# 2018 Legislative Report
# Washington Department of Financial Institutions

**ESB 6018, Concerning security freeze fees charged by consumer credit agencies, Chapter 54, 2018 Laws, Effective June 7, 2018.**

Under current law any consumer in Washington may request that a consumer reporting agency place a security freeze on the consumer's credit report. A security freeze is a prohibition on the agency's release of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit. The request for a security freeze must be submitted in writing via certified mail to the consumer reporting agency. The agency is permitted to charge $10 for the placement of a security freeze.

Subject to certain exceptions, the agency is prohibited from releasing the report or information from the report without the consumer's express permission. The agency must give the consumer a personal identification number, which the consumer may use to make a request for a temporary lift of the freeze or for a release to a particular person or entity. Currently, the consumer reporting agency may charge $10 for the removal or temporary lift of a security freeze. Victims of identity theft and persons over 65 years old may place or lift a security freeze free of charge. A consumer's request for a security freeze does not prohibit the release of the consumer's credit report for purposes that are not credit-related.

The new law states that an agency may not charge a consumer for placing a security freeze on a credit report, assigning a unique PIN, temporarily lifting a security freeze, or removing a security freeze. The new law removes the requirement that a consumer request a security freeze in writing by certified mail. In addition, The Office of Cybersecurity, the Office of Privacy and Data Protection, and the Office of the Attorney General must work with stakeholders to evaluate the impact to consumers and the consumer reporting agencies regarding removal of the security freeze fees. The report must include trends in data breaches, best practices for preventing cybersecurity attacks, identity theft mitigation services available to consumers, and identity theft mitigation protocols recommended by the Federal Trade Commission, the Consumer Financial Protection Bureau, and other relevant federal or state agencies. The report must be submitted to the Legislature by December 1, 2020.

**SB 6040, Addressing meetings under the business corporations act, Chapter 55, 2018 Laws, Effective June 7, 2018.**

Current state laws require a business corporation to hold an in-person shareholders' meeting each year at an identified location or at the corporation's principal office unless shareholders take action by consent. A corporation may also hold in-person special

shareholder meetings. The board of directors or other authorized persons may call for a special meeting.

The bill allows a business corporation's board of directors or other authorized persons to decide to hold its annual meeting or special shareholder meetings using only remote communications unless the corporate governance documents specify otherwise. When a shareholder participates remotely, the law considers them personally present at the meeting. If the articles of incorporation or by-laws allow remote annual or special corporate meetings the meeting procedure must comply with any guidelines and procedures adopted by the corporation for remote meetings; provide information to the shareholders explaining how to participate in the remote meeting; verify the identity of the remotely-participating shareholders or proxies; and provide each meeting attendee with a reasonable opportunity to participate and vote during the meeting.

**E2SSB 6029, Establishing a student loan bill of rights, Chapter 62, 2018 Laws, Sections for Licensing at the Department of Financial Institutions effective January 1, 2019, Other sections effective June 7, 2018**.

Currently there are some states that regulate and license student loan servicers. This new law creates such a program in Washington State. E2SHB 6029 also creates the Student Education Loan Advocate to receive, review, and provide assistance to student education loan borrowers who file complaints. It requires student loan servicers (servicers) to obtain a license from the Department of Financial Institutions (DFI) to operate in the state, and permits the DFI to establish fees, and regulate student loan servicers under RCW 31.04. In summary the new law requires servicers to comply with various provisions regarding assessing and crediting fees; account information and dispute requests; acquiring, transferring, and selling servicing rights; and reporting information. In addition the DFI will also regulate third-party student loan modification servicers which are prohibited from various practices that may misrepresent the student loan situation or encourage a borrower to do something counterproductive to their situation. The bill also provides for a study by the Washington State Institute for Public Policy of student loan authorities who refinance student loans from proceeds of tax-exempt bonds.

**ESSB 5928, Making financial services available to marijuana producers, processors, retailers, qualifying patients, health care providers, Chapter 68, 2018 Laws, Effective June 7, 2018.**

Washington's current law regarding marijuana revised certain provisions in criminal statute to accommodate marijuana legalization in accordance with the requirements of the initiative I-502. However, financial institutions and persons providing financial services to the regulated marijuana industry still may be held liable under the Washington Criminal Code for certain offenses, including but not limited to: money laundering; criminal conspiracy to commit certain drug-related offenses; criminal solicitation; and certain criminal profiteering offenses.

The bill provides that financial institutions that receive deposits, extend credit, conduct fund transfers, or provide other financial services for a marijuana producer, processor, retailer, qualifying patient, health care professional, or designated provider authorized under Washington law does not commit a crime for providing those financial services. Financial institutions include banks, credit unions, consumer loan companies, escrow companies, money transmitters, and armored cars. Certified public accountants also do not commit a crime solely for providing professional accounting services to licensed marijuana businesses.

**HB 1056, An act relating to consumer protections for military service members on active duty, Chapter 197, 2018 Laws, Effective June 7, 2018.**

The new law changes the definition of "service member" to mean "an active member of the United States Armed Forces, a member of a military reserve component, or a member of the National Guard who is either stationed in, or a resident of, Washington state."

In an enforcement action brought by the Washington Attorney General, the equitable or declaratory relief granted by the court may include costs and reasonable attorneys' fees. A service member in receipt of military service orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation for a period of not less than 30 days may terminate or suspend certain telecommunications, Internet, health studio, and television service contracts. There are also provisions allowing service members to reinstate the terminated or suspended services.

**SHB 1209, Concerning municipal access to local financial services, Chapter 37, 2018 Laws, Effective June 7, 2018.**

Public funds may only be deposited in a bank or trust company, savings bank, or savings association that has been designated as a public depositary by the Washington Public Deposit Protection Commission (Commission). "Public funds" means money, including money held in trust, belonging to or held for the state, its political subdivisions, municipal corporations, agencies, courts, boards, commissions, or committees.

To be approved as a public depositary, a bank or thrift must meet minimum requirements of the Commission and must pledge securities as collateral to protect public funds on deposit above the amounts insured under the Federal Deposit Insurance Corporation. If the deposit insurance and the collateral pledged by a failed institution are insufficient to reimburse all public depositors, the other public depositaries, as part of the public depositary pool, are each assessed a proportionate share of the shortfall.

In 2010 legislation was passed that added credit unions as a public depositary only for the purpose of receiving public deposits. A credit union is not a public depositary for any other purpose, such as inclusion in the public depositary pool. Currently the maximum amount insured is $250,000 per depositor.

Each public depositary reports monthly and quarterly to the Commission on the amount of its insured and uninsured public deposits, the amount of collateral pledged, as well as other financial information. Those public depositaries with excess deposits, or that do not meet minimum financial standards set by the Commission, must monitor public deposits on a daily basis and maintain adequate collateral accordingly. A credit union that accepts public deposits is subject to the Commission's reporting requirements and must report the amount of their insured public deposits monthly.

The new law includes credit unions in the definition of public depositories and as such are allowed to accept public deposits greater than the maximum insured amount from a county with a population of 300,000 persons or less, or from public funds depositors located in a county with a population of 300,000 persons or less.

**2ESHB 2057, Concerning services and processes available when residential real property is in foreclosure or abandoned, Chapter 306, Laws of 2018.**

Mortgages and deeds of trust are two forms of security interests in real property used for real estate financing. A mortgage is a pledge of real property as security for a debt owed to the lender (mortgagee). A mortgage creates a lien on the real property. A deed of trust is basically a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary). Most loan obligations for residential real property in Washington are secured by deeds of trust.

Mortgages may be foreclosed either through the courts, or through a nonjudicial process. In nonjudicial foreclosure sale process, the Deeds of Trust Act imposes detailed notice and process requirements. Nonjudicial foreclosure does not include the ability to obtain a deficiency judgment or statutory redemption rights.

In 2011 in response to the financial crisis, the Legislature passed the Foreclosure Fairness Act to assist with nonjudicial foreclosure of deeds of trust. The Department of Commerce is charged with the overall program which is a mediation program for the parties involved in nonjudicial foreclosures. The financial crisis led to many legal issues involving borrowers, lenders, deed of trust trustees, and counties, cities, and towns. Many stakeholders have been involved in trying to create new laws to assist in addressing the issues presented by the financial crisis.

The new law adds language to require in nonjudicial foreclosure that before foreclosing any reverse residential mortgage, the mortgagee must give written notice of such intention at least 33 days in advance. The notice must be sent to the resident mortgagor; or, in case of the death of the last surviving mortgagor, to any known surviving spouse or to "unknown heirs" of the residential mortgagor. In nonjudicial foreclosure several amendments and additions are made to the Deeds of Trust Act. It is expressly provided that filing a civil case to obtain court approval to access, secure, maintain, and preserve property from waste or nuisance (similar to seeking the appointment of a receiver) does not constitute an action for determining whether the

requisites for nonjudicial foreclosure are met. A trustee is required to have proof, in the form of a declaration, that the beneficiary is the holder, rather than the owner, of any promissory note secured by the deed of trust. This declaration must be transmitted to the borrower and the grantor. The Notice of Default must include on the top of the first page the current beneficiary; the current mortgage servicer; and the current trustee. Procedures are put in place with respect to deceased borrowers and successors in interest. Also, a Notice of Trustee's Sale must include additional indexing requirements. A new section expressly governs cases in which a trustee is named as a defendant in an action or proceeding in which the deed of trust is the subject. A trustee is authorized to file a declaration of nonmonetary status if there are no substantive allegations that seek damages from the trustee or seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the trustee. Other parties to the action may file objections to the declaration. Timelines and procedures are specified.

For each notice of trustee's sale (NOTS) on noncommercial loans on residential real property, a beneficiary must remit $325 to the Department for deposit into the Foreclosure Fairness Account. The Department of Commerce is authorized to adjust the fee via rulemaking, however, the fee may not exceed $325.

A new chapter is created, providing a process that may be utilized when residential real property is determined by a county, city, or town, to be abandoned, in mid-foreclosure, and a nuisance. This authority is expressly in addition to, and not in limitation of, any other authority provided by law. The local government may commence the process on its own initiative, or a mortgage servicer may request that a local government visit a property and make a determination. For purposes of this chapter, property is "Abandoned" when there are no signs of occupancy and at least three of 13 specified indications of abandonment are visible from the exterior. In "mid-foreclosure" when, pursuant to the Deeds of Trust Act, a notice of default or notice of pre-foreclosure options has been issued or a notice of trustee's sale has been recorded. A "nuisance" when so determined by a county, city, or town, pursuant to its authority under existing statutory law.

A county, city, or town may notify a mortgage servicer, via certified mail, that a property has been determined to be abandoned, in mid-foreclosure, and a nuisance. Such a notice must be accompanied by an affidavit or a declaration made under penalty of perjury by a local governmental official that a property is abandoned, in mid-foreclosure, and a nuisance. The affidavit or declaration must outline at least three indicators of abandonment and be supported with time and date stamped photographs, a finding that the property is a nuisance, and a copy of the notice of default, notice of pre-foreclosure options, or notice of trustee's sale.

Alternatively, a mortgage servicer may contact the local government regarding a property it believes to be abandoned, and a nuisance and request that such a determination be made. When making such a request, the mortgage servicer must furnish a copy of a notice of default, notice of pre-foreclosure options, or notice of trustee's sale applicable to the property. The local government must respond to the

request within 15 calendar days and notify the mortgage servicer: that a visit has been made to the property and a determination made that the property is not abandoned or not a nuisance; that a visit has been made, as well as a determination that the property is abandoned, in mid-foreclosure, and a nuisance. In this case, the notice shall be accompanied by an affidavit or a declaration that meets the requisites set forth above; or that the local government does not have adequate resources or is otherwise unable to make the requested determination.

Upon receipt of such an affidavit or declaration, a mortgage servicer or its designee may enter the property for the purposes of abating the identified nuisance, preserving property, or preventing waste and may take certain steps, such as replacing missing windows and performing pest control services, to secure the property. The mortgage servicer or designee must; make a record of entry by means of dated and time-stamped photographs; not remove personal items unless the items are hazardous or perishable; ensure that the required statutory notice is posted on the front door; and keep records of entry for at least four years. If, upon entry, the property is found to be occupied, the mortgage servicer or designee must leave the property immediately and notify the local government. Thereafter, entry is not permitted regardless of whether the property constitutes a nuisance or complies with local code enforcement standards. Similarly, if the borrower notifies the mortgage servicer that the property is not abandoned; the mortgage servicer must notify the local government and not enter the property.

Except in instances when the mortgage servicer has found the property occupied or received notice from the borrower that the property is not abandoned, if a mortgage servicer receives notice from a county, city, or town that a property is abandoned, in mid-foreclosure, and a nuisance, or a grantee of a trustee's deed or a sheriff's deed receives notice from the local governmental entity that a property is a nuisance, and fails to abate the nuisance within the time prescribed, the county, city, or town may exercise its authority to abate the nuisance and recover associated costs by levying an assessment on the property to reimburse the local government for the costs of abatement, excluding any associated fines or penalties. This assessment constitutes a lien against the property and is of equal rank with state, county, and municipal taxes.

A local government is not liable for any damages caused by any act or omission of the mortgage servicer or its designee.

**ESSB 6032, Making supplemental operating appropriations, budget proviso for the Office of Financial Management, Chapter 299, Laws of 2018, Section 129 (17), Effective immediately.**

$192,000 of the general fund—state appropriation for fiscal year 2018 and $288,000 of the general fund—state appropriation for fiscal year 2019 are provided solely for the office of financial management to contract with an entity or entities with expertise in public finance, commercial, and public banking to: (a) Evaluate the benefits and risks of establishing and operating a state-chartered, public cooperative bank in the state of Washington, specifically including the business and operational issues raised by the 2017 infrastructure and public depository task force; and (b) Develop a business plan

for a public cooperative bank based on the federal home loan bank model whose members may only be the state and/or political subdivisions. The purpose of this bank is to assist the potential members of the bank to manage cash and investments more efficiently to increase yield while maintaining liquidity, and to establish a sustainable funding source of ready capital for infrastructure and economic development in the state of Washington. The business plan shall include, but is not limited to: (i) Identification of potential members of the bank; (ii) The capital structure that would be necessary; (iii) Potential products the bank might offer; (iv) Projections of earnings; (v) Recommendations on corporate governance, accountability, and assurances; (vi) Legal, constitutional, and regulatory issues; (vii) If needed, how to obtain a federal master account and join the federal reserve; (viii) Information technology security and cybersecurity; (ix) Opportunities for collaborating with other financial institutions; (x) Impacts on the state's debt limit; (xi) In the event of failure, the risk to taxpayers, including any impact on Washington's bond rating and reputation; (xii) Potential effects on the budgets and existing state agencies programs; and (xiii) Other items necessary to establish a state-chartered, public cooperative bank modeled after the federal home loan bank or other similar institution.

**SB 6024, Securities Fees, Chapter 185, 2018 Laws, Effective June 7, 2018.**

The Department of Financial Institutions (DFI) is responsible for administering the Securities Act and regulating investment activities under the act. DFI is authorized to charge fees for registration of securities, filing annual financial statements, registration of brokers or investment advisers, transferring securities licenses, and rendering interpretative opinions. Thirteen percent of revenues collected by DFI for securities regulation are deposited in the Financial Services Regulation Fund for paying costs for the proper regulation of the securities industry. The remaining monies are deposited in the state General Fund.

The bill authorizes DFI to increase fees by rule for securities regulation by no more than $15. DFI must have found that a fee increase is necessary to defray the costs of administering the securities chapter. All monies from the fee increase must be deposited in the Financial Services Regulation Fund.