
SENATE BILL 5968

State of Washington 64th Legislature 2015 Regular Session

By Senators Hobbs, Benton, Mullet, Hatfield, and Miloscia

Read first time 02/13/15. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to clarification that the owner or holder of a
2 trust deed, or the owner or holder's designee, may initiate
3 foreclosure proceedings; and amending RCW 61.24.030, 61.24.040, and
4 61.24.163.

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

6 **Sec. 1.** RCW 61.24.030 and 2012 c 185 s 9 are each amended to
7 read as follows:

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

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

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

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

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

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

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

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

28 (b) Unless the trustee has violated his or her duty under RCW
29 61.24.010(4), the trustee is entitled to rely on the beneficiary's
30 declaration as evidence of proof required under this subsection.

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

33 (8) That at least thirty days before notice of sale shall be
34 recorded, transmitted or served, written notice of default shall be
35 transmitted by the beneficiary or trustee to the borrower and grantor
36 at their last known addresses by both first-class and either
37 registered or certified mail, return receipt requested, and the
38 beneficiary or trustee shall cause to be posted in a conspicuous
39 place on the premises, a copy of the notice, or personally served on

1 the borrower and grantor. This notice shall contain the following
2 information:

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

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

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

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

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

17 (f) A statement showing the total of (d) and (e) of this
18 subsection, designated clearly and conspicuously as the amount
19 necessary to reinstate the note and deed of trust before the
20 recording of the notice of sale;

21 (g) A statement that failure to cure the alleged default within
22 thirty days of the date of mailing of the notice, or if personally
23 served, within thirty days of the date of personal service thereof,
24 may lead to recordation, transmittal, and publication of a notice of
25 sale, and that the property described in (a) of this subsection may
26 be sold at public auction at a date no less than one hundred twenty
27 days in the future, or no less than one hundred fifty days in the
28 future if the borrower received a letter under RCW 61.24.031;

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

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

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

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

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

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

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

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

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

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

20 **SEEKING ASSISTANCE**

21 Housing counselors and legal assistance may be available at little or
22 no cost to you. If you would like assistance in determining your
23 rights and opportunities to keep your house, you may contact the
24 following:

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

27 Telephone: Web site:

28 The United States Department of Housing and Urban Development

29 Telephone: Web site:

30 The statewide civil legal aid hotline for assistance and referrals to
31 other housing counselors and attorneys

32 Telephone: Web site:"

33 The beneficiary or trustee shall obtain the toll-free numbers and
34 web site information from the department for inclusion in the notice;
35 and

36 (l) In the event the property secured by the deed of trust is
37 residential real property, the name and address of the owner or

1 holder of any promissory notes or other obligations secured by the
2 deed of trust and the name, address, and telephone number of a party
3 acting as a servicer of the obligations secured by the deed of trust;
4 and

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

9 **Sec. 2.** RCW 61.24.040 and 2012 c 185 s 10 are each amended to
10 read as follows:

11 A deed of trust foreclosed under this chapter shall be foreclosed
12 as follows:

13 (1) At least ninety days before the sale, or if a letter under
14 RCW 61.24.031 is required, at least one hundred twenty days before
15 the sale, the trustee shall:

16 (a) Record a notice in the form described in (f) of this
17 subsection in the office of the auditor in each county in which the
18 deed of trust is recorded;

19 (b) To the extent the trustee elects to foreclose its lien or
20 interest, or the beneficiary elects to preserve its right to seek a
21 deficiency judgment against a borrower or grantor under RCW
22 61.24.100(3)(a), and if their addresses are stated in a recorded
23 instrument evidencing their interest, lien, or claim of lien, or an
24 amendment thereto, or are otherwise known to the trustee, cause a
25 copy of the notice of sale described in (f) of this subsection to be
26 transmitted by both first-class and either certified or registered
27 mail, return receipt requested, to the following persons or their
28 legal representatives, if any, at such address:

29 (i) The borrower and grantor;

30 (ii) The beneficiary of any deed of trust or mortgagee of any
31 mortgage, or any person who has a lien or claim of lien against the
32 property, that was recorded subsequent to the recordation of the deed
33 of trust being foreclosed and before the recordation of the notice of
34 sale;

35 (iii) The vendee in any real estate contract, the lessee in any
36 lease, or the holder of any conveyances of any interest or estate in
37 any portion or all of the property described in such notice, if that
38 contract, lease, or conveyance of such interest or estate, or a
39 memorandum or other notice thereof, was recorded after the

1 recordation of the deed of trust being foreclosed and before the
2 recordation of the notice of sale;

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

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

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

15 (c) Cause a copy of the notice of sale described in (f) of this
16 subsection to be transmitted by both first-class and either certified
17 or registered mail, return receipt requested, to the plaintiff or the
18 plaintiff's attorney of record, in any court action to foreclose a
19 lien or other encumbrance on all or any part of the property,
20 provided a court action is pending and a lis pendens in connection
21 therewith is recorded in the office of the auditor of any county in
22 which all or part of the property is located on the date the notice
23 is recorded;

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

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

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

35 NOTICE OF TRUSTEE'S SALE

36 I.

37 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on
38 the . . . day of, . . ., at the hour of
39 o'clock M. at

1 [street
2 address and location if inside a building] in the City
3 of, State of Washington, sell at public auction to the
4 highest and best bidder, payable at the time of sale, the following
5 described real property, situated in the County(ies) of,
6 State of Washington, to-wit:

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

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

19 II.

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

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

27 III.

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

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

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

33 IV.

34 The sum owing on the obligation secured by the Deed of Trust is:
35 Principal \$, together with interest as provided in the
36 note or other instrument secured from the day

1 of, . . ., and such other costs and fees as are due under
2 the note or other instrument secured, and as are provided by statute.

3 V.

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

22 VI.

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

25
26
27

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

35 VII.

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

4 VIII.

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

8 IX.

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

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

15

16 , Trustee

17 }
18 }
19 }

20 Address

21
22 } Phone
23
24

25 [Acknowledgment]

26 (g) If the borrower received a letter under RCW 61.24.031, the
27 notice specified in (f) of this subsection (~~((1)(f) of this section)~~)
28 shall also include the following additional language:

29 **"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR**
30 **HOME.**

31 You have only 20 DAYS from the recording date on this notice to
32 pursue mediation.

33 **DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN**
34 **WASHINGTON NOW** to assess your situation and refer you to mediation if

1 you are eligible and it may help you save your home. See below for
2 safe sources of help.

3 **SEEKING ASSISTANCE**

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

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

10 Telephone: Web site:

11 The United States Department of Housing and Urban Development

12 Telephone: Web site:

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

15 Telephone: Web
16 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 (2) In addition to providing the borrower and grantor the notice
20 of sale described in subsection (1)(f) of this section, the trustee
21 shall include with the copy of the notice which is mailed to the
22 grantor, a statement to the grantor in substantially the following
23 form:

24 **NOTICE OF FORECLOSURE**

25 Pursuant to the Revised Code of Washington,
26 Chapter 61.24 RCW

27 The attached Notice of Trustee's Sale is a consequence of
28 default(s) in the obligation to, the Beneficiary of your
29 Deed of Trust (~~and owner of the obligation secured thereby~~). Unless
30 the default(s) is/are cured, your property will be sold at auction on
31 the day of, . . .

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

37		Estimated amount
38	Currently due	that will be due

1 to reinstate to reinstate
 2 on on
 3
 4 (11 days before
 5 the date set
 6 for sale)

7	Delinquent payments		
8	from,		
9	. . . , in the		
10	amount of		
11	\$. . . /mo.:	\$	\$
12	Late charges in		
13	the total		
14	amount of:	\$	\$
15			Estimated
16			Amounts
17	Attorneys' fees:	\$	\$
18	Trustee's fee:	\$	\$
19	Trustee's expenses:		
20	(Itemization)		
21	Title report	\$	\$
22	Recording fees	\$	\$
23	Service/Posting		
24	of Notices	\$	\$
25	Postage/Copying		
26	expense	\$	\$
27	Publication	\$	\$
28	Telephone		\$
29	charges	\$	
30	Inspection fees	\$	\$
31	\$	\$
32	\$	\$
33	TOTALS	\$	\$

34 To pay off the entire obligation secured by your Deed of Trust as
 35 of the day of you must pay a total of

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

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

13	Default	Description of Action Required to Cure and
14		Documentation Necessary to Show Cure
15
16	
17	
18
19	
20	

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

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

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

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

26 NAME:

27 ADDRESS:

28

29 TELEPHONE NUMBER:

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

35 (3) In addition, the trustee shall cause a copy of the notice of
36 sale described in subsection (1)(f) of this section (excluding the
37 acknowledgment) to be published in a legal newspaper in each county
38 in which the property or any part thereof is situated, once on or

1 between the thirty-fifth and twenty-eighth day before the date of
2 sale, and once on or between the fourteenth and seventh day before
3 the date of sale;

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

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

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

34 (7) The purchaser shall forthwith pay the price bid and on
35 payment the trustee shall execute to the purchaser its deed; the deed
36 shall recite the facts showing that the sale was conducted in
37 compliance with all of the requirements of this chapter and of the
38 deed of trust, which recital shall be prima facie evidence of such
39 compliance and conclusive evidence thereof in favor of bona fide
40 purchasers and encumbrancers for value, except that these recitals

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

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

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

17 X. NOTICE TO OCCUPANTS OR TENANTS

18 The purchaser at the trustee's sale is entitled to possession of the
19 property on the 20th day following the sale, as against the grantor
20 under the deed of trust (the owner) and anyone having an interest
21 junior to the deed of trust, including occupants who are not tenants.
22 After the 20th day following the sale the purchaser has the right to
23 evict occupants who are not tenants by summary proceedings under
24 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall
25 provide a tenant with written notice in accordance with RCW
26 61.24.060;

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

32 **Sec. 3.** RCW 61.24.163 and 2014 c 164 s 3 are each amended to
33 read as follows:

34 (1) The foreclosure mediation program established in this section
35 applies only to borrowers who have been referred to mediation by a
36 housing counselor or attorney. The referral to mediation may be made
37 any time after a notice of default has been issued but no later than
38 twenty days after the date a notice of sale has been recorded. If the

1 borrower has failed to elect to mediate within the applicable time
2 frame, the borrower and the beneficiary may, but are under no duty
3 to, agree in writing to enter the foreclosure mediation program. The
4 mediation program under this section is not governed by chapter 7.07
5 RCW and does not preclude mediation required by a court or other
6 provision of law.

7 (2) A housing counselor or attorney referring a borrower to
8 mediation shall send a notice to the borrower and the department,
9 stating that mediation is appropriate.

10 (3) Within ten days of receiving the notice, the department
11 shall:

12 (a) Send a notice to the beneficiary, the borrower, the housing
13 counselor or attorney who referred the borrower, and the trustee
14 stating that the parties have been referred to mediation. The notice
15 must include the statements and list of documents and information
16 described in subsections (4) and (5) of this section and a statement
17 explaining each party's responsibility to pay the mediator's fee; and

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

19 (4) Within twenty-three days of the department's notice that the
20 parties have been referred to mediation, the borrower shall transmit
21 the documents required for mediation to the mediator and the
22 beneficiary. The required documents include an initial Making Home
23 Affordable Application (HAMP) package or such other equivalent
24 homeowner financial information worksheet as required by the
25 department. In the event the department is required to create a
26 worksheet, the worksheet must include, at a minimum, the following
27 information:

28 (a) The borrower's current and future income;

29 (b) Debts and obligations;

30 (c) Assets;

31 (d) Expenses;

32 (e) Tax returns for the previous two years;

33 (f) Hardship information;

34 (g) Other applicable information commonly required by any
35 applicable federal mortgage relief program.

36 (5) Within twenty days of the beneficiary's receipt of the
37 borrower's documents, the beneficiary shall transmit the documents
38 required for mediation to the mediator and the borrower. The required
39 documents include:

1 (a) An accurate statement containing the balance of the loan
2 within thirty days of the date on which the beneficiary's documents
3 are due to the parties;

4 (b) Copies of the note and deed of trust;

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

9 (d) The best estimate of any arrearage and an itemized statement
10 of the arrearages;

11 (e) An itemized list of the best estimate of fees and charges
12 outstanding;

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

16 (g) All borrower-related and mortgage-related input data used in
17 any net present values analysis. If no net present values analysis is
18 required by the applicable federal mortgage relief program, then the
19 input data required under the federal deposit insurance corporation
20 and published in the federal deposit insurance corporation loan
21 modification program guide, or if that calculation becomes
22 unavailable, substantially similar input data as determined by the
23 department;

24 (h) An explanation regarding any denial for a loan modification,
25 forbearance, or other alternative to foreclosure in sufficient detail
26 for a reasonable person to understand why the decision was made;

27 (i) Appraisal or other broker price opinion most recently relied
28 upon by the beneficiary not more than ninety days old at the time of
29 the scheduled mediation; and

30 (j) The portion or excerpt of the pooling and servicing agreement
31 or other investor restriction that prohibits the beneficiary from
32 implementing a modification, if the beneficiary claims it cannot
33 implement a modification due to limitations in a pooling and
34 servicing agreement or other investor restriction, and documentation
35 or a statement detailing the efforts of the beneficiary to obtain a
36 waiver of the pooling and servicing agreement or other investor
37 restriction provisions.

38 (6) Within seventy days of receiving the referral from the
39 department, the mediator shall convene a mediation session in the
40 county where the property is located, unless the parties agree on

1 another location. The parties may agree to extend the time in which
2 to schedule the mediation session. If the parties agree to extend the
3 time, the beneficiary shall notify the trustee of the extension and
4 the date the mediator is expected to issue the mediator's
5 certification.

6 (7)(a) The mediator may schedule phone conferences, consultations
7 with the parties individually, and other communications to ensure
8 that the parties have all the necessary information and documents to
9 engage in a productive mediation.

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

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

16 (ii) A statement that a person with authority to agree to a
17 resolution, including a proposed settlement, loan modification, or
18 dismissal or continuation of the foreclosure proceeding, must be
19 present either in person or on the telephone or videoconference
20 during the mediation session; and

21 (iii) A statement that the parties have a duty to mediate in good
22 faith and that failure to mediate in good faith may impair the
23 beneficiary's ability to foreclose on the property or the borrower's
24 ability to modify the loan or take advantage of other alternatives to
25 foreclosure.

26 (8)(a) The borrower, the beneficiary or authorized agent, and the
27 mediator must meet in person for the mediation session. However, a
28 person with authority to agree to a resolution on behalf of the
29 beneficiary may be present over the telephone or videoconference
30 during the mediation session.

31 (b) After the mediation session commences, the mediator may
32 continue the mediation session once, and any further continuances
33 must be with the consent of the parties.

34 (9) The participants in mediation must address the issues of
35 foreclosure that may enable the borrower and the beneficiary to reach
36 a resolution, including but not limited to reinstatement,
37 modification of the loan, restructuring of the debt, or some other
38 workout plan. To assist the parties in addressing issues of
39 foreclosure, the mediator may require the participants to consider
40 the following:

1 (a) The borrower's current and future economic circumstances,
2 including the borrower's current and future income, debts, and
3 obligations for the previous sixty days or greater time period as
4 determined by the mediator;

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

8 (c) Any affordable loan modification calculation and net present
9 value calculation when required under any federal mortgage relief
10 program, including the home affordable modification program (HAMP) as
11 applicable to government-sponsored enterprise and nongovernment-
12 sponsored enterprise loans and any HAMP-related modification program
13 applicable to loans insured by the federal housing administration,
14 the veterans administration, and the rural housing service. If such a
15 calculation is not provided or required, then the beneficiary must
16 provide the net present value data inputs established by the federal
17 deposit insurance corporation and published in the federal deposit
18 insurance corporation loan modification program guide or other net
19 present value data inputs as designated by the department. The
20 mediator may run the calculation in order for a productive mediation
21 to occur and to comply with the mediator certification requirement;
22 and

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

26 (10) A violation of the duty to mediate in good faith as required
27 under this section may include:

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

30 (b) Failure of the borrower or the beneficiary to provide the
31 documentation required before mediation or pursuant to the mediator's
32 instructions;

33 (c) Failure of a party to designate representatives with adequate
34 authority to fully settle, compromise, or otherwise reach resolution
35 with the borrower in mediation; and

36 (d) A request by a beneficiary that the borrower waive future
37 claims he or she may have in connection with the deed of trust, as a
38 condition of agreeing to a modification, except for rescission claims
39 under the federal truth in lending act. Nothing in this section
40 precludes a beneficiary from requesting that a borrower dismiss with

1 prejudice any pending claims against the beneficiary, its agents,
2 loan servicer, or trustee, arising from the underlying deed of trust,
3 as a condition of modification.

4 (11) If the mediator reasonably believes a borrower will not
5 attend a mediation session based on the borrower's conduct, such as
6 the lack of response to the mediator's communications, the mediator
7 may cancel a scheduled mediation session and send a written
8 cancellation to the department and the trustee and send copies to the
9 parties. The beneficiary may proceed with the foreclosure after
10 receipt of the mediator's written confirmation of cancellation.

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

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

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

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

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

23 (e) If a written agreement was not reached, a description of any
24 net present value test used, along with a copy of the inputs,
25 including the result of any net present value test expressed in a
26 dollar amount.

27 (13) If the parties are unable to reach an agreement, the
28 beneficiary may proceed with the foreclosure after receipt of the
29 mediator's written certification.

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

36 (b) The mediator's certification that the beneficiary failed to
37 act in good faith during mediation does not constitute a defense to a
38 judicial foreclosure or a future nonjudicial foreclosure action if a
39 modification of the loan is agreed upon and the borrower subsequently
40 defaults.

1 (c) If an affordable loan modification is not offered in the
2 mediation or a written agreement was not reached and the mediator's
3 certification shows that the net present value of the modified loan
4 exceeds the anticipated net recovery at foreclosure, that showing in
5 the certification constitutes a basis for the borrower to enjoin the
6 foreclosure.

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

10 (16)(a) If a borrower has been referred to mediation before a
11 notice of trustee sale has been recorded, a trustee may not record
12 the notice of sale until the trustee receives the mediator's
13 certification stating that the mediation has been completed. If the
14 trustee does not receive the mediator's certification, the trustee
15 may record the notice of sale after ten days from the date the
16 certification to the trustee was due. If, after a notice of sale is
17 recorded under this subsection (16)(a), the mediator subsequently
18 issues a certification finding that the beneficiary violated the duty
19 of good faith, the certification constitutes a basis for the borrower
20 to enjoin the foreclosure.

21 (b) If a borrower has been referred to mediation after the notice
22 of sale was recorded, the sale may not occur until the trustee
23 receives the mediator's certification stating that the mediation has
24 been completed.

25 (17) A mediator may charge reasonable fees as authorized by this
26 subsection or as authorized by the department. Unless the fee is
27 waived, the parties agree otherwise, or the department otherwise
28 authorizes, a foreclosure mediator's fee may not exceed four hundred
29 dollars for preparing, scheduling, and conducting a mediation session
30 lasting between one hour and three hours. For a mediation session
31 exceeding three hours, the foreclosure mediator may charge a
32 reasonable fee, as authorized by the department. The mediator must
33 provide an estimated fee before the mediation, and payment of the
34 mediator's fee must be divided equally between the beneficiary and
35 the borrower. The beneficiary and the borrower must tender the loan
36 mediator's fee within thirty calendar days from receipt of the
37 department's letter referring the parties to mediation or pursuant to
38 the mediator's instructions.

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

1 (a) The performance of the program, including the numbers of
2 borrowers who are referred to mediation by a housing counselor or
3 attorney;

4 (b) The results of the mediation program, including the number of
5 mediations requested by housing counselors and attorneys, the number
6 of certifications of good faith issued, the number of borrowers and
7 beneficiaries who failed to mediate in good faith, and the reasons
8 for the failure to mediate in good faith, if known, the numbers of
9 loans restructured or modified, the change in the borrower's monthly
10 payment for principal and interest and the number of principal write-
11 downs and interest rate reductions, and, to the extent practical, the
12 number of borrowers who report a default within a year of
13 restructuring or modification;

14 (c) The information received by housing counselors regarding
15 outcomes of foreclosures; and

16 (d) Any recommendations for changes to the statutes regarding the
17 mediation program.

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