

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5590

62nd Legislature
2011 Regular Session

Passed by the Senate April 19, 2011
YEAS 46 NAYS 0

President of the Senate

Passed by the House April 5, 2011
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5590** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5590

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senator Benton)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to lien holder requirements for certain foreclosure
2 sales; amending RCW 61.24.127; reenacting and amending RCW 61.24.005;
3 and adding a new section to chapter 61.24 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 61.24 RCW
6 to read as follows:

7 (1) Whenever (a) consummation of a written agreement for the
8 purchase and sale of owner-occupied residential real property would
9 result in contractual sale proceeds that are insufficient to pay in
10 full the obligation owed to a senior beneficiary of a deed of trust
11 encumbering the residential real property; and (b) the seller makes a
12 written offer to the senior beneficiary to accept the entire net
13 proceeds of the sale in order to facilitate closing of the purchase and
14 sale; then the senior beneficiary must, within one hundred twenty days
15 after the receipt of the written offer, deliver to the seller, in
16 writing, an acceptance, rejection, or counter-offer of the seller's
17 written offer. The senior beneficiary may determine, in its sole
18 discretion, whether to accept, reject, or counter-offer the seller's
19 written offer.

1 (2) This section applies only when the written offer to the senior
2 beneficiary is received by the senior beneficiary prior to the issuance
3 of a notice of default. The offer must include a copy of the purchase
4 and sale agreement. The offer must be sent to the address of the
5 senior beneficiary or the address of a party acting as a servicer of
6 the obligation secured by the deed of trust.

7 (3) A seller has a right of action for actual monetary damages
8 incurred as a result of the senior beneficiary's failure to comply with
9 the requirements of subsection (1) of this section.

10 (4) A senior beneficiary is not liable for the actions or inactions
11 of any other lien holder.

12 (5)(a) This section does not apply to deeds of trust: (i) Securing
13 a commercial loan; (ii) securing obligations of a grantor who is not
14 the borrower or a guarantor; or (iii) securing a purchaser's
15 obligations under a seller-financed sale.

16 (b) This section does not apply to beneficiaries that are exempt
17 from RCW 61.24.--- (section 7, chapter 58, Laws of 2011), if enacted,
18 or if not enacted, to beneficiaries that conduct fewer than two hundred
19 fifty trustee sales per year.

20 (6) This section does not alter a beneficiary's right to issue a
21 notice of default and does not lengthen or shorten any time period
22 imposed or required under this chapter.

23 **Sec. 2.** RCW 61.24.127 and 2009 c 292 s 6 are each amended to read
24 as follows:

25 (1) The failure of the borrower or grantor to bring a civil action
26 to enjoin a foreclosure sale under this chapter may not be deemed a
27 waiver of a claim for damages asserting:

28 (a) Common law fraud or misrepresentation;

29 (b) A violation of Title 19 RCW; (~~(or)~~)

30 (c) Failure of the trustee to materially comply with the provisions
31 of this chapter; or

32 (d) A violation of section 1 of this act.

33 (2) The nonwaived claims listed under subsection (1) of this
34 section are subject to the following limitations:

35 (a) The claim must be asserted or brought within two years from the
36 date of the foreclosure sale or within the applicable statute of
37 limitations for such claim, whichever expires earlier;

1 (b) The claim may not seek any remedy at law or in equity other
2 than monetary damages;

3 (c) The claim may not affect in any way the validity or finality of
4 the foreclosure sale or a subsequent transfer of the property;

5 (d) A borrower or grantor who files such a claim is prohibited from
6 recording a lis pendens or any other document purporting to create a
7 similar effect, related to the real property foreclosed upon;

8 (e) The claim may not operate in any way to encumber or cloud the
9 title to the property that was subject to the foreclosure sale, except
10 to the extent that a judgment on the claim in favor of the borrower or
11 grantor may, consistent with RCW 4.56.190, become a judgment lien on
12 real property then owned by the judgment debtor; and

13 (f) The relief that may be granted for judgment upon the claim is
14 limited to actual damages. However, if the borrower or grantor brings
15 in the same civil action a claim for violation of chapter 19.86 RCW,
16 arising out of the same alleged facts, relief under chapter 19.86 RCW
17 is limited to actual damages, treble damages as provided for in RCW
18 19.86.090, and the costs of suit, including a reasonable attorney's
19 fee.

20 (~~(4)~~—~~(3)~~)) (3) This section applies only to foreclosures of
21 owner-occupied residential real property.

22 (~~(5)~~—~~(4)~~)) (4) This section does not apply to the foreclosure of
23 a deed of trust used to secure a commercial loan.

24 **Sec. 3.** RCW 61.24.005 and 2009 c 292 s 1 are each reenacted and
25 amended to read as follows:

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

28 (1) "Affiliate of beneficiary" means any entity which controls, is
29 controlled by, or is under common control with a beneficiary.

30 (2) "Beneficiary" means the holder of the instrument or document
31 evidencing the obligations secured by the deed of trust, excluding
32 persons holding the same as security for a different obligation.

33 (3) "Borrower" means a person or a general partner in a
34 partnership, including a joint venture, that is liable for all or part
35 of the obligations secured by the deed of trust under the instrument or
36 other document that is the principal evidence of such obligations, or

1 the person's successors if they are liable for those obligations under
2 a written agreement with the beneficiary.

3 (4) "Commercial loan" means a loan that is not made primarily for
4 personal, family, or household purposes.

5 (5) "Fair value" means the value of the property encumbered by a
6 deed of trust that is sold pursuant to a trustee's sale. This value
7 shall be determined by the court or other appropriate adjudicator by
8 reference to the most probable price, as of the date of the trustee's
9 sale, which would be paid in cash or other immediately available funds,
10 after deduction of prior liens and encumbrances with interest to the
11 date of the trustee's sale, for which the property would sell on such
12 date after reasonable exposure in the market under conditions requisite
13 to a fair sale, with the buyer and seller each acting prudently,
14 knowledgeably, and for self-interest, and assuming that neither is
15 under duress.

16 (6) "Grantor" means a person, or its successors, who executes a
17 deed of trust to encumber the person's interest in property as security
18 for the performance of all or part of the borrower's obligations.

19 (7) "Guarantor" means any person and its successors who is not a
20 borrower and who guarantees any of the obligations secured by a deed of
21 trust in any written agreement other than the deed of trust.

22 (8) "Owner-occupied" means property that is the principal residence
23 of the borrower.

24 (9) "Person" means any natural person, or legal or governmental
25 entity.

26 (10) "Record" and "recorded" includes the appropriate registration
27 proceedings, in the instance of registered land.

28 (11) "Residential real property" means property consisting solely
29 of a single-family residence, a residential condominium unit, or a
30 residential cooperative unit.

31 (12) "Senior beneficiary" means the beneficiary of a deed of trust
32 that has priority over any other deeds of trust encumbering the same
33 residential real property.

34 (13) "Tenant-occupied property" means property consisting solely of
35 residential real property that is the principal residence of a tenant
36 subject to chapter 59.18 RCW or other building with four or fewer
37 residential units that is the principal residence of a tenant subject
38 to chapter 59.18 RCW.

1 (~~(13)~~) (14) "Trustee" means the person designated as the trustee
2 in the deed of trust or appointed under RCW 61.24.010(2).
3 (~~(14)~~) (15) "Trustee's sale" means a nonjudicial sale under a
4 deed of trust undertaken pursuant to this chapter.

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