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## Judiciary Committee

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### HB 2623

**Title:** An act relating to the foreclosure of residential real property.

**Brief Description:** Regulating the foreclosure of residential real property.

**Sponsors:** Representatives Orwall, Miloscia, Darneille, Kirby, Sullivan, Pettigrew, Simpson, Rolfes and Hasegawa.

#### Brief Summary of Bill

- Provides a one-year forbearance on foreclosure for a borrower who is receiving unemployment benefits.
- Requires the trustee to pay a \$25 fee when recording a notice of sale.
- Repeals the expiration date of the statute requiring beneficiaries to contact borrowers before issuing a notice of default and expands the application of that requirement to all deeds of trust, rather than only deeds of trust issued between 2003 and 2007.

**Hearing Date:** 1/20/10

**Staff:** Trudes Tango (786-7384).

#### **Background:**

##### **Deeds of trust**

A deed of trust is a type of security interest in real property. A deed of trust is essentially a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary).

Unlike mortgages, which require judicial foreclosure, deeds of trust may be non-judicially foreclosed if the borrower defaults on the loan obligation. To foreclose on a deed of trust, a default must have occurred that makes the power of sale operative, a notice of default must be sent at least 30 days before a notice of sale is recorded, and other requirements must be met.

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To initiate foreclosure procedures the trustee must, among other things, file a notice of trustee's sale 90 days before the sale. The notice is recorded in the county auditor's office. A sale may not take place less than 190 days from the date of default.

Last year, the Legislature enacted ESB 5810 which added a requirement for deeds of trust made from January 1, 2003 to December 31, 2007 on owner-occupied residential property. A beneficiary cannot issue a notice of default until 30 days after the beneficiary contacts the borrower to explore options for the borrower to avoid foreclosure. During this initial contact, the beneficiary must, among other things, give the borrower contact information for a U.S. Department of Housing and Urban Development (HUD)-certified counseling agency and other places that might be able to assist the borrower. This initial contact requirement expires on December 31, 2012.

### **Unemployment benefits**

Generally, a person is eligible to receive regular unemployment benefits if he or she: (1) worked at least 680 hours in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively seeking employment. The person must have been unemployed for a waiting period of one week. The person receives unemployment benefits on a weekly basis.

### **Summary of Bill:**

When the security for a deed to trust is owner-occupied property and the beneficiary has received notice from the borrower that the borrower is receiving unemployment compensation, the beneficiary must notify the trustee. The trustee cannot proceed with any foreclosure sale until one year from the date the borrower commenced receiving unemployment compensation. A sale made in violation is void.

When recording the notice of sale with the county auditor's office, the trustee must pay a \$25 recording fee to be remitted to the Department of Financial Institutions to be used for homeownership pre-purchase outreach and post-purchase counseling.

The initial contact requirement applies to all deeds of trust and no longer expires on December 31, 2012.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.