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ENGROSSED SUBSTITUTE SENATE BILL 5797

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State of Washington

65th Legislature

2017 Regular Session

By Senate Financial Institutions & Insurance (originally sponsored by Senators Mullet, Fain, and Hobbs)

READ FIRST TIME 02/16/17.

1 AN ACT Relating to the services and processes available when  
2 residential real property is abandoned or in foreclosure; amending  
3 RCW 61.24.173, 61.24.040, and 61.24.030; and adding new sections to  
4 chapter 61.24 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 61.24  
7 RCW to read as follows:

8 (1) A certificate of abandonment may be obtained for a fee  
9 through the housing finance commission by using a form and subject to  
10 the terms and conditions developed by the housing finance commission  
11 in conjunction with the servicing industry, trustees, and civil legal  
12 aid. The housing finance commission must determine the costs  
13 associated with the application process and set a reasonable  
14 application fee based upon these costs. The fee must not exceed one  
15 hundred dollars.

16 (2) Upon issuance of a certificate of abandonment, or upon  
17 receipt of notification from a servicer pursuant to section 2 or 3 of  
18 this act, the housing finance commission must notify the appropriate  
19 city, town, or county.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 61.24  
2 RCW to read as follows:

3        (1) A servicer to whom a borrower, after default, has granted  
4 written permission to enter the premises to inspect, secure, repair,  
5 or maintain the premises may enter the premises and act in accordance  
6 with the scope of the permission granted by the borrower.

7        (2) A servicer in possession of a court order allowing entry onto  
8 the premises to access, secure, maintain, and preserve the premises  
9 may enter the premises and act in accordance with the scope of the  
10 court order.

11       (3) A certificate of abandonment is not necessary under this  
12 section, but the servicer must notify the housing finance commission  
13 that it has obtained a court order or been granted written permission  
14 from the borrower in order that the commission may notify the  
15 appropriate city, town, or county.

16       NEW SECTION.    **Sec. 3.**    A new section is added to chapter 61.24  
17 RCW to read as follows:

18       (1) A servicer may perform reasonable external maintenance  
19 without the borrower's permission if, after default and after  
20 reasonable inspection and notice in accordance with this section,  
21 there is reasonable cause to believe that the property is abandoned.

22       (2) A certificate of abandonment is not necessary under this  
23 section, but the servicer must notify the housing finance commission  
24 that it intends to perform reasonable external maintenance in order  
25 that the commission may notify the appropriate city, town, or county.

26       (3) For purposes of this section:

27       (a) "Notice" means a written notice posted on the door, informing  
28 the occupants that in three days the servicer or its agent intends to  
29 perform external maintenance of the property. The notice must remain  
30 on the door until the servicer is contacted by the borrower or lawful  
31 occupant or until foreclosure is complete. The notice must include  
32 all of the following:

33       (i) Information about the borrower's or lawful occupant's right  
34 to possession;

35       (ii) A twenty-four hour phone number that the borrower or lawful  
36 occupant may call with questions or concerns or to obtain  
37 information; and

1 (iii) The toll-free telephone number or charge-free equivalent  
2 made available by the department to find a department-approved  
3 housing counseling agency.

4 (b) "Reasonable cause to believe that the property is abandoned"  
5 means that the property exhibits a lack of evidence of occupancy and  
6 at least one of the following indicia of abandonment:

7 (i) Overgrown or dead vegetation;

8 (ii) An accumulation of newspapers, circulars, fliers, or mail;

9 (iii) Past due utility notices, or some or all of the utilities  
10 have been disconnected;

11 (iv) An accumulation of trash, junk, or debris;

12 (v) Broken windows.

13 (c) "Reasonable external maintenance" includes:

14 (i) Maintaining landscaping;

15 (ii) Collecting and disposing of newspapers, circulars, trash,  
16 and debris;

17 (iii) Painting over graffiti or tagging; and

18 (iv) The removal of hazardous property. If property is removed,  
19 the servicer must inventory and document the removal.

20 (d) "Reasonable inspection" means inspection from the street  
21 without entering the property.

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

24 (1) A certificate of abandonment for entry into a dwelling  
25 without the borrower's permission permits a servicer or its agent to  
26 enter the property to take reasonable steps to secure the property.  
27 Upon issuance of a certificate of abandonment, the housing finance  
28 commission must notify the appropriate city, town, or county.

29 (2) The following conditions must be met before issuance of a  
30 certificate of abandonment:

31 (a) The borrower is in default and the property is abandoned, as  
32 indicated by the presence of at least three of the following indicia  
33 of abandonment visible from the exterior: (i) The absence of  
34 furnishings and personal items consistent with residential  
35 habitation; (ii) the gas, electric, and water utility services have  
36 been disconnected; (iii) statements by neighbors, passersby, delivery  
37 agents, or government employees that the property is vacant; (iv)  
38 multiple windows on the property are boarded up or closed off or are  
39 smashed through, broken, or unhinged, or multiple window panes are

1 broken and unrepaired; (v) doors on the residence are smashed  
2 through, broken off, unhinged, or continuously unlocked; (vi) the  
3 property has been stripped of copper or other materials, or interior  
4 fixtures have been removed; (vii) law enforcement officials have  
5 received at least one report of trespassing or vandalism or other  
6 illegal activities occurring on the property within the immediately  
7 preceding six months; (viii) the property has been declared unfit for  
8 occupancy and ordered to remain vacant and unoccupied pursuant to an  
9 order issued by a municipal or county authority or a court of  
10 competent jurisdiction; (ix) construction was initiated on the  
11 property and was discontinued before completion, leaving a building  
12 unsuitable for occupancy, and construction has not taken place for at  
13 least six months; (x) newspapers, circulars, flyers, or mail has  
14 accumulated on the property or the United States postal service has  
15 discontinued delivery to the property; (xi) rubbish, trash, debris,  
16 neglected vegetation, or natural overgrowth has accumulated on the  
17 property; (xii) hazardous, noxious, or unhealthy substances or  
18 materials have accumulated on the property; (xiii) other credible  
19 evidence exists indicating the intent to vacate and abandon the  
20 property; and either

21 (b) The property is open and unprotected or in reasonable danger  
22 of significant damage resulting from exposure to the elements or  
23 vandalism; or

24 (c) The local police, fire department, or code enforcement  
25 authority has requested that the borrower, owner, or any other  
26 interested or authorized party secure the residential real property  
27 because the local authority has declared the property to be an  
28 imminent danger to the health, safety, and welfare of the public.

29 (3) Within seven days of issuance of the certificate of  
30 abandonment, the servicer or its agent must post a written notice on  
31 the door informing the occupants that after thirty days the servicer  
32 or its agent intends to enter the dwelling to take reasonable steps  
33 to secure the property. The notice must remain on the door until the  
34 servicer is contacted by the borrower or lawful occupant or until  
35 foreclosure is complete. The notice must include all of the  
36 following:

37 (a) Information about the borrower's or lawful occupant's right  
38 to possession;

1 (b) A twenty-four hour phone number that the borrower or lawful  
2 occupant may call with questions or concerns or to obtain  
3 information; and

4 (c) The phone number of a housing counseling agency and  
5 information regarding the foreclosure fairness act.

6 (4) Absent the threat of imminent danger of harm, the servicer or  
7 its agent must wait thirty days after posting the notice before  
8 entering to take reasonable steps to secure the property. If there is  
9 imminent danger of harm, the servicer or its agent need not wait  
10 thirty days but may enter immediately and, simultaneous with entry,  
11 post the notice required under subsection (3) of this section.

12 (5) Reasonable steps to secure the property include:

13 (a) Installing missing locks on exterior doors. Working locks may  
14 not be removed or replaced, unless all doors are secured and there is  
15 no other means of entry, and in such cases only one working lock may  
16 be removed and replaced;

17 (b) Replacing or boarding broken or missing windows;

18 (c) Winterizing, including draining pipes and disconnecting or  
19 turning on utilities;

20 (d) Eliminating building code or other code violations; or

21 (e) Securing exterior pools and spas.

22 (6) The servicer must document all steps to enter and secure the  
23 property, including taking date and time-stamped photographs of  
24 entry, and the manner of entry.

25 (7) Personal property may not be removed unless it is hazardous  
26 or perishable, and in such case an inventory and photographs of the  
27 property removed must be made.

28 (8) The servicer or agent must retain all documentation and  
29 photographs for a period of four years.

30 (9) The servicer and its agents must promptly exit the property  
31 if, upon entry, there are signs of occupancy.

32 (10) For purposes of this section, "imminent danger of harm"  
33 means:

34 (a) Active flooding, including damage to the roof such that water  
35 is entering the structure;

36 (b) Extreme weather conditions exist and immediate and extensive  
37 property damage is likely;

38 (c) Notification by the police, fire department, or code  
39 enforcement that there is immediate danger to health, safety, and  
40 welfare of the public; or

1 (d) Broken windows or damaged doors that could allow unlawful  
2 access to the property.

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

5 The authority of an agent, such as a property preservation  
6 entity, to enter abandoned property and to perform any sort of work  
7 derives solely from the servicer's authority. A servicer has a duty  
8 to monitor its agents and to make sure that its agents possess the  
9 required permit, license, certificate, or registration, and are  
10 properly bonded and insured if so required. The servicer must require  
11 that the agent implement stringent background check requirements for  
12 all of its employees engaged in on-site property preservation.

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

15 (1) As used in this section:

16 (a) "Maintain" means:

17 (i) Securing doors and windows;

18 (ii) Landscaping;

19 (iii) Collecting and disposing of newspapers, circulars, trash,  
20 and debris;

21 (iv) Removing hazardous property;

22 (v) Securing exterior pools and hot tubs; and

23 (vi) Eliminating other threats to public health and safety.

24 (b) "Reasonable costs" means actual and demonstrable costs that  
25 are commensurate with and do not exceed the market rate for services  
26 necessary to remedy a condition resulting from a failure to maintain,  
27 plus the actual and demonstrable costs of administering a contract  
28 for services to remedy the condition or the portion of the costs of a  
29 program to remedy the condition that is attributable to remedying a  
30 condition for specific property.

31 (2)(a) Beginning thirty days after obtaining written permission  
32 or a court order as described under section 2 of this act or the  
33 issuance of a certificate of abandonment under section 4 of this act,  
34 and until the later of the recording of the trustee's deed by the  
35 purchaser or fifteen days after physical delivery of the trustee's  
36 deed to the purchaser, a beneficiary or its agent or servicer is  
37 under a duty to maintain the property during any period in which the  
38 property is vacant.

1 (b) A servicer must provide the servicer's name or the name of  
2 the servicer's agent and a telephone number or other means for  
3 contacting the servicer or agent to an official that the local  
4 government designates to receive the information described in this  
5 subsection.

6 (c) The servicer must post a durable notice in a conspicuous  
7 location on the property that lists a telephone number for the  
8 servicer or for the local government that a person may call to report  
9 a condition of neglect. The servicer must replace the notice if the  
10 notice is removed from the property during a period when the property  
11 is vacant.

12 (d) A servicer or the agent of a servicer must identify the  
13 borrower to the local government and provide to, and maintain with,  
14 the local government current contact information during a period when  
15 the property is vacant.

16 (3)(a) If a local government finds a violation of subsection  
17 (2)(a) of this section, the local government must notify the  
18 servicer, in writing, that the property is the subject of the  
19 violation and in accordance with (b) or (c) of this subsection, as  
20 appropriate, must specify a time within which the servicer must  
21 remedy the condition that is the basis for the local government's  
22 finding.

23 (b) The local government must allow the servicer not fewer than  
24 thirty days to remedy the violation, unless the local government  
25 makes a determination under (c) of this subsection, and must provide  
26 the servicer with an opportunity to contest the local government's  
27 finding at a hearing. The servicer must contest the local  
28 government's finding within ten days after the local government  
29 notifies the servicer of the violation.

30 (c) If the local government determines that a specific condition  
31 of the property constitutes a threat to public health or safety, the  
32 local government may require the servicer to remedy the specific  
33 condition in fewer than thirty days, provided that the local  
34 government specifies in the written notice the date by which the  
35 servicer must remedy the specific condition. A local government may  
36 specify in the written notice different dates by which the servicer  
37 must remedy separate conditions of neglect on the foreclosed  
38 residential real property.

39 (4)(a) After a local government allows a servicer the time  
40 specified in subsection (3)(b) of this section or makes a

1 determination under subsection (3)(c) of this section, the local  
2 government may remedy or contract with another person to remedy and  
3 require the servicer to reimburse the local government for reasonable  
4 costs the local government incurs under this subsection.

5 (b) A local government that has incurred costs with respect to  
6 property under (a) of this subsection has a lien on the property for  
7 the sum of the local government's unreimbursed costs. A lien created  
8 under this subsection is prior to all other liens and encumbrances,  
9 except that the lien has equal priority with a tax lien. The lien  
10 attaches at the time the local government files a claim of lien with  
11 the county clerk of the county in which the property is located. A  
12 local government may bring an action in the superior court to  
13 foreclose the lien in the manner provided for foreclosing other liens  
14 on real or personal property.

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

17 (1) As used in this section:

18 (a) "Neglect" means:

19 (i) To fail or a failure to maintain the buildings, grounds, or  
20 appurtenances of property in such a way as to allow:

21 (A) Excessive growth of foliage that diminishes the value of  
22 adjacent property;

23 (B) Trespassers to remain on the foreclosed residential real  
24 property or in a structure located on the foreclosed residential real  
25 property;

26 (C) Mosquito larvae or pupae to grow in standing water on the  
27 property; or

28 (D) Other conditions on the property that cause or contribute to  
29 causing a public nuisance;

30 (ii) To fail or a failure to monitor the condition of property by  
31 inspecting the property at least once every thirty days with  
32 sufficient attention so as to prevent, or to identify and remedy, a  
33 condition described in (a)(i) of this subsection.

34 (b) "Reasonable costs" means actual and demonstrable costs that  
35 are commensurate with and do not exceed the market rate for services  
36 necessary to remedy a condition of neglect, plus the actual and  
37 demonstrable costs of administering a contract for services to remedy  
38 a condition of neglect or the portion of the costs of a program to



1 remedy conditions of neglect that are attributable to remedying a  
2 condition of neglect for specific property.

3 (2)(a) A servicer is under an obligation to maintain and may not  
4 neglect the property during any period in which the property is  
5 vacant.

6 (b) A servicer must provide the servicer's name or the name of  
7 the servicer's agent and a telephone number or other means for  
8 contacting the servicer or agent to an official that the local  
9 government designates to receive the information described in this  
10 subsection.

11 (c) The servicer must post a durable notice in a conspicuous  
12 location on the property that lists a telephone number for the  
13 servicer or for the local government that a person may call to report  
14 a condition of neglect. The servicer must replace the notice if the  
15 notice is removed from the property during a period when the property  
16 is vacant.

17 (d) A servicer or the agent of a servicer must identify the  
18 borrower to the local government and provide to, and maintain with,  
19 the local government current contact information during a period when  
20 the property is vacant.

21 (3)(a) If a local government finds a violation of subsection  
22 (2)(a) of this section, the local government must notify the  
23 servicer, in writing, that the property is the subject of the  
24 violation and in accordance with (b) or (c) of this subsection, as  
25 appropriate, must specify a time within which the servicer must  
26 remedy the condition of neglect that is the basis for the local  
27 government's finding.

28 (b) The local government must allow the servicer not fewer than  
29 thirty days to remedy the violation, unless the local government  
30 makes a determination under (c) of this subsection, and must provide  
31 the servicer with an opportunity to contest the local government's  
32 finding at a hearing. The servicer must contest the local  
33 government's finding within ten days after the local government  
34 notifies the servicer of the violation.

35 (c) If the local government determines that a specific condition  
36 of the property constitutes a threat to public health or safety, the  
37 local government may require the servicer to remedy the specific  
38 condition in fewer than thirty days, provided that the local  
39 government specifies in the written notice the date by which the  
40 servicer must remedy the specific condition. A local government may

1 specify in the written notice different dates by which the servicer  
2 must remedy separate conditions of neglect on the foreclosed  
3 residential real property.

4 (4)(a) After a local government allows a servicer the time  
5 specified in subsection (3)(b) of this section or makes a  
6 determination under subsection (3)(c) of this section, the local  
7 government may remedy or contract with another person to remedy  
8 neglect or a specific condition of neglect on property and require  
9 the servicer to reimburse the local government for reasonable costs  
10 the local government incurs under this subsection.

11 (b) A local government that has incurred costs with respect to  
12 property under (a) of this subsection has a lien on the property for  
13 the sum of the local government's unreimbursed costs. A lien created  
14 under this subsection is prior to all other liens and encumbrances,  
15 except that the lien has equal priority with a tax lien. The lien  
16 attaches at the time the local government files a claim of lien with  
17 the county clerk of the county in which the property is located. A  
18 local government may bring an action in the superior court to  
19 foreclose the lien in the manner provided for foreclosing other liens  
20 on real or personal property.

21 **Sec. 8.** RCW 61.24.173 and 2016 c 196 s 2 are each amended to  
22 read as follows:

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

28 ~~(a) Report to the department the number of notices of trustee's~~  
29 ~~sale recorded for each residential property during the previous~~  
30 ~~quarter;~~

31 ~~(b) Remit the amount required under subsection (2) of this~~  
32 ~~section; and~~

33 ~~(c) Report and update beneficiary contact information for the~~  
34 ~~person and work group responsible for the beneficiary's compliance~~  
35 ~~with the requirements of the foreclosure fairness act created in this~~  
36 ~~chapter.~~

37 ~~(2))~~ For each notice of trustee's sale recorded on residential  
38 real property, the beneficiary on whose behalf the notice of  
39 trustee's sale has been recorded shall remit ~~((two hundred fifty~~

1 dollars to the department to be deposited, as provided under RCW  
2 61.24.172, into the foreclosure fairness account)) three hundred  
3 dollars to the county auditor or recording officer at the time of  
4 recording the notice of trustee's sale. The ((two)) three hundred  
5 ((fifty)) dollar payment is required for every recorded notice of  
6 trustee's sale for noncommercial loans on residential real property,  
7 but does not apply to the recording of an amended notice of trustee's  
8 sale. ((If the beneficiary previously made a payment under RCW  
9 61.24.174, as it existed prior to July 1, 2016, for a notice of  
10 default supporting the recorded notice of trustee's sale, no payment  
11 is required under this section. The beneficiary shall remit the total  
12 amount required in a lump sum each quarter.

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

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

20 ~~(5)) (a) The county auditor or recording officer shall retain~~  
21 ~~three percent for collection of the fee and the amount retained must~~  
22 ~~be used for purposes of operations and maintenance consistent with~~  
23 ~~RCW 36.22.170(2)(b).~~

24 ~~(b) The county treasurer or recording officer shall remit the~~  
25 ~~remaining funds to the state treasurer on a monthly basis for deposit~~  
26 ~~into the foreclosure fairness account.~~

27 ~~(2) Any beneficiary or loan servicer that is a federally insured~~  
28 ~~depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A),~~  
29 ~~that records fewer than fifty notices of trustee's sale for~~  
30 ~~residential real property during a calendar year may apply to the~~  
31 ~~department for a refund of the recording fee established under this~~  
32 ~~section. At the option of the beneficiary or loan servicer, a refund~~  
33 ~~application may be submitted on a quarterly or an annual basis~~  
34 ~~according to rules adopted by the department.~~

35 ~~(3) This section does not apply to association beneficiaries~~  
36 ~~subject to chapter 64.32, 64.34, or 64.38 RCW.~~

37 ~~((6)) (4) For purposes of this section, "residential real~~  
38 ~~property" includes residential real property with up to four dwelling~~  
39 ~~units, whether or not the property or any part thereof is owner-~~  
40 ~~occupied.~~

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

3       A deed of trust foreclosed under this chapter shall be foreclosed  
4 as follows:

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

8       (a) Record a notice in the form described in (~~((f) of this~~)  
9 subsection (2) of this section in the office of the auditor in each  
10 county in which the deed of trust is recorded;

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

22       (i) The borrower and grantor;

23       (ii) The beneficiary of any deed of trust or mortgagee of any  
24 mortgage, or any person who has a lien or claim of lien against the  
25 property, that was recorded subsequent to the recordation of the deed  
26 of trust being foreclosed and before the recordation of the notice of  
27 sale;

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

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

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

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

7 (c) Cause a copy of the notice of sale described in (~~((f))~~  
8 ~~this~~) subsection (2) of this section to be transmitted by both  
9 first-class and either certified or registered mail, return receipt  
10 requested, to the plaintiff or the plaintiff's attorney of record, in  
11 any court action to foreclose a lien or other encumbrance on all or  
12 any part of the property, provided a court action is pending and a  
13 lis pendens in connection therewith is recorded in the office of the  
14 auditor of any county in which all or part of the property is located  
15 on the date the notice is recorded;

16 (d) Cause a copy of the notice of sale described in (~~((f))~~  
17 ~~this~~) subsection (2) of this section to be transmitted by both  
18 first-class and either certified or registered mail, return receipt  
19 requested, to any person who has recorded a request for notice in  
20 accordance with RCW 61.24.045, at the address specified in such  
21 person's most recently recorded request for notice;

22 (e) Cause a copy of the notice of sale described in (~~((f))~~  
23 ~~this~~) subsection (2) of this section to be posted in a conspicuous  
24 place on the property, or in lieu of posting, cause a copy of said  
25 notice to be served upon any occupant of the property;

26 (~~((f))~~) (2)(a) The notice required in subsection (1) of this  
27 section must include a cover sheet on which it is clearly indicated  
28 the name of the beneficiary and whether the loan is commercial or  
29 noncommercial. In addition to any other indexing requirements, the  
30 auditor shall index the notice of trustee's sale by beneficiary.  
31 Unless clearly indicated that the loan is commercial, three hundred  
32 dollars must be remitted pursuant to RCW 61.24.173(1).

33 (b) The notice (~~(shall)~~) must be in substantially the following  
34 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 (11)]

16 .....

17 ..... , Trustee

18 ..... }  
19 ..... }  
20 ..... }

23 ..... Address

24 .....

25 ..... } Phone

26 [Acknowledgment]

27 (~~(g)~~) (3) If the borrower received a letter under RCW  
28 61.24.031, the notice specified in subsection (~~(1)(f)~~) (2) of this  
29 section (~~(shall)~~) must also include the following additional  
30 language:

31 **"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR**  
32 **HOME.**

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



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

5 **SEEKING ASSISTANCE**

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

- 10 The statewide foreclosure hotline for assistance and referral to  
11 housing counselors recommended by the Housing Finance Commission  
12 Telephone: . . . . . Web site: . . . . .  
13 The United States Department of Housing and Urban Development  
14 Telephone: . . . . . Web site: . . . . .  
15 The statewide civil legal aid hotline for assistance and referrals to  
16 other housing counselors and attorneys  
17 Telephone: . . . . . Web  
18 site: . . . . ."

19 The beneficiary or trustee shall obtain the toll-free numbers and  
20 web site information from the department for inclusion in the notice;  
21 ((+2)) (4) In addition to providing the borrower and grantor the  
22 notice of sale described in subsection ((+1)(f)) (2) of this  
23 section, the trustee shall include with the copy of the notice which  
24 is mailed to the grantor, a statement to the grantor in substantially  
25 the following form:

26 **NOTICE OF FORECLOSURE**  
27 Pursuant to the Revised Code of Washington,  
28 Chapter 61.24 RCW

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

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

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

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

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

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

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

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

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

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

28 NAME: .....

29 ADDRESS: .....

30 .....

31 TELEPHONE NUMBER: .....

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

37 ((+3)) (5) In addition, the trustee shall cause a copy of the  
38 notice of sale described in subsection ((+1)(f)) (2) of this section

1 (excluding the acknowledgment) to be published in a legal newspaper  
2 in each county in which the property or any part thereof is situated,  
3 once on or between the thirty-fifth and twenty-eighth day before the  
4 date of sale, and once on or between the fourteenth and seventh day  
5 before the date of sale;

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

11 ~~((5))~~ (7) The place of sale shall be at any designated public  
12 place within the county where the property is located and if the  
13 property is in more than one county, the sale may be in any of the  
14 counties where the property is located. The sale shall be on Friday,  
15 or if Friday is a legal holiday on the following Monday, and during  
16 the hours set by statute for the conduct of sales of real estate at  
17 execution;

18 ~~((6))~~ (8) The trustee has no obligation to, but may, for any  
19 cause the trustee deems advantageous, continue the sale for a period  
20 or periods not exceeding a total of one hundred twenty days by (a) a  
21 public proclamation at the time and place fixed for sale in the  
22 notice of sale and if the continuance is beyond the date of sale, by  
23 giving notice of the new time and place of the sale by both first  
24 class and either certified or registered mail, return receipt  
25 requested, to the persons specified in subsection (1)(b)(i) and (ii)  
26 of this section to be deposited in the mail (i) not less than four  
27 days before the new date fixed for the sale if the sale is continued  
28 for up to seven days; or (ii) not more than three days after the date  
29 of the continuance by oral proclamation if the sale is continued for  
30 more than seven days, or, alternatively, (b) by giving notice of the  
31 time and place of the postponed sale in the manner and to the persons  
32 specified in subsection (1)(b), (c), (d), and (e) of this section and  
33 publishing a copy of such notice once in the newspaper(s) described  
34 in subsection ~~((3))~~ (5) of this section, more than seven days  
35 before the date fixed for sale in the notice of sale. No other notice  
36 of the postponed sale need be given;

37 ~~((7))~~ (9) The purchaser shall forthwith pay the price bid and  
38 on payment the trustee shall execute to the purchaser its deed; the  
39 deed shall recite the facts showing that the sale was conducted in  
40 compliance with all of the requirements of this chapter and of the

1 deed of trust, which recital shall be prima facie evidence of such  
2 compliance and conclusive evidence thereof in favor of bona fide  
3 purchasers and encumbrancers for value, except that these recitals  
4 shall not affect the lien or interest of any person entitled to  
5 notice under subsection (1) of this section, if the trustee fails to  
6 give the required notice to such person. In such case, the lien or  
7 interest of such omitted person shall not be affected by the sale and  
8 such omitted person shall be treated as if such person was the holder  
9 of the same lien or interest and was omitted as a party defendant in  
10 a judicial foreclosure proceeding;

11 ~~((+8))~~ (10) The sale as authorized under this chapter shall not  
12 take place less than one hundred ninety days from the date of default  
13 in any of the obligations secured;

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

20 X. NOTICE TO OCCUPANTS OR TENANTS

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

30 ~~((+10))~~ (12) Only one copy of all notices required by this  
31 chapter need be given to a person who is both the borrower and the  
32 grantor. All notices required by this chapter that are given to a  
33 general partnership are deemed given to each of its general partners,  
34 unless otherwise agreed by the parties.

35 **Sec. 10.** RCW 61.24.030 and 2012 c 185 s 9 are each amended to  
36 read as follows:

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

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

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

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

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

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

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

33 (7)(a) That, for residential real property, before the notice of  
34 trustee's sale is recorded, transmitted, or served, the trustee shall  
35 have proof that the beneficiary is the owner of any promissory note  
36 or other obligation secured by the deed of trust. A declaration by  
37 the beneficiary made under the penalty of perjury stating that the  
38 beneficiary is the actual holder of the promissory note or other  
39 obligation secured by the deed of trust shall be sufficient proof as  
40 required under this subsection.

1 (b) Unless the trustee has violated his or her duty under RCW  
2 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
3 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

29 (f) A statement showing the total of (d) and (e) of this  
30 subsection, designated clearly and conspicuously as the amount  
31 necessary to reinstate the note and deed of trust before the  
32 recording of the notice of sale;

33 (g) A statement that failure to cure the alleged default within  
34 thirty days of the date of mailing of the notice, or if personally  
35 served, within thirty days of the date of personal service thereof,  
36 may lead to recordation, transmittal, and publication of a notice of  
37 sale, and that the property described in (a) of this subsection may  
38 be sold at public auction at a date no less than one hundred twenty  
39 days in the future, or no less than one hundred fifty days in the  
40 future if the borrower received a letter under RCW 61.24.031;



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

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

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

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

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

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

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

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

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

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

30 **SEEKING ASSISTANCE**

31 Housing counselors and legal assistance may be available at little or  
32 no cost to you. If you would like assistance in determining your  
33 rights and opportunities to keep your house, you may contact the  
34 following:

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

37 Telephone: . . . . . Web site: . . . . .

1 The United States Department of Housing and Urban Development  
2 Telephone: . . . . . Web site: . . . . .  
3 The statewide civil legal aid hotline for assistance and referrals to  
4 other housing counselors and attorneys  
5 Telephone: . . . . . Web site: . . . . ."

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

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

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

--- END ---