

NEW SECTION. Sec. 8. Sections 1 through 6 of this act shall constitute a new chapter in Title 82 RCW.

Passed the House April 25, 1981.

Passed the Senate April 24, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

CHAPTER 161

[House Bill No. 493]

DEEDS OF TRUST

AN ACT Relating to real property and deeds of trust; amending section 1, chapter 74, Laws of 1965 as amended by section 1, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.010; amending 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; amending section 4, chapter 74, Laws of 1965 as last amended by section 4, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.040; amending section 7, chapter 74, Laws of 1965 and RCW 61.24.070; amending section 8, chapter 74, Laws of 1965 as amended by section 3, chapter 30, Laws of 1967 and RCW 61.24.080; amending section 9, chapter 74, Laws of 1965 as last amended by section 5, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.090; amending section 11, chapter 74, Laws of 1965 and RCW 61.24.110; and amending section 13, chapter 74, Laws of 1965 as amended by section 6, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.130.

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

Section 1. Section 1, chapter 74, Laws of 1965 as amended by section 1, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.010 are each amended to read as follows:

(1) The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

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

(a) Any domestic corporation ((or association authorized to engage in a trust business in this state)) incorporated under Title 23A, 30, 31, 32, or 33 RCW; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

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

(d) Any agency or instrumentality of the United States government; or

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

(3) ~~((In the event of the death, incapacity or disability, or resignation of the trustee, the beneficiary may))~~ The trustee shall resign at the request of the beneficiary and may resign at its own election. Upon the resignation, incapacity, disability, or death of the trustee, the beneficiary shall nominate in writing a successor trustee. Upon recording in the mortgage records of

the county or counties in which the trust deed is recorded, of the appointment of a successor trustee, the successor trustee shall be vested with all powers of the original trustee.

*** 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:**

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. 2. was vetoed, see message at end of chapter.**

Sec. 3. Section 4, chapter 74, Laws of 1965 as last amended by section 4, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.040 are each amended to read as follows:

A deed of trust ((~~may be foreclosed in the following manner~~)) 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 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) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f)((;)) to be transmitted by both first class and certified 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;

(c) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f) to be transmitted by both first class and certified mail, return receipt requested, to the plaintiff or his 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 on the date the notice is recorded in the office of the auditor;

(d) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f) to be transmitted by both first class and certified mail, return receipt requested, to any person who shall have previously requested such notice in writing to the trustee, at the address specified by the requesting person;

(e) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f) to be posted in a conspicuous place on said premises, or in lieu of posting, cause a copy of said notice to be served upon any occupant of said real 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 of, State of Washington, to-wit:

which is subject to that certain deed of trust dated, 19.., recorded, 19.., ((in volume of Mortgages, at Page)) under Auditor's File No., ((mortgage)) 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 ((dated, 19.., and)) recorded under Auditor's File No.

II.

No action 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 deed of trust.

III.

The default for which this foreclosure is made is 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 in the note provided from the day of, 19.., and such other costs and fees 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 Deed of Trust as provided by statute. Said sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the day of, 19... The defaults referred to in paragraph III must be cured by the day of, 19..., (((+θ)) 11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the day of, 19..., (10 days before the sale) the default as set forth in paragraph III is cured and the Trustee's fees and costs are paid. The sale may be terminated by the grantor anytime after the day of, 19..., (((+θ)) 11 days before the sale date) and before the sale by the grantor or his successor in interest paying the principal and interest, plus costs ((and)), fees, and advances, if any, made pursuant to the terms of the obligation and/or deed of trust.

VI.

A written notice of default was transmitted by the Beneficiary or trustee to the grantor or his 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; ((or)) and the grantor or his successor in interest was personally served on the day of, 19.., with said written notice of default ((by the beneficiary or his trustee, and the trustee has in his possession proof of such service)) 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 proof of such service or posting.

VII.

The Trustee whose name and address is 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 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]

(2) In addition to providing the grantor or his successor in interest the notice as provided in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice (~~provided in RCW 61.24.040(1)(f))~~ which is mailed to the grantor or the grantor's successor in interest, a statement to the grantor or his 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 in your obligation to, the beneficiary of your Deed of Trust and holder of your Note. Unless you cure the default, your property will be sold at auction on the day of, 19...

| | |
|-------------------------------|--|
| Currently due to reinstate | Estimated amount that will be due to reinstate |
| on..... | 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 \$..... \$.....

You may reinstate your Note and Deed of Trust at any time up to and including the day of, 19.., (((+10)) 11 days before the sale date) by paying the amount as set forth or estimated above. Of course, each month that passes brings another monthly payment due, and such monthly payment and any late charge must be added to your reinstating payment. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply

with state or local law, it will be necessary for you to contact the trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. AFTER THE DAY OF, 19.., ((THE 80TH DAY;)) YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents.

You may contest this default by initiating court action in the Superior Court of County. In such action, you may raise any legitimate defenses you have to this default. You may also contest this sale in court by initiating court action. A copy of your Note and Deed of Trust are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

If you do not reinstate your Note and Deed of Trust by paying the amount demanded here, or if you do not succeed in restraining the sale by court action, your property will be sold to satisfy your obligations. 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 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 (~~weekly during the four weeks preceding the time of sale~~) 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 of the counties where the property is located. The sale shall be on (~~the day~~) 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 deems advantageous continue the sale for a period or periods not exceeding a total of (~~thirty~~) one hundred twenty days by a public proclamation at the time and place fixed 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 the obligation secured.

***Sec. 4. Section 7, chapter 74, Laws of 1965 and RCW 61.24.070 are each amended to read as follows:**

~~((The trustee may not bid at the trustee's sale.)) Any ((other)) person including the beneficiary under the deed of trust may bid at the trustee's sale.~~

***Sec. 4. was vetoed, see message at end of chapter.**

Sec. 5. Section 8, chapter 74, Laws of 1965 as amended by section 3, chapter 30, Laws of 1967 and RCW 61.24.080 are each amended to read as follows:

The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his attorney: PROVIDED, That the aggregate of the charges by the trustee and his attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in the said court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee (~~((may))~~ shall) be deposited together with a copy of the recorded notice of sale with the clerk of the superior court of the county in which the sale took place. The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon depositing such surplus, the trustee shall be discharged from all further responsibilities therefor. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to such surplus in the order of priority that it had attached to the property. The clerk shall not disburse such surplus except upon order of the superior court of such county.

Sec. 6. Section 9, chapter 74, Laws of 1965 as last amended by section 5, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.090 are each amended to read as follows:

(1) At any time prior to the (~~((tenth))~~ eleventh) day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the (~~((tenth))~~ eleventh) day before the actual sale, the grantor or his successor in interest, any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record on the trust

property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, (~~which is not to exceed twenty-five dollars at the time the notice of trustee's sale is given and is not to exceed fifty dollars forty days after the date of notice of trustee's sale is given and is not to exceed seventy-five dollars eighty days after the date of notice of trustee's sale is given;~~) together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale. (~~In the event the property secured by the deed of trust is a single family dwelling the total of the trustee's fees and the attorney's fees shall not exceed two hundred fifty dollars without court approval.~~)

(2) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(3) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(4) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized herein, and his reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his rights to advances under this section.

(5) If the default is cured and the obligation and the deed of trust reinstated in the manner hereinabove provided, the trustee shall properly execute, acknowledge and cause to be recorded a notice of discontinuance of trustee's sale under such deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets (~~RCW 61.24.040(6), at any time prior to the tenth~~) forth a record of the deed of trust and the auditor's file number under which the deed of trust is recorded, and a reference to the notice of sale and the ((book and page on)) auditor's file number under which the ((name)) notice of sale is recorded, and a notice that such sale is discontinued.

Sec. 7. Section 11, chapter 74, Laws of 1965 and RCW 61.24.110 are each amended to read as follows:

The trustee shall reconvey all or any part of the property covered by the deed of trust to the person entitled thereto on written request of ~~((the grantor and))~~ the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

Sec. 8. Section 13, chapter 74, Laws of 1965 as amended by section 6, chapter 129, Laws of 1975 1st ex. sess. and RCW 61.24.130 are each amended to read as follows:

(1) Nothing contained in this chapter shall prejudice the right of the grantor ~~((or))~~, his successor in interest, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper ground, a ~~((threatened))~~ trustee's sale ~~((by the trustee under a deed of trust))~~. In the event that the property secured by the deed of trust is a single family dwelling occupied by the grantor or his successor in interest, and the court finds that there is proper ground to restrain a ~~((threatened))~~ trustee's sale ~~((by the trustee under a deed of trust))~~, the court shall require the ~~((grantor or his successor in interest))~~ party seeking to restrain the sale to enter into a bond in at least the amount of two hundred fifty dollars with surety to the satisfaction of the clerk of the superior court to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. In addition, the court shall require as a condition of continuing the restraining order that the ~~((grantor or his successors in interest))~~ party seeking to restrain the sale shall pay to the clerk of the court ~~((every thirty days the monthly payment of principal and interest))~~ the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed. In the case of a default in making the monthly payment of principal and interest and reserves, such sums shall be the monthly payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee and the beneficiary of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f) and after the period for continuing sale as allowed by RCW 61.24.040(6), the court granting such restraining order or injunction, or before whom the

order or injunction is returnable, has the right to set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. At least thirty days before the new sale date, the trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f); and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published once weekly during the three weeks preceding the time of sale in a legal newspaper in each county in which the property or any part thereof is situated.

Passed the House April 23, 1981.

Passed the Senate April 23, 1981.

Approved by the Governor May 14, 1981, with the exceptions of Sections 2 and 4 which are vetoed.

Filed in Office of Secretary of State May 14, 1981.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to Section 2 and Section 4 House Bill No. 493 entitled:

"AN ACT Relating to real property and deeds of trust."

Section 2 restates verbatim the current statute (RCW 61.24.020) and is therefore superfluous.

Section 4 strikes the following sentence from law: "The trustee may not bid at the trustee's sale." Striking this sentence is inconsistent with keeping RCW 61.24.020. I have therefore vetoed Section 4.

With the exceptions of Sections 2 and 4, which I have vetoed, the remainder of House Bill No. 493 is approved."

CHAPTER 162

[House Bill No. 502]

SESSION LAW PUBLICATIONS, BOUND, TEMPORARY VOLUMES—SALES PRICE

AN ACT Relating to the session laws of the state of Washington; amending section 4, chapter 150, Laws of 1941 as last amended by section 94, chapter 169, Laws of 1977 ex. sess. and RCW 40.04.040; amending section 4, chapter 136, Laws of 1907 as last amended by section 3, chapter 6, Laws of 1969 and RCW 44.20.040; making an appropriation; and declaring an emergency.

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

Section 1. Section 4, chapter 150, Laws of 1941 as last amended by section 94, chapter 169, Laws of 1977 ex. sess. and RCW 40.04.040 are each amended to read as follows:

Session laws shall be distributed, sold, and/or exchanged by the state law librarian as follows: