure; and
- the greater of 18 percent or \$1.4 million to Commerce to be used for implementation and operation of the FFA.
- up to 3 percent to the Department of Financial Institutions for outreach and education.

The program and account are administered by the Department of Commerce. Each quarter, a trust deed beneficiary must report to the Department the number of notices of default issued on owner-occupied residential properties in the previous quarter and pay \$250 per notice to the Department to be deposited in the FFA.

Summary of Bill: Every beneficiary on whose behalf a notice of trustee's sale has been recorded on residential real property must report to the Department the number of notices of trustee's sale recorded for each residential property during the previous quarter and pay \$250 for each recorded notice of trustee's sale. A federally insured beneficiary that records fewer than 50 notices of trustee's sale in the preceding year is not required to report and pay the fee.

Residential real property is defined to include residential real property with up to four dwelling units, whether or not the property or any part is owner-occupied.

\$400,000 of the fees deposited to the Foreclosure Fairness Account are to first be used to fund the counselor referral hotline. The remaining funds are to be distributed as follows:

- 69 percent for the purposes of providing housing counseling activities to benefit borrowers;
- 8 percent to the office of the attorney general to be used by the consumer protection division;
- 6 percent to the office of civil legal aid to provide legal representation for homeowners in foreclosure; and
- 17 percent to the Department to be used for implementation and operation of the FFA.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2016.