

**SHB 1108 - H AMD 11**

By Representative Orwall

1 On page 1, after line 21, insert the following:

2 **"Sec. 2.** RCW 61.24.005 and 2014 c 164 s 1 are each amended to  
3 read as follows:

4 The definitions in this section apply throughout this chapter  
5 unless the context clearly requires otherwise.

6 (1) "Affiliate of beneficiary" means any entity which controls,  
7 is controlled by, or is under common control with a beneficiary.

8 (2) "Beneficiary" means the holder of the instrument or document  
9 evidencing the obligations secured by the deed of trust, excluding  
10 persons holding the same as security for a different obligation.

11 (3) "Borrower" means a person or a general partner in a  
12 partnership, including a joint venture, that is liable for all or  
13 part of the obligations secured by the deed of trust under the  
14 instrument or other document that is the principal evidence of such  
15 obligations, or the person's successors if they are liable for those  
16 obligations under a written agreement with the beneficiary.

17 (4) "Commercial loan" means a loan that is not made primarily for  
18 personal, family, or household purposes.

19 (5) "Department" means the department of commerce or its  
20 designee.

21 (6) "Fair value" means the value of the property encumbered by a  
22 deed of trust that is sold pursuant to a trustee's sale. This value  
23 shall be determined by the court or other appropriate adjudicator by  
24 reference to the most probable price, as of the date of the trustee's  
25 sale, which would be paid in cash or other immediately available  
26 funds, after deduction of prior liens and encumbrances with interest  
27 to the date of the trustee's sale, for which the property would sell  
28 on such date after reasonable exposure in the market under conditions  
29 requisite to a fair sale, with the buyer and seller each acting  
30 prudently, knowledgeably, and for self-interest, and assuming that  
31 neither is under duress.

32 (7) "Grantor" means a person, or its successors, who executes a  
33 deed of trust to encumber the person's interest in property as

1 security for the performance of all or part of the borrower's  
2 obligations.

3 (8) "Guarantor" means any person and its successors who is not a  
4 borrower and who guarantees any of the obligations secured by a deed  
5 of trust in any written agreement other than the deed of trust.

6 (9) "Housing counselor" means a housing counselor that has been  
7 approved by the United States department of housing and urban  
8 development or approved by the Washington state housing finance  
9 commission.

10 (10) "Owner-occupied" means property that is the principal  
11 residence of the borrower.

12 (11) "Person" means any natural person, or legal or governmental  
13 entity.

14 (12) "Record" and "recorded" includes the appropriate  
15 registration proceedings, in the instance of registered land.

16 (13) "Residential real property" means property consisting solely  
17 of a single-family residence, a residential condominium unit, or a  
18 residential cooperative unit. For the purposes of the application of  
19 RCW 61.24.163, (~~owner-occupied~~) residential real property includes  
20 residential real property of up to four units.

21 (14) "Senior beneficiary" means the beneficiary of a deed of  
22 trust that has priority over any other deeds of trust encumbering the  
23 same residential real property.

24 (15) "Tenant-occupied property" means property consisting solely  
25 of residential real property that is the principal residence of a  
26 tenant subject to chapter 59.18 RCW or other building with four or  
27 fewer residential units that is the principal residence of a tenant  
28 subject to chapter 59.18 RCW.

29 (16) "Trustee" means the person designated as the trustee in the  
30 deed of trust or appointed under RCW 61.24.010(2).

31 (17) "Trustee's sale" means a nonjudicial sale under a deed of  
32 trust undertaken pursuant to this chapter.

33 **Sec. 3.** RCW 61.24.030 and 2018 c 306 s 1 are each amended to  
34 read as follows:

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

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

37 (2) That the deed of trust contains a statement that the real  
38 property conveyed is not used principally for agricultural purposes;  
39 provided, if the statement is false on the date the deed of trust was

1 granted or amended to include that statement, and false on the date  
2 of the trustee's sale, then the deed of trust must be foreclosed  
3 judicially. Real property is used for agricultural purposes if it is  
4 used in an operation that produces crops, livestock, or aquatic  
5 goods;

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

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

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

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

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

38 (b) Unless the trustee has violated his or her duty under RCW  
39 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
40 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

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

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

39 (h) A statement that the effect of the recordation, transmittal,  
40 and publication of a notice of sale will be to (i) increase the costs

1 and fees and (ii) publicize the default and advertise the grantor's  
2 property for sale;

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

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

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

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

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

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

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

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

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

29 **SEEKING ASSISTANCE**

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

34 The statewide foreclosure hotline for assistance and referral to  
35 housing counselors recommended by the Housing Finance Commission  
36 Telephone: . . . . . Website: . . . . .

37 The United States Department of Housing and Urban Development

1 Telephone: . . . . . Website: . . . . .

2 The statewide civil legal aid hotline for assistance and referrals to  
3 other housing counselors and attorneys

4 Telephone: . . . . . Website: . . . . ."

5 The beneficiary or trustee shall obtain the toll-free numbers and  
6 website information from the department for inclusion in the notice;

7 (l) In the event the property secured by the deed of trust is  
8 residential real property, the name and address of the holder of any  
9 promissory note or other obligation secured by the deed of trust and  
10 the name, address, and telephone number of a party acting as a  
11 servicer of the obligations secured by the deed of trust;

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

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

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

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

17 (9) That, for (~~owner-occupied~~) residential real property of up  
18 to four units, before the notice of the trustee's sale is recorded,  
19 transmitted, or served, the beneficiary has complied with RCW  
20 61.24.031 and, if applicable, RCW 61.24.163;

21 (10) That, in the case where the borrower or grantor is known to  
22 the mortgage servicer or trustee to be deceased, the notice required  
23 under subsection (8) of this section must be sent to any spouse,  
24 child, or parent of the borrower or grantor known to the trustee or  
25 mortgage servicer, and to any owner of record of the property, at any  
26 address provided to the trustee or mortgage servicer, and to the  
27 property addressed to the heirs and devisees of the borrower.

28 (a) If the name or address of any spouse, child, or parent of  
29 such deceased borrower or grantor cannot be ascertained with use of  
30 reasonable diligence, the trustee must execute and record with the  
31 notice of sale a declaration attesting to the same.

32 (b) Reasonable diligence for the purposes of this subsection (10)  
33 means the trustee shall search in the county where the property is  
34 located, the public records and information for any obituary, will,  
35 death certificate, or case in probate within the county for the  
36 borrower and grantor;

37 (11) Upon written notice identifying the property address and the  
38 name of the borrower to the servicer or trustee by someone claiming  
39 to be a successor in interest to the borrower's or grantor's property  
40 rights, but who is not a party to the loan or promissory note or

1 other obligation secured by the deed of trust, a trustee shall not  
2 record a notice of sale pursuant to RCW 61.24.040 until the trustee  
3 or mortgage servicer completes the following:

4 (a) Acknowledges the notice in writing and requests reasonable  
5 documentation of the death of the borrower or grantor from the  
6 claimant including, but not limited to, a death certificate or other  
7 written evidence of the death of the borrower or grantor. The  
8 claimant must be allowed thirty days from the date of this request to  
9 present this documentation. If the trustee or mortgage servicer has  
10 already obtained sufficient proof of the borrower's death, it may  
11 proceed by acknowledging the claimant's notice in writing and issuing  
12 a request under (b) of this subsection.

13 (b) If the mortgage servicer or trustee obtains or receives  
14 written documentation of the death of the borrower or grantor from  
15 the claimant, or otherwise independently confirms the death of the  
16 borrower or grantor, then the servicer or trustee must request in  
17 writing documentation from the claimant demonstrating the ownership  
18 interest of the claimant in the real property. A claimant has sixty  
19 days from the date of the request to present this documentation.

20 (c) If the mortgage servicer or trustee receives written  
21 documentation demonstrating the ownership interest of the claimant  
22 prior to the expiration of the sixty days provided in (b) of this  
23 subsection, then the servicer or trustee must, within twenty days of  
24 receipt of proof of ownership interest, provide the claimant with, at  
25 a minimum, the loan balance, interest rate and interest reset dates  
26 and amounts, balloon payments if any, prepayment penalties if any,  
27 the basis for the default, the monthly payment amount, reinstatement  
28 amounts or conditions, payoff amounts, and information on how and  
29 where payments should be made. The mortgage servicers shall also  
30 provide the claimant application materials and information, or a  
31 description of the process, necessary to request a loan assumption  
32 and modification.

33 (d) Upon receipt by the trustee or the mortgage servicer of the  
34 documentation establishing claimant's ownership interest in the real  
35 property, that claimant shall be deemed a "successor in interest" for  
36 the purposes of this section.

37 (e) There may be more than one successor in interest to the  
38 borrower's property rights. The trustee and mortgage servicer shall  
39 apply the provisions of this section to each successor in interest.  
40 In the case of multiple successors in interest, where one or more do

1 not wish to assume the loan as coborrowers or coapplicants, a  
2 mortgage servicer may require any nonapplicant successor in interest  
3 to consent in writing to the application for loan assumption.

4 (f) The existence of a successor in interest under this section  
5 does not impose an affirmative duty on a mortgage servicer or alter  
6 any obligation the mortgage servicer has to provide a loan  
7 modification to the successor in interest. If a successor in interest  
8 assumes the loan, he or she may be required to otherwise qualify for  
9 available foreclosure prevention alternatives offered by the mortgage  
10 servicer.

11 (g) (c), (e), and (f) of this subsection (11) do not apply to  
12 association beneficiaries subject to chapter 64.32, 64.34, or 64.38  
13 RCW; and

14 (12) Nothing in this section shall prejudice the right of the  
15 mortgage servicer or beneficiary from discontinuing any foreclosure  
16 action initiated under the deed of trust act in favor of other  
17 allowed methods for pursuit of foreclosure of the security interest  
18 or deed of trust security interest.

19 **Sec. 4.** RCW 61.24.031 and 2014 c 164 s 2 are each amended to  
20 read as follows:

21 (1)(a) A trustee, beneficiary, or authorized agent may not issue  
22 a notice of default under RCW 61.24.030(8) until: (i) Thirty days  
23 after satisfying the due diligence requirements as described in  
24 subsection (5) of this section and the borrower has not responded; or  
25 (ii) if the borrower responds to the initial contact, ninety days  
26 after the initial contact with the borrower was initiated.

27 (b) A beneficiary or authorized agent shall make initial contact  
28 with the borrower by letter to provide the borrower with information  
29 required under (c) of this subsection and by telephone as required  
30 under subsection (5) of this section. The letter required under this  
31 subsection must be mailed in accordance with subsection (5)(a) of  
32 this section and must include the information described in (c) of  
33 this subsection and subsection (5)(e)(i) through (iv) of this  
34 section.

35 (c) The letter required under this subsection, developed by the  
36 department pursuant to RCW 61.24.033, at a minimum shall include:

37 (i) A paragraph printed in no less than twelve-point font and  
38 bolded that reads:

1 "You must respond within thirty days of the date of this letter.  
2 IF YOU DO NOT RESPOND within thirty days, a notice of default may be  
3 issued and you may lose your home in foreclosure.

4 IF YOU DO RESPOND within thirty days of the date of this letter,  
5 you will have an additional sixty days to meet with your lender  
6 before a notice of default may be issued.

7 You should contact a housing counselor or attorney as soon as  
8 possible. Failure to contact a housing counselor or attorney may  
9 result in your losing certain opportunities, such as meeting with  
10 your lender or participating in mediation in front of a neutral third  
11 party. A housing counselor or attorney can help you work with your  
12 lender to avoid foreclosure.

13 If you filed bankruptcy or have been discharged in bankruptcy,  
14 this communication is not intended as an attempt to collect a debt  
15 from you personally, but is notice of enforcement of the deed of  
16 trust lien against the property. If you wish to avoid foreclosure and  
17 keep your property, this notice sets forth your rights and options.";

18 (ii) The toll-free telephone number from the United States  
19 department of housing and urban development to find a department-  
20 approved housing counseling agency, the toll-free numbers for the  
21 statewide foreclosure hotline recommended by the housing finance  
22 commission, and the statewide civil legal aid hotline for assistance  
23 and referrals to other housing counselors and attorneys;

24 (iii) A paragraph stating that a housing counselor may be  
25 available at little or no cost to the borrower and that whether or  
26 not the borrower contacts a housing counselor or attorney, the  
27 borrower has the right to request a meeting with the beneficiary; and

28 (iv) A paragraph explaining how the borrower may respond to the  
29 letter and stating that after responding the borrower will have an  
30 opportunity to meet with his or her beneficiary in an attempt to  
31 resolve and try to work out an alternative to the foreclosure and  
32 that, after ninety days from the date of the letter, a notice of  
33 default may be issued, which starts the foreclosure process.

34 (d) If the beneficiary has exercised due diligence as required  
35 under subsection (5) of this section and the borrower does not  
36 respond by contacting the beneficiary within thirty days of the  
37 initial contact, the notice of default may be issued. "Initial  
38 contact" with the borrower is considered made three days after the  
39 date the letter required in (b) of this subsection is sent.

1 (e) If a meeting is requested by the borrower or the borrower's  
2 housing counselor or attorney, the beneficiary or authorized agent  
3 shall schedule the meeting to occur before the notice of default is  
4 issued. An assessment of the borrower's financial ability to modify  
5 or restructure the loan obligation and a discussion of options must  
6 occur during the meeting scheduled for that purpose.

7 (f) The meeting scheduled to assess the borrower's financial  
8 ability to modify or restructure the loan obligation and discuss  
9 options to avoid foreclosure may be held telephonically, unless the  
10 borrower or borrower's representative requests in writing that a  
11 meeting be held in person. The written request for an in-person  
12 meeting must be made within thirty days of the initial contact with  
13 the borrower. If the meeting is requested to be held in person, the  
14 meeting must be held in the county where the property is located  
15 unless the parties agree otherwise. A person who is authorized to  
16 agree to a resolution, including modifying or restructuring the loan  
17 obligation or other alternative resolution to foreclosure on behalf  
18 of the beneficiary, must be present either in person or on the  
19 telephone or videoconference during the meeting.

20 (2) A notice of default issued under RCW 61.24.030(8) must  
21 include a declaration, as provided in subsection (9) of this section,  
22 from the beneficiary or authorized agent that it has contacted the  
23 borrower as provided in subsection (1) of this section, it has tried  
24 with due diligence to contact the borrower under subsection (5) of  
25 this section, or the borrower has surrendered the property to the  
26 trustee, beneficiary, or authorized agent. Unless the trustee has  
27 violated his or her duty under RCW 61.24.010(4), the trustee is  
28 entitled to rely on the declaration as evidence that the requirements  
29 of this section have been satisfied, and the trustee is not liable  
30 for the beneficiary's or its authorized agent's failure to comply  
31 with the requirements of this section.

32 (3) If, after the initial contact under subsection (1) of this  
33 section, a borrower has designated a housing counseling agency,  
34 housing counselor, or attorney to discuss with the beneficiary or  
35 authorized agent, on the borrower's behalf, options for the borrower  
36 to avoid foreclosure, the borrower shall inform the beneficiary or  
37 authorized agent and provide the contact information to the  
38 beneficiary or authorized agent. The beneficiary or authorized agent  
39 shall contact the designated representative for the borrower to meet.

1 (4) The beneficiary or authorized agent and the borrower or the  
2 borrower's representative shall attempt to reach a resolution for the  
3 borrower within the ninety days from the time the initial contact is  
4 sent and the notice of default is issued. A resolution may include,  
5 but is not limited to, a loan modification, an agreement to conduct a  
6 short sale, or a deed in lieu of foreclosure transaction, or some  
7 other workout plan. Any modification or workout plan offered at the  
8 meeting with the borrower's designated representative by the  
9 beneficiary or authorized agent is subject to approval by the  
10 borrower.

11 (5) A notice of default may be issued under RCW 61.24.030(8) if a  
12 beneficiary or authorized agent has initiated contact with the  
13 borrower as required under subsection (1)(b) of this section and the  
14 failure to meet with the borrower occurred despite the due diligence  
15 of the beneficiary or authorized agent. Due diligence requires the  
16 following:

17 (a) A beneficiary or authorized agent shall first attempt to  
18 contact a borrower by sending, by both first-class and either  
19 registered or certified mail, return receipt requested, a letter to  
20 the address in the beneficiary's records for sending account  
21 statements to the borrower and to the address of the property  
22 encumbered by the deed of trust. The letter must be the letter  
23 described in subsection (1)(c) of this section.

24 (b)(i) After the letter has been sent, the beneficiary or  
25 authorized agent shall attempt to contact the borrower by telephone  
26 at least three times at different hours and on different days.  
27 Telephone calls must be made to the primary and secondary telephone  
28 numbers on file with the beneficiary or authorized agent.

29 (ii) A beneficiary or authorized agent may attempt to contact a  
30 borrower using an automated system to dial borrowers if the telephone  
31 call, when answered, is connected to a live representative of the  
32 beneficiary or authorized agent.

33 (iii) A beneficiary or authorized agent satisfies the telephone  
34 contact requirements of this subsection (5)(b) if the beneficiary or  
35 authorized agent determines, after attempting contact under this  
36 subsection (5)(b), that the borrower's primary telephone number and  
37 secondary telephone number or numbers on file, if any, have been  
38 disconnected or are not good contact numbers for the borrower.

39 (iv) The telephonic contact under this subsection (5)(b) does not  
40 constitute the meeting under subsection (1)(f) of this section.

1 (c) If the borrower does not respond within fourteen days after  
2 the telephone call requirements of (b) of this subsection have been  
3 satisfied, the beneficiary or authorized agent shall send a certified  
4 letter, with return receipt requested, to the borrower at the address  
5 in the beneficiary's records for sending account statements to the  
6 borrower and to the address of the property encumbered by the deed of  
7 trust. The letter must include the information described in (e)(i)  
8 through (iv) of this subsection. The letter must also include a  
9 paragraph stating: "Your failure to contact a housing counselor or  
10 attorney may result in your losing certain opportunities, such as  
11 meeting with your lender or participating in mediation in front of a  
12 neutral third party."

13 (d) The beneficiary or authorized agent shall provide a means for  
14 the borrower to contact the beneficiary or authorized agent in a  
15 timely manner, including a toll-free telephone number or charge-free  
16 equivalent that will provide access to a live representative during  
17 business hours for the purpose of initiating and scheduling the  
18 meeting under subsection (1)(f) of this section.

19 (e) The beneficiary or authorized agent shall post a link on the  
20 home page of the beneficiary's or authorized agent's internet  
21 website, if any, to the following information:

22 (i) Options that may be available to borrowers who are unable to  
23 afford their mortgage payments and who wish to avoid foreclosure, and  
24 instructions to borrowers advising them on steps to take to explore  
25 those options;

26 (ii) A list of financial documents borrowers should collect and  
27 be prepared to present to the beneficiary or authorized agent when  
28 discussing options for avoiding foreclosure;

29 (iii) A toll-free telephone number or charge-free equivalent for  
30 borrowers who wish to discuss options for avoiding foreclosure with  
31 their beneficiary or authorized agent; and

32 (iv) The toll-free telephone number or charge-free equivalent  
33 made available by the department to find a department-approved  
34 housing counseling agency.

35 (6) Subsections (1) and (5) of this section do not apply if the  
36 borrower has surrendered the property as evidenced by either a letter  
37 confirming the surrender or delivery of the keys to the property to  
38 the trustee, beneficiary, or authorized agent.

39 (7)(a) This section applies only to deeds of trust that are  
40 recorded against (~~owner-occupied~~) residential real property of up

1 to four units. This section does not apply to deeds of trust: (i)  
2 Securing a commercial loan; (ii) securing obligations of a grantor  
3 who is not the borrower or a guarantor; or (iii) securing a  
4 purchaser's obligations under a seller-financed sale.

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

7 (8) As used in this section:

8 (a) "Department" means the United States department of housing  
9 and urban development.

10 (b) "Seller-financed sale" means a residential real property  
11 transaction where the seller finances all or part of the purchase  
12 price, and that financed amount is secured by a deed of trust against  
13 the subject residential real property.

14 (9) The form of declaration to be provided by the beneficiary or  
15 authorized agent as required under subsection (2) of this section  
16 must be in substantially the following form:

17 **"FORECLOSURE LOSS MITIGATION FORM**

18 **Please select applicable option(s) below.**

19 The undersigned beneficiary or authorized agent for the  
20 beneficiary hereby represents and declares under the penalty of  
21 perjury that [check the applicable box and fill in any blanks so that  
22 the beneficiary, authorized agent, or trustee can insert, on the  
23 beneficiary's behalf, the applicable declaration in the notice of  
24 default required under chapter 61.24 RCW]:

25 (1) [ ] The beneficiary or beneficiary's authorized agent has  
26 contacted the borrower under, and has complied with, RCW 61.24.031  
27 (contact provision to "assess the borrower's financial ability to pay  
28 the debt secured by the deed of trust and explore options for the  
29 borrower to avoid foreclosure") and the borrower responded but did  
30 not request a meeting.

31 (2) [ ] The beneficiary or beneficiary's authorized agent has  
32 contacted the borrower as required under RCW 61.24.031 and the  
33 borrower or the borrower's designated representative requested a  
34 meeting. A meeting was held on (insert date, time, and location/  
35 telephonic here) in compliance with RCW 61.24.031.

36 (3) [ ] The beneficiary or beneficiary's authorized agent has  
37 contacted the borrower as required in RCW 61.24.031 and the borrower  
38 or the borrower's designated representative requested a meeting. A  
39 meeting was scheduled for (insert date, time, and location/telephonic

1 here) and neither the borrower nor the borrower's designated  
2 representative appeared.

3 (4) [ ] The beneficiary or beneficiary's authorized agent has  
4 exercised due diligence to contact the borrower as required in RCW  
5 61.24.031(5) and the borrower did not respond.

6 (5) [ ] The borrower has surrendered the secured property as  
7 evidenced by either a letter confirming the surrender or by delivery  
8 of the keys to the secured property to the beneficiary, the  
9 beneficiary's authorized agent or to the trustee.

10 Additional Optional Explanatory Comments:

11 . . . . .

12 [2014 c 164 § 2; 2012 c 185 § 4; 2011 c 58 § 5; 2009 c 292 § 2.]

3 ((6)) (5) For purposes of referral and mediation under RCW  
4 61.24.163, a person may be referred to mediation if the person has  
5 been awarded title to the property in a proceeding for dissolution or  
6 legal separation. The referring counselor or attorney must determine  
7 the person's eligibility under this section and indicate the grounds  
8 for eligibility on the referral to mediation submitted to the  
9 department. For the purposes of mediation under RCW 61.24.163, the  
10 person must be treated as a "borrower." This subsection does not  
11 impose an affirmative duty on the beneficiary to accept an assumption  
12 of the loan."

13 Renumber the remaining sections consecutively, correct any  
14 **Sec. 5.** RCW 61.24.163 and 2014 c 164 s 4 are each amended to  
15 internal references accordingly, and correct the title.  
16 read as follows:

15 (1) RCW 61.24.163 applies only to deeds of trust that are  
16 On page 2, line 8, after "of" strike "owner-occupied" and insert  
17 recorded against ((owner-occupied)) residential real property of up  
18 to four units. ((The property must have been owner-occupied as of the  
19 date on page 2, line 8, after "of" strike "owner-occupied" and insert  
20 "recorded against ((owner-occupied)) residential real property of up  
21 to four units." RCW 61.24.163 was made to four units"

19 (2) ((A borrower under a deed of trust on owner-occupied  
20 residential real property who has received a notice of default on or  
21 before July 22, 2011, may be referred to mediation under RCW  
22 61.24.163 by a housing counselor or attorney.

23 (3) RCW 61.24.163 does not apply to deeds of trust.  
24 The exemption is based on the number of trustee sales of residential  
25 real (a) property of up to four units, rather than owner-occupied  
26 residential real property of a grantor who is not the borrower or  
27 guarantor of a commercial loan.

26 (3) Removes the "owner-occupied" requirement from the definition  
27 of "residential real property" and expands that definition to include  
28 residential real property of up to four units in the provisions  
29 requiring a notice of mediation prior to a trustee's sale.

28 (4) Removes the "owner-occupied" requirement from the definition  
29 of "residential real property" and expands that definition to include  
30 residential real property of up to four units in the provisions  
31 requiring the issuance of a notice of default and participation in  
32 mediation) prior to recording a notice of the trustee's sale under RCW  
33 61.24.163.

32 (5) Extends the applicability of the provisions related to  
33 issuing a notice of default to residential real property of up  
34 to four units and removes the requirement that the residential real  
35 property be owner-occupied.  
36 borrower who occupies the property as his or her primary residence.

35 The referring counselor or attorney must determine a person's  
36 eligibility under this section and indicate the grounds for  
37 eligibility on the referral to mediation submitted to the department.  
38 For the purposes of mediation under RCW 61.24.163, the person must be  
39 treated as a "borrower." This subsection does not impose an