

SENATE BILL REPORT

2ESHB 2057

As of February 19, 2018

Title: An act relating to the services and processes available when residential real property is abandoned or in foreclosure.

Brief Description: Concerning the services and processes available when residential real property is abandoned or in foreclosure.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Orwall).

Brief History: Passed House: 3/06/17, 98-0; 1/18/18, 96-0.

Committee Activity: Financial Institutions & Insurance: 2/15/18.

Brief Summary of Bill

- Raises the amount of the required beneficiary remittance from \$250 to \$325 for every recorded notice of trustee's sale (NOTS) on a noncommercial loan on residential real property.
- Establishes provisions for counties, cities, and towns to notify a mortgage servicer regarding pending abatement of a nuisance property and provides for mortgage servicers to inspect and abate abandoned nuisance properties.
- Modifies notification requirements for notice of default in the case of a deceased borrower.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Jeff Olsen (786-7428)

Background: Most loan obligations for residential real property in Washington are secured by deeds of trust. When a borrower under a trust deed fails to make loan payments as required and a default occurs, the beneficiary of the trust deed, or trustee or servicer acting on behalf of the beneficiary, must satisfy due diligence requirements in attempting to contact the borrower and providing information to the borrower including options that may be available to avoid foreclosure and how to contact a housing counselor.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Foreclosure Fairness Act (Act) was enacted in 2011, making changes to the process related to the nonjudicial foreclosure of deeds of trust under the Deed of Trust Act (DOTA). As part of those changes, the Foreclosure Fairness Program (Program) was established. The following agencies are involved with the Program and their roles and responsibilities are:

- the Department of Commerce (Commerce) is charged with the overall development and management of the Program, including the mediation program;
- the director of Commerce authorizes expenditures from the Foreclosure Fairness Account (Account);
- the Housing Finance Commission (Commission) administers the homeowner counseling program and oversees a toll-free hotline where homeowners in need of foreclosure prevention assistance can call and receive free foreclosure prevention counseling;
- the Office of the Attorney General (AGO) Consumer Protection Division investigates consumer protection complaints and enforces deed of trust foreclosure laws; and
- the Office of Civil Legal Aid (OCLA) contracts with qualified legal aid programs to provide free legal assistance to low-income and moderate-income homeowners in matters related to foreclosure.

The Account is funded through a \$250 fee paid by trust deed beneficiaries based on the number of notices of default issued on residential property. The remittance requirement does not apply to a beneficiary or loan servicer that is a federally insured depository institution with fewer than 50 notices of trustee's sale recorded on its behalf in the preceding year, or any homeowners' or condominium association beneficiaries.

Authorized expenditures from the Account are \$400,000 to fund the counselor referral hotline, and of the remaining funds:

- 69 percent for housing counseling activities;
- 8 percent to the AGO to be used by the Consumer Protection Division to enforce the DOTA;
- 6 percent to the OCLA to be used for the representation of homeowners in matters related to foreclosure; and
- 17 percent to Commerce to be used for implementation and operation of the Act.

In 2016, a majority of the Washington Supreme Court held in *Jordan v. Nationstar* that Washington law prohibits lenders from taking possession of property prior to foreclosure. Entry provisions contained in many deeds of trust allow servicers to secure vacant or undersecured property to prevent unauthorized entry or possible damage. The Washington Supreme Court held that the entry provisions enable the lender to take possession after default, and were found to be in conflict with state law.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Striking Amendment): Notice of Trustee Sale (NOTS)/Foreclosure Fairness Account. For each NOTS on noncommercial loans on residential real property, a beneficiary must remit \$325 to Commerce for deposit into the Account. Commerce is authorized to adjust the fee via rulemaking, however, the fee may not exceed \$325. Every NOTS must include a cover sheet on which it is clearly indicated the name of the beneficiary and whether the loan is commercial or noncommercial. The auditor is

required to index the NOTS by beneficiary, in addition to any other indexing requirements. References in the Act to the expired federal Home Affordable Modification Program are stricken.

Abandoned, Nuisance Residential Real Property. A county, city, or town may notify a mortgage servicer that a property has been determined to be abandoned, in mid-foreclosure, and a nuisance. The notice must outline at least three indicators of abandonment and be supported with time and date stamped photographs, a finding that the property is a nuisance, and a copy of the notice of default or notice of trustee's sale.

A mortgage servicer may contact a county, city, or town regarding a property it believes to be abandoned, in mid-foreclosure, and a nuisance and request that the local official visit the property and make a determination as to whether the property is abandoned and a nuisance. When making such a request, the mortgage servicer must furnish a copy of a notice of default, notice of pre-foreclosure, or notice of trustee's sale applicable to the property. A county, city, or town shall respond to requests within 15 calendar days of receipt and respond to the mortgage servicer.

Upon receipt of an affidavit or declaration that a property is abandoned, in mid-foreclosure, and a nuisance, a mortgage servicer or its designee may enter the property for the purposes of abating the identified nuisance, preserving property, or preventing waste and may take steps to secure the property. Securing property includes installing missing locks, replacing broken windows, winterizing, eliminating code violations, and performing routine yard maintenance on the exterior of the residence. The mortgage servicer or its designee must make a record of entry, may not remove personal items from the property, and must ensure that a notice is posted on the front door.

If a mortgage servicer is contacted by the borrower and notified that the property is not abandoned, the mortgage servicer must notify the local official and thereafter neither the mortgage servicer nor its designee may enter the property. A county, city, or town is not liable for any damages or actions caused by any act or omission of the mortgage servicer or its designee.

If a mortgage servicer receives notice from a local official that a property is abandoned, in mid-foreclosure, and a nuisance, and the mortgage servicer does not abate the nuisance within the time prescribed by local ordinance, the local official may exercise its authority to abate the nuisance and recover associated costs.

For foreclosed properties, a local government may notify grantee of the trustee's deed or sheriff's deed that the property is a nuisance. If the property is not abated, the local official may exercise its authority to abate the nuisance and recover associated costs. To recover costs, a local government may levy an assessment on the real property, and the assessment constitutes a lien against the property that is equal rank with state, county, and municipal taxes.

Deeds of Trust. The filing of a civil case to obtain court approval to access, secure and maintain property from waste or nuisance does not constitute an action under the deeds of trust chapter. After June 30, 2018 modifications are made to the notice of default for owner-

occupied residential real property including adding on the top of the first page of the notice the current beneficiary of the deed of trust, the current mortgage servicer, and the current trustee. In the case of a deceased borrower, the notice of default must be sent to any known spouse, child, or parent of the borrower or grantor provided to the trustee or mortgage servicer.

Upon written notice to the servicer or trustee by a successor in interest, a trustee must not record a notice of sale until providing notice, requesting reasonable documentation of the death of the borrower or grantor, and evaluating the ownership interest of a claimant. The claimant is allowed 30 days to provide documentation of the death and 60 days to demonstrate ownership interest in the property. Upon receipt of documentation of ownership interest, the claimant shall be deemed a successor in interest. Within 20 days of being deemed a successor in interest, a mortgage servicer must provide information regarding the loan including balance, interest rate, and other loan information.

For deed of trust foreclosures where the borrower or grantor is deceased and no successor in interest has been established, a trustee may provide notice in a newspaper of general circulation. If a successor in interest notifies a servicer or trustee, documentation must be provided to document an ownership interest.

Modifications are made to the notice of trustee sale in the case where the borrower is deceased to require notice to any successors in interest. If no successor in interest is established, additional notification requirements are provided. If someone claims to be a successor in interest to the borrower, the trustee or servicer must request written documentation. Titles for foreclosures involving commercial loans must be labeled accordingly. Provisions are also added for indexing requirements and the information a county auditor must index.

Processes and timelines are established for a trustee to file a declaration of nonmonetary status. Parties who have appeared in the action or proceeding have 30 days from the services to object to the nonmonetary status of the trustee.

Reverse Mortgage Foreclosure. Before legal action may begin to foreclose any reverse residential mortgage, such person must provide a 33-day notice to the mortgagor. The notice must be in writing, and in the case of death, sent to any known spouse or heirs. The notice must be written in English and Spanish and state the obligation or real estate security interest, and the nature of the default. Violations of the notice requirements are considered an unfair business practice under the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Striking Amendment: PRO: The bill involves years of effort to find middle ground on issues surrounding abandoned property. This issue affects communities and the changes in the bill will assist all communities deal with nuisance properties that are in foreclosure. There currently are not the tools for local governments to address abandoned properties, and communities look forward to working with financial institutions to address the problem. With the recent supreme court ruling, there are challenges for banks and mortgage institutions to secure property, and the process established in the bill is clear and detailed. Cities, in addition to counties, should be included in the public notice process in the bill. Free mortgage default counseling is available and thousands of homeowners have received this service. The fee increase in the bill is necessary to continue the programs and services supported by the foreclosure fairness account. The bill contains protections for seniors who may have a reverse mortgage foreclosure and need assistance. There still is some work on the nuisance abatement process and additional changes are being worked on.

OTHER: Non-judicial foreclosures are not available for deceased borrowers. Judicial foreclosures are more costly and time consuming. The bill creates a process to deal with foreclosures involving deceased borrowers. County auditors commend stakeholders for involving them in the process and creating a process that ensures counties can perform those functions.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Marnie Claywell, Parkview Services; Leslie Wolff, Washington State Department of Commerce; Nathan Peppin, Washington State Department of Commerce; Rowland Thompson, Allied Daily Newspapers of Washington; Trent House, Washington Bankers Association, United Financial Lobby; Joel Wachtel, SeaTac Councilmember; Mike Wallin, Longview City Councilmember; Cary Driskell, Spokane Valley City Attorney; Krystelle Purkey, Washington State Community Association Institute; Holly Chisa, United Trustees Association.

OTHER: Joseph Jordan, Northwest Justice Project; Vicky Dalton, Washington Association of County Auditors.

Persons Signed In To Testify But Not Testifying: No one.