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SENATE BILL 6070

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Kline, Frockt, Harper, Keiser, and Shin

Read first time 01/11/12. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to recording residential real property; and  
2 amending RCW 61.24.030 and 65.08.070.

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

4 **Sec. 1.** RCW 61.24.030 and 2011 c 58 s 4 are each amended to read  
5 as follows:

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

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

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

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

18 (4) That no action commenced by the beneficiary of the deed of  
19 trust is now pending to seek satisfaction of an obligation secured by

1 the deed of trust in any court by reason of the grantor's default on  
2 the obligation secured: PROVIDED, That (a) the seeking of the  
3 appointment of a receiver shall not constitute an action for purposes  
4 of this chapter; and (b) if a receiver is appointed, the grantor shall  
5 be entitled to any rents or profits derived from property subject to a  
6 homestead as defined in RCW 6.13.010. If the deed of trust was granted  
7 to secure a commercial loan, this subsection shall not apply to actions  
8 brought to enforce any other lien or security interest granted to  
9 secure the obligation secured by the deed of trust being foreclosed;

10 (5) That the deed of trust, including every assignment and  
11 transfer, has been recorded in each county in which the land or some  
12 part thereof is situated;

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

18 (7)(a) That, for residential real property, before the notice of  
19 trustee's sale is recorded, transmitted, or served, the trustee shall  
20 have proof that the beneficiary is the owner of any promissory note or  
21 other obligation secured by the deed of trust. A declaration by the  
22 beneficiary made under the penalty of perjury stating that the  
23 beneficiary is the actual holder of the promissory note or other  
24 obligation secured by the deed of trust shall be sufficient proof as  
25 required under this subsection.

26 (b) Unless the trustee has violated his or her duty under RCW  
27 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
28 declaration as evidence of proof required under this subsection.

29 (c) This subsection (7) does not apply to association beneficiaries  
30 subject to chapter 64.32, 64.34, or 64.38 RCW;

31 (8) That at least thirty days before notice of sale shall be  
32 recorded, transmitted, or served, written notice of default shall be  
33 transmitted by the beneficiary or trustee to the borrower and grantor  
34 at their last known addresses by both first-class and either registered  
35 or certified mail, return receipt requested, and the beneficiary or  
36 trustee shall cause to be posted in a conspicuous place on the  
37 premises, a copy of the notice, or personally served on the borrower  
38 and grantor. This notice shall contain the following information:

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

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

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

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

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

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

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

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

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

33 (j) A statement that the borrower, grantor, and any guarantor has  
34 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged  
35 default on any proper ground;

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

1 "You should take care to protect your interest in your home. This  
2 notice of default (your failure to pay) is the first step in a process  
3 that could result in you losing your home. You should carefully review  
4 your options. For example:

5 Can you pay and stop the foreclosure process?

6 Do you dispute the failure to pay?

7 Can you sell your property to preserve your equity?

8 Are you able to refinance this loan or obligation with a new loan  
9 or obligation from another lender with payments, terms, and fees that  
10 are more affordable?

11 Do you qualify for any government or private homeowner assistance  
12 programs?

13 Do you know if filing for bankruptcy is an option? What are the  
14 pros and cons of doing so?

15 Do not ignore this notice; because if you do nothing, you could  
16 lose your home at a foreclosure sale. (No foreclosure sale can be held  
17 any sooner than ninety days after a notice of sale is issued and a  
18 notice of sale cannot be issued until thirty days after this notice.)  
19 Also, if you do nothing to pay what you owe, be careful of people who  
20 claim they can help you. There are many individuals and businesses  
21 that watch for the notices of sale in order to unfairly profit as a  
22 result of borrowers' distress.

23 You may feel you need help understanding what to do. There are a  
24 number of professional resources available, including home loan  
25 counselors and attorneys, who may assist you. Many legal services are  
26 lower-cost or even free, depending on your ability to pay. If you  
27 desire legal help in understanding your options or handling this  
28 default, you may obtain a referral (at no charge) by contacting the  
29 county bar association in the county where your home is located. These  
30 legal referral services also provide information about lower-cost or  
31 free legal services for those who qualify. You may contact the  
32 Department of Financial Institutions or the statewide civil legal aid  
33 hotline for possible assistance or referrals"; and

34 (1) In the event the property secured by the deed of trust is  
35 residential real property, the name and address of the owner of any  
36 promissory notes or other obligations secured by the deed of trust and  
37 the name, address, and telephone number of a party acting as a servicer  
38 of the obligations secured by the deed of trust; and

1 (9) That, for owner-occupied residential real property, before the  
2 notice of the trustee's sale is recorded, transmitted, or served, the  
3 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW  
4 61.24.163.

5 **Sec. 2.** RCW 65.08.070 and 1927 c 278 s 2 are each amended to read  
6 as follows:

7 (1) A conveyance of real property, when acknowledged by the person  
8 executing the same (the acknowledgment being certified as required by  
9 law), may be recorded in the office of the recording officer of the  
10 county where the property is situated. Every such conveyance not so  
11 recorded is void as against any subsequent purchaser or mortgagee in  
12 good faith and for a valuable consideration from the same vendor, his  
13 heirs or devisees, of the same real property or any portion thereof  
14 whose conveyance is first duly recorded. An instrument is deemed  
15 recorded the minute it is filed for record.

16 (2) Every transfer and assignment of residential real property must  
17 be recorded in the office of the recording officer of the county where  
18 the property is situated. An instrument is deemed recorded the minute  
19 it is filed for record.

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