S-4216.1

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**SUBSTITUTE SENATE BILL 6005**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Mullet, Angel, Hobbs, Palumbo, Takko, Zeiger, and Wilson)

AN ACT Relating to protecting lienholders' interests while retaining consumer protections; amending RCW 84.64.050, 84.64.080, and 63.29.350; reenacting and amending RCW 63.29.010; creating new sections; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) By November 1, 2019, and in compliance with RCW 43.01.036, a report must be submitted to the house business and financial services committee and the senate financial institutions and insurance committee or appropriate legislative committees by the county treasurers of the five largest counties in the state by population size as of the effective date of this section as determined by the office of financial management. The report must include the following information:

(a) From the effective date of this section to when the report is prepared, the total number of claims submitted to each of the five county treasurers for payments of surplus funds following a tax foreclosure sale conducted pursuant to chapter 84.64 RCW; and

(b) Of the total number of claims for payments of surplus funds identified in (a) of this subsection:

(i) The number of claims submitted by claimants with a recorded interest in or lien of record upon the property sold at the foreclosure sale, compared to the number of claims submitted by claimants who held title to the property when the certificate of delinquency was issued; and

(ii) The number of claims paid to claimants with a recorded interest in or lien of record upon the property sold at the foreclosure sale, compared to the number of claims paid to claimants who held title to the property when the certificate of delinquency was issued.

(2) The treasurers of the counties required to submit a report under this section may coordinate and submit one report to the house and senate committees as required in this section.

(3) This section expires July 1, 2020.

**Sec.**  RCW 84.64.050 and 2013 c 221 s 12 are each amended to read as follows:

(1) If the property upon which property taxes are delinquent is residential real property, at least one hundred eighty days before issuing a certificate of delinquency, the county treasurer must mail notice to the record owner of the property. The notice must contain, at a minimum, everything in the notice required by RCW 61.24.030. For the purposes of this subsection, "residential real property" has the same meaning as provided in RCW 61.24.005. Nothing in this subsection affects the timeline or other requirements for tax foreclosures established under this chapter.

(2) After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer must proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs. However, the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

((~~(2)~~)) (3) Certificates of delinquency are prima facie evidence that:

(a) The property described was subject to taxation at the time the same was assessed;

(b) The property was assessed as required by law;

(c) The taxes or assessments were not paid at any time before the issuance of the certificate;

(d) Such certificate has the same force and effect as a lis pendens required under chapter 4.28 RCW.

((~~(3)~~)) (4) The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. However, if the department of revenue has previously notified the county treasurer in writing that the property has a lien on it for deferred property taxes, the county treasurer must include in the certificate of delinquency any amounts deferred under chapters 84.37 and 84.38 RCW that remain unpaid, including accrued interest and costs.

((~~(4)~~)) (5) The treasurer must file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer must thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer must send notice by regular first-class mail. The notice must include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice is sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property must be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property must be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder. However, prior to the sale of the property, the treasurer must order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders must be considered and treated as the owner or owners of the property for the purpose of this section, and are entitled to the notice provided for in this section. Such title search must be included in the costs of foreclosure.

((~~(5)~~)) (6) If the title search required by subsection ((~~(4)~~)) (5) of this section reveals a lien in favor of the state for deferred taxes on the property under RCW 84.37.070 or 84.38.100 and such deferred taxes are not already included in the certificate of delinquency, the county treasurer must issue an amended certificate of delinquency on the property to include the outstanding amount of deferred taxes, including accrued interest. The amended certificate of delinquency must be filed with the clerk of the court as provided in subsection ((~~(4)~~)) (5) of this section.

((~~(6)~~)) (7) The county treasurer may not sell property that is eligible for deferral of taxes under chapter 84.38 RCW but must require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW.

**Sec.**  RCW 84.64.080 and 2015 c 95 s 12 are each amended to read as follows:

(1) The court must examine each application for judgment foreclosing a tax lien, and if a defense (specifying in writing the particular cause of objection) is offered by any person interested in any of the lands or lots to the entry of judgment, the court must hear and determine the matter in a summary manner, without other pleadings, and pronounce judgment. However, the court may, in its discretion, continue a case in which a defense is offered, to secure substantial justice to the contestants.

(2) In all judicial proceedings for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action in the court must be allowed. No assessments of property or charge for any of the taxes is illegal on account of any irregularity in the tax list or assessment rolls, or on account of the assessment rolls or tax list not having been made, completed, or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, vitiates or in any manner affects the tax or the assessment of the tax. Any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of the taxes, or any omission or defective act of any officer connected with the assessment or levying of the taxes, may be, in the discretion of the court, corrected, supplied, and made to conform to the law by the court.

(3) The court must give judgment for the taxes, interest, and costs that appear to be due upon the several lots or tracts described in the notice of application for judgment. The judgment must be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs. The court must order and direct the clerk to make and enter an order for the sale of the real property against which judgment is made, or vacate and set aside the certificate of delinquency, or make such other order or judgment as in law or equity may be just. The order must be signed by the judge of the superior court and delivered to the county treasurer. The order is full and sufficient authority for the treasurer to proceed to sell the property for the sum set forth in the order and to take further steps provided by law.

(4) The county treasurer must immediately after receiving the order and judgment proceed to sell the property as provided in this chapter to the highest and best bidder. The acceptable minimum bid must be the total amount of taxes, interest, and costs.

(5) All sales must be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold. The county treasurer must first give notice of the time and place where the sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which must be in the office of the treasurer.

(6) Unless a sale is conducted pursuant to RCW 84.64.225, notice of a sale must be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of . . . . . . in the state of Washington, and an order of sale duly issued by the court, entered the . . . . day of . . . . . ., . . . ., in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the . . . . day of . . . . . ., . . . ., at . . . . o'clock a.m., at . . . . . . in the city of . . . . . ., and county of . . . . . ., state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this . . . . day of . . . . . ., . . . . .

Treasurer of county.

(7) As an alternative to the sale procedure specified in subsections (5) and (6) of this section, the county treasurer may conduct a public auction sale by electronic media pursuant to RCW 84.64.225.

(8) No county officer or employee may directly or indirectly be a purchaser of the property at the sale.

(9) If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

(10)(a) If the highest amount bid for any separate unit tract or lot exceeds the minimum bid due upon the whole property included in the certificate of delinquency, the ((~~excess~~)) surplus funds must be ((~~refunded~~)) distributed, following payment of all recorded water-sewer district liens, on application therefor, to the ((~~record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency~~)) persons or entities with a recorded interest in or lien of record upon the property eliminated by the tax sale under this section, or to such persons or entities' heirs, assigns, or attorney-in-fact acting under power of attorney, in the order of priority that the recorded interest or lien of record attached to the property as determined by the county treasurer in accordance with this subsection (10). After any required payments to claimants with a recorded interest in or lien of record upon the property, any remaining surplus funds must be paid to the record owner of the property, if the record owner submits a claim in accordance with this subsection (10).

(b)(i) The county treasurer must determine the priority to any surplus funds by reference to the title search report ordered or conducted in accordance with RCW 84.64.050(4). At the county treasurer's discretion, the county treasurer may require a claimant to submit, and the county treasurer may consider, any other information or proof the county treasurer deems necessary or appropriate to establish a claimant's rights to all or any portion of the surplus funds.

(ii) The county treasurer may charge a claimant a fee in an amount equal to the county treasurer's expected costs of determining priority to and distributing any surplus funds.

(iii) After the expiration of one year from the date of the recordation of the tax deed to the purchaser, if a claim or claims for a payment of surplus funds are submitted to the county treasurer, the county treasurer must promptly determine the priority to any surplus funds and must mail notice, by first-class mail, to all persons or entities who submitted a claim for a payment of surplus funds, of the county treasurer's intent to distribute surplus funds pursuant to this section. The county treasurer must mail notice to claimants under this subsection (10)(b)(iii) only once, and may not accept a claim for a payment of surplus funds more than three years after the date of the tax sale or after surplus funds are distributed to a claimant or claimants pursuant to this subsection (10), whichever is sooner.

(iv) Upon the expiration of ninety days from the date the county treasurer mails notice to claimants of the county treasurer's intent to distribute surplus funds, and subject to (c) of this subsection, the county treasurer must promptly distribute surplus funds to the claimant or claimants the county treasurer determines have priority to the surplus funds.

(c) No payment of surplus funds may be made pursuant to this subsection (10):

(i) Sooner than one year following the recordation of the tax deed to the purchaser;

(ii) Sooner than ninety days after the county treasurer mails the notice of intent to distribute surplus funds to claimants in accordance with subsection (10)(b)(iii) of this section;

(iii) While an appeal under RCW 84.64.120 is pending final resolution by a court of law;

(iv) While an action or proceeding initiated in accordance with (d) of this subsection is pending final resolution by a court of law; or

(v) To a person or entity who does not submit a claim for a payment of the surplus funds to the county treasurer.

(d) Any action or proceeding to review a decision by a county treasurer distributing surplus funds pursuant to this subsection (10) must be:

(i) Commenced within ninety days after the date the notice of the county treasurer's intent to distribute surplus funds is mailed to claimants in accordance with (b)(iii) of this subsection; and

(ii) Filed in the superior court that gave judgment for the taxes, interests, and costs that appeared due on the property pursuant to subsection (3) of this section.

(e) For purposes of this section, the record owner of the property is the person who held title to the property immediately before title transferred to the tax sale purchaser in accordance with subsection (11) of this section. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency do not affect the payment of ((~~excess~~)) surplus funds to the record owner. In the event that no claim for the ((~~excess is~~)) surplus funds are received by the county treasurer within three years after the date of the sale, the treasurer must at expiration of the three year period deposit the ((~~excess~~)) surplus funds in the current expense fund of the county, which extinguishes all claims by any owner to the excess funds.

(11) The county treasurer must execute to the purchaser of any piece or parcel of land a tax deed. The tax deed so made by the county treasurer, under the official seal of the treasurer's office, must be recorded in the same manner as other conveyances of real property, and vests in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of the conveyance.

(12) Tax deeds must be substantially in the following form:

|  |  |  |
| --- | --- | --- |
| State of Washington  County of |          | ss. |

This indenture, made this . . . . day of . . . . . ., . . . . . ., between . . . . . ., as treasurer of . . . . . . county, state of Washington, party of the first part, and . . . . . ., party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the . . . . day of . . . . . ., . . . ., pursuant to a real property tax judgment entered in the superior court in the county of . . . . . . on the . . . . day of . . . . . ., . . . ., in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, . . . . . . duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the . . . . . . has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I . . . . . ., county treasurer of the county of . . . . . ., state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto . . . . . ., his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this . . . . day of . . . . . ., A.D. . . . .

County Treasurer.

**Sec.**  RCW 63.29.350 and 2012 c 117 s 181 are each amended to read as follows:

(1) It is unlawful for any person to:

(a) Seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he or she knows has been reported or paid or delivered to the department of revenue pursuant to this chapter, ((~~or~~)) in excess of five percent of the value thereof returned to such owner;

(b) Seek or receive from or contract with any record owner of property who is a natural person who occupied the property at the time a certificate of delinquency on the property was issued in accordance with RCW 84.64.050, for any fee or compensation for locating or purporting to locate any funds held by a county that are proceeds from ((~~a~~)) the foreclosure for delinquent property taxes, assessments, or other liens, ((~~or, funds~~)) in excess of five percent of the value thereof returned to such owner;

(c) Seek or receive from any person that is a nonrecord owner of a property for any fee or compensation for locating or purporting to locate any funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or other liens in excess of thirty-five percent of the value thereof returned to such person; or

(d) Seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any funds not from the foreclosure for delinquent property taxes, assessments, or other liens described in (b) of this subsection that are otherwise held by a county because of a person's failure to claim funds held as reimbursement for unowed taxes, fees, or other government charges, in excess of five percent of the value thereof returned to such owner. Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he or she has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both.

(2) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this section is not reasonable in relation to the development and preservation of business. It is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

**Sec.**  RCW 63.29.010 and 2012 c 117 s 177 are each reenacted and amended to read as follows:

((~~As used in this chapter, unless the context otherwise requires:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(2) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(3) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(4) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(5) "Department" means the department of revenue established under RCW 82.01.050.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Fare card" means any pass or instrument, and value contained therein, purchased to utilize public transportation facilities or services. "Fare card" does not include "gift card" or "gift certificate" as those terms are defined in RCW 19.240.010.

(8) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(9) "Gift certificate" has the same meaning as in RCW 19.240.010.

(10) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(11) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible property" does not include contract claims which are unliquidated but does include:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

(c) Stocks, and other intangible ownership interests in business associations;

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) Liquidated amounts due and payable under the terms of insurance policies; and

(f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(13) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(14) "Natural person" means a human being.

(15) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

((~~(15)~~)) (16) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

((~~(16)~~)) (17) "Record owner" means the person who held title to property immediately before title transferred to the tax sale purchaser in accordance with RCW 84.64.080(11).

(18) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

((~~(17)~~)) (19) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

((~~(18)~~)) (20) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

NEW SECTION. **Sec.**  The process established in section 3 of this act for distributing surplus funds from delinquent property tax sales applies only to surplus funds from tax sales of property occurring on or after the effective date of this section.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**