
SUBSTITUTE HOUSE BILL 2876

State of Washington

64th Legislature

2016 Regular Session

By House Judiciary (originally sponsored by Representatives Orwall, Kirby, and Griffey)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to the foreclosure of deeds of trust; amending
2 RCW 61.24.172 and 61.24.135; adding a new section to chapter 61.24
3 RCW; creating a new section; repealing RCW 61.24.174; and providing
4 an effective date.

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

6 **Sec. 1.** RCW 61.24.172 and 2015 3rd sp.s. c 4 s 965 are each
7 amended to read as follows:

8 The foreclosure fairness account is created in the custody of the
9 state treasurer. All receipts received under RCW 61.24.174, as it
10 existed prior to the effective date of this section, and section 2 of
11 this act must be deposited into the account. Only the director of the
12 department of commerce or the director's designee may authorize
13 expenditures from the account. Funding to agencies and organizations
14 under this section must be provided by the department through an
15 interagency agreement or other applicable contract instrument. The
16 account is subject to allotment procedures under chapter 43.88 RCW,
17 but an appropriation is not required for expenditures. Biennial
18 expenditures from the account must be used as follows: Four hundred
19 thousand dollars to fund the counselor referral hotline. The
20 remaining funds shall be distributed as follows: (1) (~~No less than~~
21 seventy-one)) Sixty-nine percent (~~must be used~~)) for the purposes of

1 providing housing counseling activities to benefit borrowers(~~(7~~
2 ~~except that this amount may be less than seventy one percent only if~~
3 ~~necessary to meet the funding level specified for the office of the~~
4 ~~attorney general under subsection (2) of this section and the~~
5 ~~department under subsection (4) of this section)); (2) ((~~up to six~~))
6 eight percent(~~(, or six hundred fifty five thousand dollars per~~
7 ~~biennium, whichever amount is greater,)) to the office of the
8 attorney general to be used by the consumer protection division to
9 enforce this chapter; (3) ((~~up to two~~)) six percent to the office of
10 civil legal aid to be used for the purpose of contracting with
11 qualified legal aid programs for legal representation of homeowners
12 in matters relating to foreclosure. Funds provided under this
13 subsection (3) must be used to supplement, not supplant, other
14 federal, state, and local funds; and (4) ((~~up to eighteen~~)) seventeen
15 percent(~~(, or one million four hundred thousand dollars per biennium,~~
16 ~~whichever amount is greater,)) to the department to be used for
17 implementation and operation of the foreclosure fairness act(~~(; and~~
18 ~~(5) up to three percent to the department of financial institutions~~
19 ~~to conduct homeowner prepurchase and postpurchase outreach and~~
20 ~~education programs as defined in RCW 43.320.150)).~~~~~~~~

21 The department shall enter into interagency agreements to
22 contract with the Washington state housing finance commission and
23 other appropriate entities to implement the foreclosure fairness act.

24 ((~~During fiscal year 2016, the department of commerce may expend~~
25 ~~funds from the account to review deed of trust and foreclosure~~
26 ~~laws.~~))

27 NEW SECTION. Sec. 2. A new section is added to chapter 61.24
28 RCW to read as follows:

29 (1) Except as provided in subsections (4) and (5) of this
30 section, beginning July 1, 2016, and every quarter thereafter, every
31 beneficiary on whose behalf a notice of trustee's sale has been
32 recorded pursuant to RCW 61.24.040 on residential real property under
33 this chapter must:

34 (a) Report to the department the number of notices of trustee's
35 sale recorded for each residential property during the previous
36 quarter;

37 (b) Remit the amount required under subsection (2) of this
38 section; and

1 (c) Report and update beneficiary contact information for the
2 person and work group responsible for the beneficiary's compliance
3 with the requirements of the foreclosure fairness act created in this
4 chapter.

5 (2) For each notice of trustee's sale recorded on residential
6 real property, the beneficiary on whose behalf the notice of
7 trustee's sale has been recorded shall remit two hundred fifty
8 dollars to the department to be deposited, as provided under RCW
9 61.24.172, into the foreclosure fairness account. The two hundred
10 fifty dollar payment is required for every recorded notice of
11 trustee's sale, but does not apply to the recording of an amended
12 notice of trustee's sale. If the beneficiary previously made a
13 payment under RCW 61.24.174, as it existed prior to the effective
14 date of this section, for a notice of default supporting the recorded
15 notice of trustee's sale, no payment is required under this section.
16 The beneficiary shall remit the total amount required in a lump sum
17 each quarter.

18 (3) Reporting and payments under subsections (1) and (2) of this
19 section are due within forty-five days of the end of each quarter.

20 (4) This section does not apply to any beneficiary or loan
21 servicer that is a federally insured depository institution, as
22 defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under
23 penalty of perjury that fewer than fifty notices of trustee's sale
24 were recorded on its behalf in the preceding year.

25 (5) This section does not apply to association beneficiaries
26 subject to chapter 64.32, 64.34, or 64.38 RCW.

27 (6) For purposes of this section, "residential real property"
28 includes residential real property with up to four dwelling units,
29 whether or not the property or any part thereof is owner-occupied.

30 **Sec. 3.** RCW 61.24.135 and 2011 c 58 s 14 are each amended to
31 read as follows:

32 (1) It is an unfair or deceptive act or practice under the
33 consumer protection act, chapter 19.86 RCW, for any person, acting
34 alone or in concert with others, to offer, or offer to accept or
35 accept from another, any consideration of any type not to bid, or to
36 reduce a bid, at a sale of property conducted pursuant to a power of
37 sale in a deed of trust. The trustee may decline to complete a sale
38 or deliver the trustee's deed and refund the purchase price, if it
39 appears that the bidding has been collusive or defective, or that the

1 sale might have been void. However, it is not an unfair or deceptive
2 act or practice for any person, including a trustee, to state that a
3 property subject to a recorded notice of trustee's sale or subject to
4 a sale conducted pursuant to this chapter is being sold in an "as-is"
5 condition, or for the beneficiary to arrange to provide financing for
6 a particular bidder or to reach any good faith agreement with the
7 borrower, grantor, any guarantor, or any junior lienholder.

8 (2) It is an unfair or deceptive act in trade or commerce and an
9 unfair method of competition in violation of the consumer protection
10 act, chapter 19.86 RCW, for any person or entity to: (a) Violate the
11 duty of good faith under RCW 61.24.163; (b) fail to comply with the
12 requirements of RCW 61.24.174, as it existed prior to the effective
13 date of this section, or section 2 of this act; or (c) fail to
14 initiate contact with a borrower and exercise due diligence as
15 required under RCW 61.24.031.

16 NEW SECTION. **Sec. 4.** RCW 61.24.174 (Required payment for each
17 property subject to notice of default—Owner-occupied residential real
18 property—Exception—Deposit into foreclosure fairness account) and
19 2012 c 185 s 8, 2011 1st sp.s. c 24 s 1, & 2011 c 58 s 12 are each
20 repealed.

21 NEW SECTION. **Sec. 5.** The repeal in section 4 of this act does
22 not affect any existing right acquired or liability or obligation
23 incurred under the section repealed or under any rule or order
24 adopted under that section, nor does it affect any proceeding
25 instituted under that section.

26 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2016.

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