
SENATE BILL 5275

State of Washington

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By Senators Kline, Haugen, Kohl-Welles, Hargrove, Rockefeller, Nelson, Ranker, Keiser, Swecker, White, Conway, Hobbs, Chase, Harper, Kilmer, Prentice, Shin, Murray, Fraser, and McAuliffe

Read first time 01/19/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to protecting and assisting homeowners from
2 unnecessary foreclosures; amending RCW 61.24.030, 61.24.031, 61.24.040,
3 61.24.135, and 82.45.010; reenacting and amending RCW 61.24.005; adding
4 new sections to chapter 61.24 RCW; adding a new section to chapter
5 36.22 RCW; creating new sections; and repealing 2009 c 292 s 13
6 (uncodified).

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

8 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

9 (1) The rate of home foreclosures continues to rise to
10 unprecedented levels, both for prime and subprime loans;

11 (2) A new wave of foreclosures have occurred due to rising
12 unemployment, job loss, and higher adjustable loan payments;

13 (3) Foreclosures contribute to the decline in the state's housing
14 market, loss of property values, and other loss of revenue to the
15 state;

16 (4) The nonjudicial foreclosure process in Washington does not have
17 any mechanism for homeowners to readily access an impartial decision
18 maker in order to save the home;

1 (5) Several jurisdictions across the nation have foreclosure
2 mediation programs that aim to provide a cost-effective process to let
3 the homeowner and lender, with the assistance of a trained mediator,
4 reach a mutually acceptable resolution that avoids foreclosure; and

5 (6) Foreclosure mediation programs have proven to be the best
6 practice in preventing foreclosures and allowing the parties to agree
7 upon a modification that is sustainable for the homeowner and nets the
8 lender greater value than the lender can expect from proceeding with
9 foreclosure.

10 NEW SECTION. **Sec. 2.** This act may be known and cited as the
11 foreclosure fairness act.

12 **Sec. 3.** RCW 61.24.005 and 2009 c 292 s 1 are each reenacted and
13 amended to read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

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

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

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

27 (4) "Commercial loan" means a loan that is not made primarily for
28 personal, family, or household purposes.

29 (5) "Department" means the department of commerce or its designee.

30 (6) "Fair value" means the value of the property encumbered by a
31 deed of trust that is sold pursuant to a trustee's sale. This value
32 shall be determined by the court or other appropriate adjudicator by
33 reference to the most probable price, as of the date of the trustee's
34 sale, which would be paid in cash or other immediately available funds,
35 after deduction of prior liens and encumbrances with interest to the
36 date of the trustee's sale, for which the property would sell on such

1 date after reasonable exposure in the market under conditions requisite
2 to a fair sale, with the buyer and seller each acting prudently,
3 knowledgeably, and for self-interest, and assuming that neither is
4 under duress.

5 ~~((+6+))~~ (7) "Grantor" means a person, or its successors, who
6 executes a deed of trust to encumber the person's interest in property
7 as security for the performance of all or part of the borrower's
8 obligations.

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

12 ~~((+8+))~~ (9) "Owner-occupied" means property that is the principal
13 residence of the borrower.

14 ~~((+9+))~~ (10) "Person" means any natural person, or legal or
15 governmental entity.

16 ~~((+10+))~~ (11) "Record" and "recorded" includes the appropriate
17 registration proceedings, in the instance of registered land.

18 ~~((+11+))~~ (12) "Residential real property" means property consisting
19 solely of a single-family residence, a residential condominium unit, or
20 a residential cooperative unit.

21 ~~((+12+))~~ (13) "Tenant-occupied property" means property consisting
22 solely of residential real property that is the principal residence of
23 a tenant subject to chapter 59.18 RCW or other building with four or
24 fewer residential units that is the principal residence of a tenant
25 subject to chapter 59.18 RCW.

26 ~~((+13+))~~ (14) "Trustee" means the person designated as the trustee
27 in the deed of trust or appointed under RCW 61.24.010(2).

28 ~~((+14+))~~ (15) "Trustee's sale" means a nonjudicial sale under a
29 deed of trust undertaken pursuant to this chapter.

30 **Sec. 4.** RCW 61.24.030 and 2009 c 292 s 8 are each amended to read
31 as follows:

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

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

34 (2) That the deed of trust contains a statement that the real
35 property conveyed is not used principally for agricultural purposes;
36 provided, if the statement is false on the date the deed of trust was
37 granted or amended to include that statement, and false on the date of

1 the trustee's sale, then the deed of trust must be foreclosed
2 judicially. Real property is used for agricultural purposes if it is
3 used in an operation that produces crops, livestock, or aquatic goods;

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

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

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 (b) Unless the trustee has violated his or her duty under RCW
34 61.24.010(4), the trustee is entitled to rely on the beneficiary's
35 declaration as evidence of proof required under this subsection.

36 (c) This subsection (7) does not apply to association beneficiaries
37 subject to chapter 64.32, 64.34, or 64.38 RCW; (~~and~~)

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

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

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

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

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

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

23 (f) A statement showing the total of (d) and (e) of this
24 subsection, designated clearly and conspicuously as the amount
25 necessary to reinstate the note and deed of trust before the recording
26 of the notice of sale;

27 (g) A statement that failure to cure the alleged default within
28 thirty days of the date of mailing of the notice, or if personally
29 served, within thirty days of the date of personal service thereof, may
30 lead to recordation, transmittal, and publication of a notice of sale,
31 and that the property described in (a) of this subsection may be sold
32 at public auction at a date no less than one hundred twenty days in the
33 future;

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

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

4 (j) A statement that the borrower, grantor, and any guarantor has
5 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged
6 default on any proper ground;

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

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

14 Can you pay and stop the foreclosure process?

15 Do you dispute the failure to pay?

16 Can you sell your property to preserve your equity?

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

20 Do you qualify for any government or private homeowner assistance
21 programs?

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

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

32 You may feel you need help understanding what to do. There are a
33 number of professional resources available, including home loan
34 counselors and attorneys, who may assist you. Many legal services are
35 lower-cost or even free, depending on your ability to pay. If you
36 desire legal help in understanding your options or handling this
37 default, you may obtain a referral (at no charge) by contacting the
38 county bar association in the county where your home is located. These

1 legal referral services also provide information about lower-cost or
2 free legal services for those who qualify. You may contact the
3 Department of Financial Institutions or the statewide civil legal aid
4 hotline for possible assistance or referrals"; and

5 (1) In the event the property secured by the deed of trust is
6 residential real property, the name and address of the owner of any
7 promissory notes or other obligations secured by the deed of trust and
8 the name, address, and telephone number of a party acting as a servicer
9 of the obligations secured by the deed of trust; and

10 (9) That, for residential real property, before the notice of the
11 trustee's sale is recorded, transmitted, or served, the beneficiary has
12 complied with RCW 61.24.031 and section 6 of this act.((=))

13 **Sec. 5.** RCW 61.24.031 and 2009 c 292 s 2 are each amended to read
14 as follows:

15 (1)(a) A trustee, beneficiary, or authorized agent may not issue a
16 notice of default under RCW 61.24.030(8) until thirty days after
17 initial contact with the borrower is made as required under (b) of this
18 subsection or thirty days after satisfying the due diligence
19 requirements as described in subsection ((+5+)) (4) of this section.

20 (b) A beneficiary or authorized agent shall contact the borrower by
21 letter and by telephone in order to assess the borrower's financial
22 ability to pay the debt secured by the deed of trust and explore
23 options for the borrower to avoid foreclosure. The letter required
24 under this subsection must be mailed in accordance with subsection
25 ((+5+)) (4)(a) of this section and must include the information
26 described in subsection ((+5+)) (4)(a) and (e)(i) through (iv) of this
27 section.

28 (c) During the initial contact, the beneficiary or authorized agent
29 shall advise the borrower that he or she has the right to request a
30 subsequent meeting and, if requested, the beneficiary or authorized
31 agent shall schedule the meeting to occur within fourteen days of the
32 request. The assessment of the borrower's financial ability to repay
33 the debt and a discussion of options ~~((may))~~ must occur during the
34 ~~((initial contact or at a))~~ subsequent meeting scheduled for that
35 purpose. At the initial contact, the borrower must be provided the
36 toll-free telephone number made available by the ~~((department to find~~
37 ~~a department-certified housing counseling agency))~~ United States

1 department of housing and urban development to find a department-
2 certified housing counseling agency and the toll-free numbers for the
3 department of financial institutions and the statewide civil legal aid
4 hotline for possible assistance and referrals.

5 (d) (~~(Any meeting under this section may occur telephonically))~~ The
6 subsequent meeting scheduled to assess the borrower's financial ability
7 to repay the debt and discuss options to avoid foreclosure must be in
8 person, unless the requirement to meet in person is waived in writing
9 by the borrower or the borrower's representative.

10 (2) A notice of default issued under RCW 61.24.030(8) must include
11 a declaration, as provided in subsection (~~(+9))~~) (8) of this section,
12 from the beneficiary or authorized agent that it has contacted the
13 borrower as provided in subsection (1)(~~(+b))~~) of this section, it has
14 tried with due diligence to contact the borrower under subsection
15 (~~(+5))~~) (4) of this section, or the borrower has surrendered the
16 property to the trustee, beneficiary, or authorized agent. Unless the
17 trustee has violated his or her duty under RCW 61.24.010(4), the
18 trustee is entitled to rely on the declaration as evidence that the
19 requirements of this section have been satisfied, and the trustee is
20 not liable for the beneficiary's or its authorized agent's failure to
21 comply with the requirements of this section.

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

25 ~~(+4))~~) Within fourteen days after the initial contact under
26 subsection (1) of this section, if a borrower has designated a
27 department-certified housing counseling agency, attorney, or other
28 advisor to discuss with the beneficiary or authorized agent, on the
29 borrower's behalf, options for the borrower to avoid foreclosure, the
30 borrower shall inform the beneficiary or authorized agent and provide
31 the contact information. The beneficiary or authorized agent shall
32 contact the designated representative for the borrower for the
33 discussion within fourteen days after the representative is designated
34 by the borrower. Any deed of trust modification or workout plan
35 offered at the meeting with the borrower's designated representative by
36 the beneficiary or authorized agent is subject to approval by the
37 borrower.

1 ((+5+)) (4) A notice of default may be issued under RCW
2 61.24.030(8) if a beneficiary or authorized agent has not contacted a
3 borrower as required under subsection (1)(b) of this section and the
4 failure to contact the borrower occurred despite the due diligence of
5 the beneficiary or authorized agent. Due diligence requires the
6 following:

7 (a) A beneficiary or authorized agent shall first attempt to
8 contact a borrower by sending a first-class letter to the address in
9 the beneficiary's records for sending account statements to the
10 borrower and to the address of the property encumbered by the deed of
11 trust. The letter must include the toll-free telephone number made
12 available by the (~~department to find a department-certified housing~~
13 ~~counseling agency~~) United States department of housing and urban
14 development to find a department-certified housing counseling agency,
15 and the following information:

16 "You may contact the Department of Financial Institutions(~~(, the~~
17 ~~Washington State Bar Association,~~) or the statewide civil legal aid
18 hotline for possible assistance or referrals."

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

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

28 (iii) A beneficiary or authorized agent satisfies the telephone
29 contact requirements of this subsection ((+5+)) (4)(b) if the
30 beneficiary or authorized agent determines, after attempting contact
31 under this subsection ((+5+)) (4)(b), that the borrower's primary
32 telephone number and secondary telephone number or numbers on file, if
33 any, have been disconnected or are not good contact numbers for the
34 borrower.

35 (c) If the borrower does not respond within fourteen days after the
36 telephone call requirements of (b) of this subsection have been
37 satisfied, the beneficiary or authorized agent shall send a certified
38 letter, with return receipt requested, to the borrower at the address

1 in the beneficiary's records for sending account statements to the
2 borrower and to the address of the property encumbered by the deed of
3 trust. The letter must include the information described in (e)(i)
4 through (iv) of this subsection.

5 (d) The beneficiary or authorized agent shall provide a means for
6 the borrower to contact the beneficiary or authorized agent in a timely
7 manner, including a toll-free telephone number or charge-free
8 equivalent that will provide access to a live representative during
9 business hours.

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

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

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

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

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

26 ~~((+6))~~ (5) Subsections (1) and ~~((+5))~~ (4) of this section do not
27 apply if any of the following occurs:

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

31 (b) The borrower has filed for bankruptcy, and the bankruptcy stay
32 remains in place, or the borrower has filed for bankruptcy and the
33 bankruptcy court has granted relief from the bankruptcy stay allowing
34 enforcement of the deed of trust.

35 ~~((+7))~~ (6)(a) This section applies only to deeds of trust ~~((made~~
36 ~~from January 1, 2003, to December 31, 2007, inclusive,))~~ that are
37 recorded against owner-occupied residential real property. This
38 section does not apply to deeds of trust: (i) Securing a commercial

1 loan; (ii) securing obligations of a grantor who is not the borrower or
2 a guarantor; or (iii) securing a purchaser's obligations under a
3 seller-financed sale.

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

6 ~~((+8))~~ (7) As used in this section:

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

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

13 ~~((+9))~~ (8) The form of declaration to be provided by the
14 beneficiary or authorized agent as required under subsection (2) of
15 this section must be in substantially the following form:

16 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

23 (1) [] The beneficiary or beneficiary's authorized agent has
24 contacted the borrower under, and has complied with, RCW 61.24.031
25 (contact provision to "assess the borrower's financial ability to pay
26 the debt secured by the deed of trust and explore options for the
27 borrower to avoid foreclosure") and the borrower did not request a
28 subsequent meeting.

29 (2) [] The beneficiary or beneficiary's authorized agent has
30 contacted the borrower as required under RCW 61.24.031 and the borrower
31 requested a subsequent meeting. A subsequent meeting was held in
32 compliance with RCW 61.24.031.

33 (3) [] The beneficiary or beneficiary's authorized agent has
34 exercised due diligence to contact the borrower as required in RCW
35 61.24.031~~((+5))~~ (4) and, after waiting fourteen days after the
36 requirements in RCW 61.24.031 were satisfied, the beneficiary or the

1 beneficiary's authorized agent sent to the borrower(s), by certified
2 mail, return receipt requested, the letter required under RCW
3 61.24.031.

4 ~~((3))~~ (4) [] The borrower has surrendered the secured property
5 as evidenced by either a letter confirming the surrender or by delivery
6 of the keys to the secured property to the beneficiary, the
7 beneficiary's authorized agent or to the trustee.

8 ~~((4))~~ (5) [] Under RCW 61.24.031, the beneficiary or the
9 beneficiary's authorized agent has verified information that, on or
10 before the date of this declaration, the borrower(s) has filed for
11 bankruptcy, and the bankruptcy stay remains in place, or the borrower
12 has filed for bankruptcy and the bankruptcy court has granted relief
13 from the bankruptcy stay allowing the enforcement of the deed of
14 trust."

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

17 (1)(a) At any time after a notice of default has been issued to the
18 borrower, but before the recording of a notice of sale pursuant to RCW
19 61.24.040 on owner-occupied residential real property, the beneficiary
20 or authorized agent must conduct a good faith review of the borrower's
21 financial situation and, if the borrower is eligible, must offer a loan
22 modification or other option to assist the borrower in avoiding
23 foreclosure.

24 (b) The requirement under this section is in addition to the
25 requirements under RCW 61.24.031.

26 (2) A good faith review of the borrower's financial situation means
27 the beneficiary or authorized agent:

28 (a) Evaluates the borrower's eligibility for all loan modification
29 programs established by the federal government or mortgage industry;
30 and

31 (b) Participates in the foreclosure mediation program established
32 under this section, if the borrower elects mediation.

33 (3) Failure of the beneficiary or authorized agent to conduct a
34 good faith review of the borrower's financial situation constitutes a
35 defense to foreclosure.

36 (4)(a) Prior to the recording of a notice of sale pursuant to RCW

1 61.24.040, a trustee, beneficiary, or authorized agent shall provide a
2 notice to the borrower and to the department by first-class mail,
3 return receipt requested, containing the following:

4 (i) The name, address, telephone number, and email address of a
5 person with authority to negotiate a loan modification on behalf of the
6 beneficiary of the deed of trust;

7 (ii) The toll-free telephone number made available by the United
8 States department of housing and urban development to find a
9 department-certified housing counseling agency to assist homeowners in
10 the state in avoiding foreclosure; and

11 (iii) The form notice explaining the availability of the
12 foreclosure mediation program.

13 (b) The department must create the form notice to be used. At a
14 minimum, the form notice must contain:

15 (i) An option for the borrower to indicate his or her election to
16 enter into foreclosure mediation or to waive mediation;

17 (ii) A statement encouraging the borrower to meet with a housing
18 counselor or an attorney prior to mediation; and

19 (iii) A statement informing the borrower that the form must be
20 returned to the department within thirty days or the borrower will
21 waive his or her right to foreclosure mediation and the beneficiary
22 will be able to proceed with the foreclosure.

23 (5) A trustee may not record a notice of sale under RCW 61.24.040
24 until the trustee has received a waiver of foreclosure mediation as
25 provided in subsection (7) of this section or the certification as
26 provided in subsection (13) of this section.

27 (6) If the borrower returns the form to the department within the
28 required time and indicates on the form his or her election to enter
29 into mediation, the department must notify the trustee, beneficiary,
30 and authorized agent by mail that the borrower has elected to enter
31 into mediation.

32 (7) If the borrower indicates on the form his or her election to
33 waive mediation or fails to return the form to the department as
34 required, the department must notify the trustee, beneficiary, and
35 authorized agent that the borrower has waived his or her right to
36 mediation.

37 (8) Within five business days from the date the borrower returns

1 the form indicating an election for mediation, the department must
2 select a mediator and notify the parties of the selection.

3 (9)(a) The foreclosure mediator may schedule phone conferences,
4 consultations with the parties individually, and other communications
5 to ensure that the parties have all the necessary information to engage
6 in a productive foreclosure mediation. The foreclosure mediator must
7 convene a foreclosure mediation session within forty-five days after
8 receiving a referral from the department, unless the parties agree in
9 writing to extend the time in which to schedule a mediation session.

10 (b) The foreclosure mediator must send written notice of the time,
11 date, and location of the foreclosure mediation session to the
12 borrower, the beneficiary, and the department at least fifteen days
13 prior to the foreclosure mediation session. At a minimum, the notice
14 must contain:

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

17 (ii) A statement that a person with authority to agree to a
18 proposed settlement, loan modification, and dismissal or continuation
19 of the foreclosure proceeding must be present at the foreclosure
20 mediation;

21 (iii) A complete list of documents and calculations that the
22 parties must provide to the mediator and the deadlines for providing
23 the documents and calculations. The list must include the documents
24 and calculations as required under subsection (11)(b) and (c) of this
25 section; and

26 (iv) A statement that the parties have an obligation to mediate in
27 good faith and a statement providing the sanctions for failing to
28 mediate in good faith.

29 (c) The department may create the format of this notice by rule.

30 (d) The borrower, the beneficiary or agent or representative, and
31 the mediator must meet in person for the mediation session.

32 (10) The participants in a foreclosure mediation must address the
33 issues of foreclosure that will enable the borrower and the beneficiary
34 to avoid foreclosure, including but not limited to reinstatement,
35 modification of the loan, or restructuring of the debt. To assist the
36 parties in addressing issues of foreclosure, the mediator must require
37 the participants to consider the following:

1 (a) The borrower's current circumstances, including the borrower's
2 current and future income, debts, and obligations;

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

6 (c) Any affordable loan modification calculation and net present
7 value calculation when required under any federal mortgage relief
8 program, including the home affordable modification program (HAMP) as
9 applicable to government-sponsored enterprise and nongovernment-
10 sponsored enterprise loans and any HAMP-related modification program
11 applicable to loans insured by the federal housing administration, the
12 veterans administration, and the rural housing service. If such a
13 calculation is not required, then the beneficiary must use the current
14 calculations, assumptions, and forms that are established by the
15 federal deposit insurance corporation and published in the federal
16 deposit insurance corporation loan modification program guide; and

17 (d) Any other loss mitigation guidelines applicable to loans
18 insured by the federal housing administration, the veterans
19 administration, and the rural housing service.

20 (11) The parties have the duty to act in good faith. Sharing
21 information, negotiating willingly, cooperating with the mediator, and
22 keeping any agreements made in mediation are indications of whether a
23 party acted in good faith. A violation of the obligation of good faith
24 includes, but is not limited to:

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

26 (b) Failure of the beneficiary to provide the following
27 documentation to the borrower and mediator at least ten days before the
28 foreclosure mediation:

29 (i) An accurate statement containing the balance of the loan;

30 (ii) Copies of original loan documents;

31 (iii) Proof that the entity claiming to be the beneficiary is the
32 owner of any promissory note or obligation secured by the deed of
33 trust, including proof that the entity seeking to foreclose is the
34 current assignee of the deed of trust;

35 (iv) The amount of any arrearage and an itemized statement of the
36 arrearages;

37 (v) An itemized list of fees and charges outstanding;

1 (vi) The payment history and schedule, including a breakdown of all
2 fees and charges claimed;

3 (vii) An affordable loan modification calculation;

4 (viii) A net present value calculation showing all inputs and the
5 outcome of the net present value test expressed in a dollar amount
6 including all worksheets, spreadsheets, inputs, numerical assumptions,
7 and results;

8 (ix) The most recently available appraisal;

9 (x) A copy of the pooling and servicing agreement if the
10 beneficiary claims it cannot implement a modification due to
11 limitations in a pooling and servicing agreement, and documentation
12 showing the efforts of the beneficiary to obtain a waiver of the
13 pooling and servicing agreement provisions; and

14 (xi) Any other relevant information as determined by the mediator;

15 (c) Failure of the borrower to provide documentation to the
16 beneficiary and mediator at least ten days before the foreclosure
17 mediation showing the borrower's current and future income, debts and
18 obligations, and tax returns for the past two years;

19 (d) Failure of a party to designate a representative with adequate
20 authority to fully settle, compromise, or otherwise mediate the matter;

21 (e) A request by a beneficiary that the borrower waive other rights
22 or claims he or she may have in connection with the deed of trust, as
23 a condition of agreeing to a modification; and

24 (f) Failure of a beneficiary to agree to a modification where the
25 net present value of the modified loan exceeds the anticipated net
26 recovery at foreclosure.

27 (12) Within seven business days after the conclusion of a
28 foreclosure mediation session, the foreclosure mediator must make a
29 written certification to the department and send copies to the parties
30 of:

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

32 (b) The names of all persons in attendance at the mediation
33 session;

34 (c) Whether the default was cured by reinstatement, modification,
35 or restructuring of the debt;

36 (d) Whether the parties participated in the foreclosure mediation
37 in good faith; and

1 (e) A description of the net present value test used, along with a
2 copy of the calculation and inputs, including the result of the net
3 present value test expressed in a dollar amount.

4 (13) If the parties are unable to reach a mediation agreement and
5 the mediator certifies that the parties acted in good faith, the
6 beneficiary may proceed with the foreclosure.

7 (14)(a) The foreclosure mediator's certification that the
8 beneficiary failed to act in good faith in mediation constitutes a
9 defense to a foreclosure action.

10 (b) If a mediation agreement was not reached and the report of the
11 mediator indicates that the calculations showed the net present value
12 of the modified loan exceeds the anticipated net recovery at
13 foreclosure, the report's finding shall constitute a basis for the
14 borrower to enjoin the foreclosure.

15 (15) The foreclosure mediator's certification that the borrower
16 failed to act in good faith in mediation authorizes the beneficiary to
17 proceed with the foreclosure.

18 (16) A foreclosure mediator may charge reasonable fees as
19 authorized by this subsection and by the department. Unless the fee is
20 waived or the parties agree otherwise, a foreclosure mediator's fee may
21 not exceed four hundred dollars for a foreclosure mediation session
22 lasting between one hour and three hours. For a mediation session
23 exceeding three hours, the foreclosure mediator may charge a reasonable
24 fee, as authorized by the department. Payment of the mediator's fee
25 must be divided equally between the beneficiary and the borrower. The
26 beneficiary and the borrower must tender the loan mediator's fee
27 pursuant to the mediator's instructions.

28 (17) This section applies only to deeds of trust that are recorded
29 against owner-occupied residential real property. This section does
30 not apply to deeds of trust:

31 (a) Securing a commercial loan;

32 (b) Securing obligations of a grantor who is not the borrower or a
33 guarantor; or

34 (c) Securing a purchaser's obligations under a seller-financed
35 sale.

36 (18) Beginning December 1, 2012, and every year thereafter, the
37 department shall report annually to the legislature on:

1 (a) The performance of the program, including the numbers of
2 borrowers who are notified of mediation and who attend mediation;

3 (b) The results of the mediation program, including the numbers of
4 loans restructured or modified, the change in the borrower's monthly
5 payment for principal and interest, the number of principal write-downs
6 and interest rate reductions, and, to the extent practical, the number
7 of borrowers who default within a year of restructuring or
8 modification; and

9 (c) Any recommendations for changes to the statutes regarding the
10 mediation program.

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

13 (1) For the purposes of section 6 of this act, the department must
14 maintain a list of approved foreclosure mediators. The department may
15 approve the following persons to serve as foreclosure mediators under
16 this section:

17 (a) Attorneys who are active members of the Washington state bar
18 association;

19 (b) Employees of United States department of housing and urban
20 development-certified housing counseling agencies;

21 (c) Employees or volunteers of dispute resolution centers under
22 chapter 7.75 RCW;

23 (d) Retired judges of Washington courts;

24 (e) Other statewide organizations that provide mediation services;
25 and

26 (f) Any other persons authorized by the department.

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 **Sec. 8.** RCW 61.24.040 and 2009 c 292 s 9 are each amended to read
36 as follows:

1 A deed of trust foreclosed under this chapter shall be foreclosed
2 as follows:

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

4 (a) Record a notice in the form described in (f) of this subsection
5 in the office of the auditor in each county in which the deed of trust
6 is recorded;

7 (b) To the extent the trustee elects to foreclose its lien or
8 interest, or the beneficiary elects to preserve its right to seek a
9 deficiency judgment against a borrower or grantor under RCW
10 61.24.100(3)(a), and if their addresses are stated in a recorded
11 instrument evidencing their interest, lien, or claim of lien, or an
12 amendment thereto, or are otherwise known to the trustee, cause a copy
13 of the notice of sale described in (f) of this subsection to be
14 transmitted by both first-class and either certified or registered
15 mail, return receipt requested, to the following persons or their legal
16 representatives, if any, at such address:

17 (i) The borrower and grantor;

18 (ii) The beneficiary of any deed of trust or mortgagee of any
19 mortgage, or any person who has a lien or claim of lien against the
20 property, that was recorded subsequent to the recordation of the deed
21 of trust being foreclosed and before the recordation of the notice of
22 sale;

23 (iii) The vendee in any real estate contract, the lessee in any
24 lease, or the holder of any conveyances of any interest or estate in
25 any portion or all of the property described in such notice, if that
26 contract, lease, or conveyance of such interest or estate, or a
27 memorandum or other notice thereof, was recorded after the recordation
28 of the deed of trust being foreclosed and before the recordation of the
29 notice of sale;

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

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

36 (vi) The occupants of property consisting solely of a single-family
37 residence, or a condominium, cooperative, or other dwelling unit in a
38 multiplex or other building containing fewer than five residential

1 units, whether or not the occupant's rental agreement is recorded,
2 which notice may be a single notice addressed to "occupants" for each
3 unit known to the trustee or beneficiary;

4 (c) Cause a copy of the notice of sale described in (f) of this
5 subsection to be transmitted by both first-class and either certified
6 or registered mail, return receipt requested, to the plaintiff or the
7 plaintiff's attorney of record, in any court action to foreclose a lien
8 or other encumbrance on all or any part of the property, provided a
9 court action is pending and a lis pendens in connection therewith is
10 recorded in the office of the auditor of any county in which all or
11 part of the property is located on the date the notice is recorded;

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

18 (e) Cause a copy of the notice of sale described in (f) of this
19 subsection to be posted in a conspicuous place on the property, or in
20 lieu of posting, cause a copy of said notice to be served upon any
21 occupant of the property;

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

23 NOTICE OF TRUSTEE'S SALE

24 I.

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

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

36 which is subject to that certain Deed of Trust dated,
37, recorded,, under Auditor's File No.,

1 records of County, Washington, from , as
2 Grantor, to , as Trustee, to secure an obligation in
3 favor of , as Beneficiary, the beneficial interest in
4 which was assigned by , under an Assignment recorded
5 under Auditor's File No. [Include recording information for
6 all counties if the Deed of Trust is recorded in more than one county.]

7 II.

8 No action commenced by the Beneficiary of the Deed of Trust is now
9 pending to seek satisfaction of the obligation in any Court by reason
10 of the Borrower's or Grantor's default on the obligation secured by the
11 Deed of Trust.

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

15 III.

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

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

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

20 IV.

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

26 V.

27 The above-described real property will be sold to satisfy the expense
28 of sale and the obligation secured by the Deed of Trust as provided by
29 statute. The sale will be made without warranty, express or implied,
30 regarding title, possession, or encumbrances on the day of
31 , The default(s) referred to in paragraph III must be
32 cured by the day of , . . . (11 days before the sale
33 date), to cause a discontinuance of the sale. The sale will be
34 discontinued and terminated if at any time on or before the day
35 of , , (11 days before the sale date), the default(s)

1 as set forth in paragraph III is/are cured and the Trustee's fees and
2 costs are paid. The sale may be terminated any time after the
3 day of, . . . (11 days before the sale date), and before
4 the sale by the Borrower, Grantor, any Guarantor, or the holder of any
5 recorded junior lien or encumbrance paying the entire principal and
6 interest secured by the Deed of Trust, plus costs, fees, and advances,
7 if any, made pursuant to the terms of the obligation and/or Deed of
8 Trust, and curing all other defaults.

9 VI.

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

12
13
14

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

22 VII.

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

26 VIII.

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

30 IX.

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

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

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

4

5

.....

6

....., Trustee

7

..... }

8

..... } Address

9

..... }

10

..... } Phone

11

[Acknowledgment]

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

16

NOTICE OF FORECLOSURE

17

Pursuant to the Revised Code of Washington,

18

Chapter 61.24 RCW

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

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

1		Estimated amount
2	Currently due	that will be due
3	to reinstate	to reinstate
4	on	on
5
6		(11 days before
7		the date set
8		for sale)
9	Delinquent payments	
10	from,	
11	. . . , in the	
12	amount of	
13	\$. . . /mo.:	\$ \$
14	Late charges in	
15	the total	
16	amount of:	\$ \$
17		Estimated
18		Amounts
19	Attorneys' fees:	\$ \$
20	Trustee's fee:	\$ \$
21	Trustee's expenses:	
22	(Itemization)	
23	Title report	\$ \$
24	Recording fees	\$ \$
25	Service/Posting	
26	of Notices	\$ \$
27	Postage/Copying	
28	expense	\$ \$
29	Publication	\$ \$
30	Telephone	\$
31	charges	\$
32	Inspection fees	\$ \$
33	\$ \$
34	\$ \$
35	TOTALS	\$ \$

1 To pay off the entire obligation secured by your Deed of Trust as
2 of the day of you must pay a total of \$.
3 in principal, \$. in interest, plus other costs and advances
4 estimated to date in the amount of \$. From and after the
5 date of this notice you must submit a written request to the Trustee to
6 obtain the total amount to pay off the entire obligation secured by
7 your Deed of Trust as of the payoff date.

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

15	Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
17
18	
19	
20
21	
22	

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

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

13 You may contest this default by initiating court action in the
14 Superior Court of the county in which the sale is to be held. In such
15 action, you may raise any legitimate defenses you have to this default.
16 A copy of your Deed of Trust and documents evidencing the obligation
17 secured thereby are enclosed. You may wish to consult a lawyer. Legal
18 action on your part may prevent or restrain the sale, but only if you
19 persuade the court of the merits of your defense. You may contact the
20 Department of Financial Institutions or the statewide civil legal aid
21 hotline for possible assistance or referrals.

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

29 NAME:
30 ADDRESS:
31
32 TELEPHONE NUMBER:

33 If you do not reinstate the secured obligation and your Deed of
34 Trust in the manner set forth above, or if you do not succeed in
35 restraining the sale by court action, your property will be sold. The

1 effect of such sale will be to deprive you and all those who hold by,
2 through or under you of all interest in the property;

3 (3) In addition, the trustee shall cause a copy of the notice of
4 sale described in subsection (1)(f) of this section (excluding the
5 acknowledgment) to be published in a legal newspaper in each county in
6 which the property or any part thereof is situated, once on or between
7 the thirty-fifth and twenty-eighth day before the date of sale, and
8 once on or between the fourteenth and seventh day before the date of
9 sale;

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

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

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

1 (7) The purchaser shall forthwith pay the price bid and on payment
2 the trustee shall execute to the purchaser its deed; the deed shall
3 recite the facts showing that the sale was conducted in compliance with
4 all of the requirements of this chapter and of the deed of trust, which
5 recital shall be prima facie evidence of such compliance and conclusive
6 evidence thereof in favor of bona fide purchasers and encumbrancers for
7 value, except that these recitals shall not affect the lien or interest
8 of any person entitled to notice under subsection (1) of this section,
9 if the trustee fails to give the required notice to such person. In
10 such case, the lien or interest of such omitted person shall not be
11 affected by the sale and such omitted person shall be treated as if
12 such person was the holder of the same lien or interest and was omitted
13 as a party defendant in a judicial foreclosure proceeding;

14 (8) The sale as authorized under this chapter shall not take place
15 less than one hundred ninety days from the date of default in any of
16 the obligations secured and not less than sixty days from the date the
17 foreclosure mediator submits a written certification to the department
18 pursuant to section 6 of this act, if the borrower elected foreclosure
19 mediation;

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

26 X.

27 NOTICE TO OCCUPANTS OR TENANTS

28 The purchaser at the trustee's sale is entitled to possession of the
29 property on the 20th day following the sale, as against the grantor
30 under the deed of trust (the owner) and anyone having an interest
31 junior to the deed of trust, including occupants who are not tenants.
32 After the 20th day following the sale the purchaser has the right to
33 evict occupants who are not tenants by summary proceedings under
34 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall
35 provide a tenant with written notice in accordance with RCW 61.24.060;

36 (10) Only one copy of all notices required by this chapter need be
37 given to a person who is both the borrower and the grantor. All

1 notices required by this chapter that are given to a general
2 partnership are deemed given to each of its general partners, unless
3 otherwise agreed by the parties.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 61.24 RCW
5 to read as follows:

6 The provisions for foreclosure mediation under section 6 of this
7 act do not apply to community banks and credit unions organized under
8 the laws of this state.

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

11 (1) Any duty that servicers may have to maximize net present value
12 under their pooling and servicing agreements is owed to all parties in
13 a deed of trust pool, not to any particular parties, and a servicer
14 acts in the best interests of all parties if it agrees to or implements
15 a modification or workout plan when both of the following apply:

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

18 (b) Anticipated recovery under a modification or workout plan
19 exceeds the anticipated recovery through foreclosure on a net present
20 value basis.

21 (2) The mortgagee, beneficiary, or authorized agent shall offer the
22 borrower a modification or workout plan unless the beneficiary has
23 produced evidence establishing that the modification or workout plan is
24 prohibited by express terms of a pooling and servicing agreement and
25 those terms cannot be waived.

26 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.22 RCW
27 to read as follows:

28 (1) In addition to any other fees authorized by statute or other
29 law, the county auditor shall collect a thirty dollar surcharge at the
30 time of recording a notice of trustee's sale on owner-occupied
31 residential real property under RCW 61.24.040.

32 (2) The county auditor may retain up to two percent of the funds
33 collected to administer collection. The county auditor must transmit,
34 on a monthly basis, the remaining funds to the director of the
35 department of commerce to be used solely to fund housing counselors who

1 advise and represent borrowers in achieving workouts, modifications,
2 and other results that keep borrowers in their homes and avoid
3 foreclosure. The department may enter into an interagency agreement
4 with the Washington state housing finance commission to administer the
5 funds collected under this section.

6 **Sec. 12.** RCW 61.24.135 and 2008 c 153 s 6 are each amended to read
7 as follows:

8 (1) It is an unfair or deceptive act or practice under the consumer
9 protection act, chapter 19.86 RCW, for any person, acting alone or in
10 concert with others, to offer, or offer to accept or accept from
11 another, any consideration of any type not to bid, or to reduce a bid,
12 at a sale of property conducted pursuant to a power of sale in a deed
13 of trust. The trustee may decline to complete a sale or deliver the
14 trustee's deed and refund the purchase price, if it appears that the
15 bidding has been collusive or defective, or that the sale might have
16 been void. However, it is not an unfair or deceptive act or practice
17 for any person, including a trustee, to state that a property subject
18 to a recorded notice of trustee's sale or subject to a sale conducted
19 pursuant to this chapter is being sold in an "as-is" condition, or for
20 the beneficiary to arrange to provide financing for a particular bidder
21 or to reach any good faith agreement with the borrower, grantor, any
22 guarantor, or any junior lienholder.

23 (2) It is an unfair or deceptive act in trade or commerce and an
24 unfair method of competition in violation of the consumer protection
25 act, chapter 19.86 RCW, for any person to violate the duty of good
26 faith under section 6 of this act or for any person to fail to comply
27 with the requirements under RCW 61.24.031.

28 **Sec. 13.** RCW 82.45.010 and 2010 1st sp.s. c 23 s 207 are each
29 amended to read as follows:

30 (1) As used in this chapter, the term "sale" has its ordinary
31 meaning and includes any conveyance, grant, assignment, quitclaim, or
32 transfer of the ownership of or title to real property, including
33 standing timber, or any estate or interest therein for a valuable
34 consideration, and any contract for such conveyance, grant, assignment,
35 quitclaim, or transfer, and any lease with an option to purchase real
36 property, including standing timber, or any estate or interest therein

1 or other contract under which possession of the property is given to
2 the purchaser, or any other person at the purchaser's direction, and
3 title to the property is retained by the vendor as security for the
4 payment of the purchase price. The term also includes the grant,
5 assignment, quitclaim, sale, or transfer of improvements constructed
6 upon leased land.

7 (2)(a) The term "sale" also includes the transfer or acquisition
8 within any twelve-month period of a controlling interest in any entity
9 with an interest in real property located in this state for a valuable
10 consideration.

11 (b) For the sole purpose of determining whether, pursuant to the
12 exercise of an option, a controlling interest was transferred or
13 acquired within a twelve-month period, the date that the option
14 agreement was executed is the date on which the transfer or acquisition
15 of the controlling interest is deemed to occur. For all other purposes
16 under this chapter, the date upon which the option is exercised is the
17 date of the transfer or acquisition of the controlling interest.

18 (c) For purposes of this subsection, all acquisitions of persons
19 acting in concert must be aggregated for purposes of determining
20 whether a transfer or acquisition of a controlling interest has taken
21 place. The department must adopt standards by rule to determine when
22 persons are acting in concert. In adopting a rule for this purpose,
23 the department must consider the following:

24 (i) Persons must be treated as acting in concert when they have a
25 relationship with each other such that one person influences or
26 controls the actions of another through common ownership; and

27 (ii) When persons are not commonly owned or controlled, they must
28 be treated as acting in concert only when the unity with which the
29 purchasers have negotiated and will consummate the transfer of
30 ownership interests supports a finding that they are acting as a single
31 entity. If the acquisitions are completely independent, with each
32 purchaser buying without regard to the identity of the other
33 purchasers, then the acquisitions are considered separate acquisitions.

34 (3) The term "sale" does not include:

35 (a) A transfer by gift, devise, or inheritance.

36 (b) A transfer of any leasehold interest other than of the type
37 mentioned above.

1 (c) A cancellation or forfeiture of a vendee's interest in a
2 contract for the sale of real property, whether or not such contract
3 contains a forfeiture clause, or deed in lieu of foreclosure of a
4 mortgage.

5 (d) The partition of property by tenants in common by agreement or
6 as the result of a court decree.

7 (e) The assignment of property or interest in property from one
8 spouse or one domestic partner to the other spouse or other domestic
9 partner in accordance with the terms of a decree of dissolution of
10 marriage or state registered domestic partnership or in fulfillment of
11 a property settlement agreement.

12 (f) The assignment or other transfer of a vendor's interest in a
13 contract for the sale of real property, even though accompanied by a
14 conveyance of the vendor's interest in the real property involved.

15 (g) Transfers by appropriation or decree in condemnation
16 proceedings brought by the United States, the state or any political
17 subdivision thereof, or a municipal corporation.

18 (h) A mortgage or other transfer of an interest in real property
19 merely to secure a debt, or the assignment thereof.

20 (i) Any transfer or conveyance made pursuant to a deed of trust or
21 an order of sale by the court in any mortgage, deed of trust, or lien
22 foreclosure proceeding or upon execution of a judgment, or deed in lieu
23 of foreclosure to satisfy a mortgage or deed of trust. If a transfer
24 or conveyance made pursuant to a deed in lieu of foreclosure to satisfy
25 a deed of trust includes providing the transferor or conveyor a nominal
26 sum of funds to assist the transferor or conveyor with relocating, the
27 transfer or conveyance is not a sale for the purposes of this chapter.

28 (j) A conveyance to the federal housing administration or veterans
29 administration by an authorized mortgagee made pursuant to a contract
30 of insurance or guaranty with the federal housing administration or
31 veterans administration.

32 (k) A transfer in compliance with the terms of any lease or
33 contract upon which the tax as imposed by this chapter has been paid or
34 where the lease or contract was entered into prior to the date this tax
35 was first imposed.

36 (l) The sale of any grave or lot in an established cemetery.

37 (m) A sale by the United States, this state or any political
38 subdivision thereof, or a municipal corporation of this state.

1 (n) A sale to a regional transit authority or public corporation
2 under RCW 81.112.320 under a sale/leaseback agreement under RCW
3 81.112.300.

4 (o) A transfer of real property, however effected, if it consists
5 of a mere change in identity or form of ownership of an entity where
6 there is no change in the beneficial ownership. These include
7 transfers to a corporation or partnership which is wholly owned by the
8 transferor and/or the transferor's spouse or domestic partner or
9 children of the transferor or the transferor's spouse or domestic
10 partner. However, if thereafter such transferee corporation or
11 partnership voluntarily transfers such real property, or such
12 transferor, spouse or domestic partner, or children of the transferor
13 or the transferor's spouse or domestic partner voluntarily transfer
14 stock in the transferee corporation or interest in the transferee
15 partnership capital, as the case may be, to other than (i) the
16 transferor and/or the transferor's spouse or domestic partner or
17 children of the transferor or the transferor's spouse or domestic
18 partner, (ii) a trust having the transferor and/or the transferor's
19 spouse or domestic partner or children of the transferor or the
20 transferor's spouse or domestic partner as the only beneficiaries at
21 the time of the transfer to the trust, or (iii) a corporation or
22 partnership wholly owned by the original transferor and/or the
23 transferor's spouse or domestic partner or children of the transferor
24 or the transferor's spouse or domestic partner, within three years of
25 the original transfer to which this exemption applies, and the tax on
26 the subsequent transfer has not been paid within sixty days of becoming
27 due, excise taxes become due and payable on the original transfer as
28 otherwise provided by law.

29 (p)(i) A transfer that for federal income tax purposes does not
30 involve the recognition of gain or loss for entity formation,
31 liquidation or dissolution, and reorganization, including but not
32 limited to nonrecognition of gain or loss because of application of 26
33 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
34 revenue code of 1986, as amended.

35 (ii) However, the transfer described in (p)(i) of this subsection
36 cannot be preceded or followed within a twelve-month period by another
37 transfer or series of transfers, that, when combined with the otherwise
38 exempt transfer or transfers described in (p)(i) of this subsection,

1 results in the transfer of a controlling interest in the entity for
2 valuable consideration, and in which one or more persons previously
3 holding a controlling interest in the entity receive cash or property
4 in exchange for any interest the person or persons acting in concert
5 hold in the entity. This subsection (3)(p)(ii) does not apply to that
6 part of the transfer involving property received that is the real
7 property interest that the person or persons originally contributed to
8 the entity or when one or more persons who did not contribute real
9 property or belong to the entity at a time when real property was
10 purchased receive cash or personal property in exchange for that person
11 or persons' interest in the entity. The real estate excise tax under
12 this subsection (3)(p)(ii) is imposed upon the person or persons who
13 previously held a controlling interest in the entity.

14 (q) A qualified sale of a manufactured/mobile home community, as
15 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
16 but before December 31, 2018.

17 NEW SECTION. **Sec. 14.** 2009 c 292 s 13 (uncodified) is repealed.

18 NEW SECTION. **Sec. 15.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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