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**SUBSTITUTE HOUSE BILL 2614**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Kenney, Ryu, Hasegawa, and Santos)

READ FIRST TIME 01/31/12.

1       AN ACT Relating to residual debts following short sales of  
2 owner-occupied residential property secured by deeds of trust; and  
3 amending RCW 61.24.100.

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

5       **Sec. 1.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to read  
6 as follows:

7       (1)(a) Except to the extent permitted in this section for deeds of  
8 trust securing commercial loans, a deficiency judgment shall not be  
9 obtained on the obligations secured by a deed of trust against any  
10 borrower, grantor, or guarantor after a trustee's sale under that deed  
11 of trust.

12       (b) A beneficiary may not obtain a deficiency judgment on the  
13 obligations secured by a deed of trust against any borrower, grantor,  
14 or guarantor in any case when, as a consequence of or in conjunction  
15 with a sale of owner-occupied residential real property resulting in  
16 proceeds that were insufficient to pay the obligation in full, the  
17 beneficiary reports to the internal revenue service that the  
18 beneficiary has canceled all or a portion of the borrower's obligation  
19 and the beneficiary provided the borrower written evidence of the

1 beneficiary's report to the internal revenue service. This subsection  
2 (1)(b) applies only when the property that was sold was occupied by the  
3 borrower as the borrower's principal residence at the time of the sale.

4 (2)(a) Nothing in this chapter precludes an action against any  
5 person liable on the obligations secured by a deed of trust or any  
6 guarantor prior to a notice of trustee's sale being given pursuant to  
7 this chapter or after the discontinuance of the trustee's sale.

8 (b) No action under (a) of this subsection precludes the  
9 beneficiary from commencing a judicial foreclosure or trustee's sale  
10 under the deed of trust after the completion or dismissal of that  
11 action.

12 (3) This chapter does not preclude any one or more of the following  
13 after a trustee's sale under a deed of trust securing a commercial loan  
14 executed after June 11, 1998:

15 (a)(i) To the extent the fair value of the property sold at the  
16 trustee's sale to the beneficiary or an affiliate of the beneficiary is  
17 less than the unpaid obligation secured by the deed of trust  
18 immediately prior to the trustee's sale, an action for a deficiency  
19 judgment against the borrower or grantor, if such person or persons was  
20 timely given the notices under RCW 61.24.040, for (A) any decrease in  
21 the fair value of the property caused by waste to the property  
22 committed by the borrower or grantor, respectively, after the deed of  
23 trust is granted, and (B) the wrongful retention of any rents,  
24 insurance proceeds, or condemnation awards by the borrower or grantor,  
25 respectively, that are otherwise owed to the beneficiary.

26 (ii) This subsection (3)(a) does not apply to any property that is  
27 occupied by the borrower as its principal residence as of the date of  
28 the trustee's sale;

29 (b) Any judicial or nonjudicial foreclosures of any other deeds of  
30 trust, mortgages, security agreements, or other security interests or  
31 liens covering any real or personal property granted to secure the  
32 obligation that was secured by the deed of trust foreclosed; or

33 (c) Subject to this section, an action for a deficiency judgment  
34 against a guarantor if the guarantor is timely given the notices under  
35 RCW 61.24.042.

36 (4) Any action referred to in subsection (3)(a) and (c) of this  
37 section shall be commenced within one year after the date of the  
38 trustee's sale, or a later date to which the liable party otherwise

1 agrees in writing with the beneficiary after the notice of foreclosure  
2 is given, plus any period during which the action is prohibited by a  
3 bankruptcy, insolvency, moratorium, or other similar debtor protection  
4 statute. If there occurs more than one trustee's sale under a deed of  
5 trust securing a commercial loan or if trustee's sales are made  
6 pursuant to two or more deeds of trust securing the same commercial  
7 loan, the one-year limitation in this section begins on the date of the  
8 last of those trustee's sales.

9 (5) In any action against a guarantor following a trustee's sale  
10 under a deed of trust securing a commercial loan, the guarantor may  
11 request the court or other appropriate adjudicator to determine, or the  
12 court or other appropriate adjudicator may in its discretion determine,  
13 the fair value of the property sold at the sale and the deficiency  
14 judgment against the guarantor shall be for an amount equal to the sum  
15 of the total amount owed to the beneficiary by the guarantor as of the  
16 date of the trustee's sale, less the fair value of the property sold at  
17 the trustee's sale or the sale price paid at the trustee's sale,  
18 whichever is greater, plus interest on the amount of the deficiency  
19 from the date of the trustee's sale at the rate provided in the  
20 guaranty, the deed of trust, or in any other contracts evidencing the  
21 debt secured by the deed of trust, as applicable, and any costs,  
22 expenses, and fees that are provided for in any contract evidencing the  
23 guarantor's liability for such a judgment. If any other security is  
24 sold to satisfy the same debt prior to the entry of a deficiency  
25 judgment against the guarantor, the fair value of that security, as  
26 calculated in the manner applicable to the property sold at the  
27 trustee's sale, shall be added to the fair value of the property sold  
28 at the trustee's sale as of the date that additional security is  
29 foreclosed. This section is in lieu of any right any guarantor would  
30 otherwise have to establish an upset price pursuant to RCW 61.12.060  
31 prior to a trustee's sale.

32 (6) A guarantor granting a deed of trust to secure its guaranty of  
33 a commercial loan shall be subject to a deficiency judgment following  
34 a trustee's sale under that deed of trust only to the extent stated in  
35 subsection (3)(a)(i) of this section. If the deed of trust encumbers  
36 the guarantor's principal residence, the guarantor shall be entitled to  
37 receive an amount up to the homestead exemption set forth in RCW

1 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid  
2 at the foreclosure or trustee's sale accepted by the sheriff or trustee  
3 prior to the application of the bid to the guarantor's obligation.

4 (7) A beneficiary's acceptance of a deed in lieu of a trustee's  
5 sale under a deed of trust securing a commercial loan exonerates the  
6 guarantor from any liability for the debt secured thereby except to the  
7 extent the guarantor otherwise agrees as part of the deed in lieu  
8 transaction.

9 (8) This chapter does not preclude a beneficiary from foreclosing  
10 a deed of trust in the same manner as a real property mortgage and this  
11 section does not apply to such a foreclosure.

12 (9) Any contract, note, deed of trust, or guaranty may, by its  
13 express language, prohibit the recovery of any portion or all of a  
14 deficiency after the property encumbered by the deed of trust securing  
15 a commercial loan is sold at a trustee's sale.

16 (10) A trustee's sale under a deed of trust securing a commercial  
17 loan does not preclude an action to collect or enforce any obligation  
18 of a borrower or guarantor if that obligation, or the substantial  
19 equivalent of that obligation, was not secured by the deed of trust.

20 (11) Unless the guarantor otherwise agrees, a trustee's sale shall  
21 not impair any right or agreement of a guarantor to be reimbursed by a  
22 borrower or grantor for a deficiency judgment against the guarantor.

23 (12) Notwithstanding anything in this section to the contrary, the  
24 rights and obligations of any borrower, grantor, and guarantor  
25 following a trustee's sale under a deed of trust securing a commercial  
26 loan or any guaranty of such a loan executed prior to June 11, 1998,  
27 shall be determined in accordance with the laws existing prior to June  
28 11, 1998.

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