

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Nov 13, 2015, 10:42 am  
BY RONALD R. CARPENTER  
CLERK

Supreme Court No. 92381-7

Court of Appeals No. 72065-1-1

E ORF  
RECEIVED BY E-MAIL

---

**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

---

WILLIAM AND SHALAWN LEAHY,  
Plaintiffs-Petitioners,

v.

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON,  
Defendant-Respondent.

---

**ANSWER OF RESPONDENT  
QUALITY LOAN SERVICE CORPORATION OF WASHINGTON  
TO PETITION FOR REVIEW**

---

Lance E. Olsen, WSBA No. 25130  
Kathy Shakibi, WSBA No. 49381  
**MCCARTHY & HOLTHUS, LLP**  
Attorneys for Respondent,  
Quality Loan Service Corporation  
of Washington  
108 1<sup>st</sup> Ave. S., Suite 300  
Seattle, WA 98104  
(206) 596-4843  
(206) 319-9100 ext. 2725

 ORIGINAL

## TABLE OF CONTENTS

I. Identity of the Answering Party .....	1
II. Citation to the Court of Appeals Decision .....	1
III. Issues Presented for Review .....	2
IV. Statement of the Case .....	2
V. Standard of Review .....	5
VI. Argument .....	5
A. <u>The Purpose of a Notice of Default in a Nonjudicial Foreclosure</u> .....	5
B. <u>The Decision of the Court of Appeals Does Not Conflict With Any Decision of the Supreme Court</u> .....	11
C. <u>The Decision of the Court of Appeals is Not in Conflict With Another Decision of the Court of Appeals</u> .....	19
D. <u>The Petition for Review Does Not Involve an Issue of Substantial Public Interest</u> .....	19
VII. Conclusion.....	20

## TABLE OF AUTHORITIES

### Cases

<i>Albice v. Premier Mortg. Servs. Of Wash., Inc.</i> , 174 Wn.2d 560 (2012) .....	11, 12, 13
<i>Brown v. Dep't of Commerce</i> , 2015 Wash. LEXIS 1191 .....	9
<i>Cox v. Helenius</i> , 103 Wn.2d 383 (1985) .....	11, 15, 16
<i>Deutsche Bank Nat'l Trust Co. v. Pietranico</i> , 928 N.Y.S. 2d 818 (N.Y. Supr. Ct. 2011).....	19
<i>Frizzell v. Murray</i> , 179 Wn.2d 301 (2013) .....	13, 14
<i>Koegel v. Pridental Mut.Sav. Bank</i> , 51 Wn. App. 655 (1996) .....	8
<i>Leahy v. Quality Loan Serv. Corp.</i> , 2015 Wash.app. LEXIS 2191 .....	1,2, 8, 9
<i>Lyons v. U.S. Bank NA</i> , 181 Wn2d 775 (2014) .....	11, 18
<i>Meyers Way Dev. Ltd. P'ship v. Univ. Sav. Bank</i> , 80 Wn.App. 655 (1996) .....	7
<i>Plein v. Lackey</i> , 149 Wn.2d 214 (2003) .....	11, 13
<i>Quality Loan Service Corporation of Washington</i> . No. 14-2-06236-2 SEA (2014).....	19
<i>Schroeder v. Excelsior Mgmt. Grp., LLC</i> , 177 Wn.2d 94 (2013) .....	11, 17, 18

<i>Trujillo v. Nw. Tr. Servs., Inc.</i> , 183 Wn.2d 820 .....	11, 18
<i>U.S. Bank Nat'l Ass'n v. Woods</i> , 2012 U.S. Dist. LEXIS 78676 (W.D. Wash. June 6, 2012) .....	7, 8
<i>Udall v. T.D. Escrow Servs., Inc.</i> , 159 Wn.2d 903 .....	11, 15, 16

**Statutes**

RCW 61.24 .....	3
RCW 61.24.030.....	7, 17, 18
RCW 61.24.030(7) .....	18
RCW 61.24.030 (8) .....	6
RCW 61.24.040 .....	10
RCW 61.24.040(1)(f) .....	11
RCW 61.24.040(1)(f)(IX) .....	10, 18
RCW 61.24.040 (6) .....	8
RCW 61.24.090(1) .....	7
RCW 61.24.130 .....	14
Title 12 USC § 2605(b) .....	10
Title 15 USC §1641(g) .....	10

**Rules**

R.A.P. 10.4(c) .....	6, 10
R.A.P. 13.4 (b) .....	5

## **I. IDENTITY OF THE ANSWERING PARTY**

Respondent, Quality Loan Service Corporation of Washington, (“Quality”), a defendant in the King County Superior Court Case No. 13-2-02307-5 SEA, and the Respondent in the Court of Appeals, Division One, Case No. 72065-1-I, hereby submits this answer to the Petition for Review of Petitioners, William Leahy and Shalawn Leahy (“Petition for Review”).

## **II. CITATION TO THE COURT OF APPEALS DECISION**

Petitioners, William Leahy and Shalawn Leahy (“Leahys”)<sup>1</sup> seek discretionary review of the Court of Appeals decision, filed on June 29, 2015 and ordered for publication on September 14, 2015, which affirmed the trial court’s granting of Quality’s Motion for Summary Judgment as to the Leahys’ First Amended Complaint alleging three claims for Violation of the Consumer Protection Act, Intentional Infliction of Emotional Distress, and Violation of the Washington Deed of Trust Act. (CP 363, *Leahy v. Quality Loan Serv. Corp.*, 2015 Wash.App. LEXIS 1363 \* 2.)

Quality respectfully requests that the Supreme Court decline to accept discretionary review of the Appellate Decision for the reasons set forth herein.

---

<sup>1</sup> For ease of the Court’s reference, Respondents use the same identity designation for Petitioners, which the Petitioners use in their Petition for Review, (“Leahys”).

### III. ISSUES PRESENTED FOR REVIEW

The Leahys present two issues for the Court's review stated verbatim as follows:

“(1) Whether, **under the factual circumstances of this case**<sup>2</sup>, Quality was authorized by the DTA to record a NOTS in the absence of the prior issuance of a NOD that met the requirements of RCW 61.24.030(8).

(2) Whether, without issuing a new NOD, Quality was authorized to record a NOTS on September 19, 2012 (“NOTS 3”).” (Petition for Review 8)

While the issues statement contains legal conclusions not reached by any lower court,<sup>3</sup> since the Leahys limit their two issues to the factual circumstances of this case, which are rather uncommon, Quality does not present any additional issues for the Court's review.

### IV. STATEMENT OF THE CASE

The Petition for Review arises from a post-foreclosure challenge to the nonjudicial foreclosure of non-owner occupied property. (CP 363.) The Leahys obtained a \$320,000 loan from Washington Mutual Bank, FA in 2006, and executed a Promissory Note and Deed of Trust securing the loan against residential property located in Seattle, Washington. (CP 538.)

---

<sup>2</sup> Emphasis added.

<sup>3</sup> The two issues on which the lower courts ruled are more accurately described in the Appellate Opinion, *Leahy* \*1.)

In 2008, Washington Mutual Bank was placed into receivership by the Federal Deposit Insurance Company (“FDIC”). Thereafter, the FDIC, as receiver, sold certain assets of Washington Mutual, including its loan portfolio, to JP Morgan Chase Bank, N.A. (“Chase”) under a Purchase and Assumption Agreement (“Agreement”) between the FDIC and Chase. (See CP 565.)<sup>4</sup>

The Leahys admittedly fell into default on March 1, 2009. (CP 1, 300, Petition for Review 8.) Thus, on or around April 9, 2010, Quality, acting as agent for the beneficiary, issued a Notice of Default. (CP 389 π 4, 395, Petition for Review 9.) Accompanying the Notice of Default was a document entitled “Beneficiary Declaration Pursuant to Chapter 61.24 RCW (SB 5810) and Foreclosure Loss Mitigation Form.” (CP 399-400.) Shortly thereafter, Quality obtained a Beneficiary Declaration attesting that the Beneficiary was the actual holder of the note. (CP 390 π 9, 415.) An assignment of the Deed of Trust was also recorded on May 17, 2010 in the King County Recorder’s office which, like the Beneficiary Declaration,

---

<sup>4</sup> The lower court took judicial notice of the FDIC/Chase Purchase and Assumption Agreement. (CP 615-616, 762); see *Allen v. United Fin. Mortg. Corp.*, 660 F. Supp. 2d 1089, 1093-94 (N.D. Cal. 2009) (The Purchase and Assumption Agreement is a matter of public record and subject to judicial notice when deciding a Motion to Dismiss).

identified the beneficiary of the Deed of Trust as Bank of America, National Association as successor by merger to LaSalle Bank NA as trustee for WaMu Mortgage Pass-Through Certificates Series 2006-AR15 Trust. (CP 713.)

After the Notice of Default was issued, but before the issuance of a notice of sale, the Beneficiary appointed Quality as the Trustee through an Appointment of Successor Trustee, which was recorded on July 13, 2010. (CP 390  $\pi$  11, 417-418.) Quality issued a Notice of Trustee's Sale in July 2010, which was subsequently discontinued. (CP 390  $\pi$  12, 420.) Another Notice of Sale was recorded on July 11, 2012. (CP 390  $\pi$  14, 424.) The sale noticed by the July 2012 Notice of Sale was also discontinued. (CP 391  $\pi$  15, 429.)

Thereafter, Quality issued a third Notice of Trustee's Sale in September 2012, which set a sale date for January 18, 2013. (CP 391  $\pi$  16.) The Notice of Sale was mailed to the Leahys, posted, and published in accordance with all requirements of the DTA. (See CP 391  $\pi$  17-20, 437-488.) On the day before the scheduled sale, the Leahys filed suit against Quality seeking to enjoin the foreclosure. The Leahys also sought a temporary restraining order from the King County Superior Court, but the court denied the requested injunction because the Leahys

failed to follow the correct process. (CP 502) Accordingly, the sale went forward as scheduled on January 18, 2013, and the property sold to a third party purchaser. (CP 392 π 24.)

## **V. STANDARD OF REVIEW**

Per Rules of Appellate Procedure (“RAP”), Rule 13.4 (b), a petition for review will be accepted by the Supreme Court only:

- “(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.”

The Petition for Review rests on grounds (1) and (4) above and does not implicate grounds (2) and (3). As set forth below “under the factual circumstances of this case,” no ground exists for accepting review.

## **VI. ARGUMENT**

### **A. The Purpose of a Notice of Default in a Nonjudicial Foreclosure.**

The essence of the Leahy’s contention is that by issuing a second Notice of Trustee’s Sale on July 12, 2012, and a third Notice of Trustee’s Sale on September 19, 2012, without also issuing a new Notice of Default,

Quality violated the provisions of the Deeds of Trust Act (“DTA”).  
(Petition for Review 7.) This contention is not supported by the DTA.

By way of background a notice of default is sent per RCW 61.24.030 (8), which requires that at least thirty days before a notice of sale is recorded, a written notice of default be transmitted to the borrower, containing certain elements enumerated in subsections (a) through (k). Per RAP Rule 10.4(c), RCW 61.24.030 (8) is included in the Appendix enclosed herein. (A-1 through A-4.)

The Leahy Notice of Default (CP 389 π 4, 394 Ex A.),<sup>5</sup> on its face contains each and every statutorily required element listed in RCW 61.24.030(8) subsections “a’ through “k,” thus strictly complying with the statutory requirements. Notably, items a, b, c, g, h, i, j, and k listed in RCW 61.24.030(8) are constant elements not subject to change. Items d, e, and f, which comprise the reinstatement amount and its breakdown, on the other hand, are subject to change over time.

The reinstatement figures listed in a notice of default provide a snapshot of the arrears at a point in time. For that reason a notice of default contains language to contact the trustee before tendering a

---

<sup>5</sup> The Notice of Default was mailed along with accompanying documents (CP 394 Ex A.)

reinstatement in order to be advised of the exact amount required for reinstatement (CP 397.)

A borrower's right to cure a monetary default is an ongoing right that continues until 11 days prior to a sale, per RCW 61.24.090(1). At any time until 11 days prior to a sale, a borrower may request reinstatement figures, reinstate the loan and discontinue the sale. The DTA in its plain and express language in section 61.24.030 only requires that a notice of default be issued once and does not set any expiration or otherwise becoming stale date for a notice of default.

Additionally, no Washington court has held that a notice of default need be issued more than once. To the contrary, courts have recognized that once a notice of default has been issued and the default remains uncured, a trustee need only issue a new notice of trustee's sale to resume the foreclosure process following the discontinuance of an earlier sale. See *Meyers Way Dev. Ltd. P'ship v. Univ. Sav. Bank*, 80 Wn.App. 655, 671 (1996) (trustee's issuance of new notice of sale following dismissal of the grantor's bankruptcy petition "was not cause for renewing the process from beginning.")

In a district court case with similar facts, *U.S. Bank Nat'l Ass'n v. Woods*, 2012 U.S Dist. Lexis 78676 (W.D. Wash. June 6, 2012), the

court rejected the borrower's argument that the notice of default expired when multiple notices of sale were issued. There, the court observed that "to the extent the borrowers are arguing that the notice of default somehow expired, they fail to cite case or statutory authority on which they rely in making the argument and the Court is unaware of any."

*U.S. Bank* at \*18.

By contrast, for a notice of sale, the DTA's plain language sets an expiration date in RCW 61.24.040(6) by stating that a sale cannot be continued for a period exceeding 120 days, thereby necessarily requiring that a new notice of sale issue, if a sale is not completed within 120 days of the scheduled date in the notice of sale.

As the *Leahy* Appellate Court keenly observed, in the context of a nonjudicial sale, a notice of default and a notice of sale serve different purposes:

"In light of the function served by the notice of default as compared to the notice of trustee's sale, it would not make sense to interpret the act as requiring reissuance of the notice of default. "The purpose of the notice of default is to notify the debtor of the amount he owes and that he is in default." Koegel v. Prudential Mut. Sav. Bank, 51 Wn.App. 108, 112, 752 P.2d 385, review denied, 111 Wn.2d 1004 (1988). The original notice serves that purpose. The notice of trustee's sale, by contrast, must be recorded to give notice to the world that a foreclosure sale is scheduled for a specific date. The sale can be continued, but not beyond the 120-day period. Once the 120-day period expires, a new trustee's sale must be scheduled and a new notice of sale must be issued

and recorded to ensure that potential buyers are informed of the new sale date.” (*Leahy* \*6,7.)

As the Supreme Court recently confirmed and reiterated in *Brown v.*

*Dep’t of Commerce*, 2015 Wash. LEXIS 1191 \*3:

“We now recognize the DTA promotes three objectives: “First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles.” *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn2d 83, 94, 285 P.3d 34 (2012) (quoting *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985)).

For nonjudicial foreclosures in the state of Washington, it is not custom and practice to issue more than one notice of default, when a sale does not complete within 120 days, thereby necessitating issuance of additional notices of sale. If a trustee were to deviate from the plain language of the DTA, which requires a notice of default be issued once, without assigning any expiration date, such a trustee would face a plethora of litigation for having strayed from the letter and spirit of the DTA, and for upsurging the cost of a nonjudicial foreclosure, needlessly. Reissuing a notice of default will escalate the cost of a nonjudicial foreclosure, due to the mailing, personal service or posting requirements, thus defeating a fundamental objective of the DTA, which is for nonjudicial foreclosures to remain efficient and inexpensive.

The Petition for Review appears to blur a notice of default with other types of notices or a reinstatement quote. This is evident in the following argument:

“What if ownership of the loan changes hands over the years? Or the owner’s address changes? Or the servicer changes? Or the servicer’s address or phone number changes? None of these contingencies is unusual.” (Petition for Review 21)

If the ownership of the loan changes, notice is sent to borrowers per Title 15 USC section 1641(g). If the servicer of the loan changes, notice is sent to borrowers per Title 12 USC section 2605 (b). And, if a borrower needs a reinstatement or payoff quote, they can request and receive one per RCW 61.24.040(1)(f)(IX). In fact, RCW 61.24.040(1)(f)(IX) mandates that language regarding reinstating a loan and obtaining reinstatement figures be included in a “notice of trustee’s sale,” of which the Leahys received three. Per RAP Rule 10.4(c), RCW 61.24.040 is included in the Appendix enclosed herein.

Given the function of a notice of default in the context of a nonjudicial foreclosure, and the DTA’s requirement that it only be issued once, with no assigned expiration date, no Washington appellate or Supreme Court opinion has held that a notice of default need be issued more than once. Thus, there is no conflict between the *Leahy* Appellate

Decision and any other Washington appellate or Supreme Court decision, as further discussed below.

B. The Decision of the Court of Appeals Does Not Conflict With Any Decision of the Supreme Court.

The Petition for Review cites a total of seven Supreme Court cases: *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560 (2012), *Cox v. Helenius*, 103 Wn.2d 383 (1985), *Lyons v. U.S. Bank NA*, 181 Wn.2d 775 (2014), *Plein v. Lackey*, 149 Wn.2d 214 (2003), *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94 (2013), *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820 and *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, none of which support the Leahys' position or conflict with the *Leahy* Appellate Decision, as analyzed below.

In *Albice*, the borrowers entered into a forbearance agreement to cure a default. Each of the forbearance payments were accepted except for the last, and the trustee sale completed more than 120 days after the scheduled sale date listed in the notice of sale. The borrowers reasonably believed that their last payment would be accepted, and lacked ground to restrain the sale, therefore, did not waive their challenge by failing to pursue presale remedies under RCW 61.24.040(1)(f).

*Albice* is distinguishable from the instant case on a few points. First, the sale in *Albice* was in violation of the DTA, for having been continued for a period more than 120 days. By contrast, three notices of sale were issued in the Leahys case, and sale completed on the date listed in the third notice of sale (CP 390 ππ12, 14, 391 π 16, 392 π 24, 420, 424.) Next, the borrowers in *Albice* were not aware of ground to enjoin the sale preforeclosure, thereby did not waive their right to challenge a sale afterward. In contrast, the Leahys knew they were going to challenge the sale and threatened to do so (CP 392 ππ 21-22.)

Waiver is a fundamental and incurable flaw that carries throughout the Leahys contentions. The Leahys allege that the Notice of Default failed to contain all the information required by RCW 61.24.030(8), including the address for the beneficiary, the telephone number of the loan servicer, the exact amount needed to reinstate the loan, and the correct identification of Chase as successor to Washington Mutual Bank (Petition for Review 9, 10.) Assuming these allegations amount to an alleged material violation of the DTA, this claim fails at the outset because the Leahys have waived their right to bring any post-sale challenge by failing to avail themselves of the presale remedies outlined in RCW 61.24.040(1)(f)(IX).

Waiver is an equitable principle that can apply to defeat a party's legal rights where the facts support an argument that the party relinquished his rights by delaying in asserting or failing to assert an otherwise available adequate remedy. *Albice* at 569. Courts, including the Washington Supreme Court, have found waiver in a foreclosure setting where facts support is application. *Frizzell v. Murray*, 179 Wn.2d 301, 307 (2013) (finding that plaintiff waived her right to contest the nonjudicial foreclosure by failing to restrain the sale); *Plein* at 229 (finding that plaintiff waived objections to the foreclosure proceeding by failing to obtain a preliminary injunction).

Waiver of a post-sale challenge occurs where a party (1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to the foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale. *Plein* at 227. The Washington Supreme Court has stated that adequate remedies to prevent wrongful foreclosure exist in the presale remedies allowed by the DTA, and thus it has found waiver in these circumstances furthers the goals of providing an efficient and inexpensive foreclosure process and promoting the stability of land titles. *Id* at 228.

One such case is *Frizzell* decided in December 2013. Similar to the borrower in *Frizzell*, the Leahys received notice of their right to enjoin the sale and they identify three separate Notice of Sale that they received. (Petition for Review 10, 11, 12.) Each of the three Notices of Sale, which mirror the language recommended in the DTA, contained within them the following paragraph:

“Anyone having any objections to this 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.” (CP 421, 425, 433.)

Thus, the Leahys were aware of their right to enjoin the January 18, 2013 sale no later than September 19, 2012, some four months prior to the scheduled sale, and potentially as early as July 2010. Second, the Leahys had knowledge of their asserted defenses prior to the sale. The Leahys acknowledged receiving the April 2010 Notice of Default, and therefore were in possession of the facts necessary to determine whether it contained the statutorily required information (Petition for Review 9.) Finally, the Leahys failed to timely bring an action to obtain a court order enjoining the sale. The Leahys did seek a court order enjoining the sale and their request was denied. (CP 392 ππ 22-23, 502.)

The Leahys should have been aware of their claims many months-even years-before the January 18, 2013 sale day. In fact, the Leahys contacted Quality with threats to file an action on December 27, 2012 and January 11, 2013. (CP 392 ππ 21-22.) Instead of seeking a restraining order at that time, the Leahys waited until the day before the sale, in violation of statute, to seek an injunction. (CP 502.) Their requested injunction was denied, and sale proceeded.

“Under the factual circumstances of this case,” it is indisputable that the Leahys received notice of their right to enjoin the sale, had actual or constructive notices of the defenses they offer now well before the sale, and failed to act. Accordingly, the Leahys’ delay prevents them from now asserting a claim based on the content of the Notice of Default.

The next Supreme Court opinions cited by the Leahys are *Udall* and *Cox*. (Petition for Review 13.) In the *Udall* case an error in the opening bid amount caused the property to be sold for approximately \$100,000 less than the true opening bid. There, the trustee did not issue a trustee’s deed upon sale, and the Supreme Court held the trustee could not withhold delivery unless the sale was void due to a procedural irregularity, and insufficiency of price was not such an irregularity.

The *Udall* case has no similarity with the instant case and is not on point. It appears the Leahys have cited the case in support of the premise that a procedural irregularity invalidates the sale. However, the *Udall* fact pattern is inapposite and its opinion upholds the sale.

In *Cox*, the plaintiffs financed a swimming pool with a promissory note and deed of trust. The pool malfunctioned causing sewer backup and the plaintiffs sued for damages. While the lawsuit was pending, a foreclosure sale completed and the property went to a third party purchaser for a price significantly lower than the appraised value. There the Court conceded that the plaintiffs did not take appropriate steps to halt the sale; nevertheless, the Court held the sale was void because the trustee should have postponed the sale pending resolution of the underlying lawsuit.

Two factors distinguish *Cox* and make it inapplicable. First, *Cox* is a 1985 opinion, issued at a time when a trustee by statute was a fiduciary. The opinion in *Cox* has been superseded by the 2008 amendment to the DTA, adding that a trustee shall have no fiduciary obligation. Secondly, the trustee of the *Cox* deed of trust was also the attorney for the corporation that installed the swimming pool and was the beneficiary of the deed of trust. That fact created a conflict of interest for the *Cox* trustee/attorney.

Cox's fact pattern is inapplicable here, and its holding has been superseded by the 2008 DTA amendment.

The Leahys next cite *Schroeder* in support of the premise that "...a violation of any one of the eight subsections of RCW 61.24.030 would result in invalidation of the sale." (Petition for Review 14). In *Schroeder*, the nature of the borrower's property was agricultural land, and the lender and borrower had entered into a contract to waive the statutory requirement that agricultural land be foreclosed judicially, and the trustee had proceeded with a nonjudicial foreclosure.<sup>6</sup> The *Schroeder* opinion held that the parties to a deed of trust may not contract to waive the statutory requirement that agricultural land be foreclosed judicially. (*Schroeder* 98.) In *Schroeder*, a trustee's nonjudicial foreclosure of agricultural land would have been unauthorized. Unlike *Schroeder*, the property in the instant action is residential, non-owner occupied and subject to nonjudicial foreclosure.

The Leahys additionally appear to cite to *Schroeder* in support of the contention that they could not have waived their statutory right to challenge the sale. The Leahys argue that Quality sandbagged them for three days before informing them that sale would not be continued or

---

<sup>6</sup> Notably in *Schroeder* the trustee that nonjudicially foreclosed on agricultural land was also the attorney for the lender. *Schroeder* at 98.

cancelled. (Petition for Review 14, footnote 12). There has been no sandbagging here. The Notice of Default is dated April 9, 2010 (CP 389 π 4, 395.), and three Notices of Sale were issued in July 2010 (CP 390 π 12, 420.), July 2012 (CP 391 π 15, 429.) and September 2012. (CP 391 π 16.) Each Notice of Sale advised the Leahys that they could exercise their right to enjoin the sale. Since the Leahys base their contention on the Notice of Default issued in 2010, they had a matter of months, if not years, to enjoin the sale. Unlike the *Schroeder* case, no one asked the Leahys to forgo any statutory right. The Leahys failed to exercise their statutory right.

The Leahys additionally cite to *Lyons* and *Trujillo* in a short paragraph stating that both cases “...revolved around the trustees’ violation of yet another subsection of RCW 61.24.030—RCW 61.24.030(7).” (Petition for Review 15). *Lyons* and *Trujillo* were companion cases in which a trustee sale had not completed, thus, waiver of rights under RCW 61.24.040(1)(f)(IX) were not at issue. *Lyons* at 781, 782; *Trujillo* at 834. At issue in *Lyons* and *Trujillo* were the beneficiary declarations and whether the trustee could rely on them. The Leahys make no allegation regarding the beneficiary declaration in the instant action. *Lyons* and *Trujillo* do not address a waiver under RCW 61.24.040(1)(f)(IX) and do not involve a completed sale. Similar to all the other Supreme Court cases

cited in the Petition for Review, *Lyons* and *Trujillo* are not in conflict with the *Leahy* Appellate Decision.

C. The Decision of the Court of Appeals is not in Conflict With Another Decision of the Court of Appeals.

The Petition for Review does not cite to any Washington appellate cases. In addition to the seven Supreme Court cases discussed above, the Petition references *Deutsche Bank Nat'l Trust Co. v. Pietranico*, 928 N.Y.S. 2d 818 (N.Y. Supr. Ct. 2011), which is a case out of New York. Additionally there is reference to *State v. Quality Loan Service Corporation of Washington*, No. 14-2-06236-2 SEA (2014), which is not an appellate case. The Leahys cite this case to argue that Quality has entered into an agreement with the Washington Attorney General regarding sales that occurred between January 1, 2014 and February 27, 2014. (Petition for Review 16) The Leahy sale completed on January 18, 2013 ((CP 392 π 24.) and does not fall within the category of sales covered under the Attorney General Agreement.

D. The Petition for Review Does Not Involve an Issue of Substantial Public Interest.

The Petition for Review attempts to show a public interest by stating:

“If, as the Court of Appeals ruled, the NOD need never be reissued, there will be thousands of cases, and no doubt have already been thousands of cases, in which the information required to be provided by RCW 61.24.030(8) is not provided. The Washington Legislature clearly did not intend such result.” (Petition for Review at 21, 22)

The Leahys have limited their two issues presented for review to the “...factual circumstances of this case...” (Petition for Review 8), which involve failure to timely exercise a statutory right regarding a non-owner occupied property that has been purchased by a third party. The Petition for Review fails to show any other case which has the “factual circumstances of this case.” Since the Petition is limited to the factual pattern of this case, which are rather uncommon, it does not present an issue of substantial public interest.

## VII. CONCLUSION

For the reasons set forth herein, Quality respectfully requests that the Court decline the Petition for Review.

Dated this 12th day of November 2015.

**McCarthy & Holthus, LLP**

By: \_\_\_\_\_

  
Lance E. Olsen, WSBA No. 25130  
Kathy Shakibi, WSBA No. 49381  
Attorneys for Respondent,  
Quality Loan Service Corporation of  
Washington

**Declaration of Service**

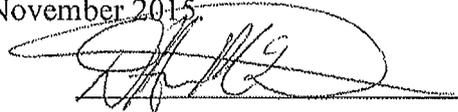
The undersigned makes the following declaration:

1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action; and I am competent to be a witness herein.
2. On November 13, 2015, I caused a copy of the **Answer of Respondent Quality Loan Service Corporation of Washington To Petition for Review** to be served on the following in the manner noted below:

William Leahy 2380 226 <sup>th</sup> Street SW Brier, WA 98036  Petitioner	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Shalawn Leahy 2380 226 <sup>th</sup> Street SW Brier, WA 98036  Petitioner	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed this 13<sup>th</sup> day of November 2015.



Anderson McLaurin, Legal Assistant

---

# APPENDIX

**RCW 61.24.030****Requisites to trustee's sale.**

It shall be requisite to a trustee's sale:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;

(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 is now pending 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; PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;

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

(6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

(c) This subsection (7) does not apply to association beneficiaries subject to chapter 64.32,

64.34, or 64.38 RCW;

(8) 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 borrower and grantor at their last known addresses 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 the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

- (a) A description of the property which is then subject to the deed of trust;
- (b) A statement identifying each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;
- (c) A statement that the beneficiary has declared the borrower or grantor 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 borrower, grantor, or any guarantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;
- (f) A statement showing the total of (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) A statement that failure to cure the 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 (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future, or no less than one hundred fifty days in the future if the borrower received a letter under RCW 61.24.031;
- (h) A statement 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) A statement that the effect of the sale of the grantor's property by the trustee will be to deprive the grantor of all their interest in the property described in (a) of this subsection;
- (j) A statement that the borrower, grantor, and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground;
- (k) In the event the property secured by the deed of trust is owner-occupied residential real

property, a statement, prominently set out at the beginning of the notice, which shall state as follows:

**"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR  
LOSING YOUR HOME.**

You may be eligible for mediation in front of a neutral third party to help save your home.

**CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you might benefit. Mediation **MUST** be requested between the time you receive the Notice of Default and no later than twenty days after the Notice of Trustee Sale is recorded.

**DO NOT DELAY.** If you do nothing, a notice of sale may be issued as soon as 30 days from the date of this notice of default. The notice of sale will provide a minimum of 120 days' notice of the date of the actual foreclosure sale.

**BE CAREFUL** of people who claim they can help you. There are many individuals and businesses that prey upon borrowers in distress.

**REFER TO THE CONTACTS BELOW** for sources of assistance.

**SEEKING ASSISTANCE**

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

Telephone: . . . . . Web site: . . . . .

The United States Department of Housing and Urban Development

Telephone: . . . . . Web site: . . . . .

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

Telephone: . . . . . Web site: . . . . ."

The beneficiary or trustee shall obtain the toll-free numbers and web site information from the department for inclusion in the notice; and

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust; and

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, RCW 61.24.163.

[2012 c 185 § 9; 2011 c 58 § 4; 2009 c 292 § 8. Prior: 2008 c 153 § 2; 2008 c 108 § 22; 1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

**Notes:**

**Findings -- Intent -- Short title -- 2011 c 58:** See notes following RCW 61.24.005.

**Findings -- 2008 c 108:** See RCW 19.144.005.

**Application -- 1985 c 193:** See note following RCW 61.24.020.

**RCW 61.24.040****Foreclosure and sale — Notice of sale.**

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

(1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and 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 of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The borrower and grantor;

(ii) The beneficiary of any deed of trust or mortgagee of any 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;

(iii) 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;

(iv) 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;

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

(vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in (f) of this subsection to be transmitted

by both first-class and either certified or registered mail, return receipt requested, to the plaintiff or 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 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;

(d) Cause a copy of the notice of sale described in (f) of this subsection to be transmitted by both first-class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in (f) of this subsection to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of 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 . . . . ., . . . ., 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:

[If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated . . . . ., . . . ., recorded . . . . ., . . . ., 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 is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

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 or other instrument secured from the . . . . day of . . . . ., . . ., 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 the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the . . . . day of . . . . . The default(s) referred to in paragraph III must be cured by the . . . . day of . . . . . (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 . . . . . (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 any time after the . . . . day of . . . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, 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 Borrower and Grantor at the following addresses:

.....  
 .....  
 .....

by both first-class and certified mail on the . . . . day of . . . . ., . . . ., proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on the . . . . day of . . . . ., . . . ., 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 possession of proof of such service or posting.

VII.

The Trustee whose name and address 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 the Grantor of all their interest in the above-described property.

IX.

.....

..... Trustee

,

..... |

.....

..... |

..... Address

..... >

..... |

.....

..... |

..... } Phone

.....

[Acknowledgment]

(g) If the borrower received a letter under RCW 61.24.031, the notice specified in subsection (1)(f) of this section shall also include the following additional language:

**"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.**

You have only 20 DAYS from the recording date on this notice to pursue mediation.

**DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

**SEEKING ASSISTANCE**

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

Telephone: . . . . . Web site: . . . . .

The United States Department of Housing and Urban Development

Telephone: . . . . . Web site: . . . . .

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

Telephone: . . . . . Web site: . . . . ."

The beneficiary or trustee shall obtain the toll-free numbers and web site information from the department for inclusion in the notice;

(2) In addition to providing the borrower and grantor the notice of sale described in subsection (1)(f) of this section, the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

**NOTICE OF FORECLOSURE**

Pursuant to the Revised Code of Washington,

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

To cure the default(s), you must bring 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 . . . . ., . . . [11 days before the sale date]. To date, these arrears 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 . . . . ., . . . . , in the amount of \$. . . . /mo.:	\$. . . .	\$. . . .
Late charges in the total amount of:	\$. . . .	\$. . . .
Attorneys' fees:	\$. . . .	Estimated Amounts \$. . . .

Trustee's fee:	\$ . . . .	\$ . . . .
Trustee's expenses: (Itemization)		
Title report	\$ . . . .	\$ . . . .
Recording fees	\$ . . . .	\$ . . . .
Service/Posting		
of Notices	\$ . . . .	\$ . . . .
Postage/Copying		
expense	\$ . . . .	\$ . . . .
Publication	\$ . . . .	\$ . . . .
Telephone		\$ . . . .
charges	\$ . . . .	
Inspection fees	\$ . . . .	\$ . . . .
.....	\$ . . . .	\$ . . . .
.....	\$ . . . .	\$ . . . .
TOTALS	\$ . . . .	\$ . . . .

To pay off the entire obligation secured by your Deed of Trust as of the . . . . . day of . . . . . you must pay a total of \$ . . . . . in principal, \$ . . . . . in interest, plus other costs and advances estimated to date in the amount of \$ . . . . . From and after the date of this notice you must submit a written request to the Trustee to obtain the total amount to pay off the entire obligation secured by your Deed of Trust as of the payoff date.

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 Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
---------	--

..... .....	..... ..... ..... .....
----------------	----------------------------------

.....  
.....  
.....  
.....

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . . day of . . . . ., . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate or to pay off the entire indebtedness 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 or the payoff amount so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to: . . . . ., whose address is . . . . ., telephone ( ) . . . . . AFTER THE . . . . DAY OF . . . . ., . . . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$ . . . . .) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby 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. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME: .....  
ADDRESS: .....  
.....

TELEPHONE .....  
NUMBER:

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold. 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 of sale described in subsection (1)(f) of this section (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth 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 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 has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in subsection (1)(b)(i) and (ii) of this section to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in subsection (1)(b), (c), (d), and (e) of this section and publishing a copy of such notice once in the newspaper(s) described in subsection (3) of this section, 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, except that these recitals shall not affect the lien or interest of any person entitled to notice under subsection (1)

of this section, if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(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;

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

#### X. NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060;

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties.

[2012 c 185 § 10; 2009 c 292 § 9; 2008 c 153 § 3; 1998 c 295 § 5; 1989 c 361 § 1; 1987 c 352 § 3; 1985 c 193 § 4; 1981 c 161 § 3; 1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

**Notes:**

**Application -- 1985 c 193:** See note following RCW 61.24.020.

## OFFICE RECEPTIONIST, CLERK

---

**To:** Kathy Shakibi  
**Subject:** RE: William and Shalawn Leahy v. Quality Loan Service Coporation of Washington- Supreme Court Case No. 92381-7

Received 11-13-15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Kathy Shakibi [mailto:kshakibi@McCarthyHolthus.com]  
**Sent:** Friday, November 13, 2015 10:39 AM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Anderson McLaurin <amclaurin@McCarthyHolthus.com>  
**Subject:** William and Shalawn Leahy v. Quality Loan Service Coporation of Washington- Supreme Court Case No. 92381-7

William and Shalawn Leahy v. Quality Loan Service Corporation of Washington.

Supreme Court Case No. 92381-7  
Court of Appeals Case No. 72065-1-I  
Filed by: Kathy Shakibi  
WSBA # 49381  
206-319-9100 ext. 2725  
[kshakibi@mccarthyholthus.com](mailto:kshakibi@mccarthyholthus.com)

Please file the enclosed **Answer of Respondent Quality Loan Service Corporation of Washington to the Petition for Review**.

Please contact me with any questions or concerns at [kshakibi@mccarthyholthus.com](mailto:kshakibi@mccarthyholthus.com) or 206-319-9100 ext. 2725.

Thank you.

**Kathy Shakibi** | Attorney - Pacific Northwest | Member State Bars of CA, WA  
McCarthy ♦ Holthus LLP

m. 108 1<sup>st</sup> Ave. S., Suite 300, Seattle, WA 98104  
p. 206-319-9100 ext. x2725  
e. [kshakibi@mccarthyholthus.com](mailto:kshakibi@mccarthyholthus.com)

Arizona ♦ California ♦ Colorado ♦ Nevada ♦ New Mexico ♦ Oregon ♦ Texas ♦ Washington

CONFIDENTIALITY NOTICE: The information contained herein may be privileged and protected by the attorney/client and/or other privilege. It is confidential in nature and intended for use by the intended addressee only. If you are not the intended recipient, you are hereby expressly prohibited from dissemination distribution, copy or any use whatsoever of this transmission and its contents. If you receive this transmission in error, please reply or call the sender and arrangements will be made to retrieve the originals from you at no charge.

Federal law requires us to advise you that communication with our office could be interpreted as an attempt to collect a debt and that any information obtained will be used for that purpose.