

SENATE BILL REPORT

SB 6484

As of January 30, 2018

Title: An act relating to nuisance abatement and foreclosures.

Brief Description: Concerning nuisance abatement.

Sponsors: Senator Mullet.

Brief History:

Committee Activity: Financial Institutions & Insurance: 1/25/18.

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 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. In 2011, the Foreclosure Fairness Act was enacted, making changes to the process related to the nonjudicial foreclosure of deeds of trust. As part of those changes, the Foreclosure Fairness Program (Program) was established. A variety of agencies are involved with the Program. Their roles and responsibilities, and the services they provide, are:

1. The Department of Commerce (Commerce) is charged with the overall development and management of the Program. Commerce is also responsible for training, approving, and maintaining a list of approved foreclosure mediators and assigning them to mediation cases. The director of Commerce authorizes expenditures from the Foreclosure Fairness Account (Account).

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.

2. The Housing Finance 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.
3. The Office of the Attorney General, Consumer Protection Division investigates consumer protection complaints and enforces deed of trust foreclosure laws.
4. The Office of Civil Legal Aid contracts with qualified legal aid programs to provide free legal assistance to low-income and moderate-income homeowners in matters related to foreclosure.

Certain beneficiaries must remit \$250 to Commerce for every notice of trustee's sale recorded on residential real property, excluding the recording of an amended notice of trustee's sale.

Residential real property includes property with up to four dwelling units, whether or not the property or any part thereof is owner-occupied. The remittance requirement does not apply to: any beneficiary or loan servicer that is a federally insured depository institution and that certifies under penalty of perjury that fewer than 50 notices of trustee's sale were recorded on its behalf in the preceding year; or, any homeowners' or condominium association beneficiaries. Monies in the Account pay for the Program, including mediation, counseling, consumer protection, and legal representation.

Cities and towns that exercise authority to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance are authorized to levy a special assessment on property where a nuisance is situated. The special assessment is for the purpose of reimbursing the city or town for the expense of abatement. This authority is supplemental to any other authority to levy an assessment or obtain a lien for costs of abatement.

The special assessment levied by the city or town is a lien, and after it is recorded in the county, up to \$2,000 of the recorded lien is of equal rank with state, county, and municipal taxes. Liens for abatement costs are binding upon successors in title beginning the date they are recorded in the county where the affected real property is located. Cities and towns that exercise authority to abate a nuisance or levy a special assessment for the costs of abatement must provide prior notice of the action to the property owner.

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

Summary of Bill (Proposed Substitute): 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 Foreclosure Fairness Act to the expired federal Home Affordable Modification Program are stricken.

Cities and towns that exercise authority to abate a nuisance or levy a special assessment must notify any identifiable mortgage servicer in addition to the property owner regarding pending

abatement or special assessments. Up to \$10,000 of the recorded lien is of equal rank with state, county, and municipal taxes and that amount may be adjusted by inflation.

For properties where a city or town determines there is a nuisance and a notice of default or a notice of trustee sale has been recorded, the city or town may notify the mortgage servicer regarding the nuisance abatement. The notice must be delivered by certified mail and include an affidavit describing the nuisance and if applicable a determination that the property is abandoned. In order to determine if a property is abandoned, the city or town official must indicate that specific criteria has been met including but not limited to lack of furnishings, utilities disconnected, windows and doors broken or boarded up, trash, and other evidence that the property is abandoned.

A mortgage servicer or its designee may enter property to perform ongoing inspections and abatement if the property is determined to be a nuisance, the property is abandoned, and a notice of default or notice of trustee's sale has been recorded. Abatement activities include installing locks, repairing or replacing doors and windows, maintenance and pest control. A mortgage servicer or its designee may not remove personal items from the property and must maintain a record of entry into property for four years. Each time a mortgage servicer enters the property a notice must be posted on the property's front door that includes a property owner's rights and contact phone numbers. If a mortgage servicer does not abate a nuisance within time limits provided by a city or town, the city or town may use its authority to abate the nuisance, impose fines, and levy a special assessment to reimburse the city or town for abatement expenses.

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 ten 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.

Provisions are established for actions involving the declaration of nonmonetary status under a deed of trust. The declaration must set forth the status of the trustee under the deed of trust, and that the complaint does not assert substantive allegations that seek damages and/or seek to enjoin foreclosure. Timelines are established for determining nonmonetary judgment status of the trustee.

Before any mortgagee of residential real property may accelerate the maturity of a mortgage or commence legal action they must provide notice in writing to the mortgagor. The notice must be written in English and Spanish and clearly state the obligation or real estate security interest, the nature of the default, rights and timelines, and a statement regarding the foreclosure process. In addition, toll-free phone numbers for the foreclosure hotline must be included. Violations of the requirements are considered an unfair business practice under the Consumer Protection Act.

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.

Appropriation: None.

Fiscal Note: Not requested.

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 Substitute: PRO: The bill continues the work that started over a year ago to address issues arising in the *Jordan vs. Nationstar* case dealing with access to property by mortgage companies and servicers during the foreclosure process. Cities have been negotiating to develop ways to deal with zombie or blighted properties that are in the process of foreclosure. While there is a process for abating nuisance properties, the \$2,000 available under current law is not sufficient to deal with the costs of abating abandoned properties. Crimes increase in areas with abandoned properties, and cities need tools to address those properties. The details of the bill are still being negotiated, but addresses concerns of homeowners, creates safeguards, and allows access to nuisance property. The bill also provides notification for successors of interest and addresses problems with reverse mortgages.

CON: Currently, community banks are unable to secure property that is in foreclosure and is abandoned, and the bill does not address this problem. The bill puts cities in a position to address nuisance properties, and puts banks between the owner and the city. While there are some positive changes, and negotiations are ongoing, more work is needed on this issue.

OTHER: There are several gaps in the current foreclosure laws, and the changes make good progress and address ways to provide partnerships between lenders and cities to address abandoned properties.

Persons Testifying: PRO: Senator Mark Mullet, Prime Sponsor; Lili Sotelo, Columbia Legal Services; Nick Federici, City of Spokane; Kate Burke, council member, City of Spokane; Joel Wachtel, council member, City of SeaTac; Cary Driskell, Attorney, Spokane

Valley City; Mike Wallin, council member, City of Longview; Ryan Mello, council member, City of Tacoma.

CON: Brad Tower, Community Bankers of Washington.

OTHER: Jessica Fortescue, Washington Mortgage Bankers Association; Trent House, Washington Bankers Association; Lance Olsen, McCarthy Holthus; Holly Chisa, United Trustees Association.

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