
SECOND ENGROSSED SUBSTITUTE HOUSE BILL 2057

State of Washington 65th Legislature 2017 Regular Session

By House Judiciary (originally sponsored by Representative Orwall)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to the services and processes available when
2 residential real property is abandoned or in foreclosure; and
3 amending RCW 61.24.173, 61.24.040, and 61.24.163.

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

5 **Sec. 1.** RCW 61.24.173 and 2016 c 196 s 2 are each amended to
6 read as follows:

7 (1) Except as provided in subsections (~~((4) and~~) (5) and (6) of
8 this section, beginning July 1, 2016, and every quarter thereafter,
9 every beneficiary on whose behalf a notice of trustee's sale has been
10 recorded pursuant to RCW 61.24.040 on residential real property under
11 this chapter must:

12 (a) Report to the department the number of notices of trustee's
13 sale recorded for each residential property during the previous
14 quarter;

15 (b) Remit the amount required under subsection (2) of this
16 section; and

17 (c) Report and update beneficiary contact information for the
18 person and work group responsible for the beneficiary's compliance
19 with the requirements of the foreclosure fairness act created in this
20 chapter.

1 (2) For each notice of trustee's sale recorded on residential
2 real property, the beneficiary on whose behalf the notice of
3 trustee's sale has been recorded shall remit ~~((two))~~ three hundred
4 ~~((fifty))~~ twenty-five dollars to the department to be deposited, as
5 provided under RCW 61.24.172, into the foreclosure fairness account.
6 The ~~((two))~~ three hundred ~~((fifty))~~ twenty-five dollar payment is
7 required for every recorded notice of trustee's sale for
8 noncommercial loans on residential real property, but does not apply
9 to the recording of an amended notice of trustee's sale. ~~((If the~~
10 ~~beneficiary previously made a payment under RCW 61.24.174, as it~~
11 ~~existed prior to July 1, 2016, for a notice of default supporting the~~
12 ~~recorded notice of trustee's sale, no payment is required under this~~
13 ~~section.))~~ Beginning on or before January 1, 2020, the department
14 shall from time to time establish the amount of the fee, not to
15 exceed three hundred twenty-five dollars, at a sufficient level to
16 defray the costs of the program. The beneficiary shall remit the
17 total amount required in a lump sum each quarter.

18 (3) Any adjustment to the amount of the fee, pursuant to the
19 authority of subsection (2) of this section, shall be made by rule
20 adopted by the department in accordance with the provisions of
21 chapter 34.05 RCW.

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

24 ~~((4))~~ (5) This section does not apply to any beneficiary or
25 loan servicer that is a federally insured depository institution, as
26 defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under
27 penalty of perjury that fewer than fifty notices of trustee's sale
28 were recorded on its behalf in the preceding year.

29 ~~((5))~~ (6) This section does not apply to association
30 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

31 ~~((6))~~ (7) For purposes of this section, "residential real
32 property" includes residential real property with up to four dwelling
33 units, whether or not the property or any part thereof is owner-
34 occupied.

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

37 A deed of trust foreclosed under this chapter shall be foreclosed
38 as follows:

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

4 (a) Record a notice in the form described in (f) of this
5 subsection in the office of the auditor in each county in which the
6 deed of trust 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
13 copy 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
16 legal 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
28 recordation of the deed of trust being foreclosed and before the
29 recordation of the 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
32 deed of trust being foreclosed that was recorded before the
33 recordation of 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-
37 family residence, or a condominium, cooperative, or other dwelling
38 unit in a multiplex or other building containing fewer than five
39 residential units, whether or not the occupant's rental agreement is

1 recorded, which notice may be a single notice addressed to
2 "occupants" for each unit known to the trustee or beneficiary;

3 (c) Cause a copy of the notice of sale described in (f) of this
4 subsection to be transmitted by both first-class and either certified
5 or registered mail, return receipt requested, to the plaintiff or the
6 plaintiff's attorney of record, in any court action to foreclose a
7 lien or other encumbrance on all or any part of the property,
8 provided a court action is pending and a lis pendens in connection
9 therewith is recorded in the office of the auditor of any county in
10 which all or part of the property is located on the date the notice
11 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
16 the address specified in such person's most recently recorded request
17 for 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)(i) The notice required in this subsection must include a
23 cover sheet on which the name of the beneficiary is clearly indicated
24 and whether the loan is commercial or noncommercial. In addition to
25 any other indexing requirements, the auditor shall index the notice
26 of trustee's sale by beneficiary name.

27 (ii) The notice ((shall)) must be in substantially the following
28 form:

29 NOTICE OF TRUSTEE'S SALE

30 I.

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

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

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

13 II.

14 No action commenced by the Beneficiary of the Deed of Trust is now
15 pending to seek satisfaction of the obligation in any Court by reason
16 of the Borrower's or Grantor's default on the obligation secured by
17 the Deed of Trust.

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

21 III.

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

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

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

27 IV.

28 The sum owing on the obligation secured by the Deed of Trust is:
29 Principal \$, together with interest as provided in the
30 note or other instrument secured from the day
31 of,, and such other costs and fees as are due under
32 the note or other instrument secured, and as are provided by statute.

33 V.

34 The above-described real property will be sold to satisfy the expense
35 of sale and the obligation secured by the Deed of Trust as provided

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

17 VI.

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

20
21
22

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

30 VII.

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

34 VIII.

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

4 IX.

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

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

11
12 , Trustee
13 }
14 }
15 }

16 Address
17
18
19
20 } Phone

21 [Acknowledgment]

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

25 **"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR**
26 **HOME.**

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

29 **DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN**
30 **WASHINGTON NOW** to assess your situation and refer you to mediation if
31 you are eligible and it may help you save your home. See below for
32 safe sources of help.

33 **SEEKING ASSISTANCE**

34 Housing counselors and legal assistance may be available at little or
35 no cost to you. If you would like assistance in determining your

1 rights and opportunities to keep your house, you may contact the
2 following:

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

5 Telephone: Web site:

6 The United States Department of Housing and Urban Development

7 Telephone: Web site:

8 The statewide civil legal aid hotline for assistance and referrals to
9 other housing counselors and attorneys

10 Telephone: Web
11 site:"

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

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

19 NOTICE OF FORECLOSURE

20 Pursuant to the Revised Code of Washington,
21 Chapter 61.24 RCW

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

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

	Estimated amount
	Currently due that will be due
	to reinstate to reinstate
	on on

	(11 days before
	the date set

for sale)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Delinquent payments		
from,		
. . . , in the		
amount of		
\$. . . /mo.:	\$	\$
Late charges in		
the total		
amount of:	\$	\$
		Estimated
		Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses:		
(Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting		
of Notices	\$	\$
Postage/Copying		
expense	\$	\$
Publication	\$	\$
Telephone		\$
charges	\$	
Inspection fees	\$	\$
.....	\$	\$
.....	\$	\$
TOTALS	\$	\$

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

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

8	Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
10
11	
12	
13
14	
15	

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

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

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

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

21 NAME:

22 ADDRESS:

23

24 TELEPHONE NUMBER:

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

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

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

1 auction to the highest bidder. The trustee may sell the property in
2 gross or in parcels as the trustee shall deem most advantageous;

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

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

29 (7) The purchaser shall forthwith pay the price bid and on
30 payment the trustee shall execute to the purchaser its deed; the deed
31 shall recite the facts showing that the sale was conducted in
32 compliance with all of the requirements of this chapter and of the
33 deed of trust, which recital shall be prima facie evidence of such
34 compliance and conclusive evidence thereof in favor of bona fide
35 purchasers and encumbrancers for value, except that these recitals
36 shall not affect the lien or interest of any person entitled to
37 notice under subsection (1) of this section, if the trustee fails to
38 give the required notice to such person. In such case, the lien or
39 interest of such omitted person shall not be affected by the sale and
40 such omitted person shall be treated as if such person was the holder

1 of the same lien or interest and was omitted as a party defendant in
2 a judicial foreclosure proceeding;

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

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

12 X. NOTICE TO OCCUPANTS OR TENANTS

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

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

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

29 (1) The foreclosure mediation program established in this section
30 applies only to borrowers who have been referred to mediation by a
31 housing counselor or attorney. The referral to mediation may be made
32 any time after a notice of default has been issued but no later than
33 twenty days after the date a notice of sale has been recorded. If the
34 borrower has failed to elect to mediate within the applicable time
35 frame, the borrower and the beneficiary may, but are under no duty
36 to, agree in writing to enter the foreclosure mediation program. The
37 mediation program under this section is not governed by chapter 7.07

1 RCW and does not preclude mediation required by a court or other
2 provision of law.

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

6 (3) Within ten days of receiving the notice, the department
7 shall:

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

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

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

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

25 (b) Debts and obligations;

26 (c) Assets;

27 (d) Expenses;

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

29 (f) Hardship information;

30 (g) Other applicable information commonly required by any
31 applicable federal mortgage relief program.

32 (5) Within twenty days of the beneficiary's receipt of the
33 borrower's documents, the beneficiary shall transmit the documents
34 required for mediation to the mediator and the borrower. The required
35 documents include:

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

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

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

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

7 (e) An itemized list of the best estimate of fees and charges
8 outstanding;

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

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

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

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

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

34 (6) Within seventy days of receiving the referral from the
35 department, the mediator shall convene a mediation session in the
36 county where the property is located, unless the parties agree on
37 another location. The parties may agree to extend the time in which
38 to schedule the mediation session. If the parties agree to extend the
39 time, the beneficiary shall notify the trustee of the extension and

1 the date the mediator is expected to issue the mediator's
2 certification.

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

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

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

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

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

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

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

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

38 (a) The borrower's current and future economic circumstances,
39 including the borrower's current and future income, debts, and

1 obligations for the previous sixty days or greater time period as
2 determined by the mediator;

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

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

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

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

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

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

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

1 loan servicer, or trustee, arising from the underlying deed of trust,
2 as a condition of modification.

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

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

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

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

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

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

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

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

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

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

--- END ---