
SUBSTITUTE SENATE BILL 6515

State of Washington

62nd Legislature

2012 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Kline, Hobbs, Kastama, Fain, Litzow, and Harper)

READ FIRST TIME 02/02/12.

1 AN ACT Relating to trustees under the deeds of trust act; and
2 amending RCW 61.24.010 and 61.24.050.

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

4 **Sec. 1.** RCW 61.24.010 and 2009 c 292 s 7 are each amended to read
5 as follows:

6 (1) The trustee of a deed of trust under this chapter shall be:

7 (a) Any domestic corporation or domestic limited liability
8 corporation incorporated under Title 23B, 25, 30, 31, 32, or 33 RCW of
9 which at least one officer is a Washington resident; or

10 (b) Any title insurance company authorized to insure title to real
11 property under the laws of this state, or any title insurance agent
12 licensed under chapter 48.17 RCW; or

13 (c) Any attorney who is an active member of the Washington state
14 bar association at the time the attorney is named trustee; or

15 (d) Any professional corporation incorporated under chapter 18.100
16 RCW, any professional limited liability company formed under chapter
17 25.15 RCW, any general partnership, including limited liability
18 partnerships, formed under chapter 25.04 RCW, all of whose
19 shareholders, members, or partners, respectively, are either licensed

1 attorneys or entities, provided all of the owners of those entities are
2 licensed attorneys, or any domestic corporation wholly owned by any of
3 the entities under this subsection (1)(d); or

4 (e) Any agency or instrumentality of the United States government;
5 or

6 (f) Any national bank, savings bank, or savings and loan
7 association chartered under the laws of the United States.

8 (2) The trustee may resign at its own election or be replaced by
9 the beneficiary. The trustee shall give prompt written notice of its
10 resignation to the beneficiary. The resignation of the trustee shall
11 become effective upon the recording of the notice of resignation in
12 each county in which the deed of trust is recorded. If a trustee is
13 not appointed in the deed of trust, or upon the resignation,
14 incapacity, disability, absence, or death of the trustee, or the
15 election of the beneficiary to replace the trustee, the beneficiary
16 shall appoint a trustee or a successor trustee. Only upon recording
17 the appointment of a successor trustee in each county in which the deed
18 of trust is recorded, the successor trustee shall be vested with all
19 powers of an original trustee.

20 (3) The trustee or successor trustee shall have no fiduciary duty
21 or fiduciary obligation to the grantor or other persons having an
22 interest in the property subject to the deed of trust.

23 (4) The trustee or successor trustee has a duty of good faith to
24 the borrower, beneficiary, and grantor.

25 **Sec. 2.** RCW 61.24.050 and 1998 c 295 s 7 are each amended to read
26 as follows:

27 (~~When delivered~~) (1) Upon physical delivery of the trustee's deed
28 to the purchaser, or a different grantee as designated by the purchaser
29 following the trustee's sale, the trustee's deed shall convey all of
30 the right, title, and interest in the real and personal property sold
31 at the trustee's sale which the grantor had or had the power to convey
32 at the time of the execution of the deed of trust, and such as the
33 grantor may have thereafter acquired. Except as provided in subsection
34 (2) of this section, if the trustee accepts a bid, then the trustee's
35 sale is final as of the date and time of such acceptance if the
36 trustee's deed is recorded within fifteen days thereafter. After a

1 trustee's sale, no person shall have any right, by statute or
2 otherwise, to redeem the property sold at the trustee's sale.

3 (2)(a) Up to the eleventh day following the trustee's sale, the
4 trustee, beneficiary, or agent for the beneficiary may declare the
5 trustee's sale and trustee's deed void for the following reasons:

6 (i) The trustee, beneficiary, or servicer for the beneficiary
7 assert that there was an error with the trustee foreclosure sale
8 process including, but not limited to, an erroneous opening bid amount
9 made by or on behalf of the foreclosing beneficiary at the trustee's
10 sale;

11 (ii) The borrower and beneficiary, or servicer for the beneficiary,
12 had agreed in writing prior to the trustee's sale to a loan
13 modification agreement, forbearance plan, shared appreciation mortgage,
14 or other loss mitigation agreement to postpone or discontinue the
15 trustee's sale; or

16 (iii) The beneficiary or servicer for the beneficiary had accepted
17 funds that fully reinstated or satisfied the loan even if the
18 beneficiary or servicer for the beneficiary had no legal duty to do so.

19 (b) This subsection does not impose a duty upon the trustee any
20 different than the obligations set forth under RCW 61.24.010 (3) and
21 (4).

22 (3) The trustee shall refund the bid amount together with interest
23 for the time period between the date that the trustee received the
24 money and the third day following the postmarked mailing of the
25 refunded bid amount to the purchaser or the date that the refunded bid
26 amount was physically delivered by the trustee to the purchaser,
27 whichever date is sooner. Interest must be calculated at the maximum
28 rate permitted under RCW 19.52.020(1) in effect on the date of the
29 rescinded trustee sale.

30 (4) No later than fifteen days following the voided trustee's sale
31 date, the trustee shall send a notice in substantially the following
32 form by first-class mail and certified mail, return receipt requested,
33 to all parties entitled to notice under RCW 61.24.040(1) (b) through
34 (e):

35 NOTICE OF RESCISSION OF TRUSTEE'S SALE

36 NOTICE IS HEREBY GIVEN that the trustee's sale that occurred on

1 (trustee's sale date) is rescinded and declared void because (insert
2 the applicable reason(s) permitted under RCW 61.24.050(2)(a)).

3 The trustee's sale occurred pursuant to that certain Notice of
4 Trustee's Sale dated,, recorded,, under
5 Auditor's File No., records of County, Washington, and
6 that certain Deed of Trust dated,, recorded,
7 ., under Auditor's File No., records of County,
8 Washington, from, as Grantor, to, as, as
9 original Beneficiary, concerning the following described property,
10 situated in the County(ies) of, State of Washington, to wit:

11 (Legal description)
12 Commonly known as (common property address)

13 (5) If the reason for the rescission stems from subsection (2)(a)
14 (i) or (ii) of this section, the trustee may set a new sale date not
15 less than forty-five days following the mailing of the notice of
16 rescission of trustee's sale. The trustee shall:

17 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
18 (f) at least thirty days before the new sale date; and

19 (b) Cause a copy of the notice of trustee's sale as provided in RCW
20 61.24.040(1)(f) to be published in a legal newspaper in each county in
21 which the property or any part of the property is situated, once
22 between the thirty-fifth and twenty-eighth day before the sale and once
23 between the fourteenth and seventh day before the sale.

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