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HOUSE BILL 2088

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State of Washington

67th Legislature

2022 Regular Session

By Representatives Orwall, Ryu, Fitzgibbon, Santos, Sutherland, and Ramel

Read first time 01/25/22. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to protecting homeowners navigating the  
2 foreclosure process; and amending RCW 61.24.008, 61.24.030, and  
3 61.24.163.

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

5 **Sec. 1.** RCW 61.24.008 and 2012 c 185 s 11 are each amended to  
6 read as follows:

7 (1) A borrower who has been referred to mediation before June 7,  
8 2012, may continue through the mediation process and does not lose  
9 his or her right to mediation.

10 (2) A borrower who has not been referred to mediation as of June  
11 7, 2012, may only be referred to mediation after a notice of default  
12 has been issued but no later than (~~twenty days from the date a~~  
13 ~~notice of sale is recorded~~) 90 days prior to the date of sale listed  
14 in the notice of trustee's sale.

15 (3) A borrower who has not been referred to mediation as of June  
16 7, 2012, and who has had a notice of sale recorded may only be  
17 referred to mediation if the referral is made (~~before twenty days~~  
18 ~~have passed from the date the notice of sale was recorded~~) at least  
19 90 days prior to the date of sale listed in the notice of trustee's  
20 sale.

1       **Sec. 2.** RCW 61.24.030 and 2021 c 151 s 3 are each amended to  
2 read as follows:

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

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

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

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

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

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

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

37       (7) (a) That, for residential real property of up to four units,  
38 before the notice of trustee's sale is recorded, transmitted, or  
39 served, the trustee shall have proof that the beneficiary is the  
40 holder of any promissory note or other obligation secured by the deed

1 of trust. A declaration by the beneficiary made under the penalty of  
2 perjury stating that the beneficiary is the holder of any promissory  
3 note or other obligation secured by the deed of trust shall be  
4 sufficient proof as required under this subsection.

5 (b) Unless the trustee has violated his or her duty under RCW  
6 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
7 declaration as evidence of proof required under this subsection.

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

10 (8) That at least (~~thirty~~) 30 days before notice of sale shall  
11 be recorded, transmitted or served, written notice of default and,  
12 for residential real property of up to four units, the beneficiary  
13 declaration specified in subsection (7)(a) of this section shall be  
14 transmitted by the beneficiary or trustee to the borrower and grantor  
15 at their last known addresses by both first-class and either  
16 registered or certified mail, return receipt requested, and the  
17 beneficiary or trustee shall cause to be posted in a conspicuous  
18 place on the premises, a copy of the notice, or personally served on  
19 the borrower and grantor. This notice shall contain the following  
20 information:

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

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

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

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

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

35 (f) A statement showing the total of (d) and (e) of this  
36 subsection, designated clearly and conspicuously as the amount  
37 necessary to reinstate the note and deed of trust before the  
38 recording of the notice of sale;

39 (g) A statement that failure to cure the alleged default within  
40 (~~thirty~~) 30 days of the date of mailing of the notice, or if

1 personally served, within (~~(thirty)~~) 30 days of the date of personal  
2 service thereof, may lead to recordation, transmittal, and  
3 publication of a notice of sale, and that the property described in  
4 (a) of this subsection may be sold at public auction at a date no  
5 less than (~~(one hundred twenty)~~) 120 days in the future, or no less  
6 than (~~(one hundred fifty)~~) 150 days in the future if the borrower  
7 received a letter under RCW 61.24.031;

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

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

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

18 (k) In the event the property secured by the deed of trust is  
19 residential real property of up to four units, a statement,  
20 prominently set out at the beginning of the notice, which shall state  
21 as follows:

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

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

26 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**  
27 to assess your situation and refer you to mediation if you might  
28 benefit. Mediation **MUST** be requested between the time you receive the  
29 Notice of Default and no later than (~~(twenty days after the Notice of~~  
30 ~~Trustee Sale is recorded)~~) 90 days prior to the date of sale listed  
31 in the Notice of Trustee's Sale.

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

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

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

**SEEKING ASSISTANCE**

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

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

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

The United States Department of Housing and Urban Development

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

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

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

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

(l) In the event the property secured by the deed of trust is residential real property of up to four units, the name and address of the holder of any promissory note or other obligation secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust;

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

- (i) The current beneficiary of the deed of trust;
- (ii) The current mortgage servicer for the deed of trust; and
- (iii) The current trustee for the deed of trust;

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

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

(a) If the name or address of any spouse, child, or parent of such deceased borrower or grantor cannot be ascertained with use of

1 reasonable diligence, the trustee must execute and record with the  
2 notice of sale a declaration attesting to the same.

3 (b) Reasonable diligence for the purposes of this subsection (10)  
4 means the trustee shall search in the county where the property is  
5 located, the public records and information for any obituary, will,  
6 death certificate, or case in probate within the county for the  
7 borrower and grantor;

8 (11) Upon written notice identifying the property address and the  
9 name of the borrower to the servicer or trustee by someone claiming  
10 to be a successor in interest to the borrower's or grantor's property  
11 rights, but who is not a party to the loan or promissory note or  
12 other obligation secured by the deed of trust, a trustee shall not  
13 record a notice of sale pursuant to RCW 61.24.040 until the trustee  
14 or mortgage servicer completes the following:

15 (a) Acknowledges the notice in writing and requests reasonable  
16 documentation of the death of the borrower or grantor from the  
17 claimant including, but not limited to, a death certificate or other  
18 written evidence of the death of the borrower or grantor. The  
19 claimant must be allowed (~~(thirty)~~) 30 days from the date of this  
20 request to present this documentation. If the trustee or mortgage  
21 servicer has already obtained sufficient proof of the borrower's  
22 death, it may proceed by acknowledging the claimant's notice in  
23 writing and issuing a request under (b) of this subsection.

24 (b) If the mortgage servicer or trustee obtains or receives  
25 written documentation of the death of the borrower or grantor from  
26 the claimant, or otherwise independently confirms the death of the  
27 borrower or grantor, then the servicer or trustee must request in  
28 writing documentation from the claimant demonstrating the ownership  
29 interest of the claimant in the real property. A claimant has  
30 (~~(sixty)~~) 60 days from the date of the request to present this  
31 documentation.

32 (c) If the mortgage servicer or trustee receives written  
33 documentation demonstrating the ownership interest of the claimant  
34 prior to the expiration of the (~~(sixty)~~) 60 days provided in (b) of  
35 this subsection, then the servicer or trustee must, within (~~(twenty)~~)  
36 20 days of receipt of proof of ownership interest, provide the  
37 claimant with, at a minimum, the loan balance, interest rate and  
38 interest reset dates and amounts, balloon payments if any, prepayment  
39 penalties if any, the basis for the default, the monthly payment  
40 amount, reinstatement amounts or conditions, payoff amounts, and

1 information on how and where payments should be made. The mortgage  
2 servicers shall also provide the claimant application materials and  
3 information, or a description of the process, necessary to request a  
4 loan assumption and modification.

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

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

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

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

26 (12) Nothing in this section shall prejudice the right of the  
27 mortgage servicer or beneficiary from discontinuing any foreclosure  
28 action initiated under the deed of trust act in favor of other  
29 allowed methods for pursuit of foreclosure of the security interest  
30 or deed of trust security interest.

31 **Sec. 3.** RCW 61.24.163 and 2018 c 306 s 6 are each amended to  
32 read as follows:

33 (1) The foreclosure mediation program established in this section  
34 applies only to borrowers who have been referred to mediation by a  
35 housing counselor or attorney. The referral to mediation may be made  
36 any time after a notice of default has been issued but no later than  
37 (~~twenty days after the date a notice of sale has been recorded~~) 90  
38 days prior to the date of sale listed in the notice of trustee's  
39 sale. If the borrower has failed to elect to mediate within the

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

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

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

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

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

18 (4) Within (~~twenty-three~~) 23 days of the department's notice  
19 that the parties have been referred to mediation, the borrower shall  
20 transmit the documents required for mediation to the mediator and the  
21 beneficiary. The required documents include an initial homeowner  
22 financial information worksheet as required by the department. The  
23 worksheet must include, at a minimum, the following information:

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

25 (b) Debts and obligations;

26 (c) Assets;

27 (d) Expenses;

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

29 (f) Hardship information;

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

32 (5) Within (~~twenty~~) 20 days of the beneficiary's receipt of the  
33 borrower's documents, the beneficiary shall transmit the documents  
34 required for mediation to the mediator and the borrower. The required  
35 documents include:

36 (a) An accurate statement containing the balance of the loan  
37 within (~~thirty~~) 30 days of the date on which the beneficiary's  
38 documents are due to the parties;

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



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

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

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

9 (f) The payment history and schedule for the preceding (~~twelve~~)  
10 12 months, or since default, whichever is longer, including a  
11 breakdown of all fees and charges claimed;

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

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

23 (i) Appraisal or other broker price opinion most recently relied  
24 upon by the beneficiary not more than (~~ninety~~) 90 days old at the  
25 time of the scheduled mediation; and

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

34 (6) Within (~~seventy~~) 70 days of receiving the referral from the  
35 department, the mediator shall convene a mediation session in the  
36 county where the property is located, unless the parties agree on  
37 another location. The parties may agree to extend the time in which  
38 to schedule the mediation session. If the parties agree to extend the  
39 time, the beneficiary shall notify the trustee of the extension and

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

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

7 (b) The mediator must send written notice of the time, date, and  
8 location of the mediation session to the borrower, the beneficiary,  
9 and the department at least (~~thirty~~) 30 days prior to the mediation  
10 session. At a minimum, the notice must contain:

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

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

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

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

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

31 (9) The participants in mediation must address the issues of  
32 foreclosure that may enable the borrower and the beneficiary to reach  
33 a resolution(~~(7)~~) including, but not limited to, reinstatement,  
34 modification of the loan, restructuring of the debt, or some other  
35 workout plan. To assist the parties in addressing issues of  
36 foreclosure, the mediator may require the participants to consider  
37 the following:

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

1 obligations for the previous (~~sixty~~) 60 days or greater time period  
2 as determined by the mediator;

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

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

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

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

23 (a) Failure to timely participate in mediation without good  
24 cause;

25 (b) Failure of the borrower or the beneficiary to provide the  
26 documentation required before mediation or pursuant to the mediator's  
27 instructions;

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

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

39 (11) If the mediator reasonably believes a borrower will not  
40 attend a mediation session based on the borrower's conduct, such as

1 the lack of response to the mediator's communications, the mediator  
2 may cancel a scheduled mediation session and send a written  
3 cancellation to the department and the trustee and send copies to the  
4 parties. The beneficiary may proceed with the foreclosure after  
5 receipt of the mediator's written confirmation of cancellation.

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

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

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

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

16 (d) Whether the parties participated in the mediation in good  
17 faith; and

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

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

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

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

36 (c) If an affordable loan modification is not offered in the  
37 mediation or a written agreement was not reached and the mediator's  
38 certification shows that the net present value of the modified loan  
39 exceeds the anticipated net recovery at foreclosure, that showing in

1 the certification constitutes a basis for the borrower to enjoin the  
2 foreclosure.

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

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

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

21 (17) A mediator may charge reasonable fees as authorized by this  
22 subsection or as authorized by the department. Unless the fee is  
23 waived, the parties agree otherwise, or the department otherwise  
24 authorizes, a foreclosure mediator's fee may not exceed (~~four~~  
25 ~~hundred dollars~~) \$400 for preparing, scheduling, and conducting a  
26 mediation session lasting between one hour and three hours. For a  
27 mediation session exceeding three hours, the foreclosure mediator may  
28 charge a reasonable fee, as authorized by the department. The  
29 mediator must provide an estimated fee before the mediation, and  
30 payment of the mediator's fee must be divided equally between the  
31 beneficiary and the borrower. The beneficiary and the borrower must  
32 tender the loan mediator's fee within (~~thirty~~) 30 calendar days  
33 from receipt of the department's letter referring the parties to  
34 mediation or pursuant to the mediator's instructions.

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

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

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

11           (c) The information received by housing counselors regarding  
12 outcomes of foreclosures; and

13           (d) Any recommendations for changes to the statutes regarding the  
14 mediation program.

--- END ---