
SENATE BILL 5840

State of Washington

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By Senators Kline and Chase

Read first time 02/21/13. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to foreclosure; amending RCW 61.24.010, 61.24.030,
2 61.24.110, and 61.24.130; adding a new chapter to Title 18 RCW; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Applicant" means a person that files an application for
8 registration under this chapter, including the applicant's sole
9 proprietor, owners, directors, officers, partners, members, and
10 controlling persons.

11 (2) "Department" means the department of financial institutions.

12 (3) "Director" means the director of financial institutions or his
13 or her duly authorized representative.

14 (4) "Person" means a natural person, firm, association,
15 partnership, corporation, or limited liability company, whether
16 resident, nonresident, citizen, or not.

17 (5) "Physical location" means a place where a trustee can accept
18 and process payments.

1 (6) "Trustee" includes a successor trustee and has the same meaning
2 as provided in RCW 61.24.005.

3 NEW SECTION. **Sec. 2.** It is unlawful for any person to engage in
4 the business of a trustee by performing any functions of a trustee
5 within this state or with respect to transactions that involve real
6 property located in this state unless the person possesses a valid
7 registration issued by the director under this chapter. Registration
8 requirements under this chapter do not apply to:

9 (1) Any person doing business under the laws of this state or the
10 United States relating to banks, mutual savings banks, savings and loan
11 associations, credit unions, insurance companies, or any federally
12 approved agency or lending institution under the national housing act
13 (12 U.S.C. Sec. 1703); or

14 (2) Any person licensed to practice law in this state if:

15 (a) All trustee transactions are performed by the attorney while
16 engaged in the practice of law, or by employees of the law practice
17 under the direct supervision of the attorney while engaged in the
18 practice of law;

19 (b) All trustee transactions are performed under a legal entity
20 publicly identified and operated as a law practice; and

21 (c) All trustee funds are deposited to, maintained in, and
22 disbursed from a trust account in compliance with rules enacted by the
23 Washington state supreme court regulating the conduct of attorneys.

24 NEW SECTION. **Sec. 3.** An application for a trustee registration
25 must be in writing on a form as prescribed by the director, and must be
26 verified under oath by the applicant. An application for trustee
27 registration must include the following:

28 (1) The applicant's form of business organization and place of
29 organization;

30 (2) The applicant's unified business identifier number;

31 (3) Information concerning the identity of the applicant, and its
32 officers, directors, owners, partners, controlling persons, and
33 employees, including: Fingerprints for submission to the Washington
34 state patrol, the federal bureau of investigation, and any government
35 agency or subdivision authorized to receive information for state and
36 national criminal history background checks; personal history;

1 experience; business record; purposes; and other pertinent facts, as
2 the director may reasonably require. The director may also request
3 criminal history record information, including nonconviction data, as
4 defined in RCW 10.97.030. The department may disseminate nonconviction
5 data obtained under this section only to criminal justice agencies.
6 The applicant must pay the cost of fingerprinting and processing the
7 fingerprints by the department;

8 (4) If the applicant is a corporation or limited liability company,
9 the address of its physical location, a list of officers, controlling
10 persons, and directors of such corporation or company and their
11 residential addresses, telephone numbers, e-mail addresses, and other
12 identifying information as the director may determine by rule. If the
13 applicant is a sole proprietorship or partnership, the address of its
14 business location, a list of owners, partners, or controlling persons
15 and their residential addresses, telephone numbers, e-mail addresses,
16 and other identifying information as the director may determine by
17 rule. Any information in the application regarding the personal
18 residential address or telephone number of any officer, director,
19 partner, owner, controlling person, or employee is exempt from the
20 public records disclosure requirements of chapter 42.56 RCW;

21 (5) If the applicant is doing business under an assumed name, a
22 copy of the master business license with the registered trade name
23 shown;

24 (6) The qualifications and business history of the applicant and
25 all of its officers, directors, owners, partners, and controlling
26 persons;

27 (7) A personal credit report from a recognized credit reporting
28 bureau satisfactory to the director on all officers, directors, owners,
29 partners, and controlling persons of the applicant;

30 (8) Whether any of the officers, directors, owners, partners, or
31 controlling persons have been convicted of any crime within the
32 preceding ten years that relates directly to the business or duties of
33 trustees, or have suffered a judgment within the preceding five years
34 in any civil action involving fraud, misrepresentation, any unfair or
35 deceptive act or practice, or conversion;

36 (9) Whether the trustee is a wholly owned subsidiary and, if so,
37 the name of the wholly owned subsidiary; and

1 (10) Any other information the director may require by rule. The
2 director may share any information contained within a registration
3 application, including fingerprints, with the federal bureau of
4 investigation and other regulatory or law enforcement agencies.

5 NEW SECTION. **Sec. 4.** A trustee must provide notice in writing to
6 the director of any change of business location or business name. The
7 notice must be given in a form prescribed by the director and be
8 delivered at least ten business days prior to the change in business
9 location or name.

10 NEW SECTION. **Sec. 5.** Unless otherwise exempt, to qualify as a
11 registered trustee of a deed of trust under this chapter, a trustee
12 must meet the same requirements as provided in RCW 61.24.010.

13 NEW SECTION. **Sec. 6.** Every trustee registration issued under this
14 chapter expires on the date one year from the date of issue, which must
15 also be the renewal date of the registration. If the application for
16 a registration renewal is not received by the director on or before the
17 renewal date, the registration is expired and any activity conducted is
18 unregistered activity in violation of this chapter. The registration
19 may be reinstated at any time prior to sixty days after renewal upon
20 payment to the director of the annual renewal fee. Acceptance by the
21 director of an application for renewal after the renewal date is not
22 a waiver of delinquency. A registration not renewed within sixty days
23 after the renewal date must be canceled. A new registration may be
24 obtained by satisfying the procedures and qualifications for initial
25 registration.

26 NEW SECTION. **Sec. 7.** Upon the filing of the application for a
27 trustee registration on a form provided by the director and satisfying
28 the requirements as set forth in this chapter, the director must issue
29 and deliver to the applicant a registration to engage in the business
30 of a trustee at the location set forth in the registration.

31 NEW SECTION. **Sec. 8.** Each trustee registration must be issued in
32 the form and size prescribed by the director and state, in addition to
33 any other matter required by the director:

- 1 (1) The name of the trustee;
- 2 (2) The address at which the trustee will do business; and
- 3 (3) The expiration date of the registration.

4 NEW SECTION. **Sec. 9.** (1) The director must charge and collect the
5 following fees:

6 (a) A fee for filing an original or a renewal application for a
7 trustee registration, a fee for an application for a change of address
8 for a trustee, and annual fees for the first office or location and for
9 each additional office or location. Subject to RCW 43.135.055, the
10 director shall set the annual fee for a trustee registration by rule in
11 fiscal year 2013.

12 (b) A fee for filing an application for a duplicate of a trustee
13 registration or of a trustee registration lost, stolen, or destroyed,
14 or for replacement.

15 (c) If triggered by a complaint, an hourly audit fee. In setting
16 the hourly audit fee, the director must ensure that every examination
17 and audit, or any part of the examination or audit, of any person
18 registered or subject to registration in this state requiring travel
19 and services outside this state by the director or by employees
20 designated by the director is at the expense of the person examined or
21 audited at the hourly rate established by the director, plus the per
22 diem compensation and actual travel expenses incurred by the director
23 or his or her employees conducting the examination or audit. When
24 conducting any examination or audit under this chapter, the director
25 may retain attorneys, appraisers, independent certified public
26 accountants, or other professionals and specialists as examiners or
27 auditors, the cost of which must be borne by the person who is the
28 subject of the examination or audit.

29 (2) In establishing the fees under this section, the director must
30 set the fees at a sufficient level to defray the costs of administering
31 this chapter.

32 (3) All fees received by the director under this chapter must be
33 paid into the state treasury to the credit of the financial services
34 regulation fund.

35 NEW SECTION. **Sec. 10.** A trustee's registration remains in effect

1 until surrendered, revoked, or suspended, or until it expires, and, at
2 all times, must be kept conspicuously posted in the trustee's place of
3 business.

4 NEW SECTION. **Sec. 11.** Annually, by December 31st, a trustee must
5 provide the director with the number of notice of trustee sales filed,
6 including the name of the beneficiary for each sale.

7 NEW SECTION. **Sec. 12.** Any person required under this chapter to
8 register who engages in business as a trustee without applying for and
9 receiving the registration required under this chapter, or willfully
10 continues to act as a trustee after the surrender, expiration,
11 suspension, or revocation of his or her registration, is guilty of a
12 misdemeanor punishable by imprisonment for not more than ninety days or
13 by a fine of not more than one hundred dollars per day for each day's
14 violation, or by both the fine and imprisonment.

15 NEW SECTION. **Sec. 13.** The proceedings for, appeal of, or review
16 of the revocation, suspension, or refusal to renew or accept an
17 application for renewal of a trustee's registration is governed under
18 chapter 34.05 RCW.

19 NEW SECTION. **Sec. 14.** It is a violation of this chapter for any
20 trustee to:

21 (1) Directly or indirectly employ any scheme, device, or artifice
22 to defraud or mislead borrowers or lenders or to defraud any person;

23 (2) Directly or indirectly engage in any unfair or deceptive
24 practice toward any person;

25 (3) Directly or indirectly obtain property by fraud or
26 misrepresentation;

27 (4) Knowingly make, publish, or disseminate any false, deceptive,
28 or misleading information in the conduct of or relative to the business
29 of a trustee;

30 (5) Knowingly make or publish, or concur in making or publishing,
31 any written report, exhibit, or statement of its affairs or pecuniary
32 condition containing any material statement that is false, or omit or
33 concur in omitting any statement required by law to be contained in the
34 written report, exhibit, or statement;

1 (6) Fail to disclose in a timely manner to the trustee's sole
2 proprietor, owners, directors, officers, partners, members, or
3 controlling persons the receipt of service of a notice of an
4 application for an injunction or other legal process affecting the
5 property or business of the trustee, including an order to cease and
6 desist or other order of the director;

7 (7) Fail to make any report or statement lawfully required by the
8 director or other public official; or

9 (8) Fail to comply with all applicable state and federal statutes
10 relating to the activities governed under this chapter.

11 NEW SECTION. **Sec. 15.** (1) The director may administer and
12 interpret this chapter to facilitate the delivery of services to
13 citizens of this state by trustees subject to this chapter.

14 (2) The director may adopt rules to govern the activities of
15 registered trustees. The director must enforce all laws and rules
16 relating to the registration of trustees. The director may hold
17 hearings and suspend or revoke the registrations of violators and may
18 deny, suspend, or revoke the authority of a trustee who commits a
19 violation of this chapter or the rules under this chapter.

20 (3) Except as otherwise provided in this chapter, any rules adopted
21 and any hearings conducted must be in accordance with chapter 34.05
22 RCW.

23 NEW SECTION. **Sec. 16.** The director may engage in the informal
24 settlement of complaints or enforcement actions including, but not
25 limited to, payment to the department for purposes of financial
26 literacy and education programs authorized under RCW 43.320.150.

27 NEW SECTION. **Sec. 17.** (1) The director may, upon a consumer
28 complaint:

29 (a) Make necessary public or private investigations within or
30 outside of this state to determine whether any person has violated or
31 is about to violate this chapter, or any rule or order under this
32 chapter, or to aid in the enforcement of this chapter or in the
33 prescribing of rules and forms under this chapter; or

34 (b) Require or permit any person to file a statement in writing,

1 under oath or otherwise as the director determines, as to all facts and
2 circumstances concerning the matter to be investigated.

3 (2) For the purpose of any investigation or proceeding under this
4 chapter, the director may administer oaths or affirmations and, upon
5 his or her own motion or upon request of any party, may subpoena
6 witnesses, compel their attendance, take evidence, and require the
7 production of any matter that is relevant to the investigation,
8 including the existence, description, nature, custody, condition, and
9 location of any books, documents, or other tangible things and the
10 identity and location of persons having knowledge or relevant facts, or
11 any other matter reasonably calculated to lead to the discovery of
12 material evidence.

13 (3) Upon failure to obey a subpoena or to answer questions
14 propounded by the investigating officer and upon reasonable notice to
15 all persons affected, the director may apply to the superior court for
16 an order compelling compliance.

17 (4) Except as otherwise provided in this chapter, all proceedings
18 under this chapter must be in accordance with chapter 34.05 RCW.

19 NEW SECTION. **Sec. 18.** (1) The director may apply for and obtain
20 a superior court order approving and authorizing a subpoena in advance
21 of its issuance. The application may be made in the county where the
22 subpoenaed person resides or is found, in the county where the
23 subpoenaed documents, records, or evidence are located, or in Thurston
24 county. The application must:

25 (a) State that an order is sought under this section;

26 (b) Adequately specify the documents, records, evidence, or
27 testimony; and

28 (c) Include a declaration made under oath that an investigation is
29 being conducted for a lawfully authorized purpose related to an
30 investigation within the department's authority and that the subpoenaed
31 documents, records, evidence, or testimony are reasonably related to an
32 investigation within the department's authority.

33 (2) When an application under this section is made to the
34 satisfaction of the court, the court must issue an order approving the
35 subpoena. An order under this subsection constitutes authority of law
36 for the agency to subpoena the documents, records, evidence, or
37 testimony.

1 (3) The director may seek approval and a court may issue an order
2 under this section without prior notice to any person, including the
3 person to whom the subpoena is directed and the person who is the
4 subject of an investigation. An application for court approval is
5 subject to the fee and process set forth in RCW 36.18.012(3).

6 NEW SECTION. **Sec. 19.** (1) The director may, upon notice to the
7 trustee, deny, suspend, decline to renew, or revoke the registration of
8 any trustee if the director finds that the trustee has committed any of
9 the following acts or engaged in any of the following conduct:

10 (a) Obtaining a registration by means of fraud, misrepresentation,
11 concealment, or through the mistake or inadvertence of the director;

12 (b) Violating any of the provisions of this chapter or chapter
13 61.24 RCW, or any lawful rules adopted by the director pursuant to this
14 chapter or chapter 61.24 RCW;

15 (c) Committing a crime against the laws of this or any other state
16 or government involving moral turpitude or dishonest dealings;

17 (d) Knowingly committing or being a party to any material fraud,
18 misrepresentation, concealment, conspiracy, collusion, trick, scheme,
19 or device whereby any other person lawfully relying upon the word,
20 representation, or conduct of the trustee or agent or any partner,
21 officer, director, controlling person, or employee acts to his or her
22 injury or damage;

23 (e) Converting any money, contract, deed, note, mortgage, or
24 abstract or other evidence of title to his or her own use or to the use
25 of his or her principal or of any other person, when delivered to him
26 or her in trust or on condition, in violation of the trust or before
27 the happening of the condition. The failure to return any money or
28 contract, deed, note, mortgage, abstract, or other evidence of title
29 within thirty days after the owner of the money, contract, deed, note,
30 mortgage, abstract, or other evidence of title is entitled to, and
31 demands the money, contract, deed, note, mortgage, abstract, or other
32 evidence of title, is prima facie evidence of such conversion;

33 (f) Failing, upon demand, to disclose any information within the
34 trustee's knowledge to, or to produce any document, book, or record in
35 the trustee's possession for inspection by, the director;

36 (g) Committing any act of fraudulent or dishonest dealing. A

1 certified copy of the final holding of any court of competent
2 jurisdiction in the matter is conclusive evidence in any hearing under
3 this chapter; or

4 (h) Committing acts or engaging in conduct that demonstrates the
5 trustee to be incompetent or untrustworthy or a source of injury and
6 loss to the public.

7 (2) Any conduct of a trustee that constitutes grounds for
8 enforcement action under this chapter is sufficient regardless of
9 whether the conduct took place within or outside of the state of
10 Washington.

11 (3) In addition to or in lieu of a registration suspension,
12 revocation, or denial, the director may assess a fine of up to one
13 hundred dollars per day for each violation of this chapter or rules
14 adopted under this chapter and may remove or prohibit from
15 participation in the conduct of the affairs of any registered trustee.

16 (4) In addition to or in lieu of (a) a registration suspension,
17 revocation, or denial, or (b) fines payable to the department, the
18 director may order a trustee who violates this chapter to make
19 restitution to an injured consumer.

20 NEW SECTION. **Sec. 20.** (1) If the director determines after notice
21 and hearing that a person has: (a) Violated any provision of this
22 chapter; (b) directly, or through an agent or employee, engaged in any
23 false, unfair and deceptive, or misleading: (i) Advertising or
24 promotional activity; or (ii) business practices; or (c) violated any
25 lawful order or rule of the director, the director may issue an order
26 requiring the person to cease and desist from the unlawful practice and
27 to take affirmative action that, in the judgment of the director, will
28 carry out the purposes of this chapter.

29 (2) If the director makes a finding of fact in writing that the
30 public interest will be irreparably harmed by delay in issuing an
31 order, the director may issue a temporary cease and desist order.
32 Every temporary cease and desist order must include in its terms a
33 provision that upon request a hearing will be held to determine whether
34 or not the order becomes permanent.

35 NEW SECTION. **Sec. 21.** (1) The director, through the attorney

1 general, may prosecute an action in any court of competent jurisdiction
2 to enforce any order made by him or her pursuant to this chapter and is
3 not required to post a bond in any such court proceedings.

4 (2) If the director has cause to believe that any person has
5 violated any penal provision of this chapter, he or she may refer the
6 violation to the attorney general or the prosecuting attorney of the
7 county in which the offense was committed.

8 (3) Whenever the director has cause to believe that any person,
9 required to be registered under this chapter, is conducting business as
10 a trustee without a valid registration, is engaged in any false, unfair
11 and deceptive, or misleading advertising or promotional, activity, or
12 business practices, is conducting business in a manner deemed unsafe or
13 injurious to the public, or has violated, is violating, or is about to
14 violate any of the provisions of this chapter or a rule or order under
15 this chapter, the director, through the attorney general, may bring an
16 action in any court of competent jurisdiction to enjoin the person from
17 continuing the violation or doing any action in furtherance of the
18 violation. Upon proper showing, injunctive relief or temporary
19 restraining orders must be granted by the court and a receiver or
20 conservator may be appointed.

21 (4) The attorney general and the several prosecuting attorneys
22 throughout the state may prosecute proceedings brought pursuant to this
23 chapter upon notification to the director.

24 NEW SECTION. **Sec. 22.** The legislature finds that the practices
25 covered by this chapter are matters vitally affecting the public
26 interest for the purpose of applying the consumer protection act,
27 chapter 19.86 RCW. A violation of this chapter is not reasonable in
28 relation to the development and preservation of business and is an
29 unfair or deceptive act in trade or commerce and an unfair method of
30 competition for the purpose of applying the consumer protection act,
31 chapter 19.86 RCW.

32 **Sec. 23.** RCW 61.24.010 and 2012 c 185 s 13 are each amended to
33 read as follows:

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

35 (a) Any domestic corporation or domestic limited liability

1 corporation incorporated under Title 23B, 25, 30, 31, 32, or 33 RCW of
2 which at least one officer is a Washington resident; or

3 (b) Any title insurance company authorized to insure title to real
4 property under the laws of this state, or any title insurance agent
5 licensed under chapter 48.17 RCW; or

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

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

16 (e) Any agency or instrumentality of the United States government;
17 or

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

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

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

35 (4) The trustee or successor trustee has a duty of good faith to
36 the borrower, beneficiary, and grantor.

37 (5) Unless otherwise exempt, the trustee or successor trustee must

1 be registered under chapter 18.--- RCW (the new chapter created in
2 section 27 of this act).

3 **Sec. 24.** RCW 61.24.030 and 2012 c 185 s 9 are each amended to read
4 as follows:

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

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

7 (2) That the deed of trust contains a statement that the real
8 property conveyed is not used principally for agricultural purposes;
9 provided, if the statement is false on the date the deed of trust was
10 granted or amended to include that statement, and false on the date of
11 the trustee's sale, then the deed of trust must be foreclosed
12 judicially. Real property is used for agricultural purposes if it is
13 used in an operation that produces crops, livestock, or aquatic goods;

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

17 (4) That no action commenced by the beneficiary of the deed of
18 trust is now pending to seek satisfaction of an obligation secured by
19 the deed of trust in any court by reason of the grantor's default on
20 the obligation secured: PROVIDED, That (a) the seeking of the
21 appointment of a receiver shall not constitute an action for purposes
22 of this chapter; and (b) if a receiver is appointed, the grantor shall
23 be entitled to any rents or profits derived from property subject to a
24 homestead as defined in RCW 6.13.010. If the deed of trust was granted
25 to secure a commercial loan, this subsection shall not apply to actions
26 brought to enforce any other lien or security interest granted to
27 secure the obligation secured by the deed of trust being foreclosed;

28 (5) That the deed of trust and the most recent assignment of the
29 beneficial interest, if any, has been executed by the current owner of
30 the beneficial interest and recorded in each county in which the land
31 or some part thereof is situated;

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

1 (7)(a) That, for residential real property, before the notice of
2 trustee's sale is recorded, transmitted, or served, the trustee shall
3 have proof that the beneficiary is the owner of any promissory note or
4 other obligation secured by the deed of trust. A declaration by the
5 beneficiary made under the penalty of perjury stating that the
6 beneficiary is the actual holder of the promissory note or other
7 obligation secured by the deed of trust shall be sufficient proof as
8 required under this subsection.

9 (b) Unless the trustee has violated his or her duty under RCW
10 61.24.010(4), the trustee is entitled to rely on the beneficiary's
11 declaration as evidence of proof required under this subsection.

12 (c) This subsection (7) does not apply to association beneficiaries
13 subject to chapter 64.32, 64.34, or 64.38 RCW;

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

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

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

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

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

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

36 (f) A statement showing the total of (d) and (e) of this
37 subsection, designated clearly and conspicuously as the amount

1 necessary to reinstate the note and deed of trust before the recording
2 of the notice of sale;

3 (g) A statement that failure to cure the alleged default within
4 thirty days of the date of mailing of the notice, or if personally
5 served, within thirty days of the date of personal service thereof, may
6 lead to recordation, transmittal, and publication of a notice of sale,
7 and that the property described in (a) of this subsection may be sold
8 at public auction at a date no less than one hundred twenty days in the
9 future, or no less than one hundred fifty days in the future if the
10 borrower received a letter under RCW 61.24.031;

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

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

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

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

24 **"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR**
25 **LOSING YOUR HOME.**

26 You may be eligible for mediation in front of a neutral third party to
27 help save your home.

28 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**
29 to assess your situation and refer you to mediation if you might
30 benefit. Mediation **MUST** be requested between the time you receive the
31 Notice of Default and no later than twenty days after the Notice of
32 Trustee Sale is recorded.

33 **DO NOT DELAY.** If you do nothing, a notice of sale may be issued as
34 soon as 30 days from the date of this notice of default. The notice of
35 sale will provide a minimum of 120 days' notice of the date of the
36 actual foreclosure sale.

1 **BE CAREFUL** of people who claim they can help you. There are many
2 individuals and businesses that prey upon borrowers in distress.

3 **REFER TO THE CONTACTS BELOW** for sources of assistance.

4 **SEEKING ASSISTANCE**

5 Housing counselors and legal assistance may be available at little or
6 no cost to you. If you would like assistance in determining your
7 rights and opportunities to keep your house, you may contact the
8 following:

9 The statewide foreclosure hotline for assistance and referral to
10 housing counselors recommended by the Housing Finance Commission

11 Telephone: Web site:

12 The United States Department of Housing and Urban Development

13 Telephone: Web site:

14 The statewide civil legal aid hotline for assistance and referrals to
15 other housing counselors and attorneys

16 Telephone: Web site:"

17 The beneficiary or trustee shall obtain the toll-free numbers and
18 web site information from the department for inclusion in the notice;
19 and

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

25 (9) That, for owner-occupied residential real property, before the
26 notice of the trustee's sale is recorded, transmitted, or served, the
27 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW
28 61.24.163.

29 **Sec. 25.** RCW 61.24.110 and 1998 c 295 s 13 are each amended to
30 read as follows:

31 (1) The trustee of record shall reconvey all or any part of the
32 property encumbered by the deed of trust to the person entitled thereto
33 on written request of the beneficiary, or upon satisfaction of the
34 obligation secured and written request for reconveyance made by the
35 beneficiary or the person entitled thereto.

1 (2) If the beneficiary fails to request reconveyance within the
2 sixty-day period specified under RCW 61.16.030 and has received payment
3 as specified by the beneficiary's demand statement, a title insurance
4 company or title insurance agent as licensed and qualified under
5 chapter 48.29 RCW, a licensed escrow agent as defined in RCW 18.44.011,
6 or an attorney admitted to practice law in this state, who has paid the
7 demand in full from escrow, upon receipt of notice of the beneficiary's
8 failure to request reconveyance, may, as agent for the person entitled
9 to receive reconveyance, in writing, submit proof of satisfaction and
10 request the trustee of record to reconvey the property encumbered by
11 the deed of trust.

12 (3)(a) If the trustee of record is unable or unwilling to reconvey
13 the property encumbered by the deed of trust within one hundred twenty
14 days following payment to the beneficiary as prescribed in the
15 beneficiary's demand statement, a title insurance company or title
16 insurance agent as licensed and qualified under chapter 48.29 RCW, a
17 licensed escrow agent as defined in RCW 18.44.011, or an attorney
18 admitted to practice law in this state representing a party making a
19 payment may record with each county auditor where the original deed of
20 trust was recorded a notarized declaration of payment. The notarized
21 declaration must: (i) Identify the deed of trust, including the
22 original grantor, beneficiary, trustee, loan number if available, and
23 the auditor's recording number and recording date; (ii) state the
24 amount, date, and name of the beneficiary and means of payment; and
25 (iii) include a declaration that the payment tendered was sufficient to
26 meet the beneficiary's demand and that no written objections have been
27 received.

28 (b) A copy of the recorded declaration of payment must be sent by
29 certified mail to the last known address of the beneficiary and the
30 trustee of record not later than two business days following the date
31 of recording of the notarized declaration. The beneficiary or trustee
32 of record has fifteen days from the date of recording of the notarized
33 declaration to record an objection, including reference to the
34 recording number of the declaration and original deed of trust, in the
35 records where the notarized declaration was recorded. A copy of any
36 objection filed by the beneficiary or the trustee of record must also
37 be provided to the party who records the notarized declaration of

1 payment. If no objection is filed within fifteen days following the
2 recording of the notarized declaration, any lien of the deed of trust
3 against the real property encumbered is extinguished.

4 **Sec. 26.** RCW 61.24.130 and 2008 c 153 s 5 are each amended to read
5 as follows:

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

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

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

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

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

33 (2) No court may grant a restraining order or injunction to
34 restrain a trustee's sale unless the person seeking the restraint gives
35 ~~((five days))~~ reasonable notice to the trustee of the time when, place
36 where, and the judge before whom the application for the restraining
37 order or injunction is to be made. This notice shall include copies of

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

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

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

15 (b) Cause a copy of the notice of trustee's sale as provided in RCW
16 61.24.040(1)(f) to be published in a legal newspaper in each county in
17 which the property or any part thereof is situated once between the
18 thirty-fifth and twenty-eighth day before the sale and once between the
19 fourteenth and seventh day before the sale.

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

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

29 (b) Cause a copy of the notice of trustee's sale as provided in RCW
30 61.24.040(1)(f) to be published in a legal newspaper in each county in
31 which the property or any part thereof is situated, once between the
32 thirty-fifth and twenty-eighth day before the sale and once between the
33 fourteenth and seventh day before the sale.

34 (5) Subsections (3) and (4) of this section are permissive only and
35 do not prohibit the trustee from proceeding with a trustee's sale
36 following termination of any injunction or stay on any date to which
37 such sale has been properly continued in accordance with RCW
38 61.24.040(6).

1 (6) The issuance of a restraining order or injunction shall not
2 prohibit the trustee from continuing the sale as provided in RCW
3 61.24.040(6).

4 NEW SECTION. **Sec. 27.** Sections 1 through 22 of this act
5 constitute a new chapter in Title 18 RCW.

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