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HOUSE BILL 1904

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State of Washington

54th Legislature

1995 Regular Session

By Representative Clements

Read first time 02/14/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to forfeiture after default on a contract; and  
2 amending RCW 61.30.090.

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

4 **Sec. 1.** RCW 61.30.090 and 1988 c 86 s 9 are each amended to read  
5 as follows:

6 (1) Even if the contract contains a provision allowing the seller,  
7 because of a default in the purchaser's obligations under the contract,  
8 to accelerate the due date of some or all payments to be made or other  
9 obligations to be performed by the purchaser under the contract, the  
10 seller may not require payment of the accelerated payments or  
11 performance of the accelerated obligations as a condition to curing the  
12 default in order to avoid forfeiture except to the extent the payments  
13 or performance would be due without the acceleration. This subsection  
14 shall not apply to an acceleration because of a transfer, encumbrance,  
15 or conveyance of any or all of the purchaser's interest in any portion  
16 or all of the property if the contract being forfeited contains a  
17 provision accelerating the unpaid balance because of such transfer,  
18 encumbrance, or conveyance and such provision is enforceable under  
19 applicable law.

1 (2) All persons described in RCW 61.30.040 (1) and (2), regardless  
2 of whether given the notice of intent to forfeit, and any guarantor of  
3 or any surety for the purchaser's performance may cure the default.  
4 These persons may cure the default at any time before expiration of the  
5 time for cure and may act alone or in any combination. Any person  
6 having a lien of record against the property which would be eliminated  
7 in whole or in part by the forfeiture and who cures the purchaser's  
8 default pursuant to this section shall have included in its lien all  
9 payments made to effect such cure, including interest thereon at the  
10 rate specified in or otherwise applicable to the obligations secured by  
11 such lien.

12 (3) Notwithstanding any other provision in this chapter, a  
13 purchaser is prohibited from defaulting on the purchaser's obligations  
14 under a contract more than three times during the life of the contract.  
15 Upon the purchaser's fourth default under the contract, the seller may  
16 record a declaration of forfeiture. The seller may continue to accept  
17 tender of cure following three defaults by the purchaser, but such an  
18 acceptance shall in no way limit the seller's right to record a  
19 declaration of forfeiture upon any subsequent default.

20 (4) The seller may, but shall not be required to, accept tender of  
21 cure after the expiration of the time for cure and before the  
22 declaration of forfeiture is recorded. The seller may accept a partial  
23 cure. If the tender of such partial cure to the seller or the seller's  
24 agent or attorney is not accompanied by a written statement of the  
25 person making the tender acknowledging that such payment or other  
26 action does not fully cure the default, the seller shall notify such  
27 person in writing of the insufficiency and the amount or character  
28 thereof, which notice shall include an offer to refund any partial  
29 tender of money paid to the seller or the seller's agent or attorney  
30 upon written request. The notice of insufficiency may state that, by  
31 statute, such request must be made by a specified date, which date may  
32 not be less than ninety days after the notice of insufficiency is  
33 served or mailed. The request must be made in writing and delivered or  
34 mailed to the seller or the person who gave the notice of insufficiency  
35 or the notice of intent to forfeit and, if the notice of insufficiency  
36 properly specifies a date by which such request must be made, by the  
37 date so specified. The seller shall refund such amount promptly  
38 following receipt of such written request, if timely made, and the  
39 seller shall be liable to the person to whom such amount is due for

1 that person's reasonable attorneys' fees and other costs incurred in an  
2 action brought to recover such amount in which such refund or any  
3 portion thereof is found to have been improperly withheld. If the  
4 seller's written notice of insufficiency is not given to the person  
5 making the tender at least ten days before the expiration of the time  
6 for cure, then regardless of whether the tender is accepted the time  
7 for cure shall be extended for ten days from the date the seller's  
8 written notice of insufficiency is given. The seller shall not be  
9 required to extend the time for cure more than once even though more  
10 than one insufficient tender is made.

11 ~~((4))~~ (5) Except as provided in this subsection, a timely tender  
12 of cure shall reinstate the contract. If a default that entitles the  
13 seller to forfeit the contract is not described in a notice of intent  
14 to forfeit previously given and the seller gives a notice of intent to  
15 forfeit concerning that default, timely cure of a default described in  
16 a previous notice of intent to forfeit shall not limit the effect of  
17 the subsequent notice.

18 ~~((5))~~ (6) If the default is cured and a fulfillment deed is not  
19 given to the purchaser, the seller or the seller's agent or attorney  
20 shall sign, acknowledge, record, and deliver or mail to the purchaser  
21 and, if different, the person who made the tender a written statement  
22 that the contract is no longer subject to forfeiture under the notice  
23 of intent to forfeit previously given, referring to the notice of  
24 intent to forfeit by its recording number. A seller who fails within  
25 thirty days of written demand to give and record the statement required  
26 by this subsection, if such demand specifies the penalties in this  
27 subsection, is liable to the person who cured the default for the  
28 greater of five hundred dollars or actual damages, if any, and for  
29 reasonable attorneys' fees and other costs incurred in an action to  
30 recover such amount or damages.

31 ~~((6))~~ (7) Any person curing or intending to cure any default  
32 shall have the right to request any court of competent jurisdiction to  
33 determine the reasonableness of any attorneys' fees which are included  
34 in the amount required to cure, and in making such determination the  
35 court may award the prevailing party its reasonable attorneys' fees and  
36 other costs incurred in the action. An action under this subsection  
37 shall not forestall any forfeiture or affect its validity.

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