



# ORCA



# TALES

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*"We can tell you more about them than their mother"*

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## Employers Restriction on Credit Reports

It is not uncommon for employers to run background checks prior to hiring a candidate. These checks can include employment history verification, criminal background checks and reference checks. But when it comes to checking their credit, many candidates may question the necessity of the credit check. As it turns out, their instinct may be right, as employers can only check their credit under specific circumstances.

### The Job-Related Rule

According to a recent article by Tina Harkness with the Mountain States Employment Council, "employers can successfully use credit reports when hiring employees so long as they comply with certain laws and make sure that credit is job-related."

The biggest point in this statement is that the consideration of credit history must be related to the job. Often times, this comes down to a cash-handling issue, or circumstances when the new employee may be in charge of the company's finances.

### Financial Industry Alone is Not Enough

Just because the job may be involved in the financial services arena does not give the employer the legal back-up to run a credit report for all of their employees. The job must involve actual interaction with cash or financial transactions. For example, a receptionist at a high-power CPA firm would not have access to the financial information. In this case, it is not considered acceptable to run the credit as a condition of employment.

### Rules for Employers

Employers must comply with the Fair Credit Reporting Act (FCRA) when running a credit report on a potential or even an existing employee. This means that they must get permission in writing prior to running the credit report. If there are items on the report that impact the employer's decision to hire or retain a candidate, they must disclose this to the candidate.

Not even a bankruptcy should be held against a potential employee. The Bankruptcy Code, at 11 U.S.C. sec. 525(b) states that "No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt."

State laws can also impact how much information the employer can use in the hiring decision. Some states won't allow the employer to discriminate against a candidate because of garnishments or court-ordered child support payments that are deducted from the paycheck.

Washington, Hawaii and Oregon recently passed laws forbidding employers to use credit reports in the hiring decision. While Colorado does not have any laws against this yet, check the Colorado Division of Labor and Employment (CDLE) for official notices.

### The Law is on My Side - But So What?

Many employers don't realize the legal restrictions on running credit reports on candidates. This can result in some job seekers feeling like they are pushed in a corner: on one hand, they want the job, but on the other they may not want to disclose something that is protected by law.

If you find yourself in this situation, try reminding the employer of the law. Even better, be sure to ask them if the job will involve handling cash or being responsible for financial transactions. If they wonder why you're asking, bring up the facts you know about the FCRA. By making them aware of recent laws, you could be doing them a favor.

Some employers won't care, and will insist on the credit report no matter what. Then the question comes down to this: is this job really worth it? Only you can answer that question.

*DISCLAIMER: I, Donna Shannon, am not an employment lawyer. If you find you need professional advice on any hiring or employment issue, consult an attorney.*

## ORCA ♦ WISDOM ♦

The season of failure is the best time for sowing the seeds of success.

## Foreclosure Process in Washington

This report is to provide you with the information on how the foreclosure process works in Washington State and how long it takes for a bank or mortgage company to foreclose on your property under Washington's deed of trust act (RCW Chapter 61.24).

The foreclosure process set out in the legal statute is known as a non-judicial foreclosure, meaning it is a foreclosure conducted without having to go to court and have a judge order a sheriff's sale of your property. Instead of a judge, the foreclosure is handled by a trustee who is appointed by the lender. The entire process is basically a series of notices given by a trustee to the borrower and anyone else who has an interest in the property, followed by a public auction (also known as a trustee's sale). The highest bidder at the trustee's sale is entitled to a trustee's deed to the property and to possession of the property 20 days after the sale.

The first step in the process is usually to name a new trustee, since most of the deed of trust forms name a title insurance company as trustee and the title companies in this state do not do the foreclosures. The trustee named can be an attorney or a corporation, but cannot be the same person or company as the beneficiary under the deed of trust (the beneficiary is the lender).

The trustee must follow exactly the procedures set out in the deed of trust act. The basic steps are listed below. There are specific requirements in the law covering what must be included in each notice sent to the property owner.

### STEP ONE

#### Notice of Default

The Notice of Default must be mailed by first class and certified mail to the borrower and must also be personally served on the borrower or posted at the property. The Notice of Default must tell the borrower what the default is (usually failure to make payments), how much is owed for the delinquent payments, trustee/attorney fees and other costs that would have to be paid to bring the loan current. It must also advise the borrower that if the default is not cured in 30 days, the property will be scheduled for sale at an auction by the trustee.

The Notice of Default must be mailed/served on the borrower at least 30 days before the Notice of Trustee's Sale.

### STEP TWO

#### Notice of Trustee's Sale

If the default is not cured, the trustee schedules the property for a sale at a public auction. The Notice must be given at least 90 days before the sale. The Notice must be mailed first class and certified and served on the borrower, the occupant of the property and on anyone else who holds a recorded interest in the property. The trustee must order a title report (Trustee's Sale Guarantee) from a title insurance company to find out who holds a recorded interest so the trustee can give notice to all parties entitled to receive a Notice. The Notice must also be published twice in the newspaper (a month before and a week before the scheduled sale). The Notice

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## Bad Guy of the Month Club

### A Criminal Record Comparison

We searched 4 popular criminal databases...see what we found!

Orca Information’s Database	Nationwide Criminal	Instant Statewide	WA State Patrol
<p><b>Washington Court Records:</b> 8/22/2004 Shoplifting, Guilty</p> <p><b>Utah Court Records:</b> 05/24/06 Illegal Possession/Use of Controlled Substance in the 2<sup>nd</sup> Degree, Guilty 05/24/06 Use or Possession of Drug Paraphernalia, Dismissed 05/24/06 Criminal Trespassing, Dismissed 05/26/06 Retail Theft (Shoplifting), No Contest 05/26/06 Possession of Drug Paraphernalia, No Contest 04/23/06 Retail Theft (Shoplifting), Guilty 07/13/07 Use or Possession of Drug Paraphernalia, Remanded 07/13/07 False Personal Information to Police, Remanded 07/13/07 Selling Unapproved Seat Belts, Remanded 07/13/07 Fail to Appear on Citation, Remanded 06/25/07 Retail Theft (Shoplifting), Guilty 06/24/07 False Information to Law Enforcement/Government Agencies, Guilty 06/24/07 Theft by Receiving Stolen Property, Dismissed 06/24/07 Possession of less than 1 oz of Marijuana, Guilty 06/24/07 Use or Possession of Drug Paraphernalia, Guilty 01/16/08 Driving Under the Influence of Alcohol/Drugs, Guilty 01/16/08 Failure to Report ACC with Unattended Vehicle, Dismissed 01/16/08 Driving on Denied License, Dismissed 08/03/07 Theft, Dismissed 11/30/06 Possession of Drug Paraphernalia, Guilty 11/30/06 False Personal Information to Police, Guilty 11/30/06 Theft by Receiving Stolen Property, Dismissed 03/02/07 Failure to Appear, Conversion Default 05/17/07 Failure to Appear, Conversion Default</p>	No Records Found	No Records Found	No Records Found

...continued from the ORCA side of this newsletter...

The Notice advises the borrower and anyone else that the loan is in default and if the default is not cured the property will be sold to the highest bidder at the time and place set out in the Notice. In Skagit County, the sale must be held on a Friday at the court house.

**STEP THREE**

**Notice of Foreclosure**

This step occurs simultaneously with Step Two since the Notice of Foreclosure is sent to the borrower along with the Notice of Trustee’s Sale. This Notice gives the borrower the amount necessary to reinstate the loan and also an estimate of how much will be owed 11 days before the sale. The 11th day before the sale is the borrower’s last chance to reinstate the loan by making up back payments and any additional costs. After that date, the lender does not have to accept anything less than full payment of the entire loan balance, plus costs.

**STEP FOUR**

**Trustee’s Sale**

The trustee’s sale is a public auction held at the court house, with the sale to the highest bidder. Only cash, cashier’s check or a combination of cash and cashier’s check are accepted. Usually the sale is to the lender for the amount owed to the lender at the time of the sale.

**STEP FIVE**

**Trustee’s Deed and Possession**

Following the sale, the trustee issues a trustee’s deed to the highest bidder. The new owner is entitled to possession of the property 20 days after the sale. If the borrower does not move out by then, the new owner can evict them using the same procedure a landlord would use to evict a tenant.

## What People are saying about LION...

“Lucy, Thank you so very much for all your extra help and efforts on this application. I really appreciate you!!”

-K.H., Olympic Peninsula, WA

“Your company does a great job for me. I am recommending you to my friends!”

-C.W.

“Please thank the staff at Orca/Lion, they were very helpful to me!”

-B.T., Anacortes, WA



**HAPPY HALLOWEEN!!**