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Putting Abandoned Properties Under the Spotlight

Ever since the Washington Supreme Court's decision in the *Jordan v. NationStar* case, loan servicers have been on edge about securing abandoned property. House Bill 2057 seeks to address this, and several other pressing issues.



Most of the bill's sections will become effective 90 days after the end of the legislative session, or on June 6, 2018. However, the new requirements applicable to Notices of Default ("NOD") will apply to NODs issued after June 30, 2018. The bill covers several subjects related to real estate loans, including residential and commercial loans, and amends the Revised Code of Washington.

The bill addresses statutory rights for lenders and servicers to take action over vacant and abandoned properties prior to foreclosure, clarifying the Washington Supreme Court's ruling in *Jordan v. NationStar Mortgage, LLC*. It provides clarification of the owner/holder/actual holder language consistent with the *Brown v. Washington State Department of Commerce* decision.

For notices issued after June 30, 2018, the bill adds required information on the first page of the Notice of Default and Notice of Trustee's Sale for commercial and residential loans. It adds statutory due diligence and notice requirements for nonjudicial foreclosure in the event a borrower is deceased. Specifically, the trustee must provide notice of the foreclosure to all known heirs and, if unknown, perform due diligence to locate the heirs.

The bill adds statutory requirements for interaction of lenders, servicers, and trustees with successors in interest to a deceased borrower. Similar to California's 2017 Widows and Orphans' bill and the new CFPB rules (effective April 2018), a servicer cannot proceed with a Notice of Default or Notice of Trustee's Sale, as prescribed in each statute, until it confirms whether the person qualifies as a successor-in-interest under the new statute.

A new pre-foreclosure notice in English and Spanish is required for judicial foreclosures of reverse residential mortgages.

One new option for non-judicial foreclosure trustees is to file a declaration of nonmonetary interest in response to civil litigation in which no wrongful conduct is alleged against the trustee (similar to California's Civil Code section 2924I). The bill also includes requirements that the beneficiary note declaration now be in the trustee's possession at the time the NOD is issued and provided to the borrower with the NOD. Finally, the bill includes an increase from \$250.00 to \$325.00 in the amount a beneficiary must deposit into the foreclosure fairness fund for each notice of trustee's sale on residential real property.

(Click [here](#) to read more of *DS News*' coverage of Washington House Bill 2057.)

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Michelle A. Mierzwa joined Wright, Finlay & Zak's Compliance Division in 2015, providing loan originators, lenders, servicers, trustees and others in the mortgage industry with state and federal compliance and regulatory counsel. Since 1998, Her accomplishments include creating the legal department for one of the largest non-judicial foreclosure trustees in the Western U.S.,

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the management and resolution of litigated matters through jury and bench trials and appellate practice, the coordination of compliance audits, and managing the California branch of a national law firm. Mierzwa served two three-year terms on the Board of Directors of the United Trustees Association (UTA) and is a member of the Legislative Committees of the California Mortgage Bankers Association and the UTA. She is licensed to practice in California and Washington.

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