

SB 5810 - S AMD 141

By Senators Kauffman, Berkey

ADOPTED 03/12/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 61.24 RCW
4 to read as follows:

5 (1)(a) A trustee, beneficiary, or authorized agent may not issue a
6 notice of default under RCW 61.24.030(7) until thirty days after
7 initial contact is made as required under (b) of this subsection or
8 thirty days after satisfying the due diligence requirements as
9 described in subsection (5) of this section.

10 (b) A beneficiary or authorized agent shall contact the borrower in
11 person or by telephone in order to assess the borrower's financial
12 ability to pay the debt secured by the deed of trust and explore
13 options for the borrower to avoid foreclosure. During the initial
14 contact, the beneficiary or authorized agent shall advise the borrower
15 that he or she has the right to request a subsequent meeting and, if
16 requested, the beneficiary or authorized agent shall schedule the
17 meeting to occur within fourteen days. The assessment of the
18 borrower's financial ability to repay the debt and a discussion of
19 options may occur during the initial contact or at the subsequent
20 meeting scheduled for that purpose. At the initial contact, the
21 borrower must be provided the toll-free telephone number made available
22 by the department to find a department-certified housing counseling
23 agency. Any meeting may occur telephonically.

24 (2) A notice of default issued under RCW 61.24.030(7) must include
25 a declaration, as provided in subsection (9) of this section, from the
26 beneficiary or authorized agent that it has contacted the borrower as
27 provided in subsection (1)(b) of this section, it has tried with due
28 diligence to contact the borrower under subsection (5) of this section,
29 or the borrower has surrendered the property to the trustee,
30 beneficiary, or authorized agent. The trustee is entitled to rely on

1 the declaration as conclusive evidence that the requirements of this
2 section have been satisfied, and the trustee is not liable for the
3 beneficiary's or its authorized agent's failure to comply with the
4 requirements of this section.

5 (3) A beneficiary's or authorized agent's loss mitigation personnel
6 may participate by telephone during any contact required under this
7 section.

8 (4) Within fourteen days after the initial contact under subsection
9 (1) of this section, if a borrower has designated a department-
10 certified housing counseling agency, attorney, or other advisor to
11 discuss with the beneficiary or authorized agent, on the borrower's
12 behalf, options for the borrower to avoid foreclosure, the borrower
13 shall inform the beneficiary or authorized agent and provide the
14 contact information. The beneficiary or authorized agent shall contact
15 the designated representative for the borrower for the discussion
16 within fourteen days after the representative is designated by the
17 borrower. Any deed of trust modification or workout plan offered at
18 the meeting with the borrower's designated representative by the
19 beneficiary or authorized agent is subject to approval by the borrower.

20 (5) A notice of default may be issued under RCW 61.24.030(7) if a
21 beneficiary or authorized agent has not contacted a borrower as
22 required under subsection (1)(b) of this section and the failure to
23 contact the borrower occurred despite the due diligence of the
24 beneficiary or authorized agent. Due diligence requires the following:

25 (a) A beneficiary or authorized agent shall first attempt to
26 contact a borrower by sending a first-class letter to the address of
27 the property encumbered by the deed of trust that includes the toll-
28 free telephone number made available by the department to find a
29 department-certified housing counseling agency, and the following
30 information:

31 "You may contact the Department of Financial Institutions, the
32 Washington State Bar Association, or the Office of Civil Legal Aid for
33 possible assistance or referrals."

34 (b)(i) After the letter has been sent, the beneficiary or
35 authorized agent shall attempt to contact the borrower by telephone at
36 least three times at different hours and on different days. Telephone
37 calls must be made to the primary telephone number on file with the
38 beneficiary or authorized agent.

1 (ii) A beneficiary or authorized agent may attempt to contact a
2 borrower using an automated system to dial borrowers if the telephone
3 call, when answered, is connected to a live representative of the
4 beneficiary or authorized agent.

5 (iii) A beneficiary or authorized agent satisfies the telephone
6 contact requirements of this subsection (5)(b) if the beneficiary or
7 authorized agent determines, after attempting contact under this
8 subsection (5)(b), that the borrower's primary telephone number and
9 secondary telephone number or numbers on file, if any, have been
10 disconnected or are not good contact numbers for the borrower.

11 (c) If the borrower does not respond within fourteen days after the
12 telephone call requirements of (b) of this subsection have been
13 satisfied, the beneficiary or authorized agent shall send a certified
14 letter, with return receipt requested, to the borrower at the address
15 of the property encumbered by the deed of trust.

16 (d) The beneficiary or authorized agent shall provide a means for
17 the borrower to contact the beneficiary or authorized agent in a timely
18 manner, including a toll-free telephone number or charge-free
19 equivalent that will provide access to a live representative during
20 business hours.

21 (e) The beneficiary or authorized agent shall post a link on the
22 home page of the beneficiary's or authorized agent's internet web site,
23 if any, to the following information:

24 (i) Options that may be available to borrowers who are unable to
25 afford their mortgage payments and who wish to avoid foreclosure, and
26 instructions to borrowers advising them on steps to take to explore
27 those options;

28 (ii) A list of financial documents borrowers should collect and be
29 prepared to present to the beneficiary or authorized agent when
30 discussing options for avoiding foreclosure;

31 (iii) A toll-free telephone number or charge-free equivalent for
32 borrowers who wish to discuss options for avoiding foreclosure with
33 their beneficiary or authorized agent; and

34 (iv) The toll-free telephone number or charge-free equivalent made
35 available by the department to find a department-certified housing
36 counseling agency.

37 (6) Subsections (1) and (5) of this section do not apply if any of
38 the following occurs:

1 (a) The borrower has surrendered the property as evidenced by
2 either a letter confirming the surrender or delivery of the keys to the
3 property to the trustee, beneficiary, or authorized agent;

4 (b) The borrower has contracted with a distressed home consultant
5 as defined in RCW 61.34.020; or

6 (c) The borrower has filed for bankruptcy, and the bankruptcy stay
7 remains in place.

8 (7) This section applies only to deeds of trust made from January
9 1, 2003, to December 31, 2007, inclusive, that are recorded against
10 owner-occupied residential real property. This section does not apply
11 to deeds of trust: (a) Securing a debt incurred primarily for
12 business, investment, or commercial purposes; (b) securing a
13 guarantor's obligations under a guaranty; or (c) securing a purchaser's
14 obligations under a seller-financed sale. For purposes of this
15 subsection, "owner-occupied" means that the residence is the principal
16 residence of the borrower.

17 (8) As used in this section:

18 (a) "Borrower" means a grantor of a deed of trust who executed a
19 promissory note secured by the deed of trust.

20 (b) "Department" means the United States department of housing and
21 urban development.

22 (c) "Residential real property" means a one-to-four, single-family
23 residence, condominium unit, residential cooperative unit, residential
24 unit in any other type of planned unit development, or manufactured
25 home in which title has been eliminated under RCW 65.20.040.

26 (d) "Seller-financed sale" means a real property transaction where
27 the seller finances all or part of the purchase price, and that
28 financed amount is secured by a deed of trust against the subject real
29 property.

30 (9) The form of declaration to be provided by the beneficiary or
31 authorized agent as required under subsection (2) of this section must
32 be in substantially the following form:

33 **"FORECLOSURE LOSS MITIGATION FORM**

34 **Please select applicable option(s) below.**

35 The undersigned beneficiary or authorized agent for the beneficiary
36 hereby represents and declares under the penalty of perjury that [check

1 the applicable box and fill in any blanks so that the trustee can
2 insert, on the beneficiary's behalf, the applicable declaration in the
3 notice of default required under chapter 61.24 RCW]:

4 (1) [] The beneficiary or beneficiary's authorized agent has
5 contacted the borrower under, and has complied with, section 1 of this
6 act (contact provision to "assess the borrower's financial ability to
7 pay the debt secured by the deed of trust and explore options for the
8 borrower to avoid foreclosure").

9 (2) [] The beneficiary or beneficiary's authorized agent has
10 exercised due diligence to contact the borrower as required in section
11 1(5) of this act and, after waiting fourteen days after the
12 requirements in section 1 of this act were satisfied, the beneficiary
13 or the beneficiary's authorized agent sent to the borrower(s), by
14 certified mail, return receipt requested, the letter required under
15 section 1 of this act.

16 (3) [] The borrower has surrendered the secured property as
17 evidenced by either a letter confirming the surrender or by delivery of
18 the keys to the secured property to the beneficiary, the beneficiary's
19 authorized agent or to the trustee.

20 (4) [] Under section 1 of this act, the beneficiary or
21 beneficiary's authorized agent has evidence in its file, and reasonably
22 believes, that the borrower has contracted with a distressed home
23 consultant as defined in RCW 61.34.020.

24 (5) [] Under section 1 of this act, the beneficiary or the
25 beneficiary's authorized agent has verified information that, on or
26 before the date of this declaration, the borrower(s) has filed for
27 bankruptcy, and the bankruptcy stay remains in place."

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 61.24 RCW
29 to read as follows:

30 (1) Upon posting a notice of sale under RCW 61.24.040, a trustee or
31 authorized agent shall also post the following notice, in the manner
32 required for posting the notice of sale on the property to be sold, and
33 a trustee, beneficiary, or authorized agent shall mail at the same time
34 in an envelope addressed to the "Resident of property subject to
35 foreclosure sale" the following notice:

36 "The foreclosure process has begun on this property, which may
37 affect your right to continue to live in this property. Ninety days or

1 more after the date of this notice, this property may be sold at
2 foreclosure. If you are renting this property, the new property owner
3 may either give you a new lease or rental agreement or provide you with
4 a sixty-day eviction notice. You may wish to contact a lawyer or your
5 local legal aid or housing counseling agency to discuss any rights that
6 you may have."

7 (2) This section applies only to deeds of trust secured by
8 residential real property, as defined in section 1 of this act, and if
9 the billing address for the promissory note is different than the
10 property address.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 61.24 RCW
12 to read as follows:

13 (1)(a) A tenant or subtenant in possession of a residential real
14 property at the time the property is sold in foreclosure must be given
15 sixty days' written notice before the tenant or subtenant may be
16 removed from the property as prescribed in chapter 59.12 RCW.

17 (b) A tenant may be evicted for waste or nuisance and subject to
18 unlawful detainer under chapter 59.12 RCW.

19 (2) This section does not prohibit the new owner of a property
20 purchased pursuant to a foreclosure sale or trustee's sale from:

21 (a) Negotiating a new purchase, lease, or rental agreement with a
22 tenant or subtenant; or

23 (b) Offering a payment to a tenant or subtenant in exchange for
24 vacating the premises on a date earlier than the expiration of the
25 notice period described in subsection (1) of this section. However,
26 the tenant or subtenant is not required to accept any payment offered.

27 (3) This section does not apply if a party to the promissory note
28 secured by the deed of trust remains on the property as a tenant,
29 subtenant, or occupant.

30 NEW SECTION. **Sec. 4.** Sections 2 and 3 of this act apply only to
31 the foreclosure of a nonowner-occupied residential real property as
32 defined in section 1 of this act.

33 NEW SECTION. **Sec. 5.** A new section is added to chapter 61.24 RCW
34 to read as follows:

1 (1) The failure of the grantor to bring a civil action to enjoin a
2 foreclosure sale under this chapter may not be deemed a waiver of a
3 claim for damages asserting:

4 (a) Common law fraud, misrepresentation, and breach of contract;

5 (b) A violation of RCW 19.144.080; or

6 (c) Failure of the trustee to materially comply with the provisions
7 of this chapter.

8 (2) The nonwaived claims listed under subsection (1) of this
9 section may be (a) asserted in an unlawful detainer action brought by
10 the lender against the grantor as a holdover tenant or (b)
11 independently brought against a lender or trustee if a third party is
12 the successful bidder at the foreclosure sale.

13 (3) The nonwaived claims listed under subsection (1) of this
14 section are subject to the following limitations:

15 (a) The claim must be asserted or brought within two years from the
16 date of the foreclosure sale;

17 (b) The claim may not seek any remedy at law or in equity other
18 than direct monetary damages, unless the property is owned by the
19 beneficiary at the time the action is filed;

20 (c) The claim may not otherwise affect the validity or finality of
21 the foreclosure sale or a subsequent transfer of the property to a bona
22 fide purchaser;

23 (d) A grantor who files such a claim is prohibited from filing for
24 record a lis pendens without prior permission of a court, as provided
25 for in RCW 4.28.320, or any other document purporting to create a
26 similar effect, related to the real property foreclosed upon;

27 (e) The claim may not otherwise operate to encumber or cloud the
28 title to the property that was subject to the foreclosure sale, except
29 to the extent that a judgment on the claim in favor of the grantor may,
30 consistent with RCW 4.56.190, become a judgment lien on real property
31 then owned by the lender; and

32 (f) The relief that may be granted for judgment upon the claim is
33 limited to actual damages. However, if the grantor brings in the same
34 civil action a claim for violation of chapter 19.86 RCW, arising out of
35 the same alleged facts, relief under chapter 19.86 RCW is limited to
36 actual damages, treble damages as provided for in RCW 19.86.090, and
37 the costs of suit, including a reasonable attorney's fee.

1 (4) This section applies only to foreclosures of an owner-occupied
2 one-to-four, single-family residence, condominium unit, residential
3 cooperative unit, residential unit in any other type of planned unit
4 development, or manufactured home in which title has been eliminated
5 under RCW 65.20.040, which is the grantor's principal place of
6 residence.

7 (5) This section does not apply to the foreclosure of a deed of
8 trust used to secure a debt incurred for business, investment, or
9 commercial purposes or to secure a guaranty.

10 **Sec. 6.** RCW 61.24.010 and 2008 c 153 s 1 are each amended to read
11 as follows:

12 (1) The trustee of a deed of trust under this chapter shall be:

13 (a) Any domestic corporation incorporated under Title 23B, 30, 31,
14 32, or 33 RCW of which at least one officer is a Washington resident;
15 or

16 (b) Any title insurance company authorized to insure title to real
17 property under the laws of this state, or (~~its agents~~) any title
18 insurance agent licensed under chapter 48.17 RCW; or

19 (c) Any attorney who is an active member of the Washington state
20 bar association at the time the attorney is named trustee; or

21 (d) Any professional corporation incorporated under chapter 18.100
22 RCW, any professional limited liability company formed under chapter
23 25.15 RCW, any general partnership, including limited liability
24 partnerships, formed under chapter 25.04 RCW, all of whose
25 shareholders, members, or partners, respectively, are either licensed
26 attorneys or entities, provided all of the owners of those entities are
27 licensed attorneys, or any domestic corporation wholly owned by any of
28 the entities under this subsection (1)(d); or

29 (e) Any agency or instrumentality of the United States government;
30 or

31 (f) Any national bank, savings bank, or savings and loan
32 association chartered under the laws of the United States.

33 (2) The trustee may resign at its own election or be replaced by
34 the beneficiary. The trustee shall give prompt written notice of its
35 resignation to the beneficiary. The resignation of the trustee shall
36 become effective upon the recording of the notice of resignation in
37 each county in which the deed of trust is recorded. If a trustee is

1 not appointed in the deed of trust, or upon the resignation,
2 incapacity, disability, absence, or death of the trustee, or the
3 election of the beneficiary to replace the trustee, the beneficiary
4 shall appoint a trustee or a successor trustee. Only upon recording
5 the appointment of a successor trustee in each county in which the deed
6 of trust is recorded, the successor trustee shall be vested with all
7 powers of an original trustee.

8 (3) The trustee or successor trustee shall have no fiduciary duty
9 or fiduciary obligation to the grantor or other persons having an
10 interest in the property subject to the deed of trust.

11 (~~The trustee or successor trustee shall act impartially~~
12 ~~between the borrower, grantor, and beneficiary.)) The trustee or
13 successor trustee has a duty of good faith to the borrower as defined
14 in section 1 of this act, beneficiary, grantor, or other persons having
15 an interest in the property subject to the deed of trust.~~

16 **Sec. 7.** RCW 61.24.030 and 2008 c 153 s 2 and 2008 c 108 s 22 are
17 each reenacted and amended to read as follows:

18 It shall be requisite to a trustee's sale:

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

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

27 (3) That a default has occurred in the obligation secured or a
28 covenant of the grantor, which by the terms of the deed of trust makes
29 operative the power to sell;

30 (4) That no action commenced by the beneficiary of the deed of
31 trust is now pending to seek satisfaction of an obligation secured by
32 the deed of trust in any court by reason of the grantor's default on
33 the obligation secured: PROVIDED, That (a) the seeking of the
34 appointment of a receiver shall not constitute an action for purposes
35 of this chapter; and (b) if a receiver is appointed, the grantor shall
36 be entitled to any rents or profits derived from property subject to a
37 homestead as defined in RCW 6.13.010. If the deed of trust was granted

1 to secure a commercial loan, this subsection shall not apply to actions
2 brought to enforce any other lien or security interest granted to
3 secure the obligation secured by the deed of trust being foreclosed;

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

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

11 (7) That at least thirty days before notice of sale shall be
12 recorded, transmitted or served, written notice of default shall be
13 transmitted by the beneficiary or trustee to the borrower and grantor
14 at their last known addresses by both first-class and either registered
15 or certified mail, return receipt requested, and the beneficiary or
16 trustee shall cause to be posted in a conspicuous place on the
17 premises, a copy of the notice, or personally served on the borrower
18 and grantor. This notice shall contain the following information:

19 (a) A description of the property which is then subject to the deed
20 of trust;

21 (b) Each county in which the deed of trust is recorded and the
22 document number given to the deed of trust upon recording by each
23 county auditor or recording officer;

24 (c) That the beneficiary has declared the borrower or grantor to be
25 in default, and a concise statement of the default alleged;

26 (d) An itemized account of the amount or amounts in arrears if the
27 default alleged is failure to make payments;

28 (e) An itemized account of all other specific charges, costs, or
29 fees that the borrower, grantor, or any guarantor is or may be obliged
30 to pay to reinstate the deed of trust before the recording of the
31 notice of sale;

32 (f) The total of (d) and (e) of this subsection, designated clearly
33 and conspicuously as the amount necessary to reinstate the note and
34 deed of trust before the recording of the notice of sale;

35 (g) That failure to cure the alleged default within thirty days of
36 the date of mailing of the notice, or if personally served, within
37 thirty days of the date of personal service thereof, may lead to

1 recordation, transmittal, and publication of a notice of sale, and that
2 the property described in (a) of this subsection may be sold at public
3 auction at a date no less than one hundred twenty days in the future;

4 (h) That the effect of the recordation, transmittal, and
5 publication of a notice of sale will be to (i) increase the costs and
6 fees and (ii) publicize the default and advertise the grantor's
7 property for sale;

8 (i) That the effect of the sale of the grantor's property by the
9 trustee will be to deprive the grantor of all their interest in the
10 property described in (a) of this subsection;

11 (j) That the borrower, grantor, and any guarantor has recourse to
12 the courts pursuant to RCW 61.24.130 to contest the alleged default on
13 any proper ground; and

14 (k)(i) That before the notice of sale is recorded, transmitted, or
15 served, the trustee: (A) Has proof that the beneficiary is the actual
16 holder of any promissory note or other obligation secured by the deed
17 of trust; or (B) has possession of the original of any promissory note
18 secured by the deed of trust with the proper endorsements so that the
19 entity initiating the foreclosure sale has the authority to enforce the
20 terms of the promissory note. In the event that an original of a
21 promissory note is lost, a copy of any promissory note secured by the
22 deed of trust and a notarized statement, made by the beneficiary under
23 the penalty of perjury, that the original promissory note has been lost
24 may be provided.

25 (ii) Proof that the beneficiary is the actual holder of the
26 promissory note or other obligation secured by the deed of trust must
27 be made by way of an affidavit made by a person with personal knowledge
28 of the physical location of the promissory note or other obligation.

29 (l) In the event the property secured by the deed of trust is
30 owner-occupied residential property, a statement, prominently set out
31 at the beginning of the notice, which shall state as follows:

32 "You should take care to protect your interest in your home. This
33 notice of default (your failure to pay) is the first step in a process
34 that could result in you losing your home. You should carefully review
35 your options. For example:

36 Can you pay and stop the foreclosure process?

37 Do you dispute the failure to pay?

38 Can you sell your property to preserve your equity?

1 Are you able to refinance this loan with a new loan from another
2 lender with payments, terms, and fees that are more affordable?

3 Do you qualify for any government or private homeowner assistance
4 programs?

5 Do you know if filing for bankruptcy is an option? What are the
6 pros and cons of doing so?

7 Do not ignore this notice; because if you do nothing, you could
8 lose your home at a foreclosure sale. (No foreclosure sale can be held
9 any sooner than ninety days after a notice of sale is issued and a
10 notice of sale cannot be issued until thirty days after this notice.)
11 Also, if you do nothing to pay what you owe, be careful of people who
12 claim they can help you. There are many individuals and businesses
13 that watch for the notices of sale in order to unfairly profit as a
14 result of borrowers' distress.

15 You may feel you need help understanding what to do. There are a
16 number of professional resources available, including home loan
17 counselors and attorneys, who may assist you. Many legal services are
18 lower-cost or even free, depending on your ability to pay. If you
19 desire legal help in understanding your options or handling this
20 default, you may obtain a referral (at no charge) by contacting the
21 county bar association in the county where your home is located. These
22 legal referral services also provide information about lower-cost or
23 free legal services for those who qualify. You may contact the
24 Department of Financial Institutions, the Washington State Bar
25 Association, or the Office of Civil Legal Aid for possible assistance
26 or referrals."

27 **Sec. 8.** RCW 61.24.040 and 2008 c 153 s 3 are each amended to read
28 as follows:

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

31 (1) At least ninety days before the sale, the trustee shall:

32 (a) Record a notice in the form described in ((RCW
33 ~~61.24.040(1)~~))(f) of this subsection in the office of the auditor in
34 each county in which the deed of trust is recorded;

35 (b) To the extent the trustee elects to foreclose its lien or
36 interest, or the beneficiary elects to preserve its right to seek a
37 deficiency judgment against a borrower or grantor under RCW

1 61.24.100(3)(a), and if their addresses are stated in a recorded
2 instrument evidencing their interest, lien, or claim of lien, or an
3 amendment thereto, or are otherwise known to the trustee, cause a copy
4 of the notice of sale described in (~~RCW 61.24.040(1)~~)(f) of this
5 subsection to be transmitted by both first-class and either certified
6 or registered mail, return receipt requested, to the following persons
7 or their legal representatives, if any, at such address:

8 (i) The borrower and grantor;

9 (ii) The beneficiary of any deed of trust or mortgagee of any
10 mortgage, or any person who has a lien or claim of lien against the
11 property, that was recorded subsequent to the recordation of the deed
12 of trust being foreclosed and before the recordation of the notice of
13 sale;

14 (iii) The vendee in any real estate contract, the lessee in any
15 lease, or the holder of any conveyances of any interest or estate in
16 any portion or all of the property described in such notice, if that
17 contract, lease, or conveyance of such interest or estate, or a
18 memorandum or other notice thereof, was recorded after the recordation
19 of the deed of trust being foreclosed and before the recordation of the
20 notice of sale;

21 (iv) The last holder of record of any other lien against or
22 interest in the property that is subject to a subordination to the deed
23 of trust being foreclosed that was recorded before the recordation of
24 the notice of sale;

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

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

33 (c) Cause a copy of the notice of sale described in (~~RCW~~
34 ~~61.24.040(1)~~)(f) of this subsection to be transmitted by both first-
35 class and either certified or registered mail, return receipt
36 requested, to the plaintiff or the plaintiff's attorney of record, in
37 any court action to foreclose a lien or other encumbrance on all or any
38 part of the property, provided a court action is pending and a lis

1 pendens in connection therewith is recorded in the office of the
2 auditor of any county in which all or part of the property is located
3 on the date the notice is recorded;

4 (d) Cause a copy of the notice of sale described in ((RCW
5 ~~61.24.040(1)~~)) (f) of this subsection to be transmitted by both first-
6 class and either certified or registered mail, return receipt
7 requested, to any person who has recorded a request for notice in
8 accordance with RCW 61.24.045, at the address specified in such
9 person's most recently recorded request for notice;

10 (e) Cause a copy of the notice of sale described in ((RCW
11 ~~61.24.040(1)~~)) (f) of this subsection to be posted in a conspicuous
12 place on the property, or in lieu of posting, cause a copy of said
13 notice to be served upon any occupant of the property;

14 (f) The notice shall be in substantially the following form:

15 NOTICE OF TRUSTEE'S SALE

16 I.

17 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
18 day of,, at the hour of o'clock M. at
19 [street
20 address and location if inside a building] in the City of,
21 State of Washington, sell at public auction to the highest and best
22 bidder, payable at the time of sale, the following described real
23 property, situated in the County(ies) of, State of
24 Washington, to-wit:

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

28 which is subject to that certain Deed of Trust dated,
29, recorded,, under Auditor's File No.,
30 records of County, Washington, from, as
31 Grantor, to, as Trustee, to secure an obligation in
32 favor of, as Beneficiary, the beneficial interest in
33 which was assigned by, under an Assignment recorded
34 under Auditor's File No. [Include recording information for
35 all counties if the Deed of Trust is recorded in more than one county.]

36 II.

1 No action commenced by the Beneficiary of the Deed of Trust is now
2 pending to seek satisfaction of the obligation in any Court by reason
3 of the Borrower's or Grantor's default on the obligation secured by the
4 Deed of Trust.

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

8 III.

9 The default(s) for which this foreclosure is made is/are as follows:

10 [If default is for other than payment of money, set forth the
11 particulars]

12 Failure to pay when due the following amounts which are now in arrears:

13 IV.

14 The sum owing on the obligation secured by the Deed of Trust is:
15 Principal \$, together with interest as provided in the note
16 or other instrument secured from the day of,,
17 and such other costs and fees as are due under the note or other
18 instrument secured, and as are provided by statute.

19 V.

20 The above-described real property will be sold to satisfy the expense
21 of sale and the obligation secured by the Deed of Trust as provided by
22 statute. The sale will be made without warranty, express or implied,
23 regarding title, possession, or encumbrances on the day of
24, The default(s) referred to in paragraph III must be
25 cured by the day of, (11 days before the sale
26 date), to cause a discontinuance of the sale. The sale will be
27 discontinued and terminated if at any time on or before the day
28 of,, (11 days before the sale date), the default(s)
29 as set forth in paragraph III is/are cured and the Trustee's fees and
30 costs are paid. The sale may be terminated any time after the
31 day of, (11 days before the sale date), and before
32 the sale by the Borrower, Grantor, any Guarantor, or the holder of any
33 recorded junior lien or encumbrance paying the entire principal and
34 interest secured by the Deed of Trust, plus costs, fees, and advances,

1 if any, made pursuant to the terms of the obligation and/or Deed of
2 Trust, and curing all other defaults.

3 VI.

4 A written notice of default was transmitted by the Beneficiary or
5 Trustee to the Borrower and Grantor at the following addresses:

6
7
8

9 by both first-class and certified mail on the day of
10,, proof of which is in the possession of the Trustee;
11 and the Borrower and Grantor were personally served on the day
12 of,, with said written notice of default or the
13 written notice of default was posted in a conspicuous place on the real
14 property described in paragraph I above, and the Trustee has possession
15 of proof of such service or posting.

16 VII.

17 The Trustee whose name and address are set forth below will provide in
18 writing to anyone requesting it, a statement of all costs and fees due
19 at any time prior to the sale.

20 VIII.

21 The effect of the sale will be to deprive the Grantor and all those who
22 hold by, through or under the Grantor of all their interest in the
23 above-described property.

24 IX.

25 Anyone having any objection to the sale on any grounds whatsoever will
26 be afforded an opportunity to be heard as to those objections if they
27 bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.
28 Failure to bring such a lawsuit may result in a waiver of any proper
29 grounds for invalidating the Trustee's sale.

30 [Add Part X to this notice if applicable under RCW 61.24.040(9)]

1
2
3
4
5
6
7
8

.....
..... , Trustee
..... }
..... } Address
..... }
..... } Phone

[Acknowledgment]

9 (2) In addition to providing the borrower and grantor the notice of
10 sale described in ((~~RCW 61.24.040~~)) subsection (1)(f) of this section,
11 the trustee shall include with the copy of the notice which is mailed
12 to the grantor, a statement to the grantor in substantially the
13 following form:

14 NOTICE OF FORECLOSURE

15 Pursuant to the Revised Code of Washington,

16 Chapter 61.24 RCW

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

22 To cure the default(s), you must bring the payments current, cure
23 any other defaults, and pay accrued late charges and other costs,
24 advances, and attorneys' fees as set forth below by the day of
25, . . . [11 days before the sale date]. To date, these
26 arrears and costs are as follows:

27
28
29

	Estimated amount
Currently due	that will be due
to reinstate	to reinstate

1 on..... on.....
 2
 3 (11 days before
 4 the date set
 5 for sale)

6	Delinquent payments		
7	from.....,		
8	..., in the		
9	amount of		
10	\$.../mo.:	\$....	\$....
11	Late charges in		
12	the total		
13	amount of:	\$....	\$....
14			Estimated
15			Amounts
16	Attorneys' fees:	\$....	\$....
17	Trustee's fee:	\$....	\$....
18	Trustee's expenses:		
19	(Itemization)		
20	Title report	\$....	\$....
21	Recording fees	\$....	\$....
22	Service/Posting		
23	of Notices	\$....	\$....
24	Postage/Copying		
25	expense	\$....	\$....
26	Publication	\$....	\$....
27	Telephone		\$....
28	charges	\$....	
29	Inspection fees	\$....	\$....
30	\$....	\$....
31	\$....	\$....
32	TOTALS	\$....	\$....

33 To pay off the entire obligation secured by your Deed of Trust as
 34 of the day of you must pay a total of \$.
 35 in principal, \$. in interest, plus other costs and advances

1 estimated to date in the amount of \$. From and after the
2 date of this notice you must submit a written request to the Trustee to
3 obtain the total amount to pay off the entire obligation secured by
4 your Deed of Trust as of the payoff date.

5 As to the defaults which do not involve payment of money to the
6 Beneficiary of your Deed of Trust, you must cure each such default.
7 Listed below are the defaults which do not involve payment of money to
8 the Beneficiary of your Deed of Trust. Opposite each such listed
9 default is a brief description of the action necessary to cure the
10 default and a description of the documentation necessary to show that
11 the default has been cured.

12	Default	Description of Action Required to Cure and
13		Documentation Necessary to Show Cure
14
15	
16	
17
18	
19	

20 You may reinstate your Deed of Trust and the obligation secured
21 thereby at any time up to and including the day of ,
22 . . . [11 days before the sale date], by paying the amount set forth or
23 estimated above and by curing any other defaults described above. Of
24 course, as time passes other payments may become due, and any further
25 payments coming due and any additional late charges must be added to
26 your reinstating payment. Any new defaults not involving payment of
27 money that occur after the date of this notice must also be cured in
28 order to effect reinstatement. In addition, because some of the
29 charges can only be estimated at this time, and because the amount
30 necessary to reinstate or to pay off the entire indebtedness may
31 include presently unknown expenditures required to preserve the
32 property or to comply with state or local law, it will be necessary for
33 you to contact the Trustee before the time you tender reinstatement or
34 the payoff amount so that you may be advised of the exact amount you
35 will be required to pay. Tender of payment or performance must be made
36 to: , whose address is , telephone ()

1 AFTER THE DAY OF , , YOU MAY NOT
2 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND
3 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will
4 respond to any written request for current payoff or reinstatement
5 amounts within ten days of receipt of your written request. In such a
6 case, you will only be able to stop the sale by paying, before the
7 sale, the total principal balance (\$) plus accrued
8 interest, costs and advances, if any, made pursuant to the terms of the
9 documents and by curing the other defaults as outlined above.

10 You may contest this default by initiating court action in the
11 Superior Court of the county in which the sale is to be held. In such
12 action, you may raise any legitimate defenses you have to this default.
13 A copy of your Deed of Trust and documents evidencing the obligation
14 secured thereby are enclosed. You may wish to consult a lawyer. Legal
15 action on your part may prevent or restrain the sale, but only if you
16 persuade the court of the merits of your defense.

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

24 NAME:

25 ADDRESS:

26

27 TELEPHONE NUMBER:

28 If you do not reinstate the secured obligation and your Deed of
29 Trust in the manner set forth above, or if you do not succeed in
30 restraining the sale by court action, your property will be sold. The
31 effect of such sale will be to deprive you and all those who hold by,
32 through or under you of all interest in the property;

33 (3) In addition, the trustee shall cause a copy of the notice of
34 sale described in (~~RCW 61.24.040~~) subsection (1)(f) of this section
35 (excluding the acknowledgment) to be published in a legal newspaper in
36 each county in which the property or any part thereof is situated, once

1 on or between the thirty-fifth and twenty-eighth day before the date of
2 sale, and once on or between the fourteenth and seventh day before the
3 date of sale;

4 (4) On the date and at the time designated in the notice of sale,
5 the trustee or its authorized agent shall sell the property at public
6 auction to the highest bidder. The trustee may sell the property in
7 gross or in parcels as the trustee shall deem most advantageous;

8 (5) The place of sale shall be at any designated public place
9 within the county where the property is located and if the property is
10 in more than one county, the sale may be in any of the counties where
11 the property is located. The sale shall be on Friday, or if Friday is
12 a legal holiday on the following Monday, and during the hours set by
13 statute for the conduct of sales of real estate at execution;

14 (6) The trustee has no obligation to, but may, for any cause the
15 trustee deems advantageous, continue the sale for a period or periods
16 not exceeding a total of one hundred twenty days by (a) a public
17 proclamation at the time and place fixed for sale in the notice of sale
18 and if the continuance is beyond the date of sale, by giving notice of
19 the new time and place of the sale by both first class and either
20 certified or registered mail, return receipt requested, to the persons
21 specified in (~~RCW 61.24.040~~) subsection (1)(b)(i) and (ii) of this
22 section to be deposited in the mail (i) not less than four days before
23 the new date fixed for the sale if the sale is continued for up to
24 seven days; or (ii) not more than three days after the date of the
25 continuance by oral proclamation if the sale is continued for more than
26 seven days, or, alternatively, (b) by giving notice of the time and
27 place of the postponed sale in the manner and to the persons specified
28 in (~~RCW 61.24.040~~) subsection (1)(b), (c), (d), and (e) of this
29 section and publishing a copy of such notice once in the newspaper(s)
30 described in (~~RCW 61.24.040~~) subsection (3) of this section, more
31 than seven days before the date fixed for sale in the notice of sale.
32 No other notice of the postponed sale need be given;

33 (7) The purchaser shall forthwith pay the price bid and on payment
34 the trustee shall execute to the purchaser its deed; the deed shall
35 recite the facts showing that the sale was conducted in compliance with
36 all of the requirements of this chapter and of the deed of trust, which
37 recital shall be prima facie evidence of such compliance and conclusive
38 evidence thereof in favor of bona fide purchasers and encumbrancers for

1 value, except that these recitals shall not affect the lien or interest
2 of any person entitled to notice under (~~RCW 61.24.040~~) subsection (1)
3 of this section, if the trustee fails to give the required notice to
4 such person. In such case, the lien or interest of such omitted person
5 shall not be affected by the sale and such omitted person shall be
6 treated as if such person was the holder of the same lien or interest
7 and was omitted as a party defendant in a judicial foreclosure
8 proceeding;

9 (8) The sale as authorized under this chapter shall not take place
10 less than one hundred ninety days from the date of default in any of
11 the obligations secured;

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

18 X.

19 NOTICE TO OCCUPANTS OR TENANTS

20 The purchaser at the trustee's sale is entitled to possession of the
21 property on the 20th day following the sale, as against the grantor
22 under the deed of trust (the owner) and anyone having an interest
23 junior to the deed of trust, including occupants (~~and~~) who are not
24 tenants. After the 20th day following the sale the purchaser has the
25 right to evict occupants (~~and~~) who are not tenants by summary
26 proceedings under (~~the unlawful detainer act,~~) chapter 59.12 RCW.
27 For tenant-occupied property, the purchaser shall provide a tenant with
28 written notice in accordance with section 2 of this act;

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

34 **Sec. 9.** RCW 61.24.060 and 1998 c 295 s 8 are each amended to read
35 as follows:

36 The purchaser at the trustee's sale shall be entitled to possession

1 of the property on the twentieth day following the sale, as against the
2 grantor under the deed of trust and anyone having an interest junior to
3 the deed of trust, including occupants (~~and~~) who are not tenants, who
4 were given all of the notices to which they were entitled under this
5 chapter. For tenant-occupied property, the purchaser shall provide a
6 tenant with written notice in accordance with section 2 of this act.
7 The purchaser shall also have a right to the summary proceedings to
8 obtain possession of real property provided in chapter 59.12 RCW.

9 NEW SECTION. Sec. 10. A new section is added to chapter 59.12 RCW
10 to read as follows:

11 An unlawful detainer action, commenced as a result of a trustee's
12 sale under chapter 61.24 RCW, must comply with the requirements of RCW
13 61.24.040 and 61.24.060.

14 NEW SECTION. Sec. 11. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 12. Sections 1 through 4, 8, and 9 of this act
19 expire December 31, 2012."

SB 5810 - S AMD

By Senators Kauffman, Berkey

ADOPTED 03/12/2009

20 On page 1, line 1 of the title, after "trust;" strike the remainder
21 of the title and insert "amending RCW 61.24.010, 61.24.040, and
22 61.24.060; reenacting and amending RCW 61.24.030; adding new sections
23 to chapter 61.24 RCW; adding a new section to chapter 59.12 RCW;
24 creating a new section; and providing an expiration date."

EFFECT: (1) In addition to contacting a borrower in default, the

beneficiary or its authorized agent shall also include the Loss Mitigation Form with the Notice of Default.

(2) Language that the foreclosure may be enjoined if a lender has not been responsive to a borrower's attempts to contact the lender is removed.

(3) Language stating that the trustee must act in the borrower's best interest is removed.

(4) Claims that are not waived with the foreclosure sale must be brought within 2 years instead of 1 year.

(5) Specifies that contact information for the Department of Financial Institutions, the Washington State Bar Association, and the Office of Civil Legal Aid be provided.

(6) Prior to the Notice of Sale being recorded, the Trustee is to have proof that the beneficiary is the actual holder of the promissory note or other obligation secured by the Deed of Trust.

(7) It is clarified that a new purchaser may offer a lease to a tenant of the foreclosed property, or may offer a cash payment in exchange for the tenant vacating the property prior to the 60 days otherwise provided for.

--- END ---