
HOUSE BILL 1942

State of Washington

61st Legislature

2009 Regular Session

By Representatives Orwall, Rodne, Kirby, Hasegawa, Pedersen, Jacks, Morrell, Van De Wege, Appleton, Liiias, Moeller, Darneille, Sells, Ormsby, Miloscia, Upthegrove, Carlyle, Dickerson, Conway, Kenney, Simpson, Goodman, Kagi, and Santos; by request of Governor Gregoire

Read first time 02/03/09. Referred to Committee on Judiciary.

1 AN ACT Relating to foreclosures on deeds of trust; amending RCW
2 61.24.130, 61.24.010, 61.24.040, and 61.24.060; adding new sections to
3 chapter 61.24 RCW; creating new sections; and providing an expiration
4 date.

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

13 (b) A mortgagee, beneficiary, or authorized agent shall contact the
14 borrower in person or by telephone in order to assess the borrower's
15 financial situation and explore options for the borrower to avoid
16 foreclosure. During the initial contact, the mortgagee, beneficiary,
17 or authorized agent shall advise the borrower that he or she has the
18 right to request a subsequent meeting and, if requested, the mortgagee,
19 beneficiary, or authorized agent shall schedule the meeting to occur

1 within fourteen days. The assessment of the borrower's financial
2 situation and a discussion of options may occur during the first
3 contact or at the subsequent meeting scheduled for that purpose. In
4 either case, the borrower must be provided the toll-free telephone
5 number made available by the department to find a department-certified
6 housing counseling agency. Any meeting may occur telephonically.

7 (2) A notice of default filed under RCW 61.24.030(7) must include
8 a declaration from the mortgagee, beneficiary, or authorized agent that
9 it has contacted the borrower, it has tried with due diligence to
10 contact the borrower as required under this section, or the borrower
11 has surrendered the property to the mortgagee, trustee, beneficiary, or
12 authorized agent.

13 (3) A mortgagee's, beneficiary's, or authorized agent's loss
14 mitigation personnel may participate by telephone during any contact
15 required under this section.

16 (4) A borrower may designate a department-certified housing
17 counseling agency, attorney, or other advisor to discuss with the
18 mortgagee, beneficiary, or authorized agent, on the borrower's behalf,
19 options for the borrower to avoid foreclosure. The contact made at the
20 direction of the borrower must satisfy the contact requirements of
21 subsection (1)(b) of this section. Any deed of trust modification or
22 workout plan offered at the meeting by the mortgagee, beneficiary, or
23 authorized agent is subject to approval by the borrower.

24 (5) A notice of default may be filed under RCW 61.24.030(7) if a
25 mortgagee, beneficiary, or authorized agent has not contacted a
26 borrower as required under subsection (1)(b) of this section and the
27 failure to contact the borrower occurred despite the due diligence of
28 the mortgagee, beneficiary, or authorized agent. Due diligence
29 requires the following:

30 (a) A mortgagee, beneficiary, or authorized agent shall first
31 attempt to contact a borrower by sending a first-class letter that
32 includes the toll-free telephone number made available by the
33 department to find a department-certified housing counseling agency.

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

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

5 (iii) A mortgagee, beneficiary, or authorized agent satisfies the
6 telephone contact requirements of this subsection (5)(b) if the
7 mortgagee, beneficiary, or authorized agent determines, after
8 attempting contact under this subsection (5)(b), that the borrower's
9 primary telephone number and secondary telephone number or numbers on
10 file, if any, have been disconnected.

11 (c) If the borrower does not respond within two weeks after the
12 telephone call requirements of (b) of this subsection have been
13 satisfied, the mortgagee, beneficiary, or authorized agent shall send
14 a certified letter, with return receipt requested.

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

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

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

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

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

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

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

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

4 (b) The borrower has contracted with an organization, person, or
5 entity whose primary business is advising people who have decided to
6 leave their homes on how to extend the foreclosure process and avoid
7 their contractual obligations to mortgagees or beneficiaries; or

8 (c) The borrower has filed for bankruptcy, and the proceedings have
9 not been finalized.

10 (7) This section applies only to deeds of trust made from January
11 1, 2003, to December 31, 2007, inclusive, that are secured by
12 residential real property and are for owner-occupied residences. For
13 purposes of this subsection, "owner-occupied" means that the residence
14 is the principal residence of the borrower.

15 (8) As used in this section:

16 (a) "Borrower" includes a mortgagor or trustor.

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

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

21 (1) The legislature finds and declares that any duty that servicers
22 may have to maximize net present value under their pooling and
23 servicing agreements is owed to all parties in a deed of trust pool,
24 not to any particular parties, and that a servicer acts in the best
25 interests of all parties if it agrees to or implements a deed of trust
26 modification or workout plan for which both of the following apply:

27 (a) The deed of trust is in payment default, or payment default is
28 reasonably foreseeable; and

29 (b) Anticipated recovery under the deed of trust modification or
30 workout plan exceeds the anticipated recovery through foreclosure on a
31 net present value basis.

32 (2) The mortgagee, beneficiary, or authorized agent shall offer the
33 borrower a deed of trust modification or workout plan if the
34 modification or plan is consistent with its contractual or other
35 authority.

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

3 (1) Upon posting a notice of sale under RCW 61.24.040, a trustee
4 or authorized agent shall also post the following notice, in the manner
5 required for posting the notice of sale on the property to be sold, and
6 a mortgagee, trustee, beneficiary, or authorized agent shall mail at
7 the same time in an envelope addressed to the "Resident of property
8 subject to foreclosure sale" the following notice:

9 "The foreclosure process has begun on this property, which may
10 affect your right to continue to live in this property. Twenty days or
11 more after the date of this notice, this property may be sold at
12 foreclosure. If you are renting this property, the new property owner
13 may either give you a new lease or rental agreement or provide you with
14 a sixty-day eviction notice. However, other laws may prohibit an
15 eviction in this circumstance or provide you with a longer notice
16 before eviction. You may wish to contact a lawyer or your local legal
17 aid or housing counseling agency to discuss any rights that you may
18 have."

19 (2) This section applies only to deeds of trust secured by
20 residential real property, and if the billing address for the mortgage
21 note is different than the property address.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 61.24 RCW
23 to read as follows:

24 (1) A tenant or subtenant in possession of a rental housing unit at
25 the time the property is sold in foreclosure must be given sixty days'
26 written notice before the tenant or subtenant may be removed from the
27 property as prescribed in chapter 59.12 RCW. The rent of the tenant or
28 subtenant must be prorated if the tenant or subtenant has paid all rent
29 amounts due and the tenant or subtenant vacates before the expiration
30 of any month.

31 (2) This section does not apply if a party to the note remains on
32 the property as a tenant, subtenant, or occupant.

33 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act do not affect
34 any local just cause eviction ordinance or affect the authority of a
35 public entity that otherwise exists to regulate or monitor the basis
36 for eviction.

1 NEW SECTION. **Sec. 6.** Sections 3 and 4 of this act apply only to
2 the foreclosure of a nonowner-occupied one-to-four family residence,
3 condominium unit, residential cooperative unit, residential unit in any
4 other type of planned unit development, or manufactured home in which
5 title has been eliminated under RCW 65.20.040.

6 **Sec. 7.** RCW 61.24.130 and 2008 c 153 s 5 are each amended to read
7 as follows:

8 (1) Nothing contained in this chapter shall prejudice the right of
9 the borrower, grantor, any guarantor, or any person who has an interest
10 in, lien, or claim of lien against the property or some part thereof,
11 to restrain, on any proper legal or equitable ground, a trustee's sale.
12 The court shall require as a condition of granting the restraining
13 order or injunction that the applicant pay to the clerk of the court
14 the sums that would be due on the obligation secured by the deed of
15 trust if the deed of trust was not being foreclosed:

16 (a) In the case of default in making the periodic payment of
17 principal, interest, and reserves, such sums shall be the periodic
18 payment of principal, interest, and reserves paid to the clerk of the
19 court every thirty days.

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

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

27 In addition, the court may condition granting the restraining order
28 or injunction upon the giving of security by the applicant, in such
29 form and amount as the court deems proper, for the payment of such
30 costs and damages, including attorneys' fees, as may be later found by
31 the court to have been incurred or suffered by any party by reason of
32 the restraining order or injunction. The court may consider, upon
33 proper showing, the grantor's equity in the property in determining the
34 amount of said security.

35 (2) No court may grant a restraining order or injunction to
36 restrain a trustee's sale unless the person seeking the restraint gives
37 five days notice to the trustee of the time when, place where, and the

1 judge before whom the application for the restraining order or
2 injunction is to be made. This notice shall include copies of all
3 pleadings and related documents to be given to the judge. No judge may
4 act upon such application unless it is accompanied by proof, evidenced
5 by return of a sheriff, the sheriff's deputy, or by any person eighteen
6 years of age or over who is competent to be a witness, that the notice
7 has been served on the trustee.

8 (3) If the restraining order or injunction is dissolved after the
9 date of the trustee's sale set forth in the notice as provided in RCW
10 61.24.040(1)(f), the court granting such restraining order or
11 injunction, or before whom the order or injunction is returnable,
12 shall, at the request of the trustee, set a new sale date which shall
13 be not less than forty-five days from the date of the order dissolving
14 the restraining order. The trustee shall:

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

17 (b) Cause a copy of the notice of trustee's sale as provided in RCW
18 61.24.040(1)(f) to be published in a legal newspaper in each county in
19 which the property or any part thereof is situated once between the
20 thirty-fifth and twenty-eighth day before the sale and once between the
21 fourteenth and seventh day before the sale.

22 (4) If a trustee's sale has been stayed as a result of the filing
23 of a petition in federal bankruptcy court and an order is entered in
24 federal bankruptcy court granting relief from the stay or closing or
25 dismissing the case, or discharging the debtor with the effect of
26 removing the stay, the trustee may set a new sale date which shall not
27 be less than forty-five days after the date of the bankruptcy court's
28 order. The trustee shall:

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

31 (b) Cause a copy of the notice of trustee's sale as provided in RCW
32 61.24.040(1)(f) to be published in a legal newspaper in each county in
33 which the property or any part thereof is situated, once between the
34 thirty-fifth and twenty-eighth day before the sale and once between the
35 fourteenth and seventh day before the sale.

36 (5) Subsections (3) and (4) of this section are permissive only and
37 do not prohibit the trustee from proceeding with a trustee's sale

1 following termination of any injunction or stay on any date to which
2 such sale has been properly continued in accordance with RCW
3 61.24.040(6).

4 (6) The issuance of a restraining order or injunction shall not
5 prohibit the trustee from continuing the sale as provided in RCW
6 61.24.040(6).

7 (7) Upon good cause shown to the court, a foreclosure sale may be
8 enjoined if the lender has not been responsive to a borrower's
9 documented, reasonable, and material requests. This subsection only
10 applies to a foreclosure sale of an owner-occupied one-to-four family
11 residence, condominium unit, residential cooperative unit, residential
12 unit in any other type of planned unit development, or manufactured
13 home in which title has been eliminated under RCW 65.20.040, which is
14 the principal residence of the borrower.

15 **Sec. 8.** 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; or

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

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

33 (e) Any agency or instrumentality of the United States government;
34 or

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

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

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

16 (4) The trustee or successor trustee shall act impartially between
17 the borrower, grantor, and beneficiary.

18 (5) The trustee or successor trustee must:

19 (a) Act in the borrower's best interest and in the utmost good
20 faith toward the borrower, and shall disclose any and all interests to
21 the borrower including, but not limited to, interests that may lie with
22 the lender that are used to facilitate a borrower's request. A trustee
23 shall not accept, provide, or charge any undisclosed compensation or
24 realize any undisclosed remuneration that inures to the benefit of the
25 trustee on an expenditure made for the borrower;

26 (b) Carry out all lawful instructions provided by the borrower;

27 (c) Disclose to the borrower all material facts of which the
28 trustee has knowledge that might reasonably affect the borrower's
29 rights, interests, or ability to receive the borrower's intended
30 benefit from the residential mortgage loan;

31 (d) Use reasonable care in performing duties; and

32 (e) Provide an accounting to the borrower for all money and
33 property received from the borrower.

34

35 NEW SECTION. Sec. 9. A new section is added to chapter 61.24 RCW
36 to read as follows:

1 (1) The claims listed under this subsection may not be waived by
2 the failure of the borrower to bring a lawsuit to enjoin a foreclosure
3 sale under this chapter. Nonwaived claims include:

4 (a) Common law fraud and misrepresentation;

5 (b) A violation of RCW 19.144.080;

6 (c) Damages against the lender that may be grounds for contractual
7 rescission, if asserted in a timely manner before the foreclosure sale;

8 (d) Breach of duty of impartiality by a trustee under RCW
9 61.24.010(4);

10 (e) Breach of duty by a trustee under RCW 61.24.010(5); or

11 (f) Breach of duty by a lender under RCW 61.24.130(7).

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

17 (3) The nonwaived claims listed under subsection (1) of this
18 section must be asserted or brought within one year from the date of
19 the foreclosure sale.

20 (4) This section applies only to foreclosures of an owner-occupied
21 one-to-four family residence, condominium unit, residential cooperative
22 unit, residential unit in any other type of planned unit development,
23 or manufactured home in which title has been eliminated under RCW
24 65.20.040, which is the principal place of the borrower.

25 **Sec. 10.** RCW 61.24.040 and 2008 c 153 s 3 are each amended to read
26 as follows:

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

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

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

33 (b) To the extent the trustee elects to foreclose its lien or
34 interest, or the beneficiary elects to preserve its right to seek a
35 deficiency judgment against a borrower or grantor under RCW
36 61.24.100(3)(a), and if their addresses are stated in a recorded
37 instrument evidencing their interest, lien, or claim of lien, or an

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

6 (i) The borrower and grantor;

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

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

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

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

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

31 (c) Cause a copy of the notice of sale described in (~~RCW~~
32 ~~61.24.040(1)~~)(f) of this subsection to be transmitted by both first-
33 class and either certified or registered mail, return receipt
34 requested, to the plaintiff or the plaintiff's attorney of record, in
35 any court action to foreclose a lien or other encumbrance on all or any
36 part of the property, provided a court action is pending and a lis
37 pendens in connection therewith is recorded in the office of the

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

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

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

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

14 NOTICE OF TRUSTEE'S SALE

15 I.

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

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

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

35 II.

36 No action commenced by the Beneficiary of the Deed of Trust is now

1 pending to seek satisfaction of the obligation in any Court by reason
2 of the Borrower's or Grantor's default on the obligation secured by the
3 Deed of Trust.

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

7 III.

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

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

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

12 IV.

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

18 V.

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

VI.

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

.....
.....
.....

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

VII.

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

VIII.

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

IX.

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

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

.....
....., Trustee
..... }

1 } Address
2
3 } Phone

4 [Acknowledgment]

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

10 NOTICE OF FORECLOSURE

11 Pursuant to the Revised Code of Washington,

12 Chapter 61.24 RCW

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

18 To cure the default(s), you must bring the payments current, cure
19 any other defaults, and pay accrued late charges and other costs,
20 advances, and attorneys' fees as set forth below by the day of
21, [11 days before the sale date]. To date, these
22 arrears and costs are as follows:

	Estimated amount
Currently due	that will be due
to reinstate	to reinstate
on.....	on.....
.....
	(11 days before
	the date set

for sale)

1			
2	Delinquent payments		
3	from,		
4	. . . , in the		
5	amount of		
6	\$. . . /mo.:	\$	\$
7	Late charges in		
8	the total		
9	amount of:	\$	\$
10			Estimated
11			Amounts
12	Attorneys' fees:	\$	\$
13	Trustee's fee:	\$	\$
14	Trustee's expenses:		
15	(Itemization)		
16	Title report	\$	\$
17	Recording fees	\$	\$
18	Service/Posting		
19	of Notices	\$	\$
20	Postage/Copying		
21	expense	\$	\$
22	Publication	\$	\$
23	Telephone		\$
24	charges	\$	
25	Inspection fees	\$	\$
26	\$	\$
27	\$	\$
28	TOTALS	\$	\$

29 To pay off the entire obligation secured by your Deed of Trust as
30 of the day of you must pay a total of \$.
31 in principal, \$. in interest, plus other costs and advances
32 estimated to date in the amount of \$. From and after the
33 date of this notice you must submit a written request to the Trustee to
34 obtain the total amount to pay off the entire obligation secured by
35 your Deed of Trust as of the payoff date.

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 . . . [11 days before the sale date], by paying the amount set forth or
 19 estimated above and by curing any other defaults described above. Of
 20 course, as time passes other payments may become due, and any further
 21 payments coming due and any additional late charges must be added to
 22 your reinstating payment. Any new defaults not involving payment of
 23 money that occur after the date of this notice must also be cured in
 24 order to effect reinstatement. In addition, because some of the
 25 charges can only be estimated at this time, and because the amount
 26 necessary to reinstate or to pay off the entire indebtedness may
 27 include presently unknown expenditures required to preserve the
 28 property or to comply with state or local law, it will be necessary for
 29 you to contact the Trustee before the time you tender reinstatement or
 30 the payoff amount so that you may be advised of the exact amount you
 31 will be required to pay. Tender of payment or performance must be made
 32 to:, whose address is, telephone ()
 33 AFTER THE DAY OF, . . ., YOU MAY NOT
 34 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND
 35 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will
 36 respond to any written request for current payoff or reinstatement
 37 amounts within ten days of receipt of your written request. In such a

1 case, you will only be able to stop the sale by paying, before the
2 sale, the total principal balance (\$) plus accrued
3 interest, costs and advances, if any, made pursuant to the terms of the
4 documents and by curing the other defaults as outlined above.

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

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

19 NAME:
20 ADDRESS:
21
22 TELEPHONE NUMBER:

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

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

35 (4) On the date and at the time designated in the notice of sale,
36 the trustee or its authorized agent shall sell the property at public

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 sale
13 and if the continuance is beyond the date of sale, by giving notice of
14 the new time and place of the sale by both first class and either
15 certified or registered mail, return receipt requested, to the persons
16 specified in ((RCW 61.24.040)) subsection (1)(b)(i) and (ii) of this
17 section to be deposited in the mail (i) not less than four days before
18 the new date fixed for the sale if the sale is continued for up to
19 seven days; or (ii) not more than three days after the date of the
20 continuance by oral proclamation if the sale is continued for more than
21 seven days, or, alternatively, (b) by giving notice of the time and
22 place of the postponed sale in the manner and to the persons specified
23 in ((RCW 61.24.040)) subsection (1)(b), (c), (d), and (e) of this
24 section and publishing a copy of such notice once in the newspaper(s)
25 described in ((RCW 61.24.040)) subsection (3) of this section, more
26 than seven days before the date fixed for sale in the notice of sale.
27 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 with
31 all of the requirements of this chapter and of the deed of trust, which
32 recital shall be prima facie evidence of such compliance and conclusive
33 evidence thereof in favor of bona fide purchasers and encumbrancers for
34 value, except that these recitals shall not affect the lien or interest
35 of any person entitled to notice under ((RCW 61.24.040)) subsection (1)
36 of this section, if the trustee fails to give the required notice to
37 such person. In such case, the lien or interest of such omitted person
38 shall not be affected by the sale and such omitted person shall be

1 treated as if such person was the holder of the same lien or interest
2 and was omitted as a party defendant in a judicial foreclosure
3 proceeding;

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

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

13 X.

14 NOTICE TO OCCUPANTS OR TENANTS

15 The purchaser at the trustee's sale is entitled to possession of the
16 property on the 20th day following the sale, as against the grantor
17 under the deed of trust (the owner) and anyone having an interest
18 junior to the deed of trust, including occupants (~~(and)~~) who are not
19 tenants. After the 20th day following the sale the purchaser has the
20 right to evict occupants (~~(and)~~) who are not tenants by summary
21 proceedings under (~~(the unlawful detainer act,)~~) chapter 59.12 RCW.
22 For tenant-occupied property, the purchaser shall provide a tenant with
23 sixty days' written notice in accordance with section 4 of this act;

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

29 **Sec. 11.** RCW 61.24.060 and 1998 c 295 s 8 are each amended to read
30 as follows:

31 The purchaser at the trustee's sale shall be entitled to possession
32 of the property on the twentieth day following the sale, as against the
33 grantor under the deed of trust and anyone having an interest junior to
34 the deed of trust, including occupants (~~(and)~~) who are not tenants, who
35 were given all of the notices to which they were entitled under this
36 chapter. For tenant-occupied property, the purchaser shall provide a

1 tenant with sixty days' written notice in accordance with section 4 of
2 this act. The purchaser shall also have a right to the summary
3 proceedings to obtain possession of real property provided in chapter
4 59.12 RCW.

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

9 NEW SECTION. **Sec. 13.** Sections 1 through 6 of this act expires
10 January 1, 2013.

--- END ---