

CHAPTER 193

[Substitute Senate Bill No. 3094]

DEEDS OF TRUST

AN ACT Relating to deeds of trust; amending RCW 61.24.020, 61.24.030, and 61.24.040; adding a new section to chapter 61.24 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 61.24 RCW to read as follows:

Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set forth the name, mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is hereby made that a copy of any notice of sale described in RCW 61.24.040(1)(f) under that certain Deed of Trust dated, 19.., recorded on, 19.., under auditor's file No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, and affecting the following described real property:

(Legal Description)

be sent by both first class and either registered or certified mail, return receipt requested, to at

Dated this day of, 19..

.....
Signature

(Acknowledgment)

A request for notice under this section shall not affect title to, or be deemed notice to any person that any person has any right, title, interest in, lien or charge upon, the property described in the request for notice.

Sec. 2. Section 2, chapter 74, Laws of 1965 as amended by section 2, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.020 are each amended to read as follows:

Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed as in this chapter provided. The county auditor shall record such deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: PROVIDED, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust.

Sec. 3. Section 3, chapter 74, Laws of 1965 as amended by section 3, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.030 are each amended to read as follows:

It shall be requisite, to foreclosure under this chapter:

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust provides in its terms that the real property conveyed is not used principally for agricultural or farming purposes;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action commenced by the beneficiary of the deed of trust or the beneficiary's successor is now pending ((on)) to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured;

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated; and

(6) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the grantor or any successor in interest at his last known address by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on said premises, a copy of said notice, or personally served on the grantor or his successor in interest. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) The book and the page of the book of records wherein the deed of trust is recorded;

(c) That the beneficiary has declared the grantor or any successor in interest to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs or fees that the grantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) The total of subparagraphs (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) That failure to cure said alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal and publication of a notice of sale, and that the property described in subparagraph (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) That the effect of the recordation, transmittal and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor or his successor in interest and all those who hold by, through or under him of all their interest in the property described in subsection (a);

(j) That the grantor or any successor in interest has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground.

Sec. 4. Section 4, chapter 74, Laws of 1965 as last amended by section 3, chapter 161, Laws of 1981 and RCW 61.24.040 are each amended to read as follows:

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form (~~hereinafter specified~~) described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) If their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice ((as hereinafter provided)) of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to ((each person who has an interest in or lien or claim of lien against the property or some part thereof, provided such interest, lien or claim is of record at the time the notice is recorded and further provided the address of such person is stated in the recorded instrument recording his interest, lien or claim, or is otherwise known to the trustee)) the following persons or their legal representatives, if any, at such address:

(i) The beneficiary or mortgagee of any deed of trust or mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(ii) The vendee in any real estate contract, the lessee in any lease or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale;
and

(iv) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed;

(c) Cause a copy of the notice ((as hereinafter provided)) of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or ((his)) the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is ((on file)) recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded ((in the office of the auditor));

(d) Cause a copy of the notice ((as hereinafter provided)) of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who ((shall have previously requested such notice in writing to the trustee)) has recorded a request for notice in accordance with section 1 of this 1985 act, at the address specified ((by the requesting person)) in such person's most recently recorded request for notice;

(e) Cause a copy of the notice ((as hereinafter provided)) of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on ((said premises)) the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of ((said tract)) the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the day of, 19 . . ., at the hour of o'clock M. at
[street address and location if inside a building] in the City of

State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of, State of Washington, to-wit:

which is subject to that certain Deed of Trust dated, 19. . ., recorded, 19. . ., under Auditor's File No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, the beneficial interest in which was assigned by, under an Assignment recorded under Auditor's File No. [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust or the Beneficiary's successor is now pending to seek satisfaction of the obligation in any Court by reason of the Grantor's default on the obligation secured by ((said)) the Deed of Trust.

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$., together with interest as provided in the note ((provided)) or other instrument secured from the day of, 19. . ., and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by ~~((said))~~ the Deed of Trust as provided by statute. ~~((Said))~~ The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the day of, 19. . . The ~~((defaults))~~ default(s) referred to in paragraph III must be cured by the day of, 19. . .~~((;))~~ (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the day of, 19. . ., ~~((+0))~~ 11 days before the sale date, the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated ~~((by the grantor anytime))~~ any time after the day of, 19. . .~~((;))~~ (11 days before the sale date), and before the sale by the Grantor or ~~((his))~~ the Grantor's successor in interest or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Grantor or ~~((his))~~ the Grantor's successor in interest at the following address:

.....

by both first class and certified mail on the day of, 19. . ., proof of which is in the possession of the Trustee; and the Grantor or ~~((his))~~ the Grantor's successor in interest was personally served on the day of, 19. . ., with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has ~~((in his))~~ possession of proof of such service or posting.

VII.

The Trustee whose name and address ~~((is))~~ are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under ~~((him))~~ the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

.....
..... } Trustee
..... } Address
..... } Phone

(STATE OF WASHINGTON) }
COUNTY OF _____ } ss:

~~On this day personally appeared before me, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.~~

~~GIVEN under my hand and official seal this day of, 19...~~

.....
~~NOTARY PUBLIC in and for the State of Washington, residing at~~

~~[SEAL]) [Individual or corporate acknowledgment]~~

(2) In addition to providing the grantor or ((his)) the grantor's successor in interest the notice ((as provided)) of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor or the grantor's successor in interest, a statement to the grantor or ((his)) the grantor's successor in interest in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW~~((et seq.))~~

The attached Notice of Trustee's Sale is a consequence of ((your)) default(s) in ((your)) the obligation to, the Beneficiary of your Deed of Trust and ((holder of your Note)) owner of the obligation secured thereby. Unless ((you cure)) the default(s) is/are cured, your property will be sold at auction on the day of, 19...

To cure ((your)) the default(s), you must bring ((your)) the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the day of

....., 19..(;) (11 days before the sale date). To date, these arrearages and costs are as follows:

	Currently due to reinstate on _____ _____	Estimated amount that will be due to reinstate on _____ (11 days before the date set for sale)
Delinquent payments from, 19.., in the amount of \$..... /mo.:	\$.....	\$.....
Late charges in the total amount of:	\$.....	\$.....
		Estimated Amounts
Attorneys' fees:	\$.....	\$.....
Trustee's fee:	\$.....	\$.....
Trustee's expenses: (Itemization)		
Title report	\$.....	\$.....
Recording fees	\$.....	\$.....
Service/Posting of Notices	\$.....	\$.....
Postage/Copying expense	\$.....	\$.....
Publication	\$.....	\$.....
Telephone charges	\$.....	\$.....
Inspection fees	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
TOTALS	\$.....	\$.....

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the

If you do not reinstate (~~(your Note)~~) the secured obligation and your Deed of Trust (~~(by paying the amount demanded here)~~) in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold to satisfy (~~(your)~~) the obligations secured by your Deed of Trust. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice (~~(as provided)~~) of sale described in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-second and twenty-eighth day before the date of sale, and once between the eleventh and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in (~~(either)~~) any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee may for any cause (~~(he)~~) the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale or, alternatively, by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured.

NEW SECTION. Sec. 5. This act shall apply to foreclosures commenced, by the giving of a notice of default pursuant to RCW 61.24.030(6), after the effective date of this act.

Passed the Senate March 7, 1985.

Passed the House April 12, 1985.

Approved by the Governor April 30, 1985.

Filed in Office of Secretary of State April 30, 1985.

CHAPTER 194

[Senate Bill No. 3103]

HOMESTEADS

AN ACT Relating to award in lieu of homestead; and amending RCW 11.52.012, 11.52.020, and 11.52.022.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 11.52.012, chapter 145, Laws of 1965 as last amended by section 18, chapter 260, Laws of 1984 and RCW 11.52.012 are each amended to read as follows:

Such award shall be made by an order or judgment of the court and shall vest the absolute title, and thereafter there shall be no further administration upon such portion of the estate so set off, but the remainder of the estate shall be settled as other estates: PROVIDED, That no property of the estate shall be awarded or set off, as provided in RCW 11.52.010 through 11.52.024, as now or hereafter amended, to a surviving spouse who has feloniously killed the deceased spouse: PROVIDED FURTHER, That if it shall appear to the court, either (1) that there are children of the deceased by a former marriage or by adoption prior to decedent's marriage to petitioner, or (2) that the petitioning surviving spouse has abandoned his or her minor children or wilfully and wrongfully failed to provide for them, or (3) if such surviving spouse or minor children are entitled to receive property not subject to probate, including insurance, by reason of the death of the deceased spouse in the ~~((sum of twenty-five thousand dollars))~~ amount specified in RCW 11.52.010, or more, then the award in lieu of homestead and exemptions shall lie in the discretion of the court, and that whether there shall be an award and the amount thereof shall be determined by the court, which shall enter such decree as shall be just and equitable but not in excess of the award provided herein.

Sec. 2. Section 11.52.020, chapter 145, Laws of 1965 as last amended by section 19, chapter 260, Laws of 1984 and RCW 11.52.020 are each amended to read as follows:

In event a homestead has been, or shall be selected in the manner provided by law, whether the selection of such homestead results in vesting the complete or partial title in the survivor, it shall be the duty of the court,