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SENATE BILL 6514

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State of Washington                      62nd Legislature                      2012 Regular Session

By Senators Hobbs, Fain, Kastama, Litzow, Hatfield, and Harper

Read first time 01/26/12. Referred to Committee on Financial Institutions, Housing & Insurance.

1            AN ACT Relating to publishing notice of owner-occupied real  
2 property foreclosure sales on the internet; and amending RCW 61.24.040.

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

4            **Sec. 1.** RCW 61.24.040 and 2009 c 292 s 9 are each amended to read  
5 as follows:

6            A deed of trust foreclosed under this chapter shall be foreclosed  
7 as follows:

8            (1) At least ninety days before the sale, the trustee shall:

9            (a) Record a notice in the form described in (f) of this subsection  
10 in the office of the auditor in each county in which the deed of trust  
11 is recorded;

12            (b) To the extent the trustee elects to foreclose its lien or  
13 interest, or the beneficiary elects to preserve its right to seek a  
14 deficiency judgment against a borrower or grantor under RCW  
15 61.24.100(3)(a), and if their addresses are stated in a recorded  
16 instrument evidencing their interest, lien, or claim of lien, or an  
17 amendment thereto, or are otherwise known to the trustee, cause a copy  
18 of the notice of sale described in (f) of this subsection to be

1 transmitted by both first-class and either certified or registered  
2 mail, return receipt requested, to the following persons or their legal  
3 representatives, if any, at such address:

4 (i) The borrower and grantor;

5 (ii) The beneficiary of any deed of trust or mortgagee of any  
6 mortgage, or any person who has a lien or claim of lien against the  
7 property, that was recorded subsequent to the recordation of the deed  
8 of trust being foreclosed and before the recordation of the notice of  
9 sale;

10 (iii) The vendee in any real estate contract, the lessee in any  
11 lease, or the holder of any conveyances of any interest or estate in  
12 any portion or all of the property described in such notice, if that  
13 contract, lease, or conveyance of such interest or estate, or a  
14 memorandum or other notice thereof, was recorded after the recordation  
15 of the deed of trust being foreclosed and before the recordation of the  
16 notice of sale;

17 (iv) The last holder of record of any other lien against or  
18 interest in the property that is subject to a subordination to the deed  
19 of trust being foreclosed that was recorded before the recordation of  
20 the notice of sale;

21 (v) The last holder of record of the lien of any judgment  
22 subordinate to the deed of trust being foreclosed; and

23 (vi) The occupants of property consisting solely of a single-family  
24 residence, or a condominium, cooperative, or other dwelling unit in a  
25 multiplex or other building containing fewer than five residential  
26 units, whether or not the occupant's rental agreement is recorded,  
27 which notice may be a single notice addressed to "occupants" for each  
28 unit known to the trustee or beneficiary;

29 (c) Cause a copy of the notice of sale described in (f) of this  
30 subsection to be transmitted by both first-class and either certified  
31 or registered mail, return receipt requested, to the plaintiff or the  
32 plaintiff's attorney of record, in any court action to foreclose a lien  
33 or other encumbrance on all or any part of the property, provided a  
34 court action is pending and a lis pendens in connection therewith is  
35 recorded in the office of the auditor of any county in which all or  
36 part of the property is located on the date the notice is recorded;

37 (d) Cause a copy of the notice of sale described in (f) of this  
38 subsection to be transmitted by both first-class and either certified

1 or registered mail, return receipt requested, to any person who has  
2 recorded a request for notice in accordance with RCW 61.24.045, at the  
3 address specified in such person's most recently recorded request for  
4 notice;

5 (e) Cause a copy of the notice of sale described in (f) of this  
6 subsection to be posted in a conspicuous place on the property, or in  
7 lieu of posting, cause a copy of said notice to be served upon any  
8 occupant of the property;

9 (f) The notice shall be in substantially the following form:

10 NOTICE OF TRUSTEE'S SALE

11 I.

12 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . .  
13 day of . . . . ., . . . ., at the hour of . . . . o'clock . . . . M. at  
14 . . . . . [street  
15 address and location if inside a building] in the City of . . . . .,  
16 State of Washington, sell at public auction to the highest and best  
17 bidder, payable at the time of sale, the following described real  
18 property, situated in the County(ies) of . . . . ., State of  
19 Washington, to-wit:

20 [If any personal property is to be included in the trustee's  
21 sale, include a description that reasonably identifies such  
22 personal property]

23 which is subject to that certain Deed of Trust dated . . . . .,  
24 . . . ., recorded . . . . ., . . . ., under Auditor's File No. . . . .,  
25 records of . . . . . County, Washington, from . . . . ., as  
26 Grantor, to . . . . ., as Trustee, to secure an obligation in  
27 favor of . . . . ., as Beneficiary, the beneficial interest in  
28 which was assigned by . . . . ., under an Assignment recorded  
29 under Auditor's File No. . . . . [Include recording information for  
30 all counties if the Deed of Trust is recorded in more than one county.]

31 II.

32 No action commenced by the Beneficiary of the Deed of Trust is now  
33 pending to seek satisfaction of the obligation in any Court by reason  
34 of the Borrower's or Grantor's default on the obligation secured by the  
35 Deed of Trust.

1 [If there is another action pending to foreclose other security  
2 for all or part of the same debt, qualify the statement and  
3 identify the action.]

4 III.

5 The default(s) for which this foreclosure is made is/are as follows:

6 [If default is for other than payment of money, set forth the  
7 particulars]

8 Failure to pay when due the following amounts which are now in arrears:

9 IV.

10 The sum owing on the obligation secured by the Deed of Trust is:  
11 Principal \$ . . . . ., together with interest as provided in the note  
12 or other instrument secured from the . . . . day of . . . . ., . . . .,  
13 and such other costs and fees as are due under the note or other  
14 instrument secured, and as are provided by statute.

15 V.

16 The above-described real property will be sold to satisfy the expense  
17 of sale and the obligation secured by the Deed of Trust as provided by  
18 statute. The sale will be made without warranty, express or implied,  
19 regarding title, possession, or encumbrances on the . . . . day of  
20 . . . . ., . . . . The default(s) referred to in paragraph III must be  
21 cured by the . . . . day of . . . . ., . . . . (11 days before the sale  
22 date), to cause a discontinuance of the sale. The sale will be  
23 discontinued and terminated if at any time on or before the . . . . day  
24 of . . . . ., . . . . (11 days before the sale date), the default(s)  
25 as set forth in paragraph III is/are cured and the Trustee's fees and  
26 costs are paid. The sale may be terminated any time after the . . . .  
27 day of . . . . ., . . . . (11 days before the sale date), and before  
28 the sale by the Borrower, Grantor, any Guarantor, or the holder of any  
29 recorded junior lien or encumbrance paying the entire principal and  
30 interest secured by the Deed of Trust, plus costs, fees, and advances,  
31 if any, made pursuant to the terms of the obligation and/or Deed of  
32 Trust, and curing all other defaults.

33 VI.

34 A written notice of default was transmitted by the Beneficiary or  
35 Trustee to the Borrower and Grantor at the following addresses:

1 .....  
2 .....  
3 .....  
4 by both first-class and certified mail on the . . . . day of  
5 . . . . ., . . ., proof of which is in the possession of the Trustee;  
6 and the Borrower and Grantor were personally served on the . . . . day  
7 of . . . . ., . . ., with said written notice of default or the  
8 written notice of default was posted in a conspicuous place on the real  
9 property described in paragraph I above, and the Trustee has possession  
10 of proof of such service or posting.

11 VII.

12 The Trustee whose name and address are set forth below will provide in  
13 writing to anyone requesting it, a statement of all costs and fees due  
14 at any time prior to the sale.

15 VIII.

16 The effect of the sale will be to deprive the Grantor and all those who  
17 hold by, through or under the Grantor of all their interest in the  
18 above-described property.

19 IX.

20 Anyone having any objection to the sale on any grounds whatsoever will  
21 be afforded an opportunity to be heard as to those objections if they  
22 bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.  
23 Failure to bring such a lawsuit may result in a waiver of any proper  
24 grounds for invalidating the Trustee's sale.

25 [Add Part X to this notice if applicable under RCW 61.24.040((+9))  
26 (10)]

27  
28 .....  
29 ..... , Trustee  
30 ..... }  
31 ..... } Address  
32 ..... }

1 ..... } Phone

2 [Acknowledgment]

3 (2) In addition to providing the borrower and grantor the notice of  
4 sale described in subsection (1)(f) of this section, the trustee shall  
5 include with the copy of the notice which is mailed to the grantor, a  
6 statement to the grantor in substantially the following form:

7 NOTICE OF FORECLOSURE

8 Pursuant to the Revised Code of Washington,

9 Chapter 61.24 RCW

10 The attached Notice of Trustee's Sale is a consequence of  
11 default(s) in the obligation to . . . . ., the Beneficiary of your  
12 Deed of Trust and owner of the obligation secured thereby. Unless the  
13 default(s) is/are cured, your property will be sold at auction on the  
14 . . . . day of . . . . ., . . . .

15 To cure the default(s), you must bring the payments current, cure  
16 any other defaults, and pay accrued late charges and other costs,  
17 advances, and attorneys' fees as set forth below by the . . . . day of  
18 . . . . ., . . . [11 days before the sale date]. To date, these  
19 arrears and costs are as follows:

20		Estimated amount
21	Currently due	that will be due
22	to reinstate	to reinstate
23	on.....	on.....
24	.....	.....
25		(11 days before
26		the date set
27		for sale)

28 Delinquent payments  
29 from.....,

1	...	in the		
2		amount of		
3	\$....	/mo.:	\$....	\$....
4		Late charges in		
5		the total		
6		amount of:	\$....	\$....
7				Estimated
8				Amounts
9		Attorneys' fees:	\$....	\$....
10		Trustee's fee:	\$....	\$....
11		Trustee's expenses:		
12		(Itemization)		
13		Title report	\$....	\$....
14		Recording fees	\$....	\$....
15		Service/Posting		
16		of Notices	\$....	\$....
17		Postage/Copying		
18		expense	\$....	\$....
19		Publication	\$....	\$....
20		Telephone		\$....
21		charges	\$....	
22		Inspection fees	\$....	\$....
23		.....	\$....	\$....
24		.....	\$....	\$....
25		TOTALS	\$....	\$....

26 To pay off the entire obligation secured by your Deed of Trust as  
27 of the . . . . . day of . . . . . you must pay a total of \$. . . . .  
28 in principal, \$. . . . . in interest, plus other costs and advances  
29 estimated to date in the amount of \$. . . . . From and after the  
30 date of this notice you must submit a written request to the Trustee to  
31 obtain the total amount to pay off the entire obligation secured by  
32 your Deed of Trust as of the payoff date.

33 As to the defaults which do not involve payment of money to the  
34 Beneficiary of your Deed of Trust, you must cure each such default.  
35 Listed below are the defaults which do not involve payment of money to

1 the Beneficiary of your Deed of Trust. Opposite each such listed  
2 default is a brief description of the action necessary to cure the  
3 default and a description of the documentation necessary to show that  
4 the default has been cured.

5	Default	Description of Action Required to Cure and
6		Documentation Necessary to Show Cure
7	.....	.....
8		.....
9		.....
10	.....	.....
11		.....
12		.....

13 You may reinstate your Deed of Trust and the obligation secured  
14 thereby at any time up to and including the . . . . day of . . . . . ,  
15 . . . [11 days before the sale date], by paying the amount set forth or  
16 estimated above and by curing any other defaults described above. Of  
17 course, as time passes other payments may become due, and any further  
18 payments coming due and any additional late charges must be added to  
19 your reinstating payment. Any new defaults not involving payment of  
20 money that occur after the date of this notice must also be cured in  
21 order to effect reinstatement. In addition, because some of the  
22 charges can only be estimated at this time, and because the amount  
23 necessary to reinstate or to pay off the entire indebtedness may  
24 include presently unknown expenditures required to preserve the  
25 property or to comply with state or local law, it will be necessary for  
26 you to contact the Trustee before the time you tender reinstatement or  
27 the payoff amount so that you may be advised of the exact amount you  
28 will be required to pay. Tender of payment or performance must be made  
29 to: . . . . . , whose address is . . . . . , telephone ( )  
30 . . . . . AFTER THE . . . . DAY OF . . . . . , . . . , YOU MAY NOT  
31 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND  
32 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will  
33 respond to any written request for current payoff or reinstatement  
34 amounts within ten days of receipt of your written request. In such a  
35 case, you will only be able to stop the sale by paying, before the

1 sale, the total principal balance (\$ . . . . .) plus accrued  
2 interest, costs and advances, if any, made pursuant to the terms of the  
3 documents and by curing the other defaults as outlined above.

4 You may contest this default by initiating court action in the  
5 Superior Court of the county in which the sale is to be held. In such  
6 action, you may raise any legitimate defenses you have to this default.  
7 A copy of your Deed of Trust and documents evidencing the obligation  
8 secured thereby are enclosed. You may wish to consult a lawyer. Legal  
9 action on your part may prevent or restrain the sale, but only if you  
10 persuade the court of the merits of your defense. You may contact the  
11 Department of Financial Institutions or the statewide civil legal aid  
12 hotline for possible assistance or referrals.

13 The court may grant a restraining order or injunction to restrain  
14 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the  
15 trustee of the time when, place where, and the judge before whom the  
16 application for the restraining order or injunction is to be made.  
17 This notice shall include copies of all pleadings and related documents  
18 to be given to the judge. Notice and other process may be served on  
19 the trustee at:

20 NAME: .....  
21 ADDRESS: .....  
22 .....  
23 TELEPHONE NUMBER: .....

24 If you do not reinstate the secured obligation and your Deed of  
25 Trust in the manner set forth above, or if you do not succeed in  
26 restraining the sale by court action, your property will be sold. The  
27 effect of such sale will be to deprive you and all those who hold by,  
28 through or under you of all interest in the property;

29 (3) In addition, the trustee shall cause a copy of the notice of  
30 sale described in subsection (1)(f) of this section (excluding the  
31 acknowledgment) to be published in a legal newspaper in each county in  
32 which the property or any part thereof is situated, once on or between  
33 the thirty-fifth and twenty-eighth day before the date of sale, and  
34 once on or between the fourteenth and seventh day before the date of  
35 sale;

1        (4)(a) For owner-occupied properties, the trustee shall also cause  
2 a copy of the notice of sale described in subsection (1)(f) of this  
3 section (excluding the acknowledgement) to be published on an internet  
4 web site beginning on the thirty-fifth day before the date of sale and  
5 ending on the seventh day before the date of sale.

6        (b) To qualify as an internet web site suitable for publishing a  
7 notice of sale, the internet web site must:

8        (i) Be available to any person;

9        (ii) Be completely free to the public for viewing and not require  
10 a subscription to the site;

11        (iii) Be primarily used to advertise real property under  
12 foreclosure; and

13        (iv) Be operated by a person who maintains a physical presence and  
14 address in the state, including telephone service at such address;

15        (5) On the date and at the time designated in the notice of sale,  
16 the trustee or its authorized agent shall sell the property at public  
17 auction to the highest bidder. The trustee may sell the property in  
18 gross or in parcels as the trustee shall deem most advantageous;

19        ~~((+5))~~ (6) The place of sale shall be at any designated public  
20 place within the county where the property is located and if the  
21 property is in more than one county, the sale may be in any of the  
22 counties where the property is located. The sale shall be on Friday,  
23 or if Friday is a legal holiday on the following Monday, and during the  
24 hours set by statute for the conduct of sales of real estate at  
25 execution;

26        ~~((+6))~~ (7) The trustee has no obligation to, but may, for any  
27 cause the trustee deems advantageous, continue the sale for a period or  
28 periods not exceeding a total of one hundred twenty days by (a) a  
29 public proclamation at the time and place fixed for sale in the notice  
30 of sale and if the continuance is beyond the date of sale, by giving  
31 notice of the new time and place of the sale by both first class and  
32 either certified or registered mail, return receipt requested, to the  
33 persons specified in subsection (1)(b)(i) and (ii) of this section to  
34 be deposited in the mail (i) not less than four days before the new  
35 date fixed for the sale if the sale is continued for up to seven days;  
36 or (ii) not more than three days after the date of the continuance by  
37 oral proclamation if the sale is continued for more than seven days,  
38 or, alternatively, (b) by giving notice of the time and place of the

1 postponed sale in the manner and to the persons specified in subsection  
2 (1)(b), (c), (d), and (e) of this section and publishing a copy of such  
3 notice once in the newspaper(s) described in subsection (3) of this  
4 section, more than seven days before the date fixed for sale in the  
5 notice of sale. No other notice of the postponed sale need be given;

6 ~~((+7))~~ (8) The purchaser shall forthwith pay the price bid and on  
7 payment the trustee shall execute to the purchaser its deed; the deed  
8 shall recite the facts showing that the sale was conducted in  
9 compliance with all of the requirements of this chapter and of the deed  
10 of trust, which recital shall be prima facie evidence of such  
11 compliance and conclusive evidence thereof in favor of bona fide  
12 purchasers and encumbrancers for value, except that these recitals  
13 shall not affect the lien or interest of any person entitled to notice  
14 under subsection (1) of this section, if the trustee fails to give the  
15 required notice to such person. In such case, the lien or interest of  
16 such omitted person shall not be affected by the sale and such omitted  
17 person shall be treated as if such person was the holder of the same  
18 lien or interest and was omitted as a party defendant in a judicial  
19 foreclosure proceeding;

20 ~~((+8))~~ (9) The sale as authorized under this chapter shall not  
21 take place less than one hundred ninety days from the date of default  
22 in any of the obligations secured;

23 ~~((+9))~~ (10) If the trustee elects to foreclose the interest of any  
24 occupant or tenant of property comprised solely of a single-family  
25 residence, or a condominium, cooperative, or other dwelling unit in a  
26 multiplex or other building containing fewer than five residential  
27 units, the following notice shall be included as Part X of the Notice  
28 of Trustee's Sale:

29 X.

30 NOTICE TO OCCUPANTS OR TENANTS

31 The purchaser at the trustee's sale is entitled to possession of the  
32 property on the 20th day following the sale, as against the grantor  
33 under the deed of trust (the owner) and anyone having an interest  
34 junior to the deed of trust, including occupants who are not tenants.  
35 After the 20th day following the sale the purchaser has the right to  
36 evict occupants who are not tenants by summary proceedings under

1 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall  
2 provide a tenant with written notice in accordance with RCW 61.24.060;  
3 ~~((+10+))~~ (11) Only one copy of all notices required by this chapter  
4 need be given to a person who is both the borrower and the grantor.  
5 All notices required by this chapter that are given to a general  
6 partnership are deemed given to each of its general partners, unless  
7 otherwise agreed by the parties.

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