
HOUSE BILL 2659

State of Washington

63rd Legislature

2014 Regular Session

By Representative Hudgins

Read first time 01/23/14. Referred to Committee on Judiciary.

1 AN ACT Relating to the restraint of a sale by a trustee; and
2 amending RCW 61.24.130.

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

4 **Sec. 1.** RCW 61.24.130 and 2008 c 153 s 5 are each amended to read
5 as follows:

6 (1) Nothing contained in this chapter shall prejudice the right of
7 the borrower, grantor, any guarantor, or any person who has an interest
8 in, lien, or claim of lien against the property or some part thereof,
9 to restrain, on any proper legal or equitable ground, a trustee's sale.
10 The court (~~shall~~) may require as a condition of granting the
11 restraining order or injunction that the applicant pay to the clerk of
12 the court the sums that would be due on the obligation secured by the
13 deed of trust if the deed of trust was not being foreclosed:

14 (a) In the case of default in making the periodic payment of
15 principal, interest, and reserves, such sums (~~shall~~) may be the
16 periodic payment of principal, interest, and reserves paid to the clerk
17 of the court every thirty days.

18 (b) In the case of default in making payment of an obligation then

1 fully payable by its terms, such sums (~~shall~~) may be the amount of
2 interest accruing monthly on said obligation at the nondefault rate,
3 paid to the clerk of the court every thirty days.

4 In the case of default in performance of any nonmonetary obligation
5 secured by the deed of trust, the court (~~shall~~) may impose such
6 conditions as it deems just.

7 In addition, the court may condition granting the restraining order
8 or injunction upon the giving of security by the applicant, in such
9 form and amount as the court deems proper, for the payment of such
10 costs and damages, including attorneys' fees, as may be later found by
11 the court to have been incurred or suffered by any party by reason of
12 the restraining order or injunction. The court may consider, upon
13 proper showing, the grantor's equity in the property in determining the
14 amount of said security.

15 (2) No court may grant a restraining order or injunction to
16 restrain a trustee's sale unless the person seeking the restraint gives
17 five days notice to the trustee of the time when, place where, and the
18 judge before whom the application for the restraining order or
19 injunction is to be made. This notice shall include copies of all
20 pleadings and related documents to be given to the judge. No judge may
21 act upon such application unless it is accompanied by proof, evidenced
22 by return of a sheriff, the sheriff's deputy, or by any person eighteen
23 years of age or over who is competent to be a witness, that the notice
24 has been served on the trustee.

25 (3) If the restraining order or injunction is dissolved after the
26 date of the trustee's sale set forth in the notice as provided in RCW
27 61.24.040(1)(f), the court granting such restraining order or
28 injunction, or before whom the order or injunction is returnable,
29 shall, at the request of the trustee, set a new sale date which shall
30 be not less than forty-five days from the date of the order dissolving
31 the restraining order. The trustee shall:

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

34 (b) Cause a copy of the notice of trustee's sale as provided in RCW
35 61.24.040(1)(f) to be published in a legal newspaper in each county in
36 which the property or any part thereof is situated once between the
37 thirty-fifth and twenty-eighth day before the sale and once between the
38 fourteenth and seventh day before the sale.

1 (4) If a trustee's sale has been stayed as a result of the filing
2 of a petition in federal bankruptcy court and an order is entered in
3 federal bankruptcy court granting relief from the stay or closing or
4 dismissing the case, or discharging the debtor with the effect of
5 removing the stay, the trustee may set a new sale date which shall not
6 be less than forty-five days after the date of the bankruptcy court's
7 order. The trustee shall:

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

10 (b) Cause a copy of the notice of trustee's sale as provided in RCW
11 61.24.040(1)(f) to be published in a legal newspaper in each county in
12 which the property or any part thereof is situated, once between the
13 thirty-fifth and twenty-eighth day before the sale and once between the
14 fourteenth and seventh day before the sale.

15 (5) Subsections (3) and (4) of this section are permissive only and
16 do not prohibit the trustee from proceeding with a trustee's sale
17 following termination of any injunction or stay on any date to which
18 such sale has been properly continued in accordance with RCW
19 61.24.040(6).

20 (6) The issuance of a restraining order or injunction shall not
21 prohibit the trustee from continuing the sale as provided in RCW
22 61.24.040(6).

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