

SHB 2421 - S AMD 150
By Senator Kline

1 On page 36, after line 10, insert the following:

2 "Sec. 10. RCW 61.24.010 and 2009 c 292 s 7 are each amended to
3 read as follows:

4 (1) The trustee of a deed of trust under this chapter shall be:

5 (a) Any domestic corporation or domestic limited liability
6 corporation incorporated under Title 23B, 25, 30, 31, 32, or 33 RCW of
7 which at least one officer is a Washington resident; or

8 (b) Any title insurance company authorized to insure title to real
9 property under the laws of this state, or any title insurance agent
10 licensed under chapter 48.17 RCW; or

11 (c) Any attorney who is an active member of the Washington state
12 bar association at the time the attorney is named trustee; or

13 (d) Any professional corporation incorporated under chapter 18.100
14 RCW, any professional limited liability company formed under chapter
15 25.15 RCW, any general partnership, including limited liability
16 partnerships, formed under chapter 25.04 RCW, all of whose
17 shareholders, members, or partners, respectively, are either licensed
18 attorneys or entities, provided all of the owners of those entities are
19 licensed attorneys, or any domestic corporation wholly owned by any of
20 the entities under this subsection (1)(d); or

21 (e) Any agency or instrumentality of the United States government;
22 or

23 (f) Any national bank, savings bank, or savings and loan
24 association chartered under the laws of the United States.

25 (2) The trustee may resign at its own election or be replaced by
26 the beneficiary. The trustee shall give prompt written notice of its
27 resignation to the beneficiary. The resignation of the trustee shall
28 become effective upon the recording of the notice of resignation in
29 each county in which the deed of trust is recorded. If a trustee is
30 not appointed in the deed of trust, or upon the resignation,

1 incapacity, disability, absence, or death of the trustee, or the
2 election of the beneficiary to replace the trustee, the beneficiary
3 shall appoint a trustee or a successor trustee. Only upon recording
4 the appointment of a successor trustee in each county in which the deed
5 of trust is recorded, the successor trustee shall be vested with all
6 powers of an original trustee.

7 (3) The trustee or successor trustee shall have no fiduciary duty
8 or fiduciary obligation to the grantor or other persons having an
9 interest in the property subject to the deed of trust.

10 (4) The trustee or successor trustee has a duty of good faith to
11 the borrower, beneficiary, and grantor.

12 **Sec. 11.** RCW 61.24.050 and 1998 c 295 s 7 are each amended to read
13 as follows:

14 ~~((When delivered))~~ (1) Upon physical delivery of the trustee's deed
15 to the purchaser, or a different grantee as designated by the purchaser
16 following the trustee's sale, the trustee's deed shall convey all of
17 the right, title, and interest in the real and personal property sold
18 at the trustee's sale which the grantor had or had the power to convey
19 at the time of the execution of the deed of trust, and such as the
20 grantor may have thereafter acquired. Except as provided in subsection
21 (2) of this section, if the trustee accepts a bid, then the trustee's
22 sale is final as of the date and time of such acceptance if the
23 trustee's deed is recorded within fifteen days thereafter. After a
24 trustee's sale, no person shall have any right, by statute or
25 otherwise, to redeem the property sold at the trustee's sale.

26 (2)(a) Up to the eleventh day following the trustee's sale, the
27 trustee, beneficiary, or authorized agent for the beneficiary may
28 declare the trustee's sale and trustee's deed void for the following
29 reasons:

30 (i) The trustee, beneficiary, or authorized agent for the
31 beneficiary assert that there was an error with the trustee foreclosure
32 sale process including, but not limited to, an erroneous opening bid
33 amount made by or on behalf of the foreclosing beneficiary at the
34 trustee's sale;

35 (ii) The borrower and beneficiary, or authorized agent for the
36 beneficiary, had agreed prior to the trustee's sale to a loan

1 modification agreement, forbearance plan, shared appreciation mortgage,
2 or other loss mitigation agreement to postpone or discontinue the
3 trustee's sale; or

4 (iii) The beneficiary or authorized agent for the beneficiary had
5 accepted funds that fully reinstated or satisfied the loan even if the
6 beneficiary or authorized agent for the beneficiary had no legal duty
7 to do so.

8 (b) This subsection does not impose a duty upon the trustee any
9 different than the obligations set forth under RCW 61.24.010 (3) and
10 (4).

11 (3) The trustee must refund the bid amount to the purchaser no
12 later than the third day following the postmarked mailing of the
13 rescission notice described under subsection (4) of this section.

14 (4) No later than fifteen days following the voided trustee's sale
15 date, the trustee shall send a notice in substantially the following
16 form by first-class mail and certified mail, return receipt requested,
17 to all parties entitled to notice under RCW 61.24.040(1) (b) through
18 (e):

19 NOTICE OF RESCISSION OF TRUSTEE'S SALE

20 NOTICE IS HEREBY GIVEN that the trustee's sale that occurred on
21 (trustee's sale date) is rescinded and declared void because (insert
22 the applicable reason(s) permitted under RCW 61.24.050(2)(a)).

23 The trustee's sale occurred pursuant to that certain Notice of
24 Trustee's Sale dated, recorded, under
25 Auditor's File No. . . ., records of . . . County, Washington, and
26 that certain Deed of Trust dated, recorded
27 ., under Auditor's File No. . . ., records of . . . County,
28 Washington, from, as Grantor, to, as, as
29 original Beneficiary, concerning the following described property,
30 situated in the County(ies) of, State of Washington, to wit:

31 (Legal description)

32 Commonly known as (common property address)

33 (5) If the reason for the rescission stems from subsection (2)(a)
34 (i) or (ii) of this section, the trustee may set a new sale date not

1 less than forty-five days following the mailing of the notice of
2 rescission of trustee's sale. The trustee shall:

3 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
4 (f) at least thirty days before the new sale date; and

5 (b) Cause a copy of the notice of trustee's sale as provided in RCW
6 61.24.040(1)(f) to be published in a legal newspaper in each county in
7 which the property or any part of the property is situated, once
8 between the thirty-fifth and twenty-eighth day before the sale and once
9 between the fourteenth and seventh day before the sale."

10 Renumber the remaining section consecutively and correct any
11 internal references accordingly.

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12 On page 1, line 3 of the title, after "61.24.040," strike "and
13 61.24.172" and insert "61.24.172, 61.24.010, and 61.24.050"

EFFECT: (1) A domestic limited liability corporation incorporated under specific statutes may be a trustee under the Deeds of Trust Act.

(2) Up to 11 days following the trustee's sale, the trustee, beneficiary, or authorized agent for the beneficiary may declare the trustee's sale and trustee's deed void for the following reasons:

(a) The trustee, beneficiary, or authorized agent for the beneficiary asserts there was an error with the trustee foreclosure sale process including, but not limited to, an erroneous opening bid amount made by or on behalf of the foreclosing beneficiary at the trustee's sale;

(b) Prior to the sale, there was an agreement for a loan modification, forbearance plan, or other loss mitigation agreement to postpone or discontinue the trustee's sale; or

(c) The beneficiary or authorized agent accepted funds that fully reinstated or satisfied the loan even if the beneficiary or authorized agent had no legal duty to do so.

(3) The trustee is to refund the bid amount to the purchaser.

(4) No later than 15 days following the voided trustee's sale, the trustee is to send a notice, as proscribed by statute, to all parties entitled to the notice.

(5) If the rescission is based on an erroneous bid amount or an agreement to postpone the sale, the trustee may set a new sale date at least 45 days following the mailing of the notice of rescission of the trustee's sale.

(6) The trustee is to: Comply with the requirements for holding a trustee's sale at least 30 days before the new sale date; and publish the Notice of Trustee's Sale as required by statute.

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