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HOUSE BILL 2421

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State of Washington

62nd Legislature

2012 Regular Session

By Representatives Orwall, Rodne, Ladenburg, Upthegrove, Tharinger, Maxwell, Kelley, Kenney, Kagi, Moscoso, and Jinkins; by request of Washington State Department of Commerce

Read first time 01/13/12. Referred to Committee on Judiciary.

1 AN ACT Relating to modifying the foreclosure fairness act; and  
2 amending RCW 61.24.031, 61.24.160, 61.24.163, 61.24.169, and 61.24.174.

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

4 **Sec. 1.** RCW 61.24.031 and 2011 c 58 s 5 are each amended to read  
5 as follows:

6 (1)(a) A trustee, beneficiary, or authorized agent may not issue a  
7 notice of default under RCW 61.24.030(8) until: (i) Thirty days after  
8 initial contact with the borrower was initiated as required under (b)  
9 of this subsection or thirty days after satisfying the due diligence  
10 requirements as described in subsection (5) of this section and the  
11 borrower has not responded; or (ii) if the borrower responds to the  
12 initial contact, ninety days after the initial contact with the  
13 borrower was initiated.

14 (b) A beneficiary or authorized agent (~~shall~~) must make initial  
15 contact with the borrower by letter to provide the borrower with  
16 information required under (c) of this subsection and by telephone as  
17 required under subsection (5) of this section. The letter required  
18 under this subsection must be mailed in accordance with subsection

1 (5)(a) of this section and must include the information described in  
2 (c) of this subsection and subsection (5)(e)(i) through (iv) of this  
3 section.

4 (c) The letter required under this subsection, developed by the  
5 department pursuant to RCW 61.24.033, at a minimum (~~shall~~) must  
6 include:

7 (i) A paragraph printed in no less than twelve-point font and  
8 bolded that reads:

9 "You must respond within thirty days of the date of this letter.  
10 IF YOU DO NOT RESPOND within thirty days, a notice of default may be  
11 issued and you may lose your home in foreclosure.

12 IF YOU DO RESPOND within thirty days of the date of this letter,  
13 you will have an additional sixty days to meet with your lender before  
14 a notice of default may be issued.

15 You should contact a housing counselor or attorney as soon as  
16 possible. Failure to contact a housing counselor or attorney may  
17 result in your losing certain opportunities, such as meeting with your  
18 lender or participating in mediation in front of a neutral third party.  
19 A housing counselor or attorney can help you work with your lender to  
20 avoid foreclosure.";

21 (ii) The toll-free telephone number from the United States  
22 department of housing and urban development to find a department-  
23 approved housing counseling agency, the toll-free numbers for the  
24 statewide foreclosure hotline recommended by the housing finance  
25 commission, and the statewide civil legal aid hotline for assistance  
26 and referrals to other housing counselors and attorneys;

27 (iii) A paragraph stating that a housing counselor may be available  
28 at little or no cost to the borrower and that whether or not the  
29 borrower contacts a housing counselor or attorney, the borrower has the  
30 right to request a meeting with the beneficiary; and

31 (iv) A paragraph explaining how the borrower may respond to the  
32 letter and stating that after responding the borrower will have an  
33 opportunity to meet with his or her beneficiary in an attempt to  
34 resolve and try to work out an alternative to the foreclosure and that,  
35 after ninety days from the date of the letter, a notice of default may  
36 be issued, which starts the foreclosure process.

37 (d) If the beneficiary has exercised due diligence as required  
38 under subsection (5) of this section and the borrower does not respond

1 by contacting the beneficiary within thirty days of the initial  
2 contact, the notice of default may be issued. "Initial contact" with  
3 the borrower is considered made three days after the date the letter  
4 required in (b) of this subsection is sent.

5 (e) If a meeting is requested by the borrower or the borrower's  
6 housing counselor or attorney, the beneficiary or authorized agent  
7 (~~shall~~) must schedule the meeting to occur before the notice of  
8 default is issued. An assessment of the borrower's financial ability  
9 to modify or restructure the loan obligation and a discussion of  
10 options must occur during the meeting scheduled for that purpose.

11 (f) The meeting scheduled to assess the borrower's financial  
12 ability to modify or restructure the loan obligation and discuss  
13 options to avoid foreclosure must be in person, unless the requirement  
14 to meet in person is waived in writing by the borrower or the  
15 borrower's representative. A person who is authorized to modify the  
16 loan obligation or reach an alternative resolution to foreclosure on  
17 behalf of the beneficiary may participate by telephone or video  
18 conference, so long as a representative of the beneficiary is at the  
19 meeting in person.

20 (2) A notice of default issued under RCW 61.24.030(8) must include  
21 a declaration, as provided in subsection (9) of this section, from the  
22 beneficiary or authorized agent that it has contacted the borrower as  
23 provided in subsection (1) of this section, it has tried with due  
24 diligence to contact the borrower under subsection (5) of this section,  
25 or the borrower has surrendered the property to the trustee,  
26 beneficiary, or authorized agent. Unless the trustee has violated his  
27 or her duty under RCW 61.24.010(4), the trustee is entitled to rely on  
28 the declaration as evidence that the requirements of this section have  
29 been satisfied, and the trustee is not liable for the beneficiary's or  
30 its authorized agent's failure to comply with the requirements of this  
31 section.

32 (3) If, after the initial contact under subsection (1) of this  
33 section, a borrower has designated a housing counseling agency, housing  
34 counselor, or attorney to discuss with the beneficiary or authorized  
35 agent, on the borrower's behalf, options for the borrower to avoid  
36 foreclosure, the borrower (~~shall~~) must inform the beneficiary or  
37 authorized agent and provide the contact information to the beneficiary

1 or authorized agent. The beneficiary or authorized agent (~~shall~~)  
2 must contact the designated representative for the borrower to meet.

3 (4) The beneficiary or authorized agent and the borrower or the  
4 borrower's representative (~~shall~~) must attempt to reach a resolution  
5 for the borrower within the ninety days from the time the initial  
6 contact is sent and the notice of default is issued. A resolution may  
7 include, but is not limited to, a loan modification, an agreement to  
8 conduct a short sale, or a deed in lieu of foreclosure transaction, or  
9 some other workout plan. Any modification or workout plan offered at  
10 the meeting with the borrower's designated representative by the  
11 beneficiary or authorized agent is subject to approval by the borrower.

12 (5) A notice of default may be issued under RCW 61.24.030(8) if a  
13 beneficiary or authorized agent has initiated contact with the borrower  
14 as required under subsection (1)(b) of this section and the failure to  
15 meet with the borrower occurred despite the due diligence of the  
16 beneficiary or authorized agent. Due diligence requires the following:

17 (a) A beneficiary or authorized agent (~~shall~~) must first attempt  
18 to contact a borrower by sending a first-class letter to the address in  
19 the beneficiary's records for sending account statements to the  
20 borrower and to the address of the property encumbered by the deed of  
21 trust. The letter must be the letter described in subsection (1)(c) of  
22 this section.

23 (b)(i) After the letter has been sent, the beneficiary or  
24 authorized agent (~~shall~~) must attempt to contact the borrower by  
25 telephone at least three times at different hours and on different  
26 days. Telephone calls must be made to the primary and secondary  
27 telephone numbers on file with the beneficiary or authorized agent.

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

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

1 (c) If the borrower does not respond within fourteen days after the  
2 telephone call requirements of (b) of this subsection have been  
3 satisfied, the beneficiary or authorized agent (~~shall~~) must send a  
4 certified letter, with return receipt requested, to the borrower at the  
5 address in the beneficiary's records for sending account statements to  
6 the borrower and to the address of the property encumbered by the deed  
7 of trust. The letter must include the information described in (e)(i)  
8 through (iv) of this subsection. The letter must also include a  
9 paragraph stating: "Your failure to contact a housing counselor or  
10 attorney may result in your losing certain opportunities, such as  
11 meeting with your lender or participating in mediation in front of a  
12 neutral third party."

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

18 (e) The beneficiary or authorized agent (~~shall~~) must post a link  
19 on the home page of the beneficiary's or authorized agent's internet  
20 web site, if any, to the following information:

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

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

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

31 (iv) The toll-free telephone number or charge-free equivalent made  
32 available by the department to find a department-approved housing  
33 counseling agency.

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

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

1 (b) The borrower has filed for bankruptcy, and the bankruptcy stay  
2 remains in place, or the borrower has filed for bankruptcy and the  
3 bankruptcy court has granted relief from the bankruptcy stay allowing  
4 enforcement of the deed of trust.

5 (7)(a) This section applies only to deeds of trust that are  
6 recorded against owner-occupied residential real property. This  
7 section does not apply to deeds of trust: (i) Securing a commercial  
8 loan; (ii) securing obligations of a grantor who is not the borrower or  
9 a guarantor; or (iii) securing a purchaser's obligations under a  
10 seller-financed sale.

11 (b) This section does not apply to association beneficiaries  
12 subject to chapter 64.32, 64.34, or 64.38 RCW.

13 (8) As used in this section:

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

16 (b) "Seller-financed sale" means a residential real property  
17 transaction where the seller finances all or part of the purchase  
18 price, and that financed amount is secured by a deed of trust against  
19 the subject residential real property.

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

23 **"FORECLOSURE LOSS MITIGATION FORM**

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

25 The undersigned beneficiary or authorized agent for the beneficiary  
26 hereby represents and declares under the penalty of perjury that [check  
27 the applicable box and fill in any blanks so that the trustee can  
28 insert, on the beneficiary's behalf, the applicable declaration in the  
29 notice of default required under chapter 61.24 RCW]:

30 (1) [ ] The beneficiary or beneficiary's authorized agent has  
31 contacted the borrower under, and has complied with, RCW 61.24.031  
32 (contact provision to "assess the borrower's financial ability to pay  
33 the debt secured by the deed of trust and explore options for the  
34 borrower to avoid foreclosure") and the borrower did not request a  
35 meeting.

36 (2) [ ] The beneficiary or beneficiary's authorized agent has

1 contacted the borrower as required under RCW 61.24.031 and the borrower  
2 or the borrower's designated representative requested a meeting. A  
3 meeting was held in compliance with RCW 61.24.031.

4 (3) [ ] The beneficiary or beneficiary's authorized agent has  
5 exercised due diligence to contact the borrower as required in RCW  
6 61.24.031(5).

7 (4) [ ] The borrower has surrendered the secured property as  
8 evidenced by either a letter confirming the surrender or by delivery of  
9 the keys to the secured property to the beneficiary, the beneficiary's  
10 authorized agent or to the trustee.

11 (5) [ ] Under RCW 61.24.031, the beneficiary or the beneficiary's  
12 authorized agent has verified information that, on or before the date  
13 of this declaration, the borrower(s) has filed for bankruptcy, and the  
14 bankruptcy stay remains in place, or the borrower has filed for  
15 bankruptcy and the bankruptcy court has granted relief from the  
16 bankruptcy stay allowing the enforcement of the deed of trust."

17 **Sec. 2.** RCW 61.24.160 and 2011 c 58 s 6 are each amended to read  
18 as follows:

19 (1)(a) A housing counselor who is contacted by a borrower under RCW  
20 61.24.031 has a duty to act in good faith to attempt to reach a  
21 resolution with the beneficiary on behalf of the borrower within the  
22 ninety days provided from the date the beneficiary initiates contact  
23 with the borrower and the date the notice of default is issued. A  
24 resolution may include, but is not limited to, modification of the  
25 loan, an agreement to conduct a short sale, a deed in lieu of  
26 foreclosure transaction, or some other workout plan.

27 (b) Nothing in RCW 61.24.031 or this section precludes a meeting or  
28 negotiations between the housing counselor, borrower, and beneficiary  
29 at any time, including after the issuance of the notice of default.

30 (c) A borrower who is contacted under RCW 61.24.031 may seek the  
31 assistance of a housing counselor or attorney at any time.

32 (2) Housing counselors have a duty to act in good faith to assist  
33 borrowers by:

34 (a) Preparing the borrower for meetings with the beneficiary;

35 (b) Advising the borrower about what documents the borrower must  
36 have to seek a loan modification or other resolution;

1 (c) Informing the borrower about the alternatives to foreclosure,  
2 including loan modifications or other possible resolutions; and

3 (d) Providing other guidance, advice, and education as the housing  
4 counselor considers necessary.

5 (3) A housing counselor or attorney assisting a borrower may refer  
6 the borrower to a mediation program, pursuant to RCW 61.24.163, if:

7 (a) The housing counselor or attorney determines that mediation is  
8 appropriate based on the individual circumstances; (~~and~~)

9 (b) A notice of sale on the deed of trust has not been recorded;  
10 and

11 (c) The borrower is in foreclosure as evidenced by the receipt of  
12 at least one of the following from the beneficiary:

13 (i) Notice of default; or

14 (ii) Notice of preforeclosure options pursuant to RCW 61.24.031.

15 (4) A referral to mediation by a housing counselor or attorney does  
16 not preclude a trustee issuing a notice of default if the requirements  
17 of RCW 61.24.031 have been met.

18 (5) Housing counselors providing assistance to borrowers under RCW  
19 61.24.031 are not liable for civil damages resulting from any acts or  
20 omissions in providing assistance, unless the acts or omissions  
21 constitute gross negligence or willful or wanton misconduct.

22 (6) Housing counselors (~~shall~~) must provide information to the  
23 department to assist the department in its annual report to the  
24 legislature as required under RCW 61.24.163(15). The information  
25 provided to the department by the housing counselors should include  
26 outcomes of foreclosures and be similar to the information requested in  
27 the national foreclosure mortgage counseling client level foreclosure  
28 outcomes report form.

29 **Sec. 3.** RCW 61.24.163 and 2011 2nd sp.s. c 4 s 1 are each amended  
30 to read as follows:

31 (1) The foreclosure mediation program established in this section  
32 applies only to borrowers who have been referred to mediation by a  
33 housing counselor or attorney. The mediation program under this  
34 section is not governed by chapter 7.07 RCW and does not preclude  
35 mediation required by a court or other provision of law.

36 (2) A housing counselor or attorney referring a borrower to



1 mediation (~~shall~~) must send a notice to the borrower and the  
2 department, stating that mediation is appropriate.

3 (3) Within ten days of receiving the notice, the department  
4 (~~shall~~) must:

5 (a) Send a notice to the beneficiary, the borrower, the housing  
6 counselor or attorney who referred the borrower, and the trustee  
7 stating that the parties have been referred to mediation. The notice  
8 must include the statements and list of documents and information  
9 described in subsection (5)(b)(i) through (iv) of this section; and

10 (b) Select a mediator and notify the parties of the selection.

11 (4) Within forty-five days of receiving the referral from the  
12 department, the mediator (~~shall~~) must convene a mediation session in  
13 the county where the borrower resides, unless the parties agree on  
14 another location. The parties may agree in writing to extend the time  
15 in which to schedule the mediation session. If the parties agree to  
16 extend the time, the beneficiary (~~shall~~) must notify the trustee of  
17 the extension and the date the mediator is expected to issue the  
18 mediator's certification.

19 (5)(a) The mediator may schedule phone conferences, consultations  
20 with the parties individually, and other communications to ensure that  
21 the parties have all the necessary information to engage in a  
22 productive mediation.

23 (b) The mediator must send written notice of the time, date, and  
24 location of the mediation session to the borrower, the beneficiary, and  
25 the department at least fifteen days prior to the mediation session.  
26 At a minimum, the notice must contain:

27 (i) A statement that the borrower may be represented in the  
28 mediation session by an attorney or other advocate;

29 (ii) A statement that a person with authority to agree to a  
30 resolution, including a proposed settlement, loan modification, or  
31 dismissal or continuation of the foreclosure proceeding, must be  
32 present either in person or on the telephone or video conference during  
33 the mediation session;

34 (iii) A complete list of documents and information required by this  
35 section that the parties must provide to the mediator and the deadlines  
36 for providing the documents and information; and

37 (iv) A statement that the parties have a duty to mediate in good  
38 faith and that failure to mediate in good faith may impair the

1 beneficiary's ability to foreclose on the property or the borrower's  
2 ability to modify the loan or take advantage of other alternatives to  
3 foreclosure.

4 (6) The borrower, the beneficiary or authorized agent, and the  
5 mediator must meet in person for the mediation session. However, a  
6 person with authority to agree to a resolution on behalf of the  
7 beneficiary may be present over the telephone or video conference  
8 during the mediation session.

9 (7) The participants in mediation must address the issues of  
10 foreclosure that may enable the borrower and the beneficiary to reach  
11 a resolution, including but not limited to reinstatement, modification  
12 of the loan, restructuring of the debt, or some other workout plan. To  
13 assist the parties in addressing issues of foreclosure, the mediator  
14 must require the participants to consider the following:

15 (a) The borrower's current and future economic circumstances,  
16 including the borrower's current and future income, debts, and  
17 obligations for the previous sixty days or greater time period as  
18 determined by the mediator;

19 (b) The net present value of receiving payments pursuant to a  
20 modified mortgage loan as compared to the anticipated net recovery  
21 following foreclosure;

22 (c) Any affordable loan modification calculation and net present  
23 value calculation when required under any federal mortgage relief  
24 program, including the home affordable modification program (HAMP) as  
25 applicable to government-sponsored enterprise and nongovernment-  
26 sponsored enterprise loans and any HAMP-related modification program  
27 applicable to loans insured by the federal housing administration, the  
28 veterans administration, and the rural housing service. If such a  
29 calculation is not required, then the beneficiary must use the current  
30 calculations, assumptions, and forms that are established by the  
31 federal deposit insurance corporation and published in the federal  
32 deposit insurance corporation loan modification program guide; and

33 (d) Any other loss mitigation guidelines to loans insured by the  
34 federal housing administration, the veterans administration, and the  
35 rural housing service, if applicable.

36 (8) A violation of the duty to mediate in good faith as required  
37 under this section may include:

38 (a) Failure to timely participate in mediation without good cause;

1 (b) Failure of the beneficiary to provide the following  
2 documentation to the borrower and mediator at least ten days before the  
3 mediation or pursuant to the mediator's instructions:

4 (i) An accurate statement containing the balance of the loan as of  
5 the first day of the month in which the mediation occurs;

6 (ii) Copies of the note and deed of trust;

7 (iii) Proof that the entity claiming to be the beneficiary is the  
8 owner of any promissory note or obligation secured by the deed of  
9 trust. Sufficient proof may be a copy of the declaration described in  
10 RCW 61.24.030(7)(a);

11 (iv) The best estimate of any arrearage and an itemized statement  
12 of the arrearages;

13 (v) An itemized list of the best estimate of fees and charges  
14 outstanding;

15 (vi) The payment history and schedule for the preceding twelve  
16 months, or since default, whichever is longer, including a breakdown of  
17 all fees and charges claimed;

18 (vii) All borrower-related and mortgage-related input data used in  
19 any net present value analysis;

20 (viii) An explanation regarding any denial for a loan modification,  
21 forbearance, or other alternative to foreclosure in sufficient detail  
22 for a reasonable person to understand why the decision was made;

23 (ix) The most recently available appraisal or other broker price  
24 opinion most recently relied upon by the beneficiary; and

25 (x) The portion or excerpt of the pooling and servicing agreement  
26 that prohibits the beneficiary from implementing a modification, if the  
27 beneficiary claims it cannot implement a modification due solely to  
28 limitations in a pooling and servicing agreement, and documentation or  
29 a statement detailing the efforts of the beneficiary to obtain a waiver  
30 of the pooling and servicing agreement provisions;

31 (c) Failure of the borrower to provide documentation to the  
32 beneficiary and mediator, at least ten days before the mediation or  
33 pursuant to the mediator's instruction, showing the borrower's current  
34 and future income, debts and obligations, and tax returns for the past  
35 two years;

36 (d) Failure of either party to pay the respective portion of the  
37 mediation fee in advance of the mediation as required under this  
38 section;

1 (e) Failure of a party to designate representatives with adequate  
2 authority to fully settle, compromise, or otherwise reach resolution  
3 with the borrower in mediation; and

4 (f) A request by a beneficiary that the borrower waive future  
5 claims he or she may have in connection with the deed of trust, as a  
6 condition of agreeing to a modification, except for rescission claims  
7 under the federal truth in lending act. Nothing in this section  
8 precludes a beneficiary from requesting that a borrower dismiss with  
9 prejudice any pending claims against the beneficiary, its agents, loan  
10 servicer, or trustee, arising from the underlying deed of trust, as a  
11 condition of modification.

12 (9) Within seven business days after the conclusion of the  
13 mediation session, the mediator must send a written certification to  
14 the department and the trustee and send copies to the parties of:

15 (a) The date, time, and location of the mediation session;

16 (b) The names of all persons attending in person and by telephone  
17 or video conference, at the mediation session;

18 (c) Whether a resolution was reached by the parties, including  
19 whether the default was cured by reinstatement, modification, or  
20 restructuring of the debt, or some other alternative to foreclosure was  
21 agreed upon by the parties;

22 (d) Whether the parties participated in the mediation in good  
23 faith; and

24 (e) A description of the net present value test used, along with a  
25 copy of the inputs, including the result of the net present value test  
26 expressed in a dollar amount.

27 (10) If the parties are unable to reach any agreement and the  
28 mediator certifies that the parties acted in good faith, the  
29 beneficiary may proceed with the foreclosure.

30 (11)(a) The mediator's certification that the beneficiary failed to  
31 act in good faith in mediation constitutes a defense to the nonjudicial  
32 foreclosure action that was the basis for initiating the mediation. In  
33 any action to enjoin the foreclosure, the beneficiary (~~shall be~~) is  
34 entitled to rebut the allegation that it failed to act in good faith.

35 (b) The mediator's certification that the beneficiary failed to act  
36 in good faith during mediation does not constitute a defense to a  
37 judicial foreclosure or a future nonjudicial foreclosure action if a

1 modification of the loan is agreed upon and the borrower subsequently  
2 defaults.

3 (c) If an agreement was not reached and the mediator's  
4 certification shows that the net present value of the modified loan  
5 exceeds the anticipated net recovery at foreclosure, that showing in  
6 the certification (~~shall~~) constitutes a basis for the borrower to  
7 enjoin the foreclosure.

8 (12) The mediator's certification that the borrower failed to act  
9 in good faith in mediation authorizes the beneficiary to proceed with  
10 the foreclosure.

11 (13)(a) A trustee may not record the notice of sale until the  
12 trustee receives the mediator's certification stating that the  
13 mediation has been completed.

14 (b) If the trustee does not receive the mediator's certification,  
15 the trustee may record the notice of sale after ten days from the date  
16 the certification to the trustee was due. If the notice of sale is  
17 recorded under this subsection (13)(b) and the mediator subsequently  
18 issues a certification alleging the beneficiary violated the duty of  
19 good faith, the trustee may not proceed with the sale.

20 (14) A mediator may charge reasonable fees as authorized by this  
21 subsection and by the department. Unless the fee is waived or the  
22 parties agree otherwise, a foreclosure mediator's fee may not exceed  
23 four hundred dollars for preparation, scheduling, and a mediation  
24 session lasting between one hour and three hours. For a mediation  
25 session exceeding three hours, the foreclosure mediator may charge a  
26 reasonable fee, as authorized by the department. The mediator must  
27 provide an estimated fee before the mediation, and payment of the  
28 mediator's fee must be divided equally between the beneficiary and the  
29 borrower. The beneficiary and the borrower must tender the loan  
30 mediator's fee seven calendar days before the commencement of the  
31 mediation or pursuant to the mediator's instructions.

32 (15) Beginning December 1, 2012, and every year thereafter, the  
33 department (~~shall~~) must report annually to the legislature on:

34 (a) The performance of the program, including the numbers of  
35 borrowers who are referred to mediation by a housing counselor or  
36 attorney;

37 (b) The results of the mediation program, including the number of  
38 mediations requested by housing counselors and attorneys, the number of

1 certifications of good faith issued, the number of borrowers and  
2 beneficiaries who failed to mediate in good faith, and the reasons for  
3 the failure to mediate in good faith, if known, the numbers of loans  
4 restructured or modified, the change in the borrower's monthly payment  
5 for principal and interest and the number of principal write-downs and  
6 interest rate reductions, and, to the extent practical, the number of  
7 borrowers who report a default within a year of restructuring or  
8 modification;

9 (c) The information received by housing counselors regarding  
10 outcomes of foreclosures; and

11 (d) Any recommendations for changes to the statutes regarding the  
12 mediation program.

13 **Sec. 4.** RCW 61.24.169 and 2011 2nd sp.s. c 4 s 2 are each amended  
14 to read as follows:

15 (1) For the purposes of RCW 61.24.163, the department must maintain  
16 a list of approved foreclosure mediators. The department may approve  
17 the following persons to serve as foreclosure mediators under this  
18 section:

19 (a) Attorneys who are active members of the Washington state bar  
20 association;

21 (b) Employees of United States department of housing and urban  
22 development-approved housing counseling agencies or approved by the  
23 Washington state housing finance commission;

24 (c) Employees or volunteers of dispute resolution centers under  
25 chapter 7.75 RCW; and

26 (d) Retired judges of Washington courts.

27 (2) The department may establish a required training program for  
28 foreclosure mediators and may require mediators to acquire training  
29 before being approved. The mediators must be familiar with relevant  
30 aspects of the law, have knowledge of community-based resources and  
31 mortgage assistance programs, and refer borrowers to these programs  
32 where appropriate.

33 (3) The department may remove any mediator from the approved list  
34 of mediators.

35 (4)(a) A mediator under this section (~~who is an employee or~~  
36 ~~volunteer of a dispute resolution center under chapter 7.75 RCW~~) is

1 immune from suit in any civil action based on any proceedings or other  
2 official acts performed in his or her capacity as a foreclosure  
3 mediator, except in cases of willful or wanton misconduct.

4 (b) A mediator is not subject to discovery or compulsory process to  
5 testify in any litigation pertaining to a foreclosure action between  
6 the parties. However, the mediator's certification and all information  
7 and material presented as part of the mediation process may be deemed  
8 admissible evidence, subject to court rules, in any litigation  
9 pertaining to a foreclosure action between the parties.

10 **Sec. 5.** RCW 61.24.174 and 2011 1st sp.s. c 24 s 1 are each amended  
11 to read as follows:

12 (1) Except as provided in subsection (~~((4))~~) (5) of this section,  
13 beginning October 1, 2011, and every quarter thereafter, every  
14 beneficiary issuing notices of default, or directing that a trustee or  
15 authorized agent issue the notice of default, on owner-occupied  
16 residential real property under this chapter must:

17 (a) Report to the department the number of owner-occupied  
18 residential real properties for which the beneficiary has issued a  
19 notice of default during the previous quarter; (~~and~~)

20 (b) Remit the amount required under subsection (2) of this section;  
21 and

22 (c) Report and update beneficiary contact information for the  
23 person and work group responsible for compliance with the foreclosure  
24 fairness act created in this chapter.

25 (2) For each owner-occupied residential real property for which a  
26 notice of default has been issued, the beneficiary issuing the notice  
27 of default, or directing that a trustee or authorized agent issue the  
28 notice of default, (~~shall~~) must remit two hundred fifty dollars to  
29 the department to be deposited, as provided under RCW 61.24.172, into  
30 the foreclosure fairness account. The two hundred fifty dollar payment  
31 is required per property and not per notice of default. The  
32 beneficiary (~~shall~~) must remit the total amount required in a lump  
33 sum each quarter.

34 (3) Reporting and payments under subsections (1) and (2) of this  
35 section are due within forty-five days of the end of each quarter.

36 (4) No later than thirty days after April 14, 2011, the  
37 beneficiaries required to report and remit to the department under this

1 section (~~shall~~) must determine the number of owner-occupied  
2 residential real properties for which notices of default were issued  
3 during the three months prior to April 14, 2011. The beneficiary  
4 (~~shall~~) must remit to the department a one-time sum of two hundred  
5 fifty dollars multiplied by the number of properties. In addition, by  
6 July 31, 2011, the beneficiaries required to report and remit to the  
7 department under this section (~~shall~~) must remit to the department  
8 another one-time sum of two hundred fifty dollars multiplied by the  
9 number of owner-occupied residential real properties for which notices  
10 of default were issued from April 14, 2011, through June 30, 2011. The  
11 department (~~shall~~) must deposit the funds into the foreclosure  
12 fairness account as provided under RCW 61.24.172.

13 (~~(+4)~~) (5) This section does not apply to any beneficiary or loan  
14 servicer that is a federally insured depository institution, as defined  
15 in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of  
16 perjury that it has issued, or has directed a trustee or authorized  
17 agent to issue, fewer than two hundred fifty notices of default in the  
18 preceding year.

19 (~~(+5)~~) (6) This section does not apply to association  
20 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

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