
SUBSTITUTE SENATE BILL 6484

State of Washington

65th Legislature

2018 Regular Session

By Senate Financial Institutions & Insurance (originally sponsored by Senator Mullet)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to nuisance abatement and foreclosures; amending
2 RCW 35.21.955, 61.24.030, 61.24.173, 61.24.040, and 61.24.163; adding
3 a new section to chapter 35.21 RCW; adding a new section to chapter
4 61.24 RCW; and adding a new section to chapter 61.12 RCW.

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

6 **PART I. NUISANCE ABATEMENT**

7 **Sec. 1.** RCW 35.21.955 and 2016 c 100 s 1 are each amended to
8 read as follows:

9 (1) A city or town that exercises its authority under chapter
10 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410, or other applicable
11 law to abate a nuisance which threatens health or safety must provide
12 prior notice to the property owner and any mortgage servicer
13 identifiable through the notice of default or notice of trustee's
14 sale that abatement is pending and a special assessment may be levied
15 on the property for the expense of abatement, excluding any
16 associated fines or penalties. Such special assessment authority is
17 supplemental to any existing authority of a city or town to levy an
18 assessment or obtain a lien for costs of abatement, unless the city
19 or town has utilized the special assessment authority provided for in
20 this act. The notice must be sent by regular mail.

1 (2) A city or town that exercises its authority under chapter
2 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410, or other applicable
3 law to declare a nuisance, abate a nuisance, or impose fines or costs
4 upon persons who create, continue, or maintain a nuisance may levy a
5 special assessment on the land or premises where the nuisance is
6 situated to reimburse the city or town for the expense of abatement,
7 excluding any associated fines or penalties. A city or town must,
8 before levying a special assessment, notify the property owner and
9 any identifiable mortgage holder that a special assessment will be
10 levied on the property and provide the estimated amount of the
11 special assessment. The notice must be sent by regular mail.

12 (3)(a) The special assessment authorized by this section
13 constitutes a lien against the property, and is binding upon
14 successors in title only from the date the lien is recorded in the
15 county where the affected real property is located. Up to ~~((two))~~ ten
16 thousand dollars of the recorded lien is of equal rank with state,
17 county, and municipal taxes and shall be assessed against the real
18 property upon which cost was incurred unless such amount is
19 previously paid. After January 1, 2019, cities and towns may annually
20 adjust the ten thousand dollar limit in this section for inflation
21 for special assessments imposed in that calendar year.

22 (b) As used in this section, "inflation" shall be based on the
23 consumer price index, using the official current base, compiled by
24 the bureau of labor statistics, United States department of labor for
25 the state of Washington. If the bureau of labor statistics develops
26 more than one consumer price index for areas within the state, the
27 index covering the city or town issuing the special assessment shall
28 be used.

29 (4) A city or town levying a special assessment under this
30 section may contract with the county treasurer to collect the special
31 assessment in accordance with RCW 84.56.035 and 84.56.020. Upon
32 certification to him or her by the municipality, the county treasurer
33 shall enter the amount of such assessment upon the tax rolls against
34 the property for the current year and the same shall become part of
35 the general taxes for that year to be collected at the same time and
36 with interest at such rates and in such manner as provided for in RCW
37 84.56.020 for delinquent taxes, and when collected to be deposited to
38 the credit of the general fund of the municipality.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21
2 RCW to read as follows:

3 (1)(a) For properties where a city or town has determined there
4 is a nuisance under chapter 7.48 RCW, RCW 35.22.280, 35.23.440, or
5 35.27.410 and a notice of default has been issued or a notice of
6 trustee sale has been recorded with the county auditor, the city or
7 town may, in addition to notifying any property owner, notify any
8 mortgage servicer identifiable through the notice of default or the
9 notice of trustee's sale of the nuisance and recover costs for
10 nuisance abatement as outlined in this section.

11 (b) The notice to the property owner and any mortgage servicer
12 identifiable through the notice of default or the notice of trustee's
13 sale shall include an affidavit or declaration describing the
14 nuisance conditions, and, if meeting the criterion in (c) of this
15 subsection, a determination that the city or town official believes
16 the property to be abandoned. The notice shall be delivered by
17 certified mail.

18 (c) A city or town official signing the affidavit or declaration
19 under penalty of perjury may only indicate that the property is
20 abandoned if at least three of the following indications of
21 abandonment are visible from the exterior and supported with time and
22 date stamped photographs memorializing the following conditions:

23 (i) The absence of furnishings and personal items consistent with
24 residential habitation;

25 (ii) The gas, electric, or water utility services have been
26 disconnected;

27 (iii) Statements by neighbors, delivery agents, or government
28 employees that the property is abandoned;

29 (iv) Multiple windows on the property are boarded up, closed off,
30 or are smashed through, broken, or unhinged, or multiple window panes
31 are broken and unrepaired;

32 (v) Doors on the residence are smashed through, broken off,
33 unhinged, or continuously unlocked;

34 (vi) The property has been stripped of copper or other materials
35 or interior fixtures have been removed;

36 (vii) Law enforcement officials have received at least one report
37 of trespassing or vandalism or other illegal activity occurring on
38 the property within the preceding six months;

1 (viii) The property has been declared unfit for occupancy and
2 ordered to remain unoccupied pursuant to an order issued by a
3 municipal or county authority or a court of competent jurisdiction;

4 (ix) Construction was initiated on the property and was
5 discontinued before completion leaving a building unsuitable for
6 occupancy, and construction has not taken place for at least six
7 months;

8 (x) Newspapers, circulars, flyers, or mail has accumulated on the
9 property or the United States postal service has discontinued
10 delivery to the property;

11 (xi) Rubbish, trash, debris, neglected vegetation, or natural
12 overgrowth has accumulated on the property;

13 (xii) Hazardous, noxious, or unhealthy substances or materials
14 have accumulated on the property;

15 (xiii) Other credible evidence exists indicating the property
16 owner's intent to abandon the property.

17 (2)(a) The mortgage servicer or its designee may perform ongoing
18 inspections to ensure code enforcement compliance upon notice from a
19 city or town that:

20 (i) A property that constitutes a nuisance under chapter 7.48
21 RCW, RCW 35.22.280, 35.23.440, or 35.27.410;

22 (ii) The city has reason to believe the property is abandoned
23 under subsection (1) of this section; and

24 (iii) A notice of default has been issued by the mortgage
25 servicer, or a notice of trustee's sale has been recorded.

26 (b) The mortgage servicer, or its designee, within the time
27 limits provided for in the notice from the city, may enter the
28 property for the purpose of abating the identified nuisance,
29 preserving property, or preventing waste and may take the following
30 steps to secure the property including, but not limited to:

31 (i) Installing missing locks on exterior doors. Working locks may
32 not be removed or replaced, unless all doors are secured and there is
33 no means of entry, and in such cases only one working lock may be
34 removed and replaced;

35 (ii) Replacing or boarding broken or missing windows;

36 (iii) Winterizing, including draining pipes and disconnecting or
37 turning on utilities;

38 (iv) Eliminating building code or other code violations;

39 (v) Securing exterior pools and spas;

1 (vi) Perform routine yard maintenance on the exterior of the
2 home; and

3 (vii) Perform pest and insect control services.

4 (c) The mortgage servicer or its designee must date and time-
5 stamp photographs of entry and document personal items inside the
6 dwelling and manner of entry.

7 (d) The mortgage servicer or its designee may not remove personal
8 items from the property, unless the items are hazardous or
9 perishable, and must take inventory of items removed.

10 (e) Record of entry into property described in this section must
11 be kept by the mortgage servicer or its designee for four years from
12 date of entry.

13 (f) If a mortgage servicer is contacted by the borrower and
14 notified that the property is not abandoned, the mortgage servicer
15 shall no longer enter the property regardless of whether the home
16 complies with local code enforcement standards and notify the city or
17 town.

18 (3) Each time the mortgage servicer enters the property, the
19 mortgage servicer or its designee must ensure a notice is posted on
20 the property's front door that contains:

21 (a) A statement about the right of the property owner or lawful
22 occupant to possession of the property until foreclosure is complete
23 pursuant to RCW 7.28.230;

24 (b) A statement about the right of the property owner to have any
25 locks installed by the mortgage servicer removed within twenty-four
26 hours and replaced with new locks accessible by only the property
27 owner;

28 (c) A local phone number that the property owner or lawful
29 occupant can call twenty-four hours a day to gain immediate entry
30 into the property;

31 (d) The phone number of the state foreclosure hotline approved by
32 the housing finance commission, the phone number for civil legal aid,
33 and a statement that the property owner may have the right to
34 participate in foreclosure mediation pursuant to RCW 61.24.163.

35 (4) If a mortgage servicer is notified according to subsection
36 (2) of this section and does not abate the nuisance within the time
37 limits provided by the city or town, a city or town may exercise its
38 authority under chapter 7.48 RCW, RCW 35.22.280, 35.23.440,
39 or 35.27.410, or other applicable law to declare a nuisance, abate a
40 nuisance, or impose fines or costs upon persons who create, continue,

1 or maintain a nuisance and may levy a special assessment on the land
2 or premises where the nuisance is situated to reimburse the city or
3 town for the expense of abatement, excluding any associated penalties
4 and fines. The special assessment authorized by this section
5 constitutes a lien against the property, and is binding upon
6 successors in title only from the date the lien is recorded in the
7 county where the affected real property is located. The special
8 assessment shall be of equal rank with state, county, and municipal
9 taxes and shall be assessed against the real property upon which cost
10 was incurred unless such amount is previously paid.

11 (5) Nothing in this section shall impact the authority of
12 associations provided for in chapters 64.32 RCW, 64.34 RCW, or 64.38
13 RCW to perform property preservation and maintenance activities.

14 **PART II. OWNER/HOLDER, DECEASED BORROWER, CHANGES TO NOTICE OF**
15 **DEFAULT**

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

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

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

20 (2) That the deed of trust contains a statement that the real
21 property conveyed is not used principally for agricultural purposes;
22 provided, if the statement is false on the date the deed of trust was
23 granted or amended to include that statement, and false on the date
24 of the trustee's sale, then the deed of trust must be foreclosed
25 judicially. Real property is used for agricultural purposes if it is
26 used in an operation that produces crops, livestock, or aquatic
27 goods;

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

31 (4) That no action commenced by the beneficiary of the deed of
32 trust is now pending to seek satisfaction of an obligation secured by
33 the deed of trust in any court by reason of the grantor's default on
34 the obligation secured: PROVIDED, That (a) the seeking of the
35 appointment of a receiver, or the filing of a civil case to obtain
36 court approval to access, secure, maintain, and preserve property
37 from waste or nuisance, shall not constitute an action for purposes
38 of this chapter; and (b) if a receiver is appointed, the grantor

1 shall be entitled to any rents or profits derived from property
2 subject to a homestead as defined in RCW 6.13.010. If the deed of
3 trust was granted to secure a commercial loan, this subsection shall
4 not apply to actions brought to enforce any other lien or security
5 interest granted to secure the obligation secured by the deed of
6 trust being foreclosed;

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

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

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

23 (b) Unless the trustee has violated his or her duty under RCW
24 61.24.010(4), the trustee is entitled to rely on the beneficiary's
25 declaration as evidence of proof required under this subsection.

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

28 (8) That at least thirty days before notice of sale shall be
29 recorded, transmitted or served, written notice of default and the
30 beneficiary declaration specified in subsection (7)(a) of this
31 section shall be transmitted by the beneficiary or trustee to the
32 borrower and grantor at their last known addresses by both first-
33 class and either registered or certified mail, return receipt
34 requested, and the beneficiary or trustee shall cause to be posted in
35 a conspicuous place on the premises, a copy of the notice, or
36 personally served on the borrower and grantor. This notice shall
37 contain the following information:

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

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

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

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

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

13 (f) A statement showing the total of (d) and (e) of this
14 subsection, designated clearly and conspicuously as the amount
15 necessary to reinstate the note and deed of trust before the
16 recording of the notice of sale;

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

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

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

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

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

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

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

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

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

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

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

15 **SEEKING ASSISTANCE**

16 Housing counselors and legal assistance may be available at little or
17 no cost to you. If you would like assistance in determining your
18 rights and opportunities to keep your house, you may contact the
19 following:

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

22 Telephone: Web site:

23 The United States Department of Housing and Urban Development

24 Telephone: Web site:

25 The statewide civil legal aid hotline for assistance and referrals to
26 other housing counselors and attorneys

27 Telephone: Web site:"

28 The beneficiary or trustee shall obtain the toll-free numbers and
29 web site information from the department for inclusion in the notice;
30 ((and))

31 (1) In the event the property secured by the deed of trust is
32 residential real property, the name and address of the ((owner))
33 holder of any promissory note((s or other obligations)) secured by
34 the deed of trust and the name, address, and telephone number of a
35 party acting as a servicer of the obligations secured by the deed of
36 trust; and

1 (m) For notices issued after June 30, 2018, on the top of the
2 first page of the notice:

3 (i) The current beneficiary of the deed of trust;

4 (ii) The current mortgage servicer for the deed of trust; and

5 (iii) The current trustee for the deed of trust;

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

10 (10) That, in the case of a deceased borrower or grantor, the
11 notice required under subsection (8) of this section must be sent to
12 any known spouse, child, or parent of the borrower or grantor, at any
13 address provided to the trustee or mortgage servicer, or discovered
14 within the business records obtained by the trustee, and to the
15 property addressed to the heirs and devisees of the borrower.

16 (a) If the name or address of any spouse, child, or parent of
17 such deceased borrower or grantor cannot be ascertained with use of
18 reasonable diligence, the trustee must execute and record with the
19 notice of sale a declaration showing the same.

20 (b) Reasonable diligence for the purposes of this section means
21 the trustee shall search public records and information for any
22 obituary, will, death certificate, or case in probate within the
23 county where the property is located for the borrower and grantor;

24 (11) Upon written notice identifying the property address and the
25 name of the borrower, to the servicer or trustee by someone claiming
26 to be a successor in interest to the borrower's or grantor's property
27 rights but who is not a party to the loan or promissory note, a
28 trustee shall not record a notice of sale pursuant to RCW 61.24.040
29 until the trustee or mortgage servicer completes the following:

30 (a) Acknowledges the notice in writing and requests reasonable
31 documentation of the death of the borrower or grantor from the
32 claimant including, but not limited to, a death certificate or other
33 written evidence of the death of the borrower or grantor. The
34 claimant shall be allowed thirty days from the date of this request
35 to present this documentation. If the trustee or mortgage servicer
36 has already obtained sufficient proof of the borrower's death, it may
37 proceed by acknowledging the claimant's notice in writing and issuing
38 a request under (b) of this subsection.

39 (b) If the mortgage servicer or trustee obtains or receives
40 reasonable documentation of the death of the borrower or grantor from

1 the claimant, or otherwise independently confirms the death of the
2 borrower or grantor, then the servicer must request in writing
3 documentation from the claimant demonstrating the ownership interest
4 of the claimant in the real property. A claimant shall have sixty
5 days from the date of the request to present this documentation;

6 (12) Upon receipt by the trustee or the mortgage servicer of the
7 documentation establishing claimant's ownership interest in the real
8 property, that claimant shall be deemed a "successor in interest" for
9 the purposes of this section.

10 (a) There may be more than one successor in interest to the
11 borrower's property rights. The trustee and mortgage servicer shall
12 apply the provisions of this section to each successor in interest.
13 In the case of multiple successors in interest, where one or more do
14 not wish to assume the loan as coborrowers or coapplicants, a
15 mortgage servicer may require any nonapplicant successor in interest
16 to consent in writing to the application for loan assumption.

17 (b) Being a successor in interest under this section does not
18 impose an affirmative duty on a mortgage servicer or alter any
19 obligation the mortgage servicer has to provide a loan modification
20 to the successor in interest. If a successor in interest assumes the
21 loan, he or she may be required to otherwise qualify for available
22 foreclosure prevention alternatives offered by the mortgage servicer.

23 (c) Within ten days of a claimant being deemed a successor in
24 interest pursuant to this subsection, a mortgage servicer shall
25 provide the successor(s) in interest with information in writing
26 about the loan. This information shall include, at a minimum, loan
27 balance, interest rate and interest reset dates and amounts, balloon
28 payments if any, prepayment penalties if any, the basis for the
29 default, the monthly payment amount, reinstatement amounts or
30 conditions, payoff amounts, and information on how and where payments
31 should be made. The mortgage servicer shall also provide application
32 materials and information or a description of the process necessary
33 to request a loan assumption and/or modification; and

34 (13) Nothing in this section shall prejudice the right of the
35 mortgage servicer or beneficiary from discontinuing any foreclosure
36 action initiated under the deed of trust act in favor of other
37 allowed methods for pursuit of foreclosure of the security interest.

38 NEW SECTION. Sec. 4. A new section is added to chapter 61.24
39 RCW to read as follows:

1 (1) If a trustee under a deed of trust is named as a defendant in
2 an action or proceeding in which that deed of trust is the subject,
3 and if there are no substantive allegations that seek damages from
4 the trustee and/or seek to enjoin the foreclosure based on any
5 alleged unlawful actions or omissions by the trustee,
6 including causes of action where the trustee is a codefendant alleged
7 to be jointly or derivatively liable, a declaration shall be served
8 not less than thirty-five days after service of the summons and
9 complaint on the trustee. The declaration must be served on the
10 parties in the manner set forth in Washington court rule 5.

11 (2) The declaration of nonmonetary status must set forth the
12 following: The status of the trustee as trustee under the deed of
13 trust that is the subject of the action or proceeding, that the
14 complaint or pleading does not assert any substantive allegations
15 that seek damages from the trustee and/or seek to enjoin the
16 foreclosure based on any alleged unlawful actions or omissions by the
17 trustee that it has been named as a defendant in the proceeding
18 solely in its capacity as a trustee under the deed of trust and that
19 the trustee agrees to be bound by whatever order or judgment is
20 issued by the court regarding the subject deed of trust.

21 (3) The parties who have appeared in the action or proceeding
22 have thirty days from the service of the declaration by the trustee
23 in which to object to the nonmonetary judgment status of the trustee.
24 Any objection must set forth the allegations against the trustee, any
25 general facts which gave rise to the allegations, and must be served
26 on the trustee. An objection that sets forth allegations against the
27 trustee and general facts will be sufficient to defeat the
28 declaration of nonmonetary status.

29 (4) If an objection is not served within the thirty-day objection
30 period, the trustee is not required to participate any further in the
31 action or proceeding, is not subject to any monetary awards, damages,
32 attorneys' fees, or costs, is required to respond to any discovery
33 requests as a nonparty; and is bound by any court order relating to
34 the subject deed of trust that is the subject of the action or
35 proceeding. The trustee's nonmonetary status is not established until
36 the thirty-day objection period has passed.

37 (5) If a timely objection to the declaration of nonmonetary
38 status is made, the trustee must thereafter be required to
39 participate in the action or proceeding.

1 (6) In the event parties elect not to or fail to timely object to
2 the declaration of nonmonetary status, but later determine through
3 discovery or other means that the trustee should participate in the
4 action because of the performance of its duties as a trustee, the
5 parties may file and serve on all parties and the trustee a motion
6 pursuant to Washington court rule 15 that specifies the factual basis
7 for the demand. Upon the court's granting of the motion, the trustee
8 must thereafter be required to participate in the action or
9 proceeding, and the court must provide sufficient time before trial
10 for the trustee to be able to respond to the complaint, to conduct
11 discovery, and to bring other pretrial motions in accordance with the
12 Washington superior court civil rules.

13 (7) Upon the filing of the declaration of nonmonetary status, the
14 time within which the trustee is required to file an answer or other
15 responsive pleading is tolled for the period of time within which the
16 opposing parties may respond to the declaration. Upon the timely
17 service of an objection to the declaration of nonmonetary status, the
18 trustee has thirty days from the date of service within which to file
19 an answer or other responsive pleading to the complaint or cross-
20 complaint.

21 (8) For purposes of this section, "trustee" includes any agent or
22 employee of the trustee who performs some or all of the duties of a
23 trustee under this chapter, and includes substitute trustees and
24 agents of the beneficiary or trustee.

25 **PART IV. NOTICE OF JUDICIAL FORECLOSURE**

26 NEW SECTION. **Sec. 5.** A new section is added to chapter 61.12
27 RCW to read as follows:

28 (1) Before any mortgagee of residential real property commences
29 any legal action under RCW 61.12.040 to foreclose any reverse
30 residential mortgage, such person shall give the mortgagor notice of
31 such intention at least thirty-three days in advance. For the
32 purposes of this section "residential real property" means property
33 consisting solely of a single-family residence, a residential
34 condominium unit, or a residential cooperative unit.

35 (2) Notice of intention to take action as specified in subsection
36 (1) of this section shall be in writing and sent to the residential
37 mortgagor or, in case of a deceased mortgagor, to any known surviving
38 spouse, by first-class and either certified or registered mail,

1 return receipt requested, at his or her last known address and, if
2 different, at the residence which is the subject of the residential
3 mortgage.

4 (3) The written notice shall be in English and Spanish, in a form
5 to be published by the department of commerce, and shall clearly and
6 conspicuously state:

7 (a) The particular obligation or real estate security interest;

8 (b) The nature of the default claimed or the reason for
9 acceleration of the mortgage;

10 (c) Except in cases where the acceleration is due to the death of
11 the mortgagor, the right, if any, of the mortgagor to cure the
12 default and exactly what performance, including what sum of money, if
13 any, must be tendered to cure the default;

14 (d) Except in cases where the acceleration is due to the death of
15 the borrower, the applicable time within which the mortgagor must
16 cure the default;

17 (e) A statement printed in no less than twelve-point font and
18 bolded that reads:

19 **"If you do nothing to cure the default, if any, we intend to start a**
20 **lawsuit to foreclose your mortgaged property. If the mortgage is**
21 **foreclosed, your mortgaged property will be sold to pay off the**
22 **mortgage debt. You should contact a housing counselor or attorney as**
23 **soon as possible."**; and

24 (f) The toll-free telephone number to find a department-approved
25 home equity conversion mortgage counseling agency from the United
26 States department of housing and urban development, the toll-free
27 numbers for the statewide foreclosure hotline recommended by the
28 housing finance commission, and the statewide civil legal aid hotline
29 for assistance and referrals.

30 (4) It is an unfair or deceptive act in trade or commerce and an
31 unfair method of competition in violation of the consumer protection
32 act, chapter 19.86 RCW, affecting the public interest, for any person
33 or entity to:

34 (a) Fail to send the notice as required in this section at least
35 thirty-three days before accelerating the maturity of any reverse
36 residential mortgage obligation or commencing any legal action under
37 RCW 61.12.040;

1 (b) Fail to state the nature of the default, the correct amount
2 or action that is required to cure the default, if any, or the time
3 and manner in which to cure if cure is possible;

4 (c) To send the notice required in this section without the
5 advisory language and information about foreclosure assistance.

6 **PART V. SERVICES AND PROCESSES AVAILABLE**

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

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

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

17 (b) Remit the amount required under subsection (2) of this
18 section; and

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

23 (2) For each notice of trustee's sale recorded on residential
24 real property, the beneficiary on whose behalf the notice of
25 trustee's sale has been recorded shall remit (~~((two))~~) three hundred
26 (~~((fifty))~~) twenty-five dollars to the department to be deposited, as
27 provided under RCW 61.24.172, into the foreclosure fairness account.
28 The (~~((two))~~) three hundred (~~((fifty))~~) twenty-five dollar payment is
29 required for every recorded notice of trustee's sale for
30 noncommercial loans on residential real property, but does not apply
31 to the recording of an amended notice of trustee's sale. (~~((If the~~
32 ~~beneficiary previously made a payment under RCW 61.24.174, as it~~
33 ~~existed prior to July 1, 2016, for a notice of default supporting the~~
34 ~~recorded notice of trustee's sale, no payment is required under this~~
35 ~~section.))~~ Beginning on or before January 1, 2020, the department
36 shall from time to time adjust the amount of the fee, not to exceed
37 three hundred twenty-five dollars, at a sufficient level to defray

1 the costs of the program. The beneficiary shall remit the total
2 amount required in a lump sum each quarter.

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

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

9 ~~((4))~~ (5) This section does not apply to any beneficiary or
10 loan servicer that is a federally insured depository institution, as
11 defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under
12 penalty of perjury that fewer than fifty notices of trustee's sale
13 were recorded on its behalf in the preceding year.

14 ~~((5))~~ (6) This section does not apply to association
15 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

16 ~~((6))~~ (7) For purposes of this section, "residential real
17 property" includes residential real property with up to four dwelling
18 units, whether or not the property or any part thereof is owner-
19 occupied.

20 **Sec. 7.** RCW 61.24.040 and 2012 c 185 s 10 are each amended to
21 read as follows:

22 A deed of trust foreclosed under this chapter shall be foreclosed
23 as follows:

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

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

30 (b) To the extent the trustee elects to foreclose its lien or
31 interest, or the beneficiary elects to preserve its right to seek a
32 deficiency judgment against a borrower or grantor under RCW
33 61.24.100(3)(a), and if their addresses are stated in a recorded
34 instrument evidencing their interest, lien, or claim of lien, or an
35 amendment thereto, or are otherwise known to the trustee, cause a
36 copy of the notice of sale described in ~~((f))~~ subsection (2) of
37 this ~~(subsection)~~ section to be transmitted by both first-class and
38 either certified or registered mail, return receipt requested, to the

1 following persons or their legal representatives, if any, at such
2 address:

3 (i)(A) The borrower and grantor;

4 (B) In the case where the borrower or grantor is deceased, to any
5 successors in interest. If no successor in interest has been
6 established, then to any spouse, child, or parent of the borrower or
7 grantor, at the addresses discovered by the trustee pursuant to RCW
8 61.24.030(10);

9 (ii) The beneficiary of any deed of trust or mortgagee of any
10 mortgage, or any person who has a lien or claim of lien against the
11 property, that was recorded subsequent to the recordation of the deed
12 of trust being foreclosed and before the recordation of the notice of
13 sale;

14 (iii) The vendee in any real estate contract, the lessee in any
15 lease, or the holder of any conveyances of any interest or estate in
16 any portion or all of the property described in such notice, if that
17 contract, lease, or conveyance of such interest or estate, or a
18 memorandum or other notice thereof, was recorded after the
19 recordation of the deed of trust being foreclosed and before the
20 recordation of the notice of sale;

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

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

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

33 (c) Cause a copy of the notice of sale described in ~~((+f+))~~
34 subsection (2) of this ~~((subsection))~~ section to be transmitted by
35 both first-class and either certified or registered mail, return
36 receipt requested, to the plaintiff or the plaintiff's attorney of
37 record, in any court action to foreclose a lien or other encumbrance
38 on all or any part of the property, provided a court action is
39 pending and a lis pendens in connection therewith is recorded in the

1 office of the auditor of any county in which all or part of the
2 property is located on the date the notice is recorded;

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

9 (e) Cause a copy of the notice of sale described in ~~((f))~~
10 subsection (2) of this ~~((subsection))~~ section to be posted in a
11 conspicuous place on the property, or in lieu of posting, cause a
12 copy of said notice to be served upon any occupant of the
13 property~~((+))~~.

14 ~~((f))~~ (2)(a) The notice required in this subsection must
15 include a cover sheet on which the name of the beneficiary is clearly
16 indicated and whether the loan is commercial or noncommercial. In
17 addition to any other indexing requirements, the auditor shall index
18 the notice of trustee's sale by beneficiary name;

19 (b) If foreclosing on a commercial loan under RCW 61.24.173, the
20 title of the document must be "Notice of Trustee's Sale of Commercial
21 Loan(s)";

22 (c) In addition to all other indexing requirements, the notice
23 required in subsection (1) of this section must clearly indicate on
24 the first page the following information, which the auditor will
25 index:

26 (i) The county or counties in which the deed of trust is
27 recorded;

28 (ii) The document number or numbers given to the deed of trust
29 upon recording;

30 (iii) The parcel number(s);

31 (iv) The grantor;

32 (v) The current beneficiary;

33 (vi) The current trustee; and

34 (vii) The current loan servicer;

35 (d) The notice ~~((shall))~~ must be in substantially the following

36 form:

37 NOTICE OF TRUSTEE'S SALE

38 Grantor:

39 Beneficiary:

1 Trustee:
2 Loan Servicer:
3 Reference Number of Deed of Trust:
4 Parcel Number(s):

5 I.

6 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on
7 the day of, . . ., at the hour of
8 o'clock M. at
9 [street
10 address and location if inside a building] in the City
11 of, State of Washington, sell at public auction to the
12 highest and best bidder, payable at the time of sale, the following
13 described real property, situated in the County(ies) of,
14 State of Washington, to-wit:

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

18 which is subject to that certain Deed of Trust
19 dated, . . ., recorded, . . ., under
20 Auditor's File No., records of County,
21 Washington, from, as Grantor, to,
22 as Trustee, to secure an obligation in favor of, as
23 Beneficiary, the beneficial interest in which was assigned
24 by, under an Assignment recorded under Auditor's
25 File No. [Include recording information for all counties if
26 the Deed of Trust is recorded in more than one county.]

27 II.

28 No action commenced by the Beneficiary of the Deed of Trust is now
29 pending to seek satisfaction of the obligation in any Court by reason
30 of the Borrower's or Grantor's default on the obligation secured by
31 the Deed of Trust.

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

35 III.

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

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

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

5 IV.

6 The sum owing on the obligation secured by the Deed of Trust is:
7 Principal \$, together with interest as provided in the
8 note or other instrument secured from the day
9 of, . . ., and such other costs and fees as are due under
10 the note or other instrument secured, and as are provided by statute.

11 V.

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

30 VI.

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

- 33
- 34
- 35

1 by both first-class and certified mail on the day
2 of, . . ., proof of which is in the possession of the
3 Trustee; and the Borrower and Grantor were personally served on
4 the day of, . . ., with said written notice of
5 default or the written notice of default was posted in a conspicuous
6 place on the real property described in paragraph I above, and the
7 Trustee has possession of proof of such service or posting.

8 VII.

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

12 VIII.

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

16 IX.

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

22 [Add Part X to this notice if applicable under RCW 61.24.040(~~(+9)~~)
23 (11)]

24

25 , Trustee

26 }
27 }
28 }

31 Address

32

33 } Phone

34 [Acknowledgment]

1 Deed of Trust and owner of the obligation secured thereby. Unless the
 2 default(s) is/are cured, your property will be sold at auction on
 3 the day of,

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

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

		(11 days before the date set for sale)
17	Delinquent payments	
18	from,	
19	. . . , in the	
20	amount of	
21	\$. . . /mo.:	\$ \$
22	Late charges in	
23	the total	
24	amount of:	\$ \$
25		Estimated
26		Amounts
27	Attorneys' fees:	\$ \$
28	Trustee's fee:	\$ \$
29	Trustee's expenses:	
30	(Itemization)	
31	Title report	\$ \$
32	Recording fees	\$ \$
33	Service/Posting	
34	of Notices	\$ \$
35	Postage/Copying	
36	expense	\$ \$

1	Publication	\$....	\$....
2	Telephone		\$....
3	charges	\$....	
4	Inspection fees	\$....	\$....
5	\$....	\$....
6	\$....	\$....
7	TOTALS	\$....	\$....

8 To pay off the entire obligation secured by your Deed of Trust as
9 of the day of you must pay a total of
10 \$. . . . in principal, \$. . . . in interest, plus other costs and
11 advances estimated to date in the amount of \$. . . . From and
12 after the date of this notice you must submit a written request to
13 the Trustee to obtain the total amount to pay off the entire
14 obligation secured by your Deed of Trust as of the payoff date.

15 As to the defaults which do not involve payment of money to the
16 Beneficiary of your Deed of Trust, you must cure each such default.
17 Listed below are the defaults which do not involve payment of money
18 to the Beneficiary of your Deed of Trust. Opposite each such listed
19 default is a brief description of the action necessary to cure the
20 default and a description of the documentation necessary to show that
21 the default has been cured.

22	Default	Description of Action Required to Cure and
23		Documentation Necessary to Show Cure
24
25	
26	
27
28	
29	

30 You may reinstate your Deed of Trust and the obligation secured
31 thereby at any time up to and including the day
32 of , . . . [11 days before the sale date], by paying the
33 amount set forth or estimated above and by curing any other defaults
34 described above. Of course, as time passes other payments may become
35 due, and any further payments coming due and any additional late
36 charges must be added to your reinstating payment. Any new defaults
37 not involving payment of money that occur after the date of this

1 notice must also be cured in order to effect reinstatement. In
2 addition, because some of the charges can only be estimated at this
3 time, and because the amount necessary to reinstate or to pay off the
4 entire indebtedness may include presently unknown expenditures
5 required to preserve the property or to comply with state or local
6 law, it will be necessary for you to contact the Trustee before the
7 time you tender reinstatement or the payoff amount so that you may be
8 advised of the exact amount you will be required to pay. Tender of
9 payment or performance must be made to:, whose address
10 is, telephone () AFTER THE DAY
11 OF,, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY
12 PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER
13 DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written
14 request for current payoff or reinstatement amounts within ten days
15 of receipt of your written request. In such a case, you will only be
16 able to stop the sale by paying, before the sale, the total principal
17 balance (\$) plus accrued interest, costs and advances, if
18 any, made pursuant to the terms of the documents and by curing the
19 other defaults as outlined above.

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

29 The court may grant a restraining order or injunction to restrain
30 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to
31 the trustee of the time when, place where, and the judge before whom
32 the application for the restraining order or injunction is to be
33 made. This notice shall include copies of all pleadings and related
34 documents to be given to the judge. Notice and other process may be
35 served on the trustee at:

36 NAME:

37 ADDRESS:

38

39 TELEPHONE NUMBER:

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

6 ~~((3))~~ (5) In addition, the trustee shall cause a copy of the
7 notice of sale described in subsection ~~((1)(f))~~ (2)(d) of this
8 section (excluding the acknowledgment) to be published in a legal
9 newspaper in each county in which the property or any part thereof is
10 situated, once on or between the thirty-fifth and twenty-eighth day
11 before the date of sale, and once on or between the fourteenth and
12 seventh day before the date of sale;

13 ~~((4))~~ (6) In the case where no successor in interest has been
14 established, and neither the beneficiary nor the trustee are able to
15 ascertain the name and address of any spouse, child, or parent of the
16 borrower or grantor in the manner described in RCW 61.24.030(10),
17 then the trustee may, in addition to mailing notice to the property
18 addressed to the unknown heirs and devisees of the grantor, serve the
19 notice of sale by publication in a newspaper of general circulation
20 in the county where the property is located once per week for six
21 consecutive weeks. Upon this service by publication, to be completed
22 not less than thirty days prior to the date the sale is conducted,
23 all unknown heirs shall be deemed served with the notice of sale;

24 (7) If a servicer or trustee receives notification by someone
25 claiming to be a successor in interest to the borrower, as under RCW
26 61.24.030(11), after the recording of the notice of sale, the trustee
27 or servicer must immediately request written documentation
28 demonstrating the ownership interest. Only If the servicer or trustee
29 receives documentation confirming someone as successor in interest
30 more than forty-five days before the scheduled sale must the servicer
31 then provide the information in RCW 61.24.030(12)(c) to the claimant
32 not less than twenty days prior to the sale;

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

37 ~~((5))~~ (9) The place of sale shall be at any designated public
38 place within the county where the property is located and if the
39 property is in more than one county, the sale may be in any of the

1 counties where the property is located. The sale shall be on Friday,
2 or if Friday is a legal holiday on the following Monday, and during
3 the hours set by statute for the conduct of sales of real estate at
4 execution;

5 ~~((+6))~~ (10) The trustee has no obligation to, but may, for any
6 cause the trustee deems advantageous, continue the sale for a period
7 or periods not exceeding a total of one hundred twenty days by (a) a
8 public proclamation at the time and place fixed for sale in the
9 notice of sale and if the continuance is beyond the date of sale, by
10 giving notice of the new time and place of the sale by both first
11 class and either certified or registered mail, return receipt
12 requested, to the persons specified in subsection (1)(b)(i) and (ii)
13 of this section to be deposited in the mail (i) not less than four
14 days before the new date fixed for the sale if the sale is continued
15 for up to seven days; or (ii) not more than three days after the date
16 of the continuance by oral proclamation if the sale is continued for
17 more than seven days, or, alternatively, (b) by giving notice of the
18 time and place of the postponed sale in the manner and to the persons
19 specified in subsection (1)(b), (c), (d), and (e) of this section and
20 publishing a copy of such notice once in the newspaper(s) described
21 in subsection ~~((+3))~~ (5) of this section, more than seven days
22 before the date fixed for sale in the notice of sale. No other notice
23 of the postponed sale need be given;

24 ~~((+7))~~ (11) The purchaser shall forthwith pay the price bid and
25 on payment the trustee shall execute to the purchaser its deed; the
26 deed shall recite the facts showing that the sale was conducted in
27 compliance with all of the requirements of this chapter and of the
28 deed of trust, which recital shall be prima facie evidence of such
29 compliance and conclusive evidence thereof in favor of bona fide
30 purchasers and encumbrancers for value, except that these recitals
31 shall not affect the lien or interest of any person entitled to
32 notice under subsection (1) of this section, if the trustee fails to
33 give the required notice to such person. In such case, the lien or
34 interest of such omitted person shall not be affected by the sale and
35 such omitted person shall be treated as if such person was the holder
36 of the same lien or interest and was omitted as a party defendant in
37 a judicial foreclosure proceeding;

38 ~~((+8))~~ (12) The sale as authorized under this chapter shall not
39 take place less than one hundred ninety days from the date of default
40 in any of the obligations secured;

1 (~~(9)~~) (13) If the trustee elects to foreclose the interest of
2 any occupant or tenant of property comprised solely of a single-
3 family residence, or a condominium, cooperative, or other dwelling
4 unit in a multiplex or other building containing fewer than five
5 residential units, the following notice shall be included as Part X
6 of the Notice of Trustee's Sale:

7 X. NOTICE TO OCCUPANTS OR TENANTS

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

17 (~~(10)~~) (14) Only one copy of all notices required by this
18 chapter need be given to a person who is both the borrower and the
19 grantor. All notices required by this chapter that are given to a
20 general partnership are deemed given to each of its general partners,
21 unless otherwise agreed by the parties.

22 **Sec. 8.** RCW 61.24.163 and 2014 c 164 s 3 are each amended to
23 read as follows:

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

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

1 (3) Within ten days of receiving the notice, the department
2 shall:

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

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

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

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

20 (b) Debts and obligations;

21 (c) Assets;

22 (d) Expenses;

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

24 (f) Hardship information;

25 (g) Other applicable information commonly required by any
26 applicable federal mortgage relief program.

27 (5) Within twenty days of the beneficiary's receipt of the
28 borrower's documents, the beneficiary shall transmit the documents
29 required for mediation to the mediator and the borrower. The required
30 documents include:

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

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

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

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

1 (e) An itemized list of the best estimate of fees and charges
2 outstanding;

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

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

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

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

20 (j) The portion or excerpt of the pooling and servicing agreement
21 or other investor restriction that prohibits the beneficiary from
22 implementing a modification, if the beneficiary claims it cannot
23 implement a modification due to limitations in a pooling and
24 servicing agreement or other investor restriction, and documentation
25 or a statement detailing the efforts of the beneficiary to obtain a
26 waiver of the pooling and servicing agreement or other investor
27 restriction provisions.

28 (6) Within seventy days of receiving the referral from the
29 department, the mediator shall convene a mediation session in the
30 county where the property is located, unless the parties agree on
31 another location. The parties may agree to extend the time in which
32 to schedule the mediation session. If the parties agree to extend the
33 time, the beneficiary shall notify the trustee of the extension and
34 the date the mediator is expected to issue the mediator's
35 certification.

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

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

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

7 (ii) A statement that a person with authority to agree to a
8 resolution, including a proposed settlement, loan modification, or
9 dismissal or continuation of the foreclosure proceeding, must be
10 present either in person or on the telephone or videoconference
11 during the mediation session; and

12 (iii) A statement that the parties have a duty to mediate in good
13 faith and that failure to mediate in good faith may impair the
14 beneficiary's ability to foreclose on the property or the borrower's
15 ability to modify the loan or take advantage of other alternatives to
16 foreclosure.

17 (8)(a) The borrower, the beneficiary or authorized agent, and the
18 mediator must meet in person for the mediation session. However, a
19 person with authority to agree to a resolution on behalf of the
20 beneficiary may be present over the telephone or videoconference
21 during the mediation session.

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

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

32 (a) The borrower's current and future economic circumstances,
33 including the borrower's current and future income, debts, and
34 obligations for the previous sixty days or greater time period as
35 determined by the mediator;

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

39 (c) Any affordable loan modification calculation and net present
40 value calculation when required under any federal mortgage relief

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

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

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

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

21 (b) Failure of the borrower or the beneficiary to provide the
22 documentation required before mediation or pursuant to the mediator's
23 instructions;

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

27 (d) A request by a beneficiary that the borrower waive future
28 claims he or she may have in connection with the deed of trust, as a
29 condition of agreeing to a modification, except for rescission claims
30 under the federal truth in lending act. Nothing in this section
31 precludes a beneficiary from requesting that a borrower dismiss with
32 prejudice any pending claims against the beneficiary, its agents,
33 loan servicer, or trustee, arising from the underlying deed of trust,
34 as a condition of modification.

35 (11) If the mediator reasonably believes a borrower will not
36 attend a mediation session based on the borrower's conduct, such as
37 the lack of response to the mediator's communications, the mediator
38 may cancel a scheduled mediation session and send a written
39 cancellation to the department and the trustee and send copies to the

1 parties. The beneficiary may proceed with the foreclosure after
2 receipt of the mediator's written confirmation of cancellation.

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

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

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

9 (c) Whether a resolution was reached by the parties, including
10 whether the default was cured by reinstatement, modification, or
11 restructuring of the debt, or some other alternative to foreclosure
12 was agreed upon by the parties;

13 (d) Whether the parties participated in the mediation in good
14 faith; and

15 (e) If a written agreement was not reached, a description of any
16 net present value test used, along with a copy of the inputs,
17 including the result of any net present value test expressed in a
18 dollar amount.

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

22 (14)(a) The mediator's certification that the beneficiary failed
23 to act in good faith in mediation constitutes a defense to the
24 nonjudicial foreclosure action that was the basis for initiating the
25 mediation. In any action to enjoin the foreclosure, the beneficiary
26 is entitled to rebut the allegation that it failed to act in good
27 faith.

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

33 (c) If an affordable loan modification is not offered in the
34 mediation or a written agreement was not reached and the mediator's
35 certification shows that the net present value of the modified loan
36 exceeds the anticipated net recovery at foreclosure, that showing in
37 the certification constitutes a basis for the borrower to enjoin the
38 foreclosure.

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

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

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

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

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

35 (a) The performance of the program, including the numbers of
36 borrowers who are referred to mediation by a housing counselor or
37 attorney;

38 (b) The results of the mediation program, including the number of
39 mediations requested by housing counselors and attorneys, the number
40 of certifications of good faith issued, the number of borrowers and

1 beneficiaries who failed to mediate in good faith, and the reasons
2 for the failure to mediate in good faith, if known, the numbers of
3 loans restructured or modified, the change in the borrower's monthly
4 payment for principal and interest and the number of principal write-
5 downs and interest rate reductions, and, to the extent practical, the
6 number of borrowers who report a default within a year of
7 restructuring or modification;

8 (c) The information received by housing counselors regarding
9 outcomes of foreclosures; and

10 (d) Any recommendations for changes to the statutes regarding the
11 mediation program.

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