
HOUSE BILL 2658

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 false declarations by a beneficiary regarding a
2 trustee's sale; amending RCW 61.24.030, 9.38.020, and 9A.72.040; and
3 prescribing penalties.

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

5 **Sec. 1.** RCW 61.24.030 and 2012 c 185 s 9 are each amended to read
6 as follows:

7 It shall be requisite to a trustee's sale:

8 (1) That the deed of trust contains a power of sale;

9 (2) That the deed of trust contains a statement that the real
10 property conveyed is not used principally for agricultural purposes;
11 provided, if the statement is false on the date the deed of trust was
12 granted or amended to include that statement, and false on the date of
13 the trustee's sale, then the deed of trust must be foreclosed
14 judicially. Real property is used for agricultural purposes if it is
15 used in an operation that produces crops, livestock, or aquatic goods;

16 (3) That a default has occurred in the obligation secured or a
17 covenant of the grantor, which by the terms of the deed of trust makes
18 operative the power to sell;

1 (4) That no action commenced by the beneficiary of the deed of
2 trust is now pending to seek satisfaction of an obligation secured by
3 the deed of trust in any court by reason of the grantor's default on
4 the obligation secured: PROVIDED, That (a) the seeking of the
5 appointment of a receiver shall not constitute an action for purposes
6 of this chapter; and (b) if a receiver is appointed, the grantor shall
7 be entitled to any rents or profits derived from property subject to a
8 homestead as defined in RCW 6.13.010. If the deed of trust was granted
9 to secure a commercial loan, this subsection shall not apply to actions
10 brought to enforce any other lien or security interest granted to
11 secure the obligation secured by the deed of trust being foreclosed;

12 (5) That the deed of trust has been recorded in each county in
13 which the land or some part thereof is situated;

14 (6) That prior to the date of the notice of trustee's sale and
15 continuing thereafter through the date of the trustee's sale, the
16 trustee must maintain a street address in this state where personal
17 service of process may be made, and the trustee must maintain a
18 physical presence and have telephone service at such address;

19 (7)(a) That, for residential real property, before the notice of
20 trustee's sale is recorded, transmitted, or served, the trustee shall
21 have proof that the beneficiary is the owner of any promissory note or
22 other obligation secured by the deed of trust.

23 (b) A declaration by the beneficiary made under the penalty of
24 perjury stating that the beneficiary is the actual holder of the
25 promissory note or other obligation secured by the deed of trust shall
26 be sufficient proof as required under this subsection. A violation of
27 this subsection (7)(b) is a class C felony.

28 ~~((b))~~ (c) Unless the trustee has violated his or her duty under
29 RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's
30 declaration as evidence of proof required under this subsection.

31 ~~((e))~~ (d) This subsection (7) does not apply to association
32 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW;

33 (8) That at least thirty days before notice of sale shall be
34 recorded, transmitted or served, written notice of default shall be
35 transmitted by the beneficiary or trustee to the borrower and grantor
36 at their last known addresses by both first-class and either registered
37 or certified mail, return receipt requested, and the beneficiary or

1 trustee shall cause to be posted in a conspicuous place on the
2 premises, a copy of the notice, or personally served on the borrower
3 and grantor. This notice shall contain the following information:

4 (a) A description of the property which is then subject to the deed
5 of trust;

6 (b) A statement identifying each county in which the deed of trust
7 is recorded and the document number given to the deed of trust upon
8 recording by each county auditor or recording officer;

9 (c) A statement that the beneficiary has declared the borrower or
10 grantor to be in default, and a concise statement of the default
11 alleged;

12 (d) An itemized account of the amount or amounts in arrears if the
13 default alleged is failure to make payments;

14 (e) An itemized account of all other specific charges, costs, or
15 fees that the borrower, grantor, or any guarantor is or may be obliged
16 to pay to reinstate the deed of trust before the recording of the
17 notice of sale;

18 (f) A statement showing the total of (d) and (e) of this
19 subsection, designated clearly and conspicuously as the amount
20 necessary to reinstate the note and deed of trust before the recording
21 of the notice of sale;

22 (g) A statement that failure to cure the alleged default within
23 thirty days of the date of mailing of the notice, or if personally
24 served, within thirty days of the date of personal service thereof, may
25 lead to recordation, transmittal, and publication of a notice of sale,
26 and that the property described in (a) of this subsection may be sold
27 at public auction at a date no less than one hundred twenty days in the
28 future, or no less than one hundred fifty days in the future if the
29 borrower received a letter under RCW 61.24.031;

30 (h) A statement that the effect of the recordation, transmittal,
31 and publication of a notice of sale will be to (i) increase the costs
32 and fees and (ii) publicize the default and advertise the grantor's
33 property for sale;

34 (i) A statement that the effect of the sale of the grantor's
35 property by the trustee will be to deprive the grantor of all their
36 interest in the property described in (a) of this subsection;

37 (j) A statement that the borrower, grantor, and any guarantor has

1 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged
2 default on any proper ground;

3 (k) In the event the property secured by the deed of trust is
4 owner-occupied residential real property, a statement, prominently set
5 out at the beginning of the notice, which shall state as follows:

6 **"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR**
7 **LOSING YOUR HOME.**

8 You may be eligible for mediation in front of a neutral third party to
9 help save your home.

10 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**
11 to assess your situation and refer you to mediation if you might
12 benefit. Mediation **MUST** be requested between the time you receive the
13 Notice of Default and no later than twenty days after the Notice of
14 Trustee Sale is recorded.

15 **DO NOT DELAY.** If you do nothing, a notice of sale may be issued as
16 soon as 30 days from the date of this notice of default. The notice of
17 sale will provide a minimum of 120 days' notice of the date of the
18 actual foreclosure sale.

19 **BE CAREFUL** of people who claim they can help you. There are many
20 individuals and businesses that prey upon borrowers in distress.

21 **REFER TO THE CONTACTS BELOW** for sources of assistance.

22 **SEEKING ASSISTANCE**

23 Housing counselors and legal assistance may be available at little or
24 no cost to you. If you would like assistance in determining your
25 rights and opportunities to keep your house, you may contact the
26 following:

27 The statewide foreclosure hotline for assistance and referral to
28 housing counselors recommended by the Housing Finance Commission
29 Telephone: Web site:

30 The United States Department of Housing and Urban Development
31 Telephone: Web site:

32 The statewide civil legal aid hotline for assistance and referrals to
33 other housing counselors and attorneys
34 Telephone: Web site:"

35 The beneficiary or trustee shall obtain the toll-free numbers and

1 web site information from the department for inclusion in the notice;
2 and

3 (1) In the event the property secured by the deed of trust is
4 residential real property, the name and address of the owner of any
5 promissory notes or other obligations secured by the deed of trust and
6 the name, address, and telephone number of a party acting as a servicer
7 of the obligations secured by the deed of trust; and

8 (9) That, for owner-occupied residential real property, before the
9 notice of the trustee's sale is recorded, transmitted, or served, the
10 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW
11 61.24.163.

12 **Sec. 2.** RCW 9.38.020 and 2000 c 250 s 9A-821 are each amended to
13 read as follows:

14 Every person who shall maliciously or fraudulently execute or file
15 for record any instrument, or put forward any claim, by which the right
16 or title of another to any real or personal property is, or purports to
17 be transferred, encumbered, or clouded, shall be guilty of a gross
18 misdemeanor, except for a violation of RCW 61.24.030(7)(b) which is a
19 class C felony.

20 **Sec. 3.** RCW 9A.72.040 and 2011 c 336 s 392 are each amended to
21 read as follows:

22 (1) A person is guilty of false swearing if he or she makes a false
23 statement, which he or she knows to be false, under an oath required or
24 authorized by law.

25 (2) False swearing is a gross misdemeanor, except for false
26 swearing under RCW 61.24.030(7)(b) which is a class C felony.

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