
SUBSTITUTE HOUSE BILL 2823

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Lambert and Constantine)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to deeds of trust; amending RCW 61.24.010,
2 61.24.020, 61.24.030, 61.24.040, 61.24.050, 61.24.060, 61.24.070,
3 61.24.080, 61.24.090, 61.24.100, 61.24.110, 61.24.130, 7.28.300, and
4 7.60.020; and adding new sections to chapter 61.24 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 61.24 RCW
7 to read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Grantor" means a person, or its successors, who executes a
11 deed of trust to encumber the person's interest in property as security
12 for the performance of all or part of the borrower's obligations.

13 (2) "Beneficiary" means the holder of the instrument or document
14 evidencing the obligations secured by the deed of trust, excluding
15 persons holding the same as security for a different obligation.

16 (3) "Affiliate of beneficiary" means any entity which controls, is
17 controlled by, or is under common control with a beneficiary.

18 (4) "Trustee" means the person designated as the trustee in the
19 deed of trust or appointed under RCW 61.24.010(2).

1 (5) "Borrower" means a person or a general partner in a
2 partnership, including a joint venture, that is liable for all or part
3 of the obligations secured by the deed of trust under the instrument or
4 other document that is the principal evidence of such obligations, or
5 the person's successors if they are liable for those obligations under
6 a written agreement with the beneficiary.

7 (6) "Guarantor" means any person and its successors who is not a
8 borrower and who guarantees any of the obligations secured by a deed of
9 trust in any written agreement other than the deed of trust.

10 (7) "Commercial loan" means a loan that is not made primarily for
11 personal, family, or household purposes.

12 (8) "Trustee's sale" means a nonjudicial sale under a deed of trust
13 undertaken pursuant to this chapter.

14 (9) "Fair value" means the value of the property encumbered by a
15 deed of trust that is sold pursuant to a trustee's sale. This value
16 shall be determined by the court or other appropriate adjudicator by
17 reference to the most probable price, as of the date of the trustee's
18 sale, which would be paid in cash or other immediately available funds,
19 after deduction of prior liens and encumbrances with interest to the
20 date of the trustee's sale, for which the property would sell on such
21 date after reasonable exposure in the market under conditions requisite
22 to a fair sale, with the buyer and seller each acting prudently,
23 knowledgeably, and for self-interest, and assuming that neither is
24 under duress.

25 (10) "Record" and "recorded" includes the appropriate registration
26 proceedings, in the instance of registered land.

27 (11) "Person" means any natural person, or legal or governmental
28 entity.

29 **Sec. 2.** RCW 61.24.010 and 1991 c 72 s 58 are each amended to read
30 as follows:

31 ~~(1) ((The terms "record" and "recorded" as used in this chapter,~~
32 ~~shall include the appropriate registration proceedings, in the instance~~
33 ~~of registered land.~~

34 ~~(2))~~ Subject to RCW 61.24.020, the trustee of a deed of trust
35 under this chapter shall be:

36 (a) Any domestic corporation incorporated under Title 23B, 30, 31,
37 32, or 33 RCW of which at least one officer is a Washington resident;
38 or

1 (b) Any title insurance company authorized to insure title to real
2 property under the laws of this state, or its agents; or

3 (c) Any attorney who is an active member of the Washington state
4 bar association at the time ~~((he))~~ the attorney is named trustee; or

5 (d) Any professional corporation incorporated under chapter 18.100
6 RCW, ~~((all of whose shareholders are licensed attorneys))~~ any
7 professional limited liability company formed under chapter 25.15 RCW,
8 any general partnership, including limited liability partnerships,
9 formed under chapter 25.04 RCW, all of whose shareholders, members, or
10 partners, respectively, are either licensed attorneys or entities,
11 provided all of the owners of those entities are licensed attorneys, or
12 any domestic corporation wholly owned by any of the entities under this
13 subsection (1)(d); or

14 (e) Any agency or instrumentality of the United States government;
15 or

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

18 ~~((+3))~~ (2) The trustee ~~((shall))~~ may resign ~~((at the request of~~
19 ~~the beneficiary and may resign))~~ at its own election~~((r))~~ or be
20 replaced by the beneficiary. The trustee shall give prompt written
21 notice of its resignation to the beneficiary. The resignation of the
22 trustee shall become effective upon the recording of the notice of
23 resignation in each county in which the deed of trust is recorded. If
24 a trustee is not appointed in the deed of trust, or upon the
25 resignation, incapacity, disability, absence, or death of the trustee,
26 or the election of the beneficiary to replace the trustee, the
27 beneficiary shall ~~((nominate in writing))~~ appoint a trustee or a
28 successor trustee. Upon recording ~~((in the mortgage records of the~~
29 ~~county or counties))~~ the appointment of a successor trustee in each
30 county in which the ~~((trust))~~ deed of trust is recorded, ~~((of the~~
31 ~~appointment of a successor trustee,))~~ the successor trustee shall be
32 vested with all powers of ~~((the))~~ an original trustee.

33 **Sec. 3.** RCW 61.24.020 and 1985 c 193 s 2 are each amended to read
34 as follows:

35 Except as provided in this chapter, a deed of trust is subject to
36 all laws relating to mortgages on real property. A deed conveying real
37 property to a trustee in trust to secure the performance of an
38 obligation of the grantor or another to the beneficiary may be

1 foreclosed (~~(as in this chapter provided)~~) by trustee's sale. The
2 county auditor shall record (~~(such)~~) the deed as a mortgage and shall
3 index the name of the grantor as mortgagor and the names of the trustee
4 and beneficiary as mortgagee. No person, corporation or association
5 may be both trustee and either beneficiary or an affiliate of the
6 beneficiary under the same deed of trust: PROVIDED, That any agency of
7 the United States government may be both trustee and beneficiary under
8 the same deed of trust. A deed of trust conveying real property that
9 is used principally for agricultural purposes may be foreclosed as a
10 mortgage. Pursuant to RCW 62A.9-501(4), when a deed of trust encumbers
11 both real and personal property, the trustee is authorized to sell all
12 or any portion of the grantor's interest in that real and personal
13 property at a trustee's sale.

14 **Sec. 4.** RCW 61.24.030 and 1990 c 111 s 1 are each amended to read
15 as follows:

16 It shall be requisite(~~(, to foreclosure under this chapter)~~) to a
17 trustee's sale:

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

19 (2) That the deed of trust (~~(provides in its terms)~~) contains a
20 statement that the real property conveyed is not used principally for
21 agricultural (~~(or farming)~~) purposes; provided, if the statement is
22 false on the date the deed of trust was granted or amended to include
23 that statement, and false on the date of the trustee's sale, then the
24 deed of trust must be foreclosed judicially. Real property is used for
25 agricultural purposes if it is used in an operation that produces
26 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 (~~(or the beneficiary's successor)~~) is now pending to seek
32 satisfaction of an obligation secured by the deed of trust in any court
33 by reason of the grantor's default on the obligation secured:
34 PROVIDED, That (a) the seeking of the appointment of a receiver shall
35 not constitute an action for purposes of this chapter; and (b) if a
36 receiver is appointed, the grantor shall be entitled to any rents or
37 profits derived from property subject to a homestead as defined in RCW
38 6.13.010. If the deed of trust was (~~(not)~~) granted to secure (~~(an~~

1 obligation incurred primarily for personal, family, or household
2 purposes)) a commercial loan, this subsection shall not apply to
3 actions brought to enforce any other lien or security interest granted
4 to secure the obligation secured by the deed of trust being foreclosed;

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

7 (6) That prior to the date of the notice of trustee's sale and
8 continuing thereafter through the date of the trustee's sale, the
9 trustee must have a street address in this state where personal service
10 of process may be made; 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 ~~((or any successor in interest))~~ at ~~((his))~~ their last known
15 ~~((address))~~ addresses by both first class and either registered or
16 certified mail, return receipt requested, and the beneficiary or
17 trustee shall cause to be posted in a conspicuous place on ~~((said))~~ the
18 premises, a copy of ~~((said))~~ the notice, or personally served on the
19 borrower and grantor ~~((or his successor in interest))~~. This notice
20 shall contain the following information:

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

23 (b) ~~((The book and the page of the book of records wherein the deed~~
24 ~~of trust is recorded))~~ Each county in which the deed of trust is
25 recorded and the document number given to the deed of trust upon
26 recording by each county auditor or recording officer;

27 (c) That the beneficiary has declared the borrower or grantor ~~((or~~
28 ~~any successor in interest))~~ to be in default, and a concise statement
29 of the default alleged;

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

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

36 (f) The total of ~~((subparagraphs))~~ (d) and (e) of this subsection,
37 designated clearly and conspicuously as the amount necessary to
38 reinstate the note and deed of trust before the recording of the notice
39 of sale;

1 (g) That failure to cure (~~said~~) the alleged default within thirty
2 days of the date of mailing of the notice, or if personally served,
3 within thirty days of the date of personal service thereof, may lead to
4 recordation, transmittal, and publication of a notice of sale, and that
5 the property described in (~~subparagraph~~) (a) of this subsection may
6 be sold at public auction at a date no less than one hundred twenty
7 days in the future;

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

12 (i) That the effect of the sale of the grantor's property by the
13 trustee will be to deprive the grantor (~~or his successor in interest~~
14 ~~and all those who hold by, through or under him~~) of all their interest
15 in the property described in (~~subsection~~) (a) of this subsection; and

16 (j) That the borrower, grantor (~~or any successor in interest~~),
17 and any guarantor has recourse to the courts pursuant to RCW 61.24.130
18 to contest the alleged default on any proper ground.

19 **Sec. 5.** RCW 61.24.040 and 1989 c 361 s 1 are each amended to read
20 as follows:

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

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

24 (a) Record a notice in the form described in RCW 61.24.040(1)(f) in
25 the office of the auditor in each county in which the deed of trust is
26 recorded;

27 (b) To the extent the trustee elects to foreclose its lien or
28 interest, or the beneficiary elects to preserve its right to seek a
29 deficiency judgment against a borrower or grantor under RCW
30 61.24.100(3)(a), and if their addresses are stated in a recorded
31 instrument evidencing their interest, lien, or claim of lien, or an
32 amendment thereto, or are otherwise known to the trustee, cause a copy
33 of the notice of sale described in RCW 61.24.040(1)(f) to be
34 transmitted by both first class and either certified or registered
35 mail, return receipt requested, to the following persons or their legal
36 representatives, if any, at such address:

37 (i) The borrower and grantor (~~or the grantor's successor in~~
38 ~~interest~~));

1 (ii) The beneficiary of any deed of trust or mortgagee of any
2 mortgage, or any person who has a lien or claim of lien against the
3 property, that was recorded subsequent to the recordation of the deed
4 of trust being foreclosed and before the recordation of the notice of
5 sale;

6 (iii) The vendee in any real estate contract, the lessee in any
7 lease, or the holder of any conveyances of any interest or estate in
8 any portion or all of the property described in such notice, if that
9 contract, lease, or conveyance of such interest or estate, or a
10 memorandum or other notice thereof, was recorded after the recordation
11 of the deed of trust being foreclosed and before the recordation of the
12 notice of sale;

13 (iv) The last holder of record of any other lien against or
14 interest in the property that is subject to a subordination to the deed
15 of trust being foreclosed that was recorded before the recordation of
16 the notice of sale; ((and))

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

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

25 (c) Cause a copy of the notice of sale described in RCW
26 61.24.040(1)(f) to be transmitted by both first class and either
27 certified or registered mail, return receipt requested, to the
28 plaintiff or the plaintiff's attorney of record, in any court action to
29 foreclose a lien or other encumbrance on all or any part of the
30 property, provided a court action is pending and a lis pendens in
31 connection therewith is recorded in the office of the auditor of any
32 county in which all or part of the property is located on the date the
33 notice is recorded;

34 (d) Cause a copy of the notice of sale described in RCW
35 61.24.040(1)(f) to be transmitted by both first class and either
36 certified or registered mail, return receipt requested, to any person
37 who has recorded a request for notice in accordance with RCW 61.24.045,
38 at the address specified in such person's most recently recorded
39 request for notice;

1 (e) Cause a copy of the notice of sale described in RCW
2 61.24.040(1)(f) to be posted in a conspicuous place on the property, or
3 in lieu of posting, cause a copy of said notice to be served upon any
4 occupant of the property;

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

6 NOTICE OF TRUSTEE'S SALE

7 I.

8 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
9 day of, ((19)). . ., at the hour of o'clock
10 M. at [street
11 address and location if inside a building] in the City of,
12 State of Washington, sell at public auction to the highest and best
13 bidder, payable at the time of sale, the following described real
14 property, situated in the County(ies) of, State of
15 Washington, to-wit:

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

19 which is subject to that certain Deed of Trust dated,
20 ((19)). . ., recorded, ((19)). . ., under Auditor's File
21 No., records of County, Washington, from
22, as Grantor, to, as Trustee, to
23 secure an obligation in favor of, as Beneficiary, the
24 beneficial interest in which was assigned by, under
25 an Assignment recorded under Auditor's File No. [Include
26 recording information for all counties if the Deed of Trust is recorded
27 in more than one county.]

28 II.

29 No action commenced by the Beneficiary of the Deed of Trust (~~or the~~
30 ~~Beneficiary's successor~~) is now pending to seek satisfaction of the
31 obligation in any Court by reason of the Borrower's or Grantor's
32 default on the obligation secured by the Deed of Trust.

1 interest secured by the Deed of Trust, plus costs, fees, and advances,
2 if any, made pursuant to the terms of the obligation and/or Deed of
3 Trust, and curing all other defaults.

4 VI.

5 A written notice of default was transmitted by the Beneficiary or
6 Trustee to the Borrower and Grantor (~~(or the Grantor's successor in~~
7 ~~interest)) at the following ((address)) addresses:~~

8
9
10

11 by both first class and certified mail on the day of
12, ((19)). . ., proof of which is in the possession of the
13 Trustee; and the Borrower and Grantor (~~(or the Grantor's successor in~~
14 ~~interest was)) were personally served on the day of
15, ((19)). . ., with said written notice of default or the
16 written notice of default was posted in a conspicuous place on the real
17 property described in paragraph I above, and the Trustee has possession
18 of proof of such service or posting.~~

19 VII.

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

23 VIII.

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

27 IX.

28 Anyone having any objection to the sale on any grounds whatsoever will
29 be afforded an opportunity to be heard as to those objections if they
30 bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.

1 Failure to bring such a lawsuit may result in a waiver of any proper
2 grounds for invalidating the Trustee's sale.

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

4
5 , Trustee
6 }
7 } Address
8 }
9 } Phone

10 [~~((Individual or corporate))~~ Acknowledgment]

11 (2) In addition to providing the borrower and grantor (~~or the~~
12 ~~grantor's successor in interest~~) the notice of sale described in RCW
13 61.24.040(1)(f), the trustee shall include with the copy of the notice
14 which is mailed to the grantor (~~or the grantor's successor in~~
15 ~~interest~~), a statement to the grantor (~~or the grantor's successor in~~
16 ~~interest~~) in substantially the following form:

17 NOTICE OF FORECLOSURE

18 Pursuant to the Revised Code of Washington,
19 Chapter 61.24 RCW

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

25 To cure the default(s), you must bring the payments current, cure
26 any other defaults, and pay accrued late charges and other costs,
27 advances, and attorneys' fees as set forth below by the day of
28, ((19)). . . ((+))[11 days before the sale date((+))]. To
29 date, these arrears and costs are as follows:

1		Estimated amount
2	Currently due	that will be due
3	to reinstate	to reinstate
4	on.	on.
5
6		(11 days before
7		the date set
8		for sale)

9 Delinquent payments
10 from,
11 ((19)). . ., in the
12 amount of

13	\$ /mo.:	\$	\$
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14 Late charges in
15 the total
16 amount of:

16	\$	\$
----	------------	------------

17		Estimated
18		Amounts

19	Attorneys' fees:	\$	\$
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20	Trustee's fee:	\$	\$
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21 Trustee's expenses:
22 (Itemization)

23	Title report	\$	\$
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24	Recording fees	\$	\$
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25	Service/Posting		
26	of Notices	\$	\$

27	Postage/Copying		
28	expense	\$	\$

29	Publication	\$	\$
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30	Telephone		
31	charges	\$	\$

32	Inspection fees	\$	\$
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33	\$	\$
----	-----------	------------	------------

34	\$	\$
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35	TOTALS	\$	\$
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1 As to the defaults which do not involve payment of money to the
2 Beneficiary of your Deed of Trust, you must cure each such default.
3 Listed below are the defaults which do not involve payment of money to
4 the Beneficiary of your Deed of Trust. Opposite each such listed
5 default is a brief description of the action necessary to cure the
6 default and a description of the documentation necessary to show that
7 the default has been cured.

8	Default	Description of Action Required to Cure and
9		Documentation Necessary to Show Cure
10
11	
12	
13
14	
15	

16 You may reinstate your Deed of Trust and the obligation secured
17 thereby at any time up to and including the day of,
18 ((19)). . . ((+)) [11 days before the sale date((+))], by paying the
19 amount set forth or estimated above and by curing any other defaults
20 described above. Of course, as time passes other payments may become
21 due, and any further payments coming due and any additional late
22 charges must be added to your reinstating payment. Any new defaults
23 not involving payment of money that occur after the date of this notice
24 must also be cured in order to effect reinstatement. In addition,
25 because some of the charges can only be estimated at this time, and
26 because the amount necessary to reinstate may include presently unknown
27 expenditures required to preserve the property or to comply with state
28 or local law, it will be necessary for you to contact the Trustee
29 before the time you tender reinstatement so that you may be advised of
30 the exact amount you will be required to pay. Tender of payment or
31 performance must be made to:, whose address is
32, telephone () AFTER THE DAY OF
33, ((19)). . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY
34 PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER
35 DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to
36 stop the sale by paying, before the sale, the total principal balance
37 (\$) plus accrued interest, costs and advances, if any, made
38 pursuant to the terms of the documents and by curing the other defaults
39 as outlined above.

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

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

15 NAME: _____
16 ADDRESS: _____
17 _____
18 TELEPHONE NUMBER: _____

19 If you do not reinstate the secured obligation and your Deed of
20 Trust in the manner set forth above, or if you do not succeed in
21 restraining the sale by court action, your property will be sold (~~to~~
22 ~~satisfy the obligations secured by your Deed of Trust~~). The effect of
23 such sale will be to deprive you and all those who hold by, through or
24 under you of all interest in the property;

25 (3) In addition, the trustee shall cause a copy of the notice of
26 sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to
27 be published in a legal newspaper in each county in which the property
28 or any part thereof is situated, once on or between the (~~thirty-~~
29 ~~second~~) thirty-fifth and twenty-eighth day before the date of sale,
30 and once on or between the (~~eleventh~~) fourteenth and seventh day
31 before the date of sale;

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

36 (5) The place of sale shall be at any designated public place
37 within the county where the property is located and if the property is
38 in more than one county, the sale may be in any of the counties where

1 the property is located. The sale shall be on Friday, or if Friday is
2 a legal holiday on the following Monday, and during the hours set by
3 statute for the conduct of sales of real estate at execution;

4 (6) The trustee may for any cause the trustee deems advantageous,
5 continue the sale for a period or periods not exceeding a total of one
6 hundred twenty days by a public proclamation at the time and place
7 fixed for sale in the notice of sale or, alternatively, by giving
8 notice of the time and place of the postponed sale in the manner and to
9 the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and
10 publishing a copy of such notice once in the newspaper(s) described in
11 RCW 61.24.040(3), more than seven days before the date fixed for sale
12 in the notice of sale. No other notice of the postponed sale need be
13 given;

14 (7) The purchaser shall forthwith pay the price bid and on payment
15 the trustee shall execute to the purchaser its deed; the deed shall
16 recite the facts showing that the sale was conducted in compliance with
17 all of the requirements of this chapter and of the deed of trust, which
18 recital shall be prima facie evidence of such compliance and conclusive
19 evidence thereof in favor of bona fide purchasers and encumbrancers for
20 value, except that these recitals shall not affect the lien or interest
21 of any person entitled to notice under RCW 61.24.040(1), if the trustee
22 fails to give the required notice to such person. In such case, the
23 lien or interest of such omitted person shall not be affected by the
24 sale and such omitted person shall be treated as if such person was the
25 holder of the same lien or interest and was omitted as a party
26 defendant in a judicial foreclosure proceeding;

27 (8) The sale as authorized under this chapter shall not take place
28 less than one hundred ninety days from the date of default in any of
29 the obligations secured.

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

36 X.

37 NOTICE TO OCCUPANTS OR TENANTS

1 The purchaser at the trustee's sale is entitled to possession of the
2 property on the 20th day following the sale, as against the grantor
3 under the deed of trust (the owner) and anyone having an interest
4 junior to the deed of trust, including occupants and tenants. After
5 the 20th day following the sale the purchaser has the right to evict
6 occupants and tenants by summary proceedings under the unlawful
7 detainer act, chapter 59.12 RCW.

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

13 NEW SECTION. Sec. 6. A new section is added to chapter 61.24 RCW
14 to read as follows:

15 The beneficiary may give the notices of default, trustee's sale,
16 and foreclosure referred to in RCW 61.24.030(7) and 61.24.040 to any
17 one or more of the guarantors of a commercial loan at the time they are
18 given to the grantor. In addition to the information contained in the
19 notices provided to the grantor, these notices shall state that (1) the
20 guarantor may be liable for a deficiency judgment to the extent the
21 sale price obtained at the trustee's sale is less than the debt secured
22 by the deed of trust; (2) the guarantor has the same rights to
23 reinstate the debt, cure the default, or repay the debt as is given to
24 the grantor in order to avoid the trustee's sale; (3) the guarantor
25 will have no right to redeem the property after the trustee's sale; (4)
26 subject to such longer periods as are provided in the Washington deed
27 of trust act, chapter 61.24 RCW, any action brought to enforce a
28 guaranty must be commenced within one year after the trustee's sale, or
29 the last trustee's sale under any deed of trust granted to secure the
30 same debt; and (5) in any action for a deficiency, the guarantor will
31 have the right to establish the fair value of the property as of the
32 date of the trustee's sale, less prior liens and encumbrances, and to
33 limit its liability for a deficiency to the difference between the debt
34 and the greater of such fair value or the sale price paid at the
35 trustee's sale, plus interest and costs. The failure of the
36 beneficiary to provide any guarantor the notice referred to in this
37 section does not invalidate either the notices given to the borrower or
38 the grantor, or the trustee's sale.

1 **Sec. 7.** RCW 61.24.050 and 1965 c 74 s 5 are each amended to read
2 as follows:

3 (~~The deed of the trustee, executed to the purchaser,~~) When
4 delivered to the purchaser, the trustee's deed shall convey all of the
5 right, title, and interest in the real and personal property sold at
6 the trustee's sale which the grantor had or had the power to convey at
7 the time of the execution ((by him)) of the deed of trust, and such as
8 ((he)) the grantor may have thereafter acquired. If the trustee
9 accepts a bid, then the trustee's sale is final as of the date and time
10 of such acceptance if the trustee's deed is recorded within fifteen
11 days thereafter. After a trustee's sale, ((as in this chapter
12 provided,) no person shall have any right, by statute or otherwise, to
13 redeem (~~from the deed of trust or from~~) the property sold at the
14 trustee's sale.

15 **Sec. 8.** RCW 61.24.060 and 1967 c 30 s 2 are each amended to read
16 as follows:

17 The purchaser at the trustee's sale shall be entitled to possession
18 of the property on the twentieth day following the sale, as against the
19 grantor under the deed of trust (~~or anyone claiming through him,~~) and
20 anyone having an interest junior to the deed of trust, including
21 occupants and tenants, who were given all of the notices to which they
22 were entitled under this chapter. The purchaser shall also have a
23 right to the summary proceedings to obtain possession of real property
24 provided in chapter 59.12 RCW.

25 **Sec. 9.** RCW 61.24.070 and 1965 c 74 s 7 are each amended to read
26 as follows:

27 (1) The trustee may not bid at the trustee's sale. Any other
28 person, including the beneficiary (~~under the deed of trust~~), may bid
29 at the trustee's sale.

30 (2) The trustee shall, at the request of the beneficiary, credit
31 toward the beneficiary's bid all or any part of the monetary
32 obligations secured by the deed of trust. If the beneficiary is the
33 purchaser, any amount bid by the beneficiary in excess of the amount so
34 credited shall be paid to the trustee in the form of cash, certified
35 check, cashier's check, money order, or funds received by verified
36 electronic transfer, or any combination thereof. If the purchaser is
37 not the beneficiary, the entire bid shall be paid to the trustee in the

1 form of cash, certified check, cashier's check, money order, or funds
2 received by verified electronic transfer, or any combination thereof.

3 **Sec. 10.** RCW 61.24.080 and 1981 c 161 s 5 are each amended to read
4 as follows:

5 The trustee shall apply the proceeds of the sale as follows:

6 (1) To the expense of sale, including a reasonable charge by the
7 trustee and by his or her attorney: PROVIDED, That the aggregate of
8 the charges by the trustee and his or her attorney, for their services
9 in the sale, shall not exceed the amount which would, by the superior
10 court of the county in which the trustee's sale occurred, have been
11 deemed a reasonable attorney fee, had the trust deed been foreclosed as
12 a mortgage in a noncontested action in (~~the said~~) that court;

13 (2) To the obligation secured by the deed of trust; and

14 (3) The surplus, if any, less the clerk's filing fee, shall be
15 deposited, together with written notice of the amount of the surplus,
16 a copy of the (~~recorded~~) notice of trustee's sale, and an affidavit
17 of mailing as provided in this subsection, with the clerk of the
18 superior court of the county in which the sale took place. The trustee
19 shall mail copies of the notice of the surplus, the notice of trustee's
20 sale, and the affidavit of mailing to each party to whom the notice of
21 trustee's sale was sent pursuant to RCW 61.24.040(1). The clerk shall
22 index such funds under the name of the grantor as set out in the
23 recorded notice. Upon (~~depositing such surplus~~) compliance with this
24 subsection, the trustee shall be discharged from all further
25 responsibilities (~~therefor~~) for the surplus. Interests in, or liens
26 or claims of liens against the property eliminated by sale under this
27 section shall attach to (~~such~~) the surplus in the order of priority
28 that it had attached to the property. A party seeking disbursement of
29 the surplus funds shall file a motion requesting disbursement in the
30 superior court for the county in which the surplus funds are deposited.
31 Notice of the motion shall be personally served upon, or mailed in the
32 manner specified in RCW 61.24.040(1)(b), to all parties to whom the
33 trustee mailed notice of the surplus, and any other party who has
34 entered an appearance in the proceeding, not less than twenty days
35 prior to the hearing of the motion. The clerk shall not disburse such
36 surplus except upon order of the superior court of such county.

1 **Sec. 11.** RCW 61.24.090 and 1987 c 352 s 4 are each amended to read
2 as follows:

3 (1) At any time prior to the eleventh day before the date set by
4 the trustee for the sale in the recorded notice of sale, or in the
5 event the trustee continues the sale pursuant to RCW 61.24.040(6), at
6 any time prior to the eleventh day before the actual sale, the
7 borrower, grantor ((or his successor in interest)), any guarantor, any
8 beneficiary under a subordinate deed of trust, or any person having a
9 subordinate lien or encumbrance of record on the trust property or any
10 part thereof, shall be entitled to cause a discontinuance of the sale
11 proceedings by curing the default or defaults set forth in the notice,
12 which in the case of a default by failure to pay, shall be by paying to
13 the trustee:

14 (a) The entire amount then due under the terms of the deed of trust
15 and the obligation secured thereby, other than such portion of the
16 principal as would not then be due had no default occurred, and

17 (b) The expenses actually incurred by the trustee enforcing the
18 terms of the note and deed of trust, including a reasonable trustee's
19 fee, together with the trustee's reasonable attorney's fees, together
20 with costs of recording the notice of discontinuance of notice of
21 trustee's sale.

22 (2) Any person entitled to cause a discontinuance of the sale
23 proceedings shall have the right, before or after reinstatement, to
24 request any court, excluding a small claims court, for disputes within
25 the jurisdictional limits of that court, to determine the
26 reasonableness of any fees demanded or paid as a condition to
27 reinstatement. The court shall make such determination as it deems
28 appropriate, which may include an award to the prevailing party of its
29 costs and reasonable attorneys' fees, and render judgment accordingly.
30 An action to determine fees shall not forestall any sale or affect its
31 validity.

32 (3) Upon receipt of such payment the proceedings shall be
33 discontinued, the deed of trust shall be reinstated and the obligation
34 shall remain as though no acceleration had taken place.

35 (4) In the case of a default which is occasioned by other than
36 failure to make payments, the person or persons causing the said
37 default shall pay the expenses incurred by the trustee and the
38 trustee's fees as set forth in subsection (1)(b) of this section.

1 (5) Any person having a subordinate lien of record on the trust
2 property and who has cured the default or defaults pursuant to this
3 section shall thereafter have included in his lien all payments made to
4 cure any defaults, including interest thereon at eight percent per
5 annum, payments made for trustees' costs and fees incurred as
6 authorized ((herein)), and ((his)) reasonable attorney's fees and costs
7 incurred resulting from any judicial action commenced to enforce his or
8 her rights to advances under this section.

9 (6) If the default is cured and the obligation and the deed of
10 trust reinstated in the manner ((hereinabove)) provided, the trustee
11 shall properly execute, acknowledge, and cause to be recorded a notice
12 of discontinuance of trustee's sale under ((such)) that deed of trust.
13 A notice of discontinuance of trustee's sale when so executed and
14 acknowledged is entitled to be recorded and shall be sufficient if it
15 sets forth a record of the deed of trust and the auditor's file number
16 under which the deed of trust is recorded, and a reference to the
17 notice of sale and the auditor's file number under which the notice of
18 sale is recorded, and a notice that ((such)) the sale is discontinued.

19 (7) Any payments required under this section as a condition
20 precedent to reinstatement of the deed of trust shall be tendered to
21 the trustee in the form of cash, certified check, cashier's check,
22 money order, or funds received by verified electronic transfer, or any
23 combination thereof.

24 **Sec. 12.** RCW 61.24.100 and 1990 c 111 s 2 are each amended to read
25 as follows:

26 ~~((Foreclosure, as in this chapter provided, shall satisfy the~~
27 ~~obligation secured by the deed of trust foreclosed, regardless of the~~
28 ~~sale price or fair value, and no deficiency decree or other judgment~~
29 ~~shall thereafter be obtained on such obligation, except that if such~~
30 ~~obligation was not incurred primarily for personal, family, or~~
31 ~~household purposes, such foreclosure shall not preclude any judicial or~~
32 ~~nonjudicial foreclosure of any other deeds of trust, mortgages,~~
33 ~~security agreements, or other security interests or liens covering any~~
34 ~~real or personal property granted to secure such obligation. Where~~
35 ~~foreclosure is not made under this chapter, the beneficiary shall not~~
36 ~~be precluded from enforcing the security as a mortgage nor from~~
37 ~~enforcing the obligation by any means provided by law.)) (1) Except to
38 the extent permitted in this section for deeds of trust securing~~

1 commercial loans, a deficiency judgment shall not be obtained on the
2 obligations secured by a deed of trust against any borrower, grantor,
3 or guarantor after a trustee's sale under that deed of trust.

4 (2)(a) Nothing in this chapter precludes an action against any
5 person liable on the obligations secured by a deed of trust or any
6 guarantor prior to a notice of trustee's sale being given pursuant to
7 this chapter or after the discontinuance of the trustee's sale.

8 (b) No action under (a) of this subsection precludes the
9 beneficiary from commencing a judicial foreclosure or trustee's sale
10 under the deed of trust after the completion or dismissal of that
11 action.

12 (3) This chapter does not preclude any one or more of the following
13 after a trustee's sale under a deed of trust securing a commercial loan
14 executed after the effective date of this section:

15 (a)(i) To the extent the fair value of the property sold at the
16 trustee's sale to the beneficiary or an affiliate of the beneficiary is
17 less than the unpaid obligation secured by the deed of trust
18 immediately prior to the trustee's sale, an action for a deficiency
19 judgment against the borrower or grantor, if such person or persons was
20 timely given the notices under RCW 61.24.040, for (A) any decrease in
21 the fair value of the property caused by waste to the property
22 committed by the borrower or grantor, respectively, after the deed of
23 trust is granted, and (B) the wrongful retention of any rents,
24 insurance proceeds, or condemnation awards by the borrower or grantor,
25 respectively, that are otherwise owed to the beneficiary.

26 (ii) This subsection (3)(a) does not apply to any property that is
27 occupied by the borrower as its principal residence as of the date of
28 the trustee's sale;

29 (b) Any judicial or nonjudicial foreclosures of any other deeds of
30 trust, mortgages, security agreements, or other security interests or
31 liens covering any real or personal property granted to secure the
32 obligation that was secured by the deed of trust foreclosed; or

33 (c) Subject to this section, an action for a deficiency judgment
34 against a guarantor if the guarantor is timely given the notices under
35 section 6 of this act.

36 (4) Any action referred to in subsection (3)(a) and (c) of this
37 section shall be commenced within one year after the date of the
38 trustee's sale, or a later date to which the liable party otherwise
39 agrees in writing with the beneficiary after the notice of foreclosure

1 is given, plus any period during which the action is prohibited by a
2 bankruptcy, insolvency, moratorium, or other similar debtor protection
3 statute. If there occurs more than one trustee's sale under a deed of
4 trust securing a commercial loan or if trustee's sales are made
5 pursuant to two or more deeds of trust securing the same commercial
6 loan, the one-year limitation in this section begins on the date of the
7 last of those trustee's sales.

8 (5) In any action against a guarantor following a trustee's sale
9 under a deed of trust securing a commercial loan, the guarantor may
10 request the court or other appropriate adjudicator to determine, or the
11 court or other appropriate adjudicator may in its discretion determine,
12 the fair value of the property sold at the sale and the deficiency
13 judgment against the guarantor shall be for an amount equal to the sum
14 of the total amount owed to the beneficiary by the guarantor as of the
15 date of the trustee's sale, less the fair value of the property sold at
16 the trustee's sale or the sale price paid at the trustee's sale,
17 whichever is greater, plus interest on the amount of the deficiency
18 from the date of the trustee's sale at the rate provided in the
19 guaranty, the deed of trust, or in any other contracts evidencing the
20 debt secured by the deed of trust, as applicable, and any costs,
21 expenses, and fees that are provided for in any contract evidencing the
22 guarantor's liability for such a judgment. If any other security is
23 sold to satisfy the same debt prior to the entry of a deficiency
24 judgment against the guarantor, the fair value of that security, as
25 calculated in the manner applicable to the property sold at the
26 trustee's sale, shall be added to the fair value of the property sold
27 at the trustee's sale as of the date that additional security is
28 foreclosed. This section is in lieu of any right any guarantor would
29 otherwise have to establish an upset price pursuant to RCW 61.12.060
30 prior to a trustee's sale.

31 (6) A guarantor granting a deed of trust to secure its guaranty of
32 a commercial loan shall be subject to a deficiency judgment following
33 a trustee's sale under that deed of trust only to the extent stated in
34 subsection (3)(a)(i) of this section. If the deed of trust encumbers
35 the guarantor's principal residence, the guarantor shall be entitled to
36 receive an amount up to the homestead exemption set forth in RCW
37 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid
38 at the foreclosure or trustee's sale accepted by the sheriff or trustee
39 prior to the application of the bid to the guarantor's obligation.

1 (7) A beneficiary's acceptance of a deed in lieu of a trustee's
2 sale under a deed of trust securing a commercial loan exonerates the
3 guarantor from any liability for the debt secured thereby except to the
4 extent the guarantor otherwise agrees as part of the deed in lieu
5 transaction.

6 (8) This chapter does not preclude a beneficiary from foreclosing
7 a deed of trust in the same manner as a real property mortgage and this
8 section does not apply to such a foreclosure.

9 (9) Any contract, note, deed of trust, or guaranty may, by its
10 express language, prohibit the recovery of any portion or all of a
11 deficiency after the property encumbered by the deed of trust securing
12 a commercial loan is sold at a trustee's sale.

13 (10) A trustee's sale under a deed of trust securing a commercial
14 loan does not preclude an action to collect or enforce any obligation
15 of a borrower or guarantor if that obligation, or the substantial
16 equivalent of that obligation, was not secured by the deed of trust.

17 (11) Unless the guarantor otherwise agrees, a trustee's sale shall
18 not impair any right or agreement of a guarantor to be reimbursed by a
19 borrower or grantor for a deficiency judgment against the guarantor.

20 (12) Notwithstanding anything in this section to the contrary, the
21 rights and obligations of any borrower, grantor, and guarantor
22 following a trustee's sale under a deed of trust securing a commercial
23 loan or any guaranty of such a loan executed prior to the effective
24 date of this section shall be determined in accordance with the laws
25 existing prior to the effective date of this section.

26 **Sec. 13.** RCW 61.24.110 and 1981 c 161 s 7 are each amended to read
27 as follows:

28 The trustee shall reconvey all or any part of the property
29 ~~((covered))~~ encumbered by the deed of trust to the person entitled
30 thereto on written request of the beneficiary, or upon satisfaction of
31 the obligation secured and written request for reconveyance made by the
32 beneficiary or the person entitled thereto.

33 **Sec. 14.** RCW 61.24.130 and 1987 c 352 s 5 are each amended to read
34 as follows:

35 (1) Nothing contained in this chapter shall prejudice the right of
36 the borrower, grantor, ~~((the grantor's successor in interest))~~ any
37 guarantor, or any person who has an interest in, lien, or claim of lien

1 against the property or some part thereof, to restrain, on any proper
2 ground, a trustee's sale. The court shall require as a condition of
3 granting the restraining order or injunction that the applicant pay to
4 the clerk of the court the sums that would be due on the obligation
5 secured by the deed of trust if the deed of trust was not being
6 foreclosed:

7 (a) In the case of default in making the periodic payment of
8 principal, interest, and reserves, such sums shall be the periodic
9 payment of principal, interest, and reserves paid to the clerk of the
10 court every thirty days.

11 (b) In the case of default in making payment of an obligation then
12 fully payable by its terms, such sums shall be the amount of interest
13 accruing monthly on said obligation at the nondefault rate, paid to the
14 clerk of the court every thirty days.

15 In the case of default in performance of any nonmonetary obligation
16 secured by the deed of trust, the court shall impose such conditions as
17 it deems just.

18 In addition, the court may condition granting the restraining order
19 or injunction upon the giving of security by the applicant, in such
20 form and amount as the court deems proper, for the payment of such
21 costs and damages, including attorneys' fees, as may be later found by
22 the court to have been incurred or suffered by any party by reason of
23 the restraining order or injunction. The court may consider, upon
24 proper showing, the grantor's equity in the property in determining the
25 amount of said security.

26 (2) No court may grant a restraining order or injunction to
27 restrain a trustee's sale unless the person seeking the restraint gives
28 five days notice to the trustee (~~and the beneficiary~~) of the time
29 when, place where, and the judge before whom the application for the
30 restraining order or injunction is to be made. This notice shall
31 include copies of all pleadings and related documents to be given to
32 the judge. No judge may act upon such application unless it is
33 accompanied by proof, evidenced by return of a sheriff, the sheriff's
34 deputy, or by any person eighteen years of age or over who is competent
35 to be a witness, that the notice has been served on the trustee.

36 (3) If the restraining order or injunction is dissolved after the
37 date of the trustee's sale set forth in the notice as provided in RCW
38 61.24.040(1)(f) (~~and after the period for continuing sale as allowed~~
39 ~~by RCW 61.24.040(6)~~), the court granting such restraining order or

1 injunction, or before whom the order or injunction is returnable, (~~has~~
2 ~~the right to~~) shall, at the request of the trustee, set a new sale
3 date which shall be not less than forty-five days from the date of the
4 order dissolving the restraining order. (~~At least thirty days before~~
5 ~~the new sale date,~~) The trustee shall:

6 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
7 (f) at least thirty days before the new sale date; and

8 (b) Cause a copy of the notice of trustee's sale as provided in RCW
9 61.24.040(1)(f) to be published (~~once weekly during the three weeks~~
10 ~~preceding the time of sale~~) in a legal newspaper in each county in
11 which the property or any part thereof is situated once between the
12 thirty-fifth and twenty-eighth day before the sale and once between the
13 fourteenth and seventh day before the sale.

14 (4) If a trustee's sale has been stayed as a result of the filing
15 of a petition in federal bankruptcy court and(~~, after the period for~~
16 ~~continuing sale as allowed by RCW 61.24.040(6),~~) an order is entered
17 in federal bankruptcy court granting relief from the stay or closing or
18 dismissing the case, or discharging the debtor with the effect of
19 removing the stay, the trustee may set a new sale date which shall not
20 be less than forty-five days after the date of the bankruptcy court's
21 order. The trustee shall:

22 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
23 (f) at least thirty days before the new sale date; and

24 (b) Cause a copy of the notice of trustee's sale as provided in RCW
25 61.24.040(1)(f) to be published in a legal newspaper in each county in
26 which the property or any part thereof is situated, once between the
27 (~~thirty-second~~) thirty-fifth and twenty-eighth day before the sale
28 and once between the (~~eleventh~~) fourteenth and seventh day before the
29 sale.

30 (5) Subsections (3) and (4) of this section are permissive only and
31 do not prohibit the trustee from proceeding with a trustee's sale
32 following termination of any injunction or stay on any date to which
33 such sale has been properly continued in accordance with RCW
34 61.24.040(6).

35 NEW SECTION. Sec. 15. A new section is added to chapter 61.24 RCW
36 to read as follows:

37 It is an unfair or deceptive act or practice under the consumer
38 protection act, chapter 19.86 RCW, for any person, acting alone or in

1 concert with others, to offer, or offer to accept or accept from
2 another, any consideration of any type not to bid, or to reduce a bid,
3 at a sale of property conducted pursuant to a power of sale in a deed
4 of trust. However, it is not an unfair or deceptive act or practice
5 for any person, including a trustee, to state that a property subject
6 to a recorded notice of trustee's sale or subject to a sale conducted
7 pursuant to this chapter is being sold in an "as-is" condition, or for
8 the beneficiary to arrange to provide financing for a particular bidder
9 or to reach any good faith agreement with the borrower, grantor, any
10 guarantor, or any junior lienholder.

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 61.24 RCW
12 to read as follows:

13 The beneficiary shall not enforce or attempt to enforce an
14 assignment of rents by demanding or collecting rent from a tenant
15 occupying property consisting solely of a single-family residence, or
16 a condominium, cooperative, or other dwelling unit in a multiplex or
17 other building containing fewer than five residential units, without
18 first giving the tenant either a court order authorizing payment of
19 rent to the beneficiary or a written consent by the tenant's landlord
20 to the payment. It is a defense to an eviction based on nonpayment of
21 rent that the tenant paid the rent due to the beneficiary pursuant to
22 a court order or a landlord's written consent.

23 **Sec. 17.** RCW 7.28.300 and 1937 c 124 s 1 are each amended to read
24 as follows:

25 The record owner of real estate may maintain an action to quiet
26 title against the lien of a mortgage or deed of trust on the real
27 estate where an action to foreclose such mortgage or deed of trust
28 would be barred by the statute of limitations, and, upon proof
29 sufficient to satisfy the court, may have judgment quieting title
30 against such ((mortgage)) a lien.

31 **Sec. 18.** RCW 7.60.020 and 1937 c 47 s 1 are each amended to read
32 as follows:

33 A receiver may be appointed by the court in the following cases:

34 (1) In an action by a vendor to vacate a fraudulent purchase of
35 property, or by a creditor to subject any property or fund to his or
36 her claim;

1 (2) In an action between partners, or other persons jointly
2 interested in any property or fund;

3 (3) In all actions where it is shown that the property, fund, or
4 rents and profits in controversy are in danger of being lost, removed,
5 or materially injured;

6 (4) In an action or proceeding by a mortgagee or beneficiary for
7 the foreclosure of a mortgage or deed of trust and the sale of the
8 mortgaged property when the mortgagee or beneficiary has a perfected
9 assignment of rents pursuant to RCW 7.28.230(3), when it appears that
10 such property is in danger of being lost, removed, or materially
11 injured; (or when such property is insufficient to discharge the debt,
12 to secure the application of the rents and profits accruing, before a
13 sale can be had);

14 (5) When a corporation has been dissolved, or is in the process of
15 dissolution or is insolvent, or is in imminent danger of insolvency, or
16 has forfeited its corporate rights, and when the court in its sound
17 discretion deems that the appointment of a receiver is necessary to
18 secure ample justice to the parties(~~(-)~~); and

19 (6) (~~And~~) In such other cases as may be provided by law, or when,
20 in the discretion of the court, it may be necessary to secure ample
21 justice to the parties: PROVIDED, That no party or attorney or other
22 person interested in an action shall be appointed receiver therein.

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