

ESB 5810 - H COMM AMD
By Committee on Judiciary

ADOPTED 4/09/2009

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

3 "Sec. 1. RCW 61.24.005 and 1998 c 295 s 1 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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

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

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

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

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

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

27

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

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

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

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

18 (11) "Person" means any natural person, or legal or governmental
19 entity.

20 (12) "Owner-occupied" means property that is the principal
21 residence of the borrower.

22 (13) "Residential real property" means property consisting solely
23 of a single family residence, a residential condominium unit, or a
24 residential cooperative unit.

25 (14) "Tenant-occupied property" means property consisting solely
26 of residential real property that is the principal residence of a
27 tenant subject to chapter 59.18 RCW or other building with four or
28 fewer residential units that is the principal residence of a tenant
29 subject to chapter 59.18 RCW.

30
31 NEW SECTION. Sec. 2. A new section is added to chapter
32 61.24 RCW to read as follows:

33 (1)(a) A trustee, beneficiary, or authorized agent may not issue a
34 notice of default under RCW 61.24.030(8) until thirty days after

1 initial contact with the borrower is made as required under (b) of
2 this subsection or thirty days after satisfying the due diligence
3 requirements as described in subsection (5) of this section.

4 (b) A beneficiary or authorized agent shall contact the borrower
5 by letter and by telephone in order to assess the borrower's financial
6 ability to pay the debt secured by the deed of trust and explore
7 options for the borrower to avoid foreclosure. The letter required
8 under this subsection must be mailed in accordance with subsection
9 (5)(a) of this section and must include the information described in
10 subsection (5)(a) and (5)(e)(i) through (iv) of this section.

11 (c) During the initial contact, the beneficiary or authorized
12 agent shall advise the borrower that he or she has the right to
13 request a subsequent meeting and, if requested, the beneficiary or
14 authorized agent shall schedule the meeting to occur within fourteen
15 days of the request. The assessment of the borrower's financial
16 ability to repay the debt and a discussion of options may occur during
17 the initial contact or at a subsequent meeting scheduled for that
18 purpose. At the initial contact, the borrower must be provided the
19 toll-free telephone number made available by the department to find a
20 department-certified housing counseling agency and the toll-free
21 numbers for the Department of Financial Institutions and the statewide
22 civil legal aid hotline for possible assistance and referrals.

23 (d) Any meeting under this section may occur telephonically.

24 (2) A notice of default issued under RCW 61.24.030(8) 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
29 section, or the borrower has surrendered the property to the trustee,
30 beneficiary, or authorized agent. Unless the trustee has violated his
31 or her duty under RCW 61.24.010(4), the trustee is entitled to rely on
32 the declaration as evidence that the requirements of this section have
33 been satisfied, and the trustee is not liable for the beneficiary's or
34

1 its authorized agent's failure to comply with the requirements of this
2 section.

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

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

19 (5) A notice of default may be issued under RCW 61.24.030(8) if a
20 beneficiary or authorized agent has not contacted a borrower as
21 required under subsection (1)(b) of this section and the failure to
22 contact the borrower occurred despite the due diligence of the
23 beneficiary or authorized agent. Due diligence requires the
24 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 in
27 the beneficiary's records for sending account statements to the
28 borrower and to the address of the property encumbered by the deed of
29 trust. The letter must include the toll-free telephone number made
30 available by the department to find a department-certified housing
31 counseling agency, and the following information:

32 "You may contact the Department of Financial Institutions, the
33 Washington State Bar Association, or the statewide civil legal aid
34 hotline for possible assistance or referrals."

1 (b)(i) After the letter has been sent, the beneficiary or
2 authorized agent shall attempt to contact the borrower by telephone at
3 least three times at different hours and on different days. Telephone
4 calls must be made to the primary and secondary telephone numbers on
5 file with the beneficiary or authorized agent.

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

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

16 (c) If the borrower does not respond within fourteen days after
17 the telephone call requirements of (b) of this subsection have been
18 satisfied, the beneficiary or authorized agent shall send a certified
19 letter, with return receipt requested, to the borrower at the address
20 in the beneficiary's records for sending account statements to the
21 borrower and to the address of the property encumbered by the deed of
22 trust. The letter must include the information described in
23 subsection (5)(e)(i) through (iv) of this section.

24 (d) The beneficiary or authorized agent shall provide a means for
25 the borrower to contact the beneficiary or authorized agent in a
26 timely manner, including a toll-free telephone number or charge-free
27 equivalent that will provide access to a live representative during
28 business hours.

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

32 (i) Options that may be available to borrowers who are unable to
33 afford their mortgage payments and who wish to avoid foreclosure, and
34

1 instructions to borrowers advising them on steps to take to explore
2 those options;

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

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

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

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

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

17 (b) The borrower has filed for bankruptcy, and the bankruptcy stay
18 remains in place, or the borrower has filed for bankruptcy and the
19 bankruptcy court has granted relief from the bankruptcy stay allowing
20 enforcement of the deed of trust.

21 (7)(a) This section applies only to deeds of trust made from
22 January 1, 2003, to December 31, 2007, inclusive, that are recorded
23 against owner-occupied residential real property. This section does
24 not apply to deeds of trust: (i) Securing a commercial loan; (ii)
25 securing obligations of a grantor who is not the borrower or a
26 guarantor; or (iii) securing a purchaser's obligations under a seller-
27 financed sale.

28 (b) This section does not apply to association beneficiaries
29 subject to chapters 64.32, 64.34, or 64.38 RCW.

30 (8) As used in this section:

31 (a) "Department" means the United States department of housing and
32 urban development.

33 (b) "Seller-financed sale" means a residential real property
34 transaction where the seller finances all or part of the purchase

1 price, and that financed amount is secured by a deed of trust against
2 the subject residential real property.

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

6

7

"FORECLOSURE LOSS MITIGATION FORM

8

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

10

11 The undersigned beneficiary or authorized agent for the
12 beneficiary hereby represents and declares under the penalty of
13 perjury that [check the applicable box and fill in any blanks so that
14 the trustee can insert, on the beneficiary's behalf, the applicable
15 declaration in the notice of default required under chapter 61.24
16 RCW]:

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

22 (2) [] The beneficiary or beneficiary's authorized agent has
23 exercised due diligence to contact the borrower as required in section
24 1(5) of this act and, after waiting fourteen days after the
25 requirements in section 1 of this act were satisfied, the beneficiary
26 or the beneficiary's authorized agent sent to the borrower(s), by
27 certified mail, return receipt requested, the letter required under
28 section 1 of this act.

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

33 (4) [] Under section 1 of this act, the beneficiary or the
34 beneficiary's authorized agent has verified information that, on or

1 before the date of this declaration, the borrower(s) has filed for
2 bankruptcy and the bankruptcy stay remains in place, or the borrower
3 has filed for bankruptcy and the bankruptcy court has granted relief
4 from the bankruptcy stay allowing the enforcement of the deed of
5 trust."

6
7 NEW SECTION. **Sec. 3.** A new section is added to chapter 61.24 RCW
8 to read as follows:

9 If the trustee elects to foreclose the interest of any occupant of
10 tenant-occupied property, upon posting a notice of trustee's sale
11 under RCW 61.24.040, the trustee or its authorized agent shall post in
12 the manner required under RCW 61.24.040(1)(e) and shall mail at the
13 same time in an envelope addressed to the "Resident of property
14 subject to foreclosure sale" the following notice:

15
16 "The foreclosure process has begun on this property, which may
17 affect your right to continue to live in this property. Ninety days
18 or more after the date of this notice, this property may be sold at
19 foreclosure. If you are renting this property, the new property owner
20 may either give you a new rental agreement or provide you with a
21 sixty-day notice to vacate the property. You may wish to contact a
22 lawyer or your local legal aid or housing counseling agency to discuss
23 any rights that you may have."

24
25 NEW SECTION. **Sec. 4.** A new section is added to chapter 61.24 RCW
26 to read as follows:

27 (1) A tenant or subtenant in possession of a residential real
28 property at the time the property is sold in foreclosure must be given
29 sixty days' written notice to vacate before the tenant or subtenant
30 may be removed from the property as prescribed in chapter 59.12 RCW.
31 Notwithstanding the notice requirement in this subsection, a tenant
32 may be evicted for waste or nuisance in an unlawful detainer action
33 under chapter 59.12 RCW.

1 (2) This section does not prohibit the new owner of a property
2 purchased pursuant to a trustee's sale from negotiating a new purchase
3 or rental agreement with a tenant or subtenant.

4 (3) This section does not apply if the borrower or grantor remains
5 on the property as a tenant, subtenant, or occupant.

6
7 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act apply only to
8 the foreclosure of tenant-occupied property.

9
10 NEW SECTION. **Sec. 6.** A new section is added to chapter 61.24 RCW
11 to read as follows:

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

15 (a) Common law fraud or misrepresentation;

16 (b) A violation of Title 19 RCW; or

17 (c) Failure of the trustee to materially comply with the
18 provisions of this chapter.

19 (2) The nonwaived claims listed under subsection (1) of this
20 section are subject to the following limitations:

21 (a) The claim must be asserted or brought within two years from
22 the date of the foreclosure sale or within the applicable statute of
23 limitations for such claim, whichever expires earlier;

24 (b) The claim may not seek any remedy at law or in equity other
25 than monetary damages;

26 (c) The claim may not affect in any way the validity or finality
27 of the foreclosure sale or a subsequent transfer of the property;

28 (d) A borrower or grantor who files such a claim is prohibited
29 from recording a lis pendens or any other document purporting to
30 create a similar effect, related to the real property foreclosed upon;

31 (e) The claim may not operate in any way to encumber or cloud the
32 title to the property that was subject to the foreclosure sale, except
33 to the extent that a judgment on the claim in favor of the borrower or
34

1 grantor may, consistent with RCW 4.56.190, become a judgment lien on
2 real property then owned by the judgment debtor; and

3 (f) The relief that may be granted for judgment upon the claim is
4 limited to actual damages. However, if the borrower or grantor brings
5 in the same civil action a claim for violation of chapter 19.86 RCW,
6 arising out of the same alleged facts, relief under chapter 19.86 RCW
7 is limited to actual damages, treble damages as provided for in RCW
8 19.86.090, and the costs of suit, including a reasonable attorney's
9 fee.

10 (4) This section applies only to foreclosures of owner-occupied
11 residential real property.

12 (5) This section does not apply to the foreclosure of a deed of
13 trust used to secure a commercial loan.

14
15 **Sec. 7.** RCW 61.24.010 and 2008 c 153 s 1 are each amended to read
16 as follows:

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

18 (a) Any domestic corporation incorporated under Title 23B, 30, 31,
19 32, or 33 RCW of which at least one officer is a Washington resident;
20 or

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

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

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

1 (e) Any agency or instrumentality of the United States government;
2 or

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

5 (2) The trustee may resign at its own election or be replaced by
6 the beneficiary. The trustee shall give prompt written notice of its
7 resignation to the beneficiary. The resignation of the trustee shall
8 become effective upon the recording of the notice of resignation in
9 each county in which the deed of trust is recorded. If a trustee is
10 not appointed in the deed of trust, or upon the resignation,
11 incapacity, disability, absence, or death of the trustee, or the
12 election of the beneficiary to replace the trustee, the beneficiary
13 shall appoint a trustee or a successor trustee. Only upon recording
14 the appointment of a successor trustee in each county in which the
15 deed of trust is recorded, the successor trustee shall be vested with
16 all powers of an original trustee.

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

20 (4) (~~The trustee or successor trustee shall act impartially~~
21 ~~between the borrower, grantor, and beneficiary.~~) The trustee or
22 successor trustee has a duty of good faith to the borrower,
23 beneficiary, and grantor.

24
25 **Sec. 8.** RCW 61.24.030 and 2008 c 153 s 2 and 2008 c 108 s 22 are
26 each reenacted and amended to read as follows:

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

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

29 (2) That the deed of trust contains a statement that the real
30 property conveyed is not used principally for agricultural purposes;
31 provided, if the statement is false on the date the deed of trust was
32 granted or amended to include that statement, and false on the date of
33 the trustee's sale, then the deed of trust must be foreclosed

34

1 judicially. Real property is used for agricultural purposes if it is
2 used in an operation that produces crops, livestock, or aquatic goods;

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

6 (4) That no action commenced by the beneficiary of the deed of
7 trust is now pending to seek satisfaction of an obligation secured by
8 the deed of trust in any court by reason of the grantor's default on
9 the obligation secured: PROVIDED, That (a) the seeking of the
10 appointment of a receiver shall not constitute an action for purposes
11 of this chapter; and (b) if a receiver is appointed, the grantor shall
12 be entitled to any rents or profits derived from property subject to a
13 homestead as defined in RCW 6.13.010. If the deed of trust was
14 granted to secure a commercial loan, this subsection shall not apply
15 to actions brought to enforce any other lien or security interest
16 granted to secure the obligation secured by the deed of trust being
17 foreclosed;

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

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

25 (7)(a) That, for residential real property, before the notice of
26 trustee's sale is recorded, transmitted, or served, the trustee shall
27 have proof that the beneficiary is the owner of any promissory note or
28 other obligation secured by the deed of trust. A declaration by the
29 beneficiary made under the penalty of perjury stating that the
30 beneficiary is the actual holder of the promissory note or other
31 obligation secured by the deed of trust shall be sufficient proof as
32 required under this subsection.

33

34

1 (b) Unless the trustee has violated his or her duty under RCW
2 61.24.010(4), the trustee is entitled to rely on the beneficiary's
3 declaration as evidence of proof required under this subsection.

4 (c) This subsection (7) does not apply to association
5 beneficiaries subject to chapters 64.32, 64.34, or 64.38 RCW.

6 ~~((+7))~~ (8) That at least thirty days before notice of sale shall
7 be recorded, transmitted or served, written notice of default shall be
8 transmitted by the beneficiary or trustee to the borrower and grantor
9 at their last known addresses by both first-class and either
10 registered or certified mail, return receipt requested, and the
11 beneficiary or trustee shall cause to be posted in a conspicuous place
12 on the premises, a copy of the notice, or personally served on the
13 borrower and grantor. This notice shall contain the following
14 information:

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

17 (b) A statement identifying each county in which the deed of trust
18 is recorded and the document number given to the deed of trust upon
19 recording by each county auditor or recording officer;

20 (c) A statement that the beneficiary has declared the borrower or
21 grantor to be in default, and a concise statement of the default
22 alleged;

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

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

29 (f) A statement showing the total of (d) and (e) of this
30 subsection, designated clearly and conspicuously as the amount
31 necessary to reinstate the note and deed of trust before the recording
32 of the notice of sale;

33 (g) A statement that failure to cure the alleged default within
34 thirty days of the date of mailing of the notice, or if personally

1 served, within thirty days of the date of personal service thereof,
2 may lead to recordation, transmittal, and publication of a notice of
3 sale, and that the property described in (a) of this subsection may be
4 sold at public auction at a date no less than one hundred twenty days
5 in the future;

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

10 (i) A statement that the effect of the sale of the grantor's
11 property by the trustee will be to deprive the grantor of all their
12 interest in the property described in (a) of this subsection;

13 (j) A statement that the borrower, grantor, and any guarantor has
14 recourse to the courts pursuant to RCW 61.24.130 to contest the
15 alleged default on any proper ground; (~~and~~)

16 (k) In the event the property secured by the deed of trust is
17 owner-occupied residential real property, a statement, prominently set
18 out at the beginning of the notice, which shall state as follows:

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

23 Can you pay and stop the foreclosure process?

24 Do you dispute the failure to pay?

25 Can you sell your property to preserve your equity?

26 Are you able to refinance this loan or obligation with a new loan
27 or obligation from another lender with payments, terms, and fees that
28 are more affordable?

29 Do you qualify for any government or private homeowner assistance
30 programs?

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

33 Do not ignore this notice; because if you do nothing, you could
34 lose your home at a foreclosure sale. (No foreclosure sale can be

1 held any sooner than ninety days after a notice of sale is issued and
2 a notice of sale cannot be issued until thirty days after this
3 notice.) Also, if you do nothing to pay what you owe, be careful of
4 people who claim they can help you. There are many individuals and
5 businesses that watch for the notices of sale in order to unfairly
6 profit as a result of borrowers' distress.

7 You may feel you need help understanding what to do. There are a
8 number of professional resources available, including home loan
9 counselors and attorneys, who may assist you. Many legal services are
10 lower-cost or even free, depending on your ability to pay. If you
11 desire legal help in understanding your options or handling this
12 default, you may obtain a referral (at no charge) by contacting the
13 county bar association in the county where your home is located.
14 These legal referral services also provide information about
15 lower-cost or free legal services for those who qualify. You may
16 contact the Department of Financial Institutions or the statewide
17 civil legal aid hotline for possible assistance or referrals." and;

18 (1) In the event the property secured by the deed of trust is
19 residential real property, the name and address of the owner of any
20 promissory notes or other obligations secured by the deed of trust and
21 the name, address, and telephone number of a party acting as a
22 servicer of the obligations secured by the deed of trust.

23
24 **Sec. 9.** RCW 61.24.040 and 2008 c 153 s 3 are each amended to read
25 as follows:

26 A deed of trust foreclosed under this chapter shall be foreclosed
27 as follows:

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

29 (a) Record a notice in the form described in ((RCW
30 ~~61.24.040(1)~~))(f) of this subsection in the office of the auditor in
31 each county in which the deed of trust is recorded;

32 (b) To the extent the trustee elects to foreclose its lien or
33 interest, or the beneficiary elects to preserve its right to seek a
34 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
20 the 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
23 deed of trust being foreclosed that was recorded before the
24 recordation of 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-
28 family residence, or a condominium, cooperative, or other dwelling
29 unit in a multiplex or other building containing fewer than five
30 residential units, whether or not the occupant's rental agreement is
31 recorded, which notice may be a single notice addressed to "occupants"
32 for each 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-

1 class and either certified or registered mail, return receipt
2 requested, to the plaintiff or the plaintiff's attorney of record, in
3 any court action to foreclose a lien or other encumbrance on all or
4 any part of the property, provided a court action is pending and a lis
5 pendens in connection therewith is recorded in the office of the
6 auditor of any county in which all or part of the property is located
7 on the date the notice is recorded;

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

14 (e) Cause a copy of the notice of sale described in ((RCW
15 ~~61.24.040(1)~~)) (f) of this subsection to be posted in a conspicuous
16 place on the property, or in lieu of posting, cause a copy of said
17 notice to be served upon any occupant of the property;

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

19
20 NOTICE OF TRUSTEE'S SALE

21
22 I.

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

32
33
34

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

4
5
6 which is subject to that certain Deed of Trust dated ,
7 , recorded , , under Auditor's File No. ,
8 records of County, Washington, from , as
9 Grantor, to , as Trustee, to secure an obligation in
10 favor of , as Beneficiary, the beneficial interest in
11 which was assigned by , under an Assignment recorded
12 under Auditor's File No. [Include recording information for
13 all counties if the Deed of Trust is recorded in more than one
14 county.]

15
16 II.

17
18 No action commenced by the Beneficiary of the Deed of Trust is now
19 pending to seek satisfaction of the obligation in any Court by reason
20 of the Borrower's or Grantor's default on the obligation secured by
21 the Deed of Trust.

22
23 [If there is another action pending to foreclose other
24 security for all or part of the same debt, qualify the
25 statement and identify the action.]

26
27
28 III.

29
30 The default(s) for which this foreclosure is made is/are as follows:

31
32 [If default is for other than payment of money, set forth the
33 particulars]

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

IV.

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

V.

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

VI.

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

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4
5
6

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

14

VII.

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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
22

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

26

IX.

27
28

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

34

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

2
3

4 , Trustee

5

6 } Address

7

8 } Phone

9 [Acknowledgment]

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

15
16 NOTICE OF FORECLOSURE

17
18 Pursuant to the Revised Code of Washington,

19
20 Chapter 61.24 RCW

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

28 To cure the default(s), you must bring the payments current, cure
29 any other defaults, and pay accrued late charges and other costs,
30 advances, and attorneys' fees as set forth below by the day of
31, . . . [11 days before the sale date]. To date, these
32 arrears and costs are as follows:

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	Currently due to reinstate on	Estimated amount that will be due to reinstate on (11 days before the date set for sale)
Delinquent payments from , . . . , in the amount of \$ /mo.:	\$	\$
Late charges in the total amount of:	\$	\$
		Estimated Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses: (Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting of Notices	\$	\$
Postage/Copying expense	\$	\$

1	Publication	\$	\$
2	Telephone		\$
3	charges	\$	
4	Inspection fees	\$	\$
5	\$	\$
6	\$	\$
7	TOTALS	\$	\$

8
9

10 To pay off the entire obligation secured by your Deed of Trust as
11 of the day of you must pay a total of \$. . . .
12 in principal, \$. . . . in interest, plus other costs and advances
13 estimated to date in the amount of \$. . . . From and after the
14 date of this notice you must submit a written request to the Trustee
15 to obtain the total amount to pay off the entire obligation secured by
16 your Deed of Trust as of the payoff date.

17 As to the defaults which do not involve payment of money to the
18 Beneficiary of your Deed of Trust, you must cure each such default.
19 Listed below are the defaults which do not involve payment of money to
20 the Beneficiary of your Deed of Trust. Opposite each such listed
21 default is a brief description of the action necessary to cure the
22 default and a description of the documentation necessary to show that
23 the default has been cured.

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Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
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You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the day of, . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate or to pay off the entire indebtedness may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement or the payoff amount so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:, whose address is, telephone () AFTER THE DAY OF, . . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a

1 lawyer. Legal action on your part may prevent or restrain the sale,
2 but only if you persuade the court of the merits of your defense. You
3 may contact the Department of Financial Institutions or the statewide
4 civil legal aid hotline for possible assistance or referrals.

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

12
13
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19

NAME:
ADDRESS:
.....
TELEPHONE
NUMBER:

20 If you do not reinstate the secured obligation and your Deed of
21 Trust in the manner set forth above, or if you do not succeed in
22 restraining the sale by court action, your property will be sold. The
23 effect of such sale will be to deprive you and all those who hold by,
24 through or 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~~)) subsection (1)(f) of this section
27 (excluding the acknowledgment) to be published in a legal newspaper in
28 each county in which the property or any part thereof is situated,
29 once on or between the thirty-fifth and twenty-eighth day before the
30 date of sale, and once on or between the 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

1 auction to the highest bidder. The trustee may sell the property in
2 gross or in parcels as the trustee shall deem most advantageous;

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

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

28 (7) The purchaser shall forthwith pay the price bid and on payment
29 the trustee shall execute to the purchaser its deed; the deed shall
30 recite the facts showing that the sale was conducted in compliance
31 with all of the requirements of this chapter and of the deed of trust,
32 which recital shall be prima facie evidence of such compliance and
33 conclusive evidence thereof in favor of bona fide purchasers and
34 encumbrancers for value, except that these recitals shall not affect

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

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

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

17

18

X.

19

20

NOTICE TO OCCUPANTS OR TENANTS

21

22 The purchaser at the trustee's sale is entitled to possession of the
23 property on the 20th day following the sale, as against the grantor
24 under the deed of trust (the owner) and anyone having an interest
25 junior to the deed of trust, including occupants ((~~and~~) who are not
26 tenants. After the 20th day following the sale the purchaser has the
27 right to evict occupants ((~~and~~) who are not tenants by summary
28 proceedings under ((~~the unlawful detainer act,~~) chapter 59.12 RCW.
29 For tenant-occupied property, the purchaser shall provide a tenant
30 with written notice in accordance with section 10 of this act;

31 (10) Only one copy of all notices required by this chapter need be
32 given to a person who is both the borrower and the grantor. All
33 notices required by this chapter that are given to a general
34

1 partnership are deemed given to each of its general partners, unless
2 otherwise agreed by the parties.

3
4 **Sec. 10.** RCW 61.24.060 and 1998 c 295 s 8 are each amended to
5 read as follows:

6 (1) The purchaser at the trustee's sale shall be entitled to
7 possession of the property on the twentieth day following the sale, as
8 against the borrower and grantor under the deed of trust and anyone
9 having an interest junior to the deed of trust, including occupants
10 ((and)) who are not tenants, who were given all of the notices to
11 which they were entitled under this chapter. The purchaser shall also
12 have a right to the summary proceedings to obtain possession of real
13 property provided in chapter 59.12 RCW.

14 (2) If the trustee elected to foreclose the interest of any
15 occupant or tenant, the purchaser of tenant-occupied property at the
16 trustee's sale shall provide written notice to the occupants and
17 tenants at the property purchased in substantially the following form:

18 "NOTICE: The property located at was purchased at a
19 trustee's sale by on(date).

20 1. If you are the previous owner or an occupant who is not a
21 tenant of the property that was purchased, pursuant to RCW 61.24.060,
22 the purchaser at the trustee's sale is entitled to possession of the
23 property on(date), which is the twentieth day following
24 the sale.

25 2. If you are a tenant or subtenant in possession of the property
26 that was purchased, pursuant to section 4 of this act, the purchaser
27 at the trustee's sale may either give you a new rental agreement OR
28 give you a written notice to vacate the property in sixty days or more
29 before the end of the monthly rental period."

30 (3) The notice required in subsection (2) of this section must be
31 given to the property's occupants and tenants by both first-class
32 mail, and either certified or registered mail, return receipt
33 requested.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 59.12
2 RCW to read as follows:

3 An unlawful detainer action, commenced as a result of a trustee's
4 sale under chapter 61.24 RCW, must comply with the requirements of RCW
5 61.24.040 and 61.24.060.

6
7 NEW SECTION. **Sec. 12.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11
12 NEW SECTION. **Sec. 13.** Section 2 of this act expires December 31,
13 2012."

14

15 Correct the title.

16

EFFECT: The striking amendment makes the following changes:

1. Requirement for beneficiary to contact the borrower

Requires the beneficiary's initial contact to be by phone and letter. Provides that the contact requirement does not apply when the beneficiary is a homeowner or condominium association. Removes language stating the contact requirements do not apply if the borrower contracts with a distressed home consultant.

2. Nonwaiver of claims

Removes the provision allowing the claim to be raised in an unlawful detainer action. Removes breach of contract from the types of claims that are not waived. Adds to the list of nonwaived claims a violation of Title 19 RCW (regulations of businesses, including the Consumer Protection Act). Clarifies that the nonwaived claims must be brought within two years of the foreclosure sale or within the applicable statute of limitation for the claim, whichever is earlier.

3. Requirements before recording the notice of sale

Provides that the trustee's proof of the beneficiary's ownership of the promissory note may be in the form of the beneficiary's declaration (language regarding the trustee having possession of the original note is removed). Allows the trustee to rely on the declaration, unless the trustee violated its duty of good faith.

34

Exempts beneficiaries that are homeowner or condominium associations. Requires that the notice of default must contain the name and address of the owner of the promissory note and servicer of any obligation secured by the deed of trust. Clarifies that the requirements apply only to residential real property.

4. Notice to tenants

Removes language stating the purchaser may offer a tenant payment in exchange for the tenant vacating the property before the 60 days expires.

5. Other changes

Defines "residential real property" as property consisting solely of a single family residence, a residential condominium unit, or a residential cooperative unit. Defines "tenant-occupied" property as property consisting solely of residential real property that is the principal residence of a tenant or other building with four or fewer residential units that is the principal residence of a tenant.

Removes the expiration date that applied to the sections on notice to tenants.

Removes language imposing on a trustee a duty of good faith to persons other than the borrower, beneficiary, and grantor.

Makes other changes for clarification.

--- END ---