

Real Estate Finance: Washington

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A Q&A guide to real estate finance law for borrowers and lenders in Washington. This Q&A addresses state laws relating to security instruments, usury laws, limitations on personal liability, recording requirements and taxes, priority issues, mechanics' liens, landlord liens, title insurance matters, and foreclosure procedures primarily impacting lending transactions in a commercial context. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Real Estate Finance: State Q&A Tool](#)).

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Instrument and Execution

1. When real estate is part of the lender's collateral, is a mortgage commonly used in your jurisdiction or is a trustee appointed to hold a deed of trust (or a deed to secure debt) as security for the loan? If a deed of trust is more commonly used, who is typically designated as the trustee?

Although **mortgages** and real estate contracts are permitted, the **deed of trust** is the preferred form of real property security instrument in Washington. Mortgages are commonly used for agricultural property (because a deed of trust must recite that the property is not used principally for agricultural purposes). Otherwise, deeds of trust are used almost universally.

The **trustee** under a deed of trust is typically the title insurance company that insures the deed of trust. Others permitted to act as trustee include:

- A domestic corporation or domestic limited liability, of which at least one officer is a Washington resident.

- An attorney who is an active member of the Washington state bar association at the time the document names the attorney as trustee.
- A **professional corporation**, professional **limited liability company**, or **general partnership** (including **limited liability partnerships**), all of whose shareholders, members, or partners are either:
 - licensed attorneys;
 - entities owned completely by licensed attorneys; or
 - a domestic corporation owned by any of these entities.
- Any agency or instrumentality of the US government.
- Any national bank, savings bank, or savings and loan association chartered under the laws of the US.

(RCW 61.24.010(1).)

When a non-judicial **foreclosure** is required, the beneficiary almost always appoints a substitute trustee to conduct the foreclosure (see [Question 14](#)).

The deed of trust is the preferred form of security instrument because the foreclosure of a mortgage requires a judicial proceeding, while the foreclosure of a deed of trust and the forfeiture of a buyer's interest under a real estate contract generally do not. However, the beneficiary of a deed of trust can elect to foreclose it judicially as a mortgage.

2. Describe any laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

Non-Judicial Foreclosure

In Washington, **deficiency judgments** against the borrower and guarantor are more widely available in a judicial foreclosure. In a non-judicial foreclosure, with very limited exceptions, a deficiency judgment is not available against the borrower. A deficiency judgment is available, with some limitations, against guarantors after a non-judicial foreclosure.

General Rule

Washington's **anti-deficiency law** for non-judicial foreclosure of deeds of trust provides, with certain limited exceptions, that a deficiency judgment cannot be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a non-judicial trustee's sale under that deed of trust ([RCW 61.24.100\(1\)](#)).

However, a non-judicial foreclosure generally does not preclude the lender from realizing on other **collateral** for the same obligation. If an obligation is secured by other collateral in addition to the deed of trust, the lender must take care not to bid the entire amount of the debt at the trustee's sale that will result in full satisfaction of the debt and loss of all other collateral on which the lender has not yet realized. As long as the secured debt is not satisfied in full by the trustee's sale, the lender can foreclose other deeds of trust or **security interests** in **personal property** that secure the debt, but the debtor will have no personal liability for any deficiency that ultimately remains.

Exceptions for Borrowers or Grantors

If timely notice is given, a borrower or grantor can be liable for a deficiency judgment for:

- Any decrease in the fair value of the property caused by waste committed by the borrower or grantor after the deed of trust is granted.
- The wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor that are otherwise owed to the beneficiary.

(RCW 61.24.100(3)(a)(i).)

This exception does not apply if:

- The loan is not a commercial loan (RCW 61.24.100(6); see *Washington Federal v. Harvey*, 340 P.3d 846, 848 (Wash. 2015)).
- The property is the borrower's principal **residence** (RCW 61.24.100(3)(a)(ii)).
- The lender is not the buyer of the property at the foreclosure sale.

This law does not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor (RCW 61.24.100(11)).

Exception for Guarantors

The lender can get a deficiency judgment against the guarantor of a commercial loan after a non-judicial foreclosure subject to the following limitations:

- **Fair value limitation.** The guarantor has the right to have the court or other adjudicator determine the fair value of the property (and of any other previously sold collateral securing the same debt) and to have the deficiency calculated on the basis of the greater of that fair value or the amount bid at the trustee's sale (RCW 61.24.100(5)).
- **Secured guaranties.** A deficiency judgment is not available against a guarantor that is the grantor of a deed of trust to secure the guaranty after foreclosure of that deed of trust, except to the extent of any waste or wrongful retention of funds (see [Exceptions for Borrowers or Grantors](#)).

- **Not secured by deed of trust.** Most lenders include language in the deed of trust to expressly exclude guaranties and environmental **indemnities** from the secured collateral under a deed of trust. As long as the obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust, then a trustee's sale for a commercial loan does not preclude an action to collect on such obligations ([RCW 61.24.100\(10\)](#)).
- **Homestead right for guaranties secured by principal residence.** If the guaranty is secured by a deed of trust on the guarantor's principal residence, the guarantor is entitled to be paid an amount equal to the homestead exemption (currently \$125,000) from the bid at the foreclosure sale ([RCW 6.13.030](#) and [61.24.100\(6\)](#)). The statute does not specify how this provision would apply in the case of a **credit bid** by a foreclosing creditor, and this has not been determined by case law.
- **Procedural requirements.** The guarantor must be given certain notices during the foreclosure and the action for a deficiency must be brought within one year after the trustee's sale ([RCW 61.24.100\(3\), \(4\)](#)).

Judicial Foreclosure

The principal restriction on deficiency judgments in judicial foreclosures of deeds of trust or mortgages is the upset price provision of the mortgage statute. The upset price provision provides the court the power to set the amount of any deficiency judgment at the difference between the amount of the debt and the higher of the winning bid at the foreclosure sale or the fair market value of the property. ([RCW 61.12.060](#).)

3. Are there restrictions on interest rates charged for loans secured by real property?

Washington's **usury** law applies only to consumer transactions, which are transactions primarily for personal, family, or household purposes ([RCW 19.52.080](#)). The usury law includes exceptions to certain specified types of consumer transactions, including the financing of mobile homes that meet the definition of real property (as defined in the usury law) ([RCW 19.52.160](#)). Where the usury law does apply, the maximum lawful rate is variable based on the yield rate on certain **US Treasury securities**, but it is never less than 12% per annum and has not been higher than that rate in a number of years ([RCW 19.52.005](#) to [19.52.900](#)).

When drafting a deed of trust, most lenders will expressly note that:

- None of the property is used principally for agricultural or farming purposes.
- The property does not constitute the homestead of borrower.
- The loan is primarily for commercial, investment, or business purposes.
- The loan has not been made for personal, family, or household purposes.

4. Are there any requirements for the execution of a mortgage or deed of trust? In particular, please consider if:

- Witnesses are required.
- Specified officers of a corporation (or members of a limited liability company) must execute the security instrument.
- The signatory's name and title must be specified on the signature page.
- A corporate seal is required.
- Signed resolutions must be presented with the security instrument for purposes of recording.
- There are any other important requirements in your state?

Owner

In Washington, the grantor of a deed of trust or mortgage must be the owner of the real property being encumbered ([RCW 61.24.005\(7\)](#)).

Witnesses

There is no requirement for witnesses to a mortgage or deed of trust.

Specified Officers

The signer of a mortgage or deed of trust must be authorized to execute it on the entity's behalf, but there is no requirement that specified officers of a corporation or members of a limited liability company must execute the security instrument.

Signatory's Name and Title

The signatory's name and title must be stated in the notary acknowledgment block. It is customary but not required to state the signatory's name and title also within the signature block.

Corporate Seal

No corporate seal is required. The absence of a corporate seal on any **deed**, mortgage, lease, bond, or other instrument or contract in writing does not affect its validity, legality, or character ([RCW 64.04.105](#)).

Signed Resolutions

Signed resolutions are not required for recording but are nearly always required to be submitted to the title insurer, **escrow** agent, and notary public.

Other Requirements

A deed of trust is subject to all laws relating to mortgages on real property ([RCW 61.24.020](#)). Therefore, the same requirements relating to the recording of mortgages apply to the recording of deeds of trust.

Washington law has specific formatting requirements. When any instrument is presented for recording, the first page of the instrument must contain:

- A top margin of at least three inches and a one-inch margin on the bottom and sides. A minor portion of a notary seal, incidental writing, or minor portion of a signature may extend beyond the margins.
- The names and address to whom the instrument will be returned to, on the top left-hand side.
- Immediately below the three-inch margin at the top of page, the title of the instrument being recorded, indicating the kind of documents contained within.
- The names of the grantor and grantee (in practice, parties also include the name of the trustee).
- An abbreviated legal description of the property (for purposes of this requirement, abbreviated legal description of the property means lot, block, plat, or section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable).
- The assessor's real property tax parcel or account number set forth separately from the legal description or other text.
- Reference to the recording numbers of documents being assigned or released with reference to the document page number where additional references can be found, if applicable.

([RCW 65.04.045\(1\)](#).)

All pages of the document must:

- Be in eight-point font or larger type.
- Be on paper that does not exceed 8.5 inches wide and 14 inches long.

- Have at minimum a one-inch margin on the top, bottom, and sides (except for page one).

(RCW 65.04.045(2).)

A document presented for recording may not contain a:

- Social security number.
- Date of birth identified with a particular person.
- Maiden name of a person's parent identified with a particular person.

(RCW 65.04.045(3).)

Local recorders will sometimes:

- Charge additional recording fees for numerous titles in the heading of a document.
- Require that recorded documents use specific headings or titles to enable them to more easily categorize and index the documents.

For this reason, it is best practice to check with the title company or the local recorder's office to verify exactly what the recording fees will be for a document with numerous titles.

All documents to be recorded must contain original signatures and notarials.

Additionally, the lender in deeds of trust is referred to as "beneficiary" and the borrower is referred to as the "grantor" or "borrower" rather than trustor.

5. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Washington has adopted the Revised Uniform Law on Notarial Acts (RULONA) ([RCW 42.45.010](#) to [42.45.905](#)). In addition to the statutory form of acknowledgement, Washington also accepts acknowledgements:

- In the form prescribed by the jurisdiction in which the notarization occurred ([RCW 42.45.130](#)).
- From federal authorities ([RCW 42.45.110](#)).
- From foreign authorities ([RCW 42.45.120](#)).
- That are made with electronic records, if all of the following are satisfied:
 - the notary public holds a commission as an electronic records notary public.
 - the notary public has selected one or more tamper-evident technologies to perform notarial acts that meet the standards under the RULONA.
 - the notary public notifies the department that he will be performing notarial acts with respect to electronic records, and identifies the technology to be used.

([RCW 42.45.190](#).)

Individual

STATE OF Washington)
COUNTY OF [COUNTY])

The record was acknowledged before me on (date) by (name(s) of individuals).

Dated: [DATE]

[SIGNATURE]

[SEAL]

[NOTARY TITLE]

Title

My commission expires: [DATE]

([RCW 42.45.140\(1\)](#).)

Corporation

STATE OF Washington)
COUNTY OF [COUNTY])

The record was acknowledged before me on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

Dated: [DATE]

[SIGNATURE]

[SEAL]

[NOTARY TITLE]

Title

My commission expires: [DATE]

(RCW 42.45.140(2).)

Limited Liability Company

Washington law provides a single form of acknowledgment that applies in any instance a person signs in a representative capacity (see [Corporation](#)).

Limited Partnership

Washington law provides a single form of acknowledgment that applies in any instance a person signs in a representative capacity (see [Corporation](#)).

Trustee

Washington law provides a single form of acknowledgment that applies in any instance a person signs in a representative capacity (see [Corporation](#)).

Priority

6. Describe the relevant statutes granting priority to mechanics' liens.

In Washington, the Mechanic's and Materialmen's Liens law provides that a construction lien in Washington has priority over any lien, mortgage, deed of trust, or other encumbrance that:

- Attached to the land after the commencement of labor, professional services, or first delivery of materials or equipment by the lien claimant.
- Was unrecorded at the time of commencement of labor, professional services, or first delivery of materials or equipment by the lien claimant.

(RCW 60.04.061.)

Any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien for the contract price of labor, professional services, materials, or equipment furnished, subject to [RCW 60.04.031](#) ([RCW 60.04.021](#)).

The notice of the construction lien claim must be recorded in the county where the property is located, not later than 90 days after either:

- The person stopped furnishing:
 - labor;
 - professional services;
 - materials; or
 - equipment.
- The last date on which employee benefit contributions were due.

(RCW 60.04.091.)

7. Are there liens which can supersede the priority of a lender's recorded lien?

Under Washington law, the following liens may take priority over a deed of trust, real estate contract, or mortgage, regardless of whether the notice of the lien is recorded in the real property records when the deed of trust, real estate contract, or mortgage is recorded:

- A construction lien under the Mechanics' and Materialmen's Liens law ([RCW 60.04.011 to 60.04.904](#)).
- A real estate **tax lien** ([RCW 84.60.010 to 84.60.070](#)).
- An employee's lien for unpaid **employee benefit plan** contributions, which has priority over any mortgage that attaches after the contribution becomes due, if notice of the lien claim is recorded within 60 days after the contribution becomes due ([RCW 60.76.010 to 60.76.050](#)).

A lender that enters into a modification of its deed of trust or mortgage risks having its lien subordinated to the lien of an otherwise junior encumbrance on the property to the extent that the modification is materially prejudicial to the interests of the junior lienholder (*Kim v. Lee*, 31 P.3d 665, 670 (Wash. 2001)).

8. How do lenders maintain the priority of their real property liens over superseding liens, such as real property tax liens and mechanics' liens? In particular, please consider:

- Permanent loans.
- Construction loans with future advances.
- Credit facilities with future advances under revolving lines of credit.

Permanent Loans

In Washington, the lien priority of a **permanent loan** without future advances is unaffected by later liens except for those with priority (see [Question 7](#)). However, if the lender provides in its permanent loan documents for the making of future advances, the repayment of the future advances must be included in the description of the secured obligations in the deed of trust.

The lender should condition the making of an advance on:

- The issuance of title endorsements insuring the lack of intervening liens not approved by the lender and insuring priority over any approved junior liens (which may require a subordination agreement from any junior lienholders).
- Increasing the amount of the policy to include the amount of the advance.
- Changing the date of the policy to the date of the advance.

Construction Loans

To ensure its priority in a **construction loan**, the lender should condition the making of an advance on the issuance of title endorsements that:

- Insure the lack of intervening liens not approved by the lender and insure priority over any approved junior liens.
- Increase the amount of the policy to include the amount of the advance.

The usual construction advance endorsement is the California Land Title Association form 122.

Credit Facilities

In a credit facility, the lender should follow the same protocols for future advances as in a construction loan (see [Construction Loans](#)). If appropriate, the lender should have an **American Land Title Association** revolving loan endorsement to the title policy providing similar protection.

9. What are a landlord's legal rights to a tenant's personal property located in the leased premises? Are these rights governed by statute, common law, or contract?

A Washington landlord holds a lien on a tenant's personal property that has been used or kept on the rented premises by the tenant, if the tenancy predates the security interest of the competing creditor. This excludes:

- Property of third persons, delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional **bills of sale** duly filed.
- The property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his family.

(RCW 60.72.010.)

Landlord liens have preference over all other liens except:

- Liens for taxes.
- General and special liens of labor.
- Liens of mortgages duly recorded prior to the tenancy.

(RCW 60.72.010.)

The claim is limited in amount to the value of two month's rent, except this may be increased for up to four month's rent when the tenant is renting a mobile home lot in a mobile home park (RCW 59.20.030(10), (11) and 60.72.010).

Mortgage Recording Taxes

10. Is there a mortgage recording tax (or similar tax)? If so:

- What is the rate and how is the tax calculated?
- Can a loan or refinance be structured to reduce the tax?
- Is the tax payable on making a loan secured by real property or perfecting a lien on real property?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are there any other state or local taxes or fees imposed on the grant, perfection, or enforcement of a security interest in real property? Are there any exceptions?

No Washington state or local taxes are due on the making of a loan secured by real estate or the recording of a lien on real property.

There are recording fees due at the time of recording documents in the real estate records. The recording fee for most documents is \$99 for the first page and \$1 for each additional page, but there are some variations, depending on the type of document ([King County: Recording Fees as of June 7, 2018](#)).

For a deed of trust, the recording fee is \$100 for the first page and \$1 for each additional page ([King County: Recording Fees as of June 7, 2018](#)).

For an Assignment of Deed of Trust, Resignation of Trustee, Appointment of Trustee, and Substitution of Trustee, the fee is \$16.00 for the first page and \$1.00 for each additional page ([Pierce County: Recording, Excise, and Map Fees](#)).

Title Insurance

11. Are title insurance premiums or service charges for lenders' title insurance policies regulated? Are the costs of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Title insurance premiums are regulated by through the [Washington Office of the Insurance Commissioner](#) (WA OIC). Title insurance companies must file their rates with the WA OIC, which reviews them to ensure they are not any of the following:

- Excessive.
- Inadequate.
- Unfairly discriminatory.

([RCW 48.29.143](#) and [48.29.147.](#))

The WA IOC determines that a rate is not excessive, inadequate, or unfairly discriminatory if it is a sound estimate of the expected value of all future costs associated with an individual risk transfer. Such future costs include:

- Claims.
- Claim settlement expenses.
- Operational and administrative expenses.
- The cost of capital.

([RCW 48.29.143\(2\).](#))

The cost of title insurance is negotiated on large transactions, although reduced rates must be consistent with filed rates. Title insurance companies often quote discounted rates:

- For refinancings.
- If a prior policy is provided at the time the new title order is placed.
- If multiple policies are being issued concurrently.

12. Provide a list and brief description of the title insurance endorsements available to lenders?

There are numerous title endorsements available to lenders in Washington. Title insurance companies are not required to file their forms with the [Washington Office of the Insurance Commissioner](#), so they are free to revise the forms of title endorsements and to create custom endorsements. Commonly requested lender American Land Title Association (ALTA) 2006 endorsements include the following, if applicable:

- ALTA 3.1-06 (Zoning, completed structure).
- ALTA 4-06 (Condominium).
- ALTA 6-06 (Variable rate mortgage).
- ALTA 8.2-06 (Environmental protection).
- ALTA 9.3-06 (Comprehensive).
- ALTA 12-06 (Aggregation).
- ALTA 13.1-06 (Leasehold loan).
- ALTA 14-06 (Future advance, priority).
- ALTA 14.2-06 (Future advance, letter of credit).
- ALTA 17-06 (Access and entry).
- ALTA 18-06 (Single tax parcel) or ALTA 18.1-06 (Multiple tax parcels).
- ALTA 19-06 (Contiguity).
- ALTA 20-06 (First loss, multiple parcel transaction).
- ALTA 22-06 (Location).
- ALTA 25-06 (Same as survey).
- ALTA 26-06 (Subdivision/legal parcel).
- ALTA 27-06 (Usury).

- ALTA 28-06 (Easement, damage or forced removal).
- Deletion of arbitration (not in 2006 policy jacket).

In addition to the ALTA form numbers, the California Land Title Association endorsement numbers are often used in Washington.

Many of these endorsements require specific references to various parts of the real property or transaction. For example, ALTA 17-06 (Access and entry) requires the street name. It is best practice to require Proforma endorsements prior to closing to ensure that each endorsement includes the correct particular references needed, rather than agreeing upon a list of endorsements to be included in the final title policy.

ALTA's forms are available on ALTA's [website](#) (subscription required).

13. How is gap coverage (the time between closing the loan and actually recording the lien) typically handled by the title insurance companies?

Title insurance companies in Washington issue gap coverage based on [gap indemnity](#) agreements. Typically, the title company requires the borrower to provide the title company with an owner's affidavit or indemnity agreement (usually in the same document). This to ensure that no intervening liens are recorded against the real property from the date of closing before the deed of trust is recorded. The owner's affidavit agreement will also often be required in connection with the issuance of certain [title insurance endorsements](#), such as a same as survey endorsement, and the forms are often negotiable with the title company.

Foreclosure

14. Describe the foreclosure process available and the typical timing for the process. Do borrowers have a right of redemption? If so, what is the redemption period? Can lenders limit a borrower's right of redemption?

In Washington, deeds of trust may be foreclosed either non-judicially or judicially, at the option of the lender. Mortgages may be foreclosed only judicially. The primary method of foreclosure is non-judicial foreclosure, also commonly called a trustee's sale. The following are some of the important differences between the judicial and non-judicial foreclosure processes:

- **Power of Sale.** The key language in a Deed of Trust allowing non-judicial foreclosure is the power of sale language. Trustee sales are required to include a power of sale clause, which after a default allows the trustee to sell the property

non-judicially to satisfy the defaulted underlying loan. A judicial foreclosure must be pursued if there is no power of sale language in the Deed of Trust. (RCW 61.24.030(1); *Bain v. Metro. Mortgage Group, Inc.*, 285 P.3d 34, 38 (Wash. 2012).)

- **Time required to complete foreclosure.** Once the process is initiated, a non-judicial foreclosure sale may not be held earlier than 190 days after the default on the loan, and could take longer if the foreclosure is contested or is otherwise complicated by the inability to properly serve the applicable parties, or if the borrower files for bankruptcy (RCW 61.24.040(12)). In contrast, a judicial foreclosure is likely to take approximately five to six months to complete, assuming there is no opposition from the borrower or other parties (exclusive of the redemption period only applicable to a judicial foreclosure).
- **Deficiency judgment.** Deficiency judgments against the borrower and guarantor are much more widely available in a judicial foreclosure. In a non-judicial foreclosure, with very limited exceptions, a deficiency judgment is not available against the borrower. A deficiency judgment is available, with some limitations, against guarantors after a non-judicial foreclosure (RCW 61.24.100; see [Question 2: Non-Judicial Foreclosure](#)).
- **Right of redemption.** There is no right of redemption after a non-judicial foreclosure sale, subject to certain limited exceptions if the trustee's sale and trustee's deed is declared void no later than the 11th day following the trustee's sale (RCW 61.24.050(2)(a)). After a judicial foreclosure, the borrower and junior lienholders have a right to redeem or buy back the property from the buyer at the foreclosure sale. Until the redemption period has run, it is generally not feasible to sell the property or to make non-trivial improvements. Some key features of the redemption right are that:
 - the redemption right generally runs for one year after the court enters an order confirming the sale if the lender obtains a deficiency judgment and for eight months if it does not (RCW 6.23.020(1));
 - the redemption price is the amount of the successful bid at the foreclosure sale plus interest at the rate provided in the judgment and certain limited other amounts (RCW 6.23.020(2));
 - redemption rights may not effectively be waived in the loan documents (*Batten v. Fallgren*, 467 P.2d 882, 884 (Wash. Ct. App. 1970)); and
 - the purchaser at the foreclosure sale is entitled to possession of the property during the redemption period unless the property is a homestead or is used for farming purposes. Tenants under unexpired leases may remain in possession during the redemption period, but the purchaser is entitled to the rent under the lease. (RCW 6.23.110(1).)
- **Right to reinstate.** In a non-judicial foreclosure, the borrower has the right to reinstate the loan and cure defaults up to 11 days before the foreclosure sale by paying past due amounts (including installments of principal and interest, late charges and default rate interest) without giving effect to any acceleration of the loan balance (RCW 61.24.090). In a judicial foreclosure, the borrower cannot undo an acceleration in this manner.
- **Litigation risks.** It is more likely that the borrower or others will raise defenses in a judicial foreclosure than in a non-judicial foreclosure. This is true because:
 - a lawsuit pending in a judicial foreclosure makes it easier for the defendants to file an answer raising defenses, which the lender will be forced to have decided by the court, whether in a trial or by a summary judgment motion; and

- to litigate defenses effectively in a non-judicial foreclosure, the borrower must file a lawsuit seeking an **injunction** to restrain the foreclosure sale. The party seeking to restrain the sale must pay to the clerk of the court every 30 days the principal, interest, and reserves coming due or, if the debt is matured, the interest accruing monthly at the non-default rate. Failure to restrain the sale may result in waiver of defenses to the debt. ([RCW 61.24.040\(1\)\(d\)](#) (IX).)
- **Termination of junior leases.** Washington law is not entirely clear about whether foreclosure automatically terminates all leases junior to the foreclosed deed of trust or mortgage (at least if the tenants have not agreed otherwise in the lease or an agreement with the lender). The outcome is potentially different in a judicial versus a non-judicial proceeding. This can be an important issue if the lender wants to hold commercial tenants to their leases, especially leases at above market rental rates. To address this risk, often a lender will require in its loan documents that the borrower require its tenants to execute a subordination, non-disturbance, and attornment agreement addressing lender's rights and obligations post-foreclosure.
- **Upset price.** In both types of foreclosure, the court has the power to set the amount of any deficiency judgment at the difference between the amount of the debt and the higher of the winning bid at the foreclosure sale or the fair market value of the property ([RCW 61.12.060](#); see [Question 2: Judicial Foreclosure](#)).
- **Receiver.** A receiver can be obtained before the foreclosure sale in both types of proceedings.

15. Describe any significant costs of or impediments to foreclosing a lien on real property.

There are typically no significant costs or impediments to foreclose a lien on real property in Washington that are not typical in other states as well unless the borrower either:

- Disputes the authority of the lender to foreclose the lien.
- Asserts a claim against the lender for breach of contract, misrepresentation, or other wrongful act.

The typical costs of foreclosing a lien on real property include:

- Sheriff or trustee fees.
- Attorneys' fees.
- Title insurance company fees.

- The cost of statutorily-required advertising of the foreclosure sale.
- Recording fees.

Foreign Entities

16. Are there any permissions, approvals, or licenses specifically required for foreign banks (or other foreign lenders) to make loans secured by real property?

Foreign corporations cannot transact business in Washington unless they:

- Register with the [Washington secretary of state](#).
- Are otherwise authorized to transact business pursuant to state or federal statute.

([RCW 23B.15.010\(1\)](#).)

Washington sets out various examples of activities that **do not** constitute transacting business. They include, but are not limited to:

- Creating or acquiring indebtedness, mortgages, or security interests in property.
- Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- Owning, without more, property.

([RCW 23.95.520](#).)

Limited liability companies, **limited partnerships**, and limited liability partnerships organized under the laws of jurisdictions other than Washington are subject to similar, but not identical, requirements ([RCW 25.05.550 to 25.05.589](#) and [25.15.051](#)).

There are no requirements for a general partnership organized under the laws of a jurisdiction other than Washington to register to transact business in the state. However, there is a trade name registration requirement ([RCW 19.80.010](#)).