

FINAL BILL REPORT

SHB 1435

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Synopsis as Enacted

Brief Description: Clarifying agency relationships in reconveyances of deeds of trust.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman and Nealey).

House Committee on Judiciary
Senate Committee on Financial Institutions, Housing & Insurance

Background:

A deed of trust is a type of security interest in real property. Basically, a deed of trust is a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (trustee) who holds the deed in trust as security for an obligation due to the lender (beneficiary).

A trustee must reconvey all or any part of the property encumbered by the deed of trust to the proper person entitled thereto upon:

- written request of the beneficiary; *or*
- satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the proper person.

No time frame is specified for reconveyance; however, unless specifically provided for otherwise, deeds of trust are subject to all the laws relating to mortgages on real property. Under the mortgage laws, when the amount on a mortgage is paid and at the request of any person interested in the property, the mortgagee must execute an instrument in writing acknowledging that the mortgage has been satisfied and record it in the county where the property is located. If a mortgagee fails to acknowledge satisfaction of the mortgage within 60 days from the date of the request, the mortgagor may recover damages and a reasonable attorneys' fee, together with a court order to be recorded with the auditor indicating that the mortgage has been fully satisfied.

Summary:

The reference to "trustee" is changed to "trustee of record," and it is the trustee of record that has the obligation to reconvey upon written request of the beneficiary or satisfaction of the

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obligation secured and written request for reconveyance made by the beneficiary or the proper person.

New provisions are added for situations in which the beneficiary has received payment as set forth in its demand statement but fails to request reconveyance within the 60-day period specified under the mortgage laws. A title insurance company or agent, a licensed escrow agent, or an attorney admitted to practice in Washington, who has paid the demand in full from escrow, may act as agent for the person entitled to receive reconveyance. Upon receipt of notice of the beneficiary's failure to request reconveyance, the agent may submit proof of satisfaction and request the trustee of record to reconvey the deed of trust.

If the trustee of record is unable or unwilling to reconvey within 120 days following payment to the beneficiary per the beneficiary's demand statement, the agent may record a notarized Declaration of Payment with each county auditor where the original deed of trust was recorded. The Declaration of Payment must:

- identify the deed of trust, including the original grantor, beneficiary, trustee, loan number if available, and the recording number and date;
- state the amount, date, and name of the beneficiary and means of payment; and
- include a declaration that payment tendered was sufficient to meet the demand and that no written objections have been received.

A copy of the Declaration of Payment must be sent by certified mail to the last known address of the beneficiary and the trustee of record not later than two business days following the date the declaration is recorded. The beneficiary or trustee of record has 60 days from the date of recording to record an Objection to Declaration of Payment. If no such Objection is recorded within 60 days following recording of the notarized Declaration of Payment, any lien of the deed of trust against the encumbered real property ceases to exist.

Votes on Final Passage:

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| House | 95 | 0 |
| Senate | 48 | 0 |

Effective: July 28, 2013