

SENATE BILL REPORT

SB 5968

As of February 17, 2015

Title: An act relating to clarification that the owner or holder of a trust deed, or the owner or holder's designee, may initiate foreclosure proceedings.

Brief Description: Clarifying that the owner or holder of a trust deed, or the owner or holder's designee, may initiate foreclosure proceedings.

Sponsors: Senators Hobbs, Benton, Mullet, Hatfield and Miloscia.

Brief History:

Committee Activity: Financial Institutions & Insurance:

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Shani Bauer (786-7468)

Background: Under the Washington Deed of Trust Act (Act), in order to initiate foreclosure proceedings on residential real property, the trustee must have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust will constitute sufficient proof.

Traditionally the beneficiary of a deed of trust is the lender who loaned money to the homeowner. The deed of trust protects the lender by giving the lender the power to nominate a trustee and giving that trustee the power to sell the home if the homeowner's debt is not paid. Lenders may sell the secured debt, typically by selling the promissory note signed by the homeowner. The Act recognizes this may occur and broadly defines beneficiary as the holder of the instrument or document evidencing the obligations secured by the deed of trust.

In today's market, a mortgage debt may be sold among different banks and investors, sometimes over and over again. The bank who is the owner of the note may not have possession of the original note. The Supreme Court of Washington has determined that, under the Act, only the actual holder of a promissory note can be the beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property.

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.

Summary of Bill: In order to initiate foreclosure proceedings, the trustee must have proof that the beneficiary is the owner or holder of any promissory note or other obligation secured by the deed of trust. A declaration stating that the beneficiary is the owner or holder of the promissory note constitutes sufficient proof.

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.