

Real Estate Update

Legislature Enacts Homeowner Foreclosure Protection

by John D. Sullivan

The Legislature amended the Deed of Trust Act, effective as of July 26, 2009, to provide additional protections for residential borrowers who are facing foreclosure.

Last month we pointed out one change that extended the period of time a residential tenant has to vacate after a nonjudicial foreclosure sale. However, that is not the only change. And some of the other changes are substantial.

The changes were, of course, made in reaction to the current economic situation and generally make it more difficult for the holder of a deed of trust on residential real property to nonjudicially foreclose.

Amendments intended to be temporary

In fact, many revisions only affect deeds of trust recorded between January 1, 2003, and December 31, 2007, and most of the

amendments have a "sunset" date of December 31, 2012.

Residential property affected

Most changes only affect owner-occupied and tenant-occupied residential property consisting of a single-family residence, a residential condominium unit, or a residential cooperative unit, and to tenant-occupied units in buildings with four or fewer residential units if it is the tenant's principal residence.

The amendments do not apply to deeds of trust securing a commercial loan, or securing obligations of a grantor who is not also the borrower or a guarantor of the loan, or securing a purchaser's obligations under a seller-financed sale.

The Act now requires the deed of trust beneficiary (lender) to go through several additional steps over a period of at least 30 days

before the beneficiary can even start to give the statutory Notice of Default and Notice of Trustee Sale that initiate the nonjudicial foreclosure process.

First notice

A beneficiary must first have an "initial contact" with the borrower, which must be by both first class mail and telephone, in which the beneficiary:

- Assesses the borrower's financial ability to pay;
- Explores options for the borrower to avoid foreclosure;
- Advises the borrower of his/her right to a subsequent meeting with the beneficiary within fourteen days; and
- Provides the borrower with the toll-free telephone num-



bers for the Washington Department of Financial Institutions ("DFI"), DFI-certified housing counselors, and legal aid services.

The borrower may designate a DFI-certified housing counselor or attorney to speak on his/her behalf, but must do so within fourteen days after the initial contact. The beneficiary must then contact the housing counselor/attorney within fourteen days for a subsequent meeting.

Second Notice

At the end of the second fourteen day period, the beneficiary must give additional written notice by certified mail. If the beneficiary or its authorized agent has a Website, it must also provide links on its Website to:

- Options for the borrower to avoid foreclosure;
- List of documents the borrower should collect;
- Beneficiary's toll free telephone number; and
- Toll-free telephone numbers for the Washington Department of Financial Institutions ("DFI"), DFI-certified housing counselors, and legal aid services.

Only then can the beneficiary give the statutory Notice of Default to initiate the foreclosure. The Notice of Default and the Notice of Trustee's Sale must include prescribed notices that address the items discussed above.



SCB Attorney Becomes LEED Accredited

SCB real estate attorney, John D. Sullivan, has attained designation as a LEED® Accredited Professional (AP) by the U.S. Green Building Council.

The U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design)® Green Building Rating System™ is nationally accepted as the benchmark for designing, building and operating environmentally and socially responsible, healthy and prosperous buildings that improve the quality of life. It rewards a whole-building approach by recognizing performance in five key areas: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality.

To become LEED® AP one must demonstrate expertise in all five key areas by passing a rigorous examination.

John chairs SCB's Real Estate Group and the Sustainable Development Group, which brings together expertise in Green development, construction, real estate, land use, municipal law, environmental regulation, and water law to advise our clients on designing, constructing, leasing and managing Green Buildings, including assisting clients in obtaining LEED® certification.

In addition to sustainable development, his practice includes all aspects of commercial real estate transactions, particularly those involving purchase and sale, Section 1031 tax-deferred exchanges, title insurance, leasing, financing, construction, development, and Indian land.

If you have any questions or need any assistance with foreclosure, contact John at (206) 682-3333, jsullivan@scblaw.com.

