

HB 1349 - S AMD 310
By Senator Kuderer

ADOPTED 04/06/2023

1 Strike everything after the enacting clause and insert the
2 following:

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

5 (1) A borrower who has been referred to mediation before June 7,
6 2012, may continue through the mediation process and does not lose
7 his or her right to mediation.

8 (2) A borrower who has not been referred to mediation as of June
9 7, 2012, may only be referred to mediation after a notice of default
10 has been issued but no later than ~~((twenty days from the date a
11 notice of sale is recorded))~~ 90 days prior to the date of sale listed
12 in the notice of trustee's sale. If an amended notice of trustee's
13 sale is recorded after the trustee sale has been stayed pursuant to
14 RCW 61.24.130, the borrower may be referred to mediation no later
15 than 25 days prior to the date of sale listed in the amended notice
16 of trustee's sale.

17 (3) A borrower who has not been referred to mediation as of June
18 7, 2012, and who has had a notice of sale recorded may only be
19 referred to mediation if the referral is made ~~((before twenty days
20 have passed from the date the notice of sale was recorded))~~ at least
21 90 days prior to the date of sale listed in the notice of trustee's
22 sale. If an amended notice of trustee's sale is recorded, the
23 borrower may be referred to mediation no later than 25 days prior to
24 the date of sale listed in the amended notice of trustee's sale.

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

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

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

29 (2) That the deed of trust contains a statement that the real
30 property conveyed is not used principally for agricultural purposes;
31 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 of up to four units,
31 before the notice of trustee's sale is recorded, transmitted, or
32 served, the trustee shall have proof that the beneficiary is the
33 holder of any promissory note or other obligation secured by the deed
34 of trust. A declaration by the beneficiary made under the penalty of
35 perjury stating that the beneficiary is the holder of any promissory
36 note or other obligation secured by the deed of trust shall be
37 sufficient proof as required 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~~) 30 days before notice of sale shall
4 be recorded, transmitted or served, written notice of default and,
5 for residential real property of up to four units, the beneficiary
6 declaration specified in subsection (7)(a) of this section shall be
7 transmitted by the beneficiary or trustee to the borrower and grantor
8 at their last known addresses by both first-class and either
9 registered or certified mail, return receipt requested, and the
10 beneficiary or trustee shall cause to be posted in a conspicuous
11 place on the premises, a copy of the notice, or personally served on
12 the borrower and grantor. This notice shall contain the following
13 information:

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

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

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

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

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

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

32 (g) A statement that failure to cure the alleged default within
33 (~~thirty~~) 30 days of the date of mailing of the notice, or if
34 personally served, within (~~thirty~~) 30 days of the date of personal
35 service thereof, may lead to recordation, transmittal, and
36 publication of a notice of sale, and that the property described in
37 (a) of this subsection may be sold at public auction at a date no
38 less than (~~one hundred twenty~~) 120 days in the future, or no less
39 than (~~one hundred fifty~~) 150 days in the future if the borrower
40 received a letter under RCW 61.24.031;

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

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

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

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

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

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

19 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**
20 to assess your situation and refer you to mediation if you might
21 benefit. Mediation **MUST** be requested between the time you receive the
22 Notice of Default and no later than (~~twenty days after the Notice of~~
23 ~~Trustee Sale is recorded~~) **90 calendar days BEFORE the date of sale**
24 **listed in the Notice of Trustee Sale. If an amended Notice of Trustee**
25 **Sale is recorded providing a 45-day notice of the sale, mediation**
26 **must be requested no later than 25 calendar days BEFORE the date of**
27 **sale listed in the amended Notice of Trustee Sale.**

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

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

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

35 **SEEKING ASSISTANCE**

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

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

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

5 Telephone: Website:

6 The United States Department of Housing and Urban Development

7 Telephone: Website:

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

10 Telephone: Website:"

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

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

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

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

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

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

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

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

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

39 (b) Reasonable diligence for the purposes of this subsection (10)
40 means the trustee shall search in the county where the property is

1 located, the public records and information for any obituary, will,
2 death certificate, or case in probate within the county for the
3 borrower and grantor;

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

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

23 (b) If the mortgage servicer or trustee obtains or receives
24 written documentation of the death of the borrower or grantor from
25 the claimant, or otherwise independently confirms the death of the
26 borrower or grantor, then the servicer or trustee must request in
27 writing documentation from the claimant demonstrating the ownership
28 interest of the claimant in the real property. A claimant has
29 (~~sixty~~) 60 days from the date of the request to present this
30 documentation. Documentation demonstrating the ownership interest of
31 the claimant in the real property includes, but is not limited to,
32 one of the following:

33 (i) Excerpts of a trust document noting the claimant as a
34 beneficiary of a trust with title to the real property;

35 (ii) A will of the borrower or grantor listing the claimant as an
36 heir or devisee with respect to the real property;

37 (iii) A probate order or finding of heirship issued by any court
38 documenting the claimant as an heir or devisee or awarding the real
39 property to the claimant;

1 (iv) A recorded lack of probate affidavit signed by any heir
2 listing the claimant as an heir of the borrower or grantor pursuant
3 to the laws of intestacy;

4 (v) A deed, such as a personal representative's deed, trustee's
5 deed issued on behalf of a trust, statutory warranty deed, transfer
6 on death deed, or other deed, giving any ownership interest to the
7 claimant resulting from the death of the borrower or grantor or
8 executed by the borrower or grantor for estate planning purposes; and

9 (vi) Other proof documenting the claimant as an heir of the
10 borrower or grantor pursuant to state rules of intestacy set forth in
11 chapter 11.04 RCW.

12 (c) If the mortgage servicer or trustee receives written
13 documentation demonstrating the ownership interest of the claimant
14 prior to the expiration of the ((~~sixty~~)) 60 days provided in (b) of
15 this subsection, then the servicer or trustee must, within ((~~twenty~~))
16 20 days of receipt of proof of ownership interest, provide the
17 claimant with, at a minimum, the loan balance, interest rate and
18 interest reset dates and amounts, balloon payments if any, prepayment
19 penalties if any, the basis for the default, the monthly payment
20 amount, reinstatement amounts or conditions, payoff amounts, and
21 information on how and where payments should be made. The mortgage
22 servicers shall also provide the claimant application materials and
23 information, or a description of the process, necessary to request a
24 loan assumption and modification.

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

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

36 (f) The existence of a successor in interest under this section
37 does not impose an affirmative duty on a mortgage servicer or alter
38 any obligation the mortgage servicer has to provide a loan
39 modification to the successor in interest. If a successor in interest
40 assumes the loan, he or she may be required to otherwise qualify for

1 available foreclosure prevention alternatives offered by the mortgage
2 servicer.

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

6 (12) Nothing in this section shall prejudice the right of the
7 mortgage servicer or beneficiary from discontinuing any foreclosure
8 action initiated under the deed of trust act in favor of other
9 allowed methods for pursuit of foreclosure of the security interest
10 or deed of trust security interest.

11 **Sec. 3.** RCW 61.24.040 and 2018 c 306 s 2 are each amended to
12 read as follows:

13 A deed of trust foreclosed under this chapter shall be foreclosed
14 as follows:

15 (1) At least (~~ninety~~) 90 days before the sale, or if a letter
16 under RCW 61.24.031 is required, at least (~~one hundred twenty~~) 120
17 days before the sale, the trustee shall:

18 (a) Record a notice in the form described in subsection (2) of
19 this section in the office of the auditor in each county in which the
20 deed of trust is recorded;

21 (b) To the extent the trustee elects to foreclose its lien or
22 interest, or the beneficiary elects to preserve its right to seek a
23 deficiency judgment against a borrower or grantor under RCW
24 61.24.100(3)(a), and if their addresses are stated in a recorded
25 instrument evidencing their interest, lien, or claim of lien, or an
26 amendment thereto, or are otherwise known to the trustee, cause a
27 copy of the notice of sale described in subsection (2) of this
28 section to be transmitted by both first-class and either certified or
29 registered mail, return receipt requested, to the following persons
30 or their legal representatives, if any, at such address:

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

32 (B) In the case where the borrower or grantor is deceased, to any
33 successors in interest. If no successor in interest has been
34 established, then to any spouse, child, or parent of the borrower or
35 grantor, at the addresses discovered by the trustee pursuant to RCW
36 61.24.030(10);

37 (ii) The beneficiary of any deed of trust or mortgagee of any
38 mortgage, or any person who has a lien or claim of lien against the
39 property, that was recorded subsequent to the recordation of the deed

1 of trust being foreclosed and before the recordation of the notice of
2 sale;

3 (iii) The vendee in any real estate contract, the lessee in any
4 lease, or the holder of any conveyances of any interest or estate in
5 any portion or all of the property described in such notice, if that
6 contract, lease, or conveyance of such interest or estate, or a
7 memorandum or other notice thereof, was recorded after the
8 recordation of the deed of trust being foreclosed and before the
9 recordation of the notice of sale;

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

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

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

22 (c) Cause a copy of the notice of sale described in subsection
23 (2) of this section to be transmitted by both first-class and either
24 certified or registered mail, return receipt requested, to the
25 plaintiff or the plaintiff's attorney of record, in any court action
26 to foreclose a lien or other encumbrance on all or any part of the
27 property, provided a court action is pending and a lis pendens in
28 connection therewith is recorded in the office of the auditor of any
29 county in which all or part of the property is located on the date
30 the notice is recorded;

31 (d) Cause a copy of the notice of sale described in subsection
32 (2) of this section to be transmitted by both first-class and either
33 certified or registered mail, return receipt requested, to any person
34 who has recorded a request for notice in accordance with RCW
35 61.24.045, at the address specified in such person's most recently
36 recorded request for notice;

37 (e) Cause a copy of the notice of sale described in subsection
38 (2) of this section to be posted in a conspicuous place on the
39 property, or in lieu of posting, cause a copy of said notice to be
40 served upon any occupant of the property.

1 (2) (a) If foreclosing on a commercial loan under RCW
2 61.24.005(4), the title of the document must be "Notice of Trustee's
3 Sale of Commercial Loan(s)";

4 (b) In addition to all other indexing requirements, the notice
5 required in subsection (1) of this section must clearly indicate on
6 the first page the following information, which the auditor will
7 index:

8 (i) The document number or numbers given to the deed of trust
9 upon recording;

10 (ii) The parcel number(s);

11 (iii) The grantor;

12 (iv) The current beneficiary of the deed of trust;

13 (v) The current trustee of the deed of trust; and

14 (vi) The current loan mortgage servicer of the deed of trust;

15 (c) Nothing in this section:

16 (i) Requires a trustee or beneficiary to cause to be recorded any
17 new notice of trustee's sale upon transfer of the beneficial interest
18 in a deed of trust or the servicing rights for the associated
19 mortgage loan;

20 (ii) Relieves a mortgage loan servicer of any obligation to
21 provide the borrower with notice of a transfer of servicing rights or
22 other legal obligations related to the transfer; or

23 (iii) Prevents the trustee from disclosing the beneficiary's
24 identity to the borrower and to county and municipal officials
25 seeking to abate nuisance and abandoned property in foreclosure
26 pursuant to chapter 35.21 RCW.

27 (d) The notice must be in substantially the following form:

28 NOTICE OF TRUSTEE'S SALE

29 Grantor:

30 Current beneficiary of the deed of trust:

31 Current trustee of the deed of trust:

32 Current mortgage servicer of the deed of trust:

33 Reference number of the deed of trust:

34 Parcel number(s):

35 I.

36 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on
37 the day of, . . ., at the hour of
38 o'clock M. at
39 [street

1 address and location if inside a building] in the City
2 of, State of Washington, sell at public auction to the
3 highest and best bidder, payable at the time of sale, the following
4 described real property, situated in the County(ies) of,
5 State of Washington, to-wit:

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

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

18 II.

19 No action commenced by the Beneficiary of the Deed of Trust is now
20 pending to seek satisfaction of the obligation in any Court by reason
21 of the Borrower's or Grantor's default on the obligation secured by
22 the Deed of Trust.

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

26 III.

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

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

30 Failure to pay when due the following amounts which are now in
31 arrears:

32 IV.

33 The sum owing on the obligation secured by the Deed of Trust is:
34 Principal \$, together with interest as provided in the
35 note or other instrument secured from the day

1 of, . . ., and such other costs and fees as are due under
2 the note or other instrument secured, and as are provided by statute.

3 V.

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

22 VI.

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

25
26
27

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

35 VII.

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

4 VIII.

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

8 IX.

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

14 [Add Part X to this notice if applicable under RCW 61.24.040(11)]

15

16 , Trustee

17 }
18 }
19 }

20 Address

21
22 } Phone

25 [Acknowledgment]

26 (3) If the borrower received a letter under RCW 61.24.031, the
27 notice specified in subsection (2)(d) of this section shall also
28 include the following additional language:

29 **"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR**
30 **HOME.**

31 You have only (~~20 DAYS from the recording date on this notice to~~
32 ~~pursue mediation~~) **until 90 calendar days BEFORE the date of sale**
33 **listed in this Notice of Trustee Sale to be referred to mediation. If**
34 **this is an amended Notice of Trustee Sale providing a 45-day notice**
35 **of the sale, mediation must be requested no later than 25 calendar**

1 days BEFORE the date of sale listed in this amended Notice of Trustee
2 Sale.

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

7 **SEEKING ASSISTANCE**

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

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

14 Telephone: Website:

15 The United States Department of Housing and Urban Development

16 Telephone: Website:

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

19 Telephone: Website:"

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

22 (4) In addition to providing the borrower and grantor the notice
23 of sale described in subsection (2) of this section, the trustee
24 shall include with the copy of the notice which is mailed to the
25 grantor, a statement to the grantor in substantially the following
26 form:

27 NOTICE OF FORECLOSURE

28 Pursuant to the Revised Code of Washington,

29 Chapter 61.24 RCW

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

35 To cure the default(s), you must bring the payments current, cure
36 any other defaults, and pay accrued late charges and other costs,
37 advances, and attorneys' fees as set forth below by the day

1 of, . . . [11 days before the sale date]. To date, these
 2 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)

Delinquent payments		
from,		
. . ., in the		
amount of		
\$. . . /mo.:	\$	\$

Late charges in		
the total		
amount of:	\$	\$

		Estimated Amounts
--	--	----------------------

Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses:		
(Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting		
of Notices	\$	\$
Postage/Copying		
expense	\$	\$
Publication	\$	\$
Telephone		\$
charges	\$	
Inspection fees	\$	\$
.	\$	\$

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

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

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

31 NAME:

32 ADDRESS:

33

34 TELEPHONE NUMBER:

35 If you do not reinstate the secured obligation and your Deed of
36 Trust in the manner set forth above, or if you do not succeed in
37 restraining the sale by court action, your property will be sold. The

1 effect of such sale will be to deprive you and all those who hold by,
2 through or under you of all interest in the property;

3 (5) In addition, the trustee shall cause a copy of the notice of
4 sale described in subsection (2)(d) of this section (excluding the
5 acknowledgment) to be published in a legal newspaper in each county
6 in which the property or any part thereof is situated, once on or
7 between the (~~thirty-fifth~~) 35th and (~~twenty-eighth~~) 28th day
8 before the date of sale, and once on or between the (~~fourteenth~~)
9 14th and seventh day before the date of sale;

10 (6) In the case where no successor in interest has been
11 established, and neither the beneficiary nor the trustee are able to
12 ascertain the name and address of any spouse, child, or parent of the
13 borrower or grantor in the manner described in RCW 61.24.030(10),
14 then the trustee may, in addition to mailing notice to the property
15 addressed to the unknown heirs and devisees of the grantor, serve the
16 notice of sale by publication in a newspaper of general circulation
17 in the county or city where the property is located once per week for
18 three consecutive weeks. Upon this service by publication, to be
19 completed not less than (~~thirty~~) 30 days prior to the date the sale
20 is conducted, all unknown heirs shall be deemed served with the
21 notice of sale;

22 (7)(a) If a servicer or trustee receives notification by someone
23 claiming to be a successor in interest to the borrower or grantor, as
24 under RCW 61.24.030(11), after the recording of the notice of sale,
25 the trustee or servicer must request written documentation within
26 five days demonstrating the ownership interest, provided that, the
27 trustee may, but is not required to, postpone a trustee's sale upon
28 receipt of such notification by someone claiming to be a successor in
29 interest.

30 (b) Upon receipt of documentation establishing a claimant as a
31 successor in interest, the servicer must provide the information in
32 RCW 61.24.030(11)(c). Only if the servicer or trustee receives the
33 documentation confirming someone as successor in interest more than
34 (~~forty-five~~) 45 days before the scheduled sale must the servicer
35 then provide the information in RCW 61.24.030(11)(c) to the claimant
36 not less than (~~twenty~~) 20 days prior to the sale.

37 (c) (b) of this subsection (7) does not apply to association
38 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

39 (8) On the date and at the time designated in the notice of sale,
40 the trustee or its authorized agent shall sell the property at public

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

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

10 (10) The trustee has no obligation to, but may, for any cause the
11 trustee deems advantageous, continue the sale for a period or periods
12 not exceeding a total of (~~one hundred twenty~~) 120 days by (a) a
13 public proclamation at the time and place fixed for sale in the
14 notice of sale and if the continuance is beyond the date of sale, by
15 giving notice of the new time and place of the sale by both first
16 class and either certified or registered mail, return receipt
17 requested, to the persons specified in subsection (1)(b)(i) and (ii)
18 of this section to be deposited in the mail (i) not less than four
19 days before the new date fixed for the sale if the sale is continued
20 for up to seven days; or (ii) not more than three days after the date
21 of the continuance by oral proclamation if the sale is continued for
22 more than seven days, or, alternatively, (b) by giving notice of the
23 time and place of the postponed sale in the manner and to the persons
24 specified in subsection (1)(b), (c), (d), and (e) of this section and
25 publishing a copy of such notice once in the newspaper(s) described
26 in subsection (5) of this section, more than seven days before the
27 date fixed for sale in the notice of sale. No other notice of the
28 postponed sale need be given;

29 (11) The purchaser shall forthwith pay the price bid (~~and on~~
30 ~~payment~~). On payment and subject to RCW 61.24.050, the trustee shall
31 execute to the purchaser its deed(~~;~~~~the~~). The deed shall recite the
32 facts showing that the sale was conducted in compliance with all of
33 the requirements of this chapter and of the deed of trust, which
34 recital shall be prima facie evidence of such compliance and
35 conclusive evidence thereof in favor of bona fide purchasers and
36 encumbrancers for value, except that these recitals shall not affect
37 the lien or interest of any person entitled to notice under
38 subsection (1) of this section, if the trustee fails to give the
39 required notice to such person. In such case, the lien or interest of
40 such omitted person shall not be affected by the sale and such

1 omitted person shall be treated as if such person was the holder of
2 the same lien or interest and was omitted as a party defendant in a
3 judicial foreclosure proceeding;

4 (12) The sale as authorized under this chapter shall not take
5 place less than (~~one hundred ninety~~) 190 days from the date of
6 default in any of the obligations secured;

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

13 X. NOTICE TO OCCUPANTS OR TENANTS

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

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

28 **Sec. 4.** RCW 61.24.160 and 2012 c 185 s 5 are each amended to
29 read as follows:

30 (1)(a) A housing counselor who is contacted by a borrower under
31 RCW 61.24.031 has a duty to act in good faith to attempt to reach a
32 resolution with the beneficiary on behalf of the borrower within the
33 (~~ninety~~) 90 days provided from the date the beneficiary initiates
34 contact with the borrower and the date the notice of default is
35 issued. A resolution may include, but is not limited to, modification
36 of the loan, an agreement to conduct a short sale, a deed in lieu of
37 foreclosure transaction, or some other workout plan.

1 (b) Nothing in RCW 61.24.031 or this section precludes a meeting
2 or negotiations between the housing counselor, borrower, and
3 beneficiary at any time, including after the issuance of the notice
4 of default.

5 (c) A borrower who is contacted under RCW 61.24.031 may seek the
6 assistance of a housing counselor or attorney at any time.

7 (2) Housing counselors have a duty to act in good faith to assist
8 borrowers by:

9 (a) Preparing the borrower for meetings with the beneficiary;

10 (b) Advising the borrower about what documents the borrower must
11 have to seek a loan modification or other resolution;

12 (c) Informing the borrower about the alternatives to foreclosure,
13 including loan modifications or other possible resolutions; and

14 (d) Providing other guidance, advice, and education as the
15 housing counselor considers necessary.

16 (3) A housing counselor or attorney assisting a borrower may
17 refer the borrower to mediation, pursuant to RCW 61.24.163, if the
18 housing counselor or attorney determines that mediation is
19 appropriate based on the individual circumstances and the borrower
20 has received a notice of default. The referral to mediation may be
21 made any time after a notice of default has been issued but no later
22 than (~~twenty days after the date a notice of sale has been~~
23 ~~recorded~~) 90 days prior to the date of sale listed in the notice of
24 trustee's sale. If an amended notice of trustee's sale is recorded
25 after the trustee sale has been stayed pursuant to RCW 61.24.130, the
26 borrower may be referred to mediation no later than 25 days prior to
27 the date of sale listed in the amended notice of trustee's sale.

28 (4) For borrowers who have received a letter under RCW 61.24.031
29 before June 7, 2012, a referral to mediation by a housing counselor
30 or attorney does not preclude a trustee issuing a notice of default
31 if the requirements of RCW 61.24.031 have been met.

32 (5) Housing counselors providing assistance to borrowers under
33 RCW 61.24.031 are not liable for civil damages resulting from any
34 acts or omissions in providing assistance, unless the acts or
35 omissions constitute gross negligence or willful or wanton
36 misconduct.

37 (6) Housing counselors shall provide information to the
38 department to assist the department in its annual report to the
39 legislature as required under RCW 61.24.163(18). The information
40 provided to the department by the housing counselors should include

1 outcomes of foreclosures and be similar to the information requested
2 in the national foreclosure mortgage counseling client level
3 foreclosure outcomes report form.

4 **Sec. 5.** RCW 61.24.163 and 2018 c 306 s 6 are each amended to
5 read as follows:

6 (1) The foreclosure mediation program established in this section
7 applies only to borrowers who have been referred to mediation by a
8 housing counselor or attorney. The referral to mediation may be made
9 any time after a notice of default has been issued but no later than
10 (~~twenty days after the date a notice of sale has been recorded~~) 90
11 days prior to the date of sale listed in the notice of trustee's
12 sale. If an amended notice of trustee's sale is recorded after the
13 trustee sale has been stayed pursuant to RCW 61.24.130, the borrower
14 may be referred to mediation no later than 25 days prior to the date
15 of sale listed in the amended notice of trustee's sale. If the
16 borrower has failed to elect to mediate within the applicable time
17 frame, the borrower and the beneficiary may, but are under no duty
18 to, agree in writing to enter the foreclosure mediation program. The
19 mediation program under this section is not governed by chapter 7.07
20 RCW and does not preclude mediation required by a court or other
21 provision of law.

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

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

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

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

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

- 1 (a) The borrower's current and future income;
- 2 (b) Debts and obligations;
- 3 (c) Assets;
- 4 (d) Expenses;
- 5 (e) Tax returns for the previous two years;
- 6 (f) Hardship information;
- 7 (g) Other applicable information commonly required by any
- 8 applicable federal mortgage relief program.

9 (5) Within (~~twenty~~) 20 days of the beneficiary's receipt of the
10 borrower's documents, the beneficiary shall transmit the documents
11 required for mediation to the mediator and the borrower. The required
12 documents include:

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

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

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

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

23 (e) An itemized list of the best estimate of fees and charges
24 outstanding;

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

28 (g) All borrower-related and mortgage-related input data used in
29 any net present values analysis. If no net present values analysis is
30 required by the applicable federal mortgage relief program, then the
31 input data required under the federal deposit insurance corporation
32 and published in the federal deposit insurance corporation loan
33 modification program guide, or if that calculation becomes
34 unavailable, substantially similar input data as determined by the
35 department;

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

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

4 (j) The portion or excerpt of the pooling and servicing agreement
5 or other investor restriction that prohibits the beneficiary from
6 implementing a modification, if the beneficiary claims it cannot
7 implement a modification due to limitations in a pooling and
8 servicing agreement or other investor restriction, and documentation
9 or a statement detailing the efforts of the beneficiary to obtain a
10 waiver of the pooling and servicing agreement or other investor
11 restriction provisions.

12 (6) Within (~~seventy~~) 70 days of receiving the referral from the
13 department, the mediator shall convene a mediation session in the
14 county where the property is located, unless the parties agree on
15 another location. The parties may agree to extend the time in which
16 to schedule the mediation session. If the parties agree to extend the
17 time, the beneficiary shall notify the trustee of the extension and
18 the date the mediator is expected to issue the mediator's
19 certification.

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

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

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

30 (ii) A statement that a person with authority to agree to a
31 resolution, including a proposed settlement, loan modification, or
32 dismissal or continuation of the foreclosure proceeding, must be
33 present either in person or on the telephone or videoconference
34 during the mediation session; and

35 (iii) A statement that the parties have a duty to mediate in good
36 faith and that failure to mediate in good faith may impair the
37 beneficiary's ability to foreclose on the property or the borrower's
38 ability to modify the loan or take advantage of other alternatives to
39 foreclosure.

1 (8) (a) The borrower, the beneficiary or authorized agent, and the
2 mediator must meet in person for the mediation session. However, a
3 person with authority to agree to a resolution on behalf of the
4 beneficiary may be present over the telephone or videoconference
5 during the mediation session.

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

9 (9) The participants in mediation must address the issues of
10 foreclosure that may enable the borrower and the beneficiary to reach
11 a resolution, including but not limited to reinstatement,
12 modification of the loan, restructuring of the debt, or some other
13 workout plan. To assist the parties in addressing issues of
14 foreclosure, the mediator may require the participants to consider
15 the following:

16 (a) The borrower's current and future economic circumstances,
17 including the borrower's current and future income, debts, and
18 obligations for the previous (~~sixty~~) 60 days or greater time period
19 as determined by the mediator;

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

23 (c) Any affordable loan modification calculation and net present
24 value calculation when required under any federal mortgage relief
25 program and any modification program related to loans insured by the
26 federal housing administration, the veterans administration, and the
27 rural housing service. If such a calculation is not provided or
28 required, then the beneficiary must provide the net present value
29 data inputs established by the federal deposit insurance corporation
30 and published in the federal deposit insurance corporation loan
31 modification program guide or other net present value data inputs as
32 designated by the department. The mediator may run the calculation in
33 order for a productive mediation to occur and to comply with the
34 mediator certification requirement; and

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

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

1 (a) Failure to timely participate in mediation without good
2 cause;

3 (b) Failure of the borrower or the beneficiary to provide the
4 documentation required before mediation or pursuant to the mediator's
5 instructions;

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

9 (d) A request by a beneficiary that the borrower waive future
10 claims he or she may have in connection with the deed of trust, as a
11 condition of agreeing to a modification, except for rescission claims
12 under the federal truth in lending act. Nothing in this section
13 precludes a beneficiary from requesting that a borrower dismiss with
14 prejudice any pending claims against the beneficiary, its agents,
15 loan servicer, or trustee, arising from the underlying deed of trust,
16 as a condition of modification.

17 (11) If the mediator reasonably believes a borrower will not
18 attend a mediation session based on the borrower's conduct, such as
19 the lack of response to the mediator's communications, the mediator
20 may cancel a scheduled mediation session and send a written
21 cancellation to the department and the trustee and send copies to the
22 parties. The beneficiary may proceed with the foreclosure after
23 receipt of the mediator's written confirmation of cancellation.

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

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

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

30 (c) Whether a resolution was reached by the parties, including
31 whether the default was cured by reinstatement, modification, or
32 restructuring of the debt, or some other alternative to foreclosure
33 was agreed upon by the parties;

34 (d) Whether the parties participated in the mediation in good
35 faith; and

36 (e) If a written agreement was not reached, a description of any
37 net present value test used, along with a copy of the inputs,
38 including the result of any net present value test expressed in a
39 dollar amount.

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

4 (14)(a) The mediator's certification that the beneficiary failed
5 to act in good faith in mediation constitutes a defense to the
6 nonjudicial foreclosure action that was the basis for initiating the
7 mediation. In any action to enjoin the foreclosure, the beneficiary
8 is entitled to rebut the allegation that it failed to act in good
9 faith.

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

15 (c) If an affordable loan modification is not offered in the
16 mediation or a written agreement was not reached and the mediator's
17 certification shows that the net present value of the modified loan
18 exceeds the anticipated net recovery at foreclosure, that showing in
19 the certification constitutes a basis for the borrower to enjoin the
20 foreclosure.

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

24 (16)(a) If a borrower has been referred to mediation before a
25 notice of trustee sale has been recorded, a trustee may not record
26 the notice of sale until the trustee receives the mediator's
27 certification stating that the mediation has been completed. If the
28 trustee does not receive the mediator's certification, the trustee
29 may record the notice of sale after (~~ten~~) 10 days from the date the
30 certification to the trustee was due. If, after a notice of sale is
31 recorded under this subsection (16)(a), the mediator subsequently
32 issues a certification finding that the beneficiary violated the duty
33 of good faith, the certification constitutes a basis for the borrower
34 to enjoin the foreclosure.

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

39 (17) A mediator may charge reasonable fees as authorized by this
40 subsection or as authorized by the department. Unless the fee is

1 waived, the parties agree otherwise, or the department otherwise
2 authorizes, a foreclosure mediator's fee may not exceed (~~four~~
3 ~~hundred dollars~~) \$400 for preparing, scheduling, and conducting a
4 mediation session lasting between one hour and three hours. For a
5 mediation session exceeding three hours, the foreclosure mediator may
6 charge a reasonable fee, as authorized by the department. The
7 mediator must provide an estimated fee before the mediation, and
8 payment of the mediator's fee must be divided equally between the
9 beneficiary and the borrower. The beneficiary and the borrower must
10 tender the loan mediator's fee within (~~thirty~~) 30 calendar days
11 from receipt of the department's letter referring the parties to
12 mediation or pursuant to the mediator's instructions.

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

15 (a) The performance of the program, including the numbers of
16 borrowers who are referred to mediation by a housing counselor or
17 attorney;

18 (b) The results of the mediation program, including the number of
19 mediations requested by housing counselors and attorneys, the number
20 of certifications of good faith issued, the number of borrowers and
21 beneficiaries who failed to mediate in good faith, and the reasons
22 for the failure to mediate in good faith, if known, the numbers of
23 loans restructured or modified, the change in the borrower's monthly
24 payment for principal and interest and the number of principal write-
25 downs and interest rate reductions, and, to the extent practical, the
26 number of borrowers who report a default within a year of
27 restructuring or modification;

28 (c) The information received by housing counselors regarding
29 outcomes of foreclosures; and

30 (d) Any recommendations for changes to the statutes regarding the
31 mediation program.

32 (19) This section does not apply to certain federally insured
33 depository institutions, as specified in RCW 61.24.166.

34 **Sec. 6.** RCW 61.24.165 and 2021 c 151 s 6 are each amended to
35 read as follows:

36 (1) RCW 61.24.163 applies only to deeds of trust that are
37 recorded against residential real property of up to four units.

38 (2) RCW 61.24.163 does not apply to deeds of trust:

39 (a) Securing a commercial loan;

1 (b) Securing obligations of a grantor who is not the borrower or
2 a guarantor;

3 (c) Securing a purchaser's obligations under a seller-financed
4 sale; or

5 (d) Where the grantor is a partnership, corporation, or limited
6 liability company, or where the property is vested in a partnership,
7 corporation, or limited liability company at the time the notice of
8 default is issued.

9 (3) RCW 61.24.163 does not apply to association beneficiaries
10 subject to chapter 64.32, 64.34, or 64.38 RCW.

11 (4) For purposes of referral and mediation under RCW 61.24.163, a
12 person may be referred to mediation if the borrower is deceased and
13 the person is a successor in interest of the deceased borrower (~~who~~
14 ~~occupies the property as his or her primary residence~~). The
15 referring counselor or attorney must determine a person's eligibility
16 under this section and indicate the grounds for eligibility on the
17 referral to mediation submitted to the department. For the purposes
18 of mediation under RCW 61.24.163, the person must be treated as a
19 "borrower." This subsection does not impose an affirmative duty on
20 the beneficiary to accept an assumption of the loan.

21 (5) For purposes of referral and mediation under RCW 61.24.163, a
22 person may be referred to mediation if the person has been awarded
23 title to the property in a proceeding for dissolution or legal
24 separation. The referring counselor or attorney must determine the
25 person's eligibility under this section and indicate the grounds for
26 eligibility on the referral to mediation submitted to the department.
27 For the purposes of mediation under RCW 61.24.163, the person must be
28 treated as a "borrower." This subsection does not impose an
29 affirmative duty on the beneficiary to accept an assumption of the
30 loan.

31 **Sec. 7.** RCW 61.24.166 and 2021 c 151 s 7 are each amended to
32 read as follows:

33 (1) Beginning on January 1, (~~(2023)~~) 2024, the provisions of RCW
34 61.24.163 do not apply to any federally insured depository
35 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
36 certifies to the department under penalty of perjury that it was not
37 a beneficiary of deeds of trust in more than (~~two hundred fifty~~)
38 250 trustee sales of residential real property of up to four units
39 that occurred in this state during the preceding calendar year. A

1 federally insured depository institution certifying that RCW
2 61.24.163 does not apply must do so annually, beginning no later than
3 January 31, ((2023)) 2024, and no later than January 31st of each
4 year thereafter.

5 (2) During the 2023 calendar year, the provisions of RCW
6 61.24.163 do not apply to any federally insured depository
7 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
8 certifies to the department under penalty of perjury that it was not
9 a beneficiary of deeds of trust in more than 250 trustee sales of
10 owner-occupied residential real property that occurred in this state
11 during 2019. A federally insured depository institution certifying
12 that RCW 61.24.163 does not apply pursuant to this subsection must do
13 so no later than 30 days after the effective date of this section.

14 (3) This section applies retroactively to January 1, 2023, and
15 prospectively beginning with the effective date of this section.

16 **Sec. 8.** RCW 61.24.190 and 2021 c 151 s 11 are each amended to
17 read as follows:

18 (1) Except as provided in subsections (6) and (7) of this
19 section, beginning January 1, 2022, and every quarter thereafter,
20 every beneficiary issuing notices of default, or causing notices of
21 default to be issued on its behalf, on residential real property
22 under this chapter must:

23 (a) Report to the department, on a form approved by the
24 department, the total number of residential real properties for which
25 the beneficiary has issued a notice of default during the previous
26 quarter, together with the street address, city, and zip code;

27 (b) Remit the amount required under subsection (2) of this
28 section; and

29 (c) Report and update beneficiary contact information for the
30 person and work group responsible for the beneficiary's compliance
31 with the requirements of the foreclosure fairness act created in this
32 chapter.

33 (2) For each residential real property for which a notice of
34 default has been issued, the beneficiary issuing the notice of
35 default, or causing the notice of default to be issued on the
36 beneficiary's behalf, shall remit \$250 to the department to be
37 deposited, as provided under RCW 61.24.172, into the foreclosure
38 fairness account. The \$250 payment is required per property and not

1 per notice of default. The beneficiary shall remit the total amount
2 required in a lump sum each quarter.

3 (3) Reporting and payments under subsections (1) and (2) of this
4 section are due within 45 days of the end of each quarter.

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

8 (5) The department, including its officials and employees, may
9 not be held civilly liable for damages arising from any release of
10 information or the failure to release information related to the
11 reporting required under this section, so long as the release was
12 without gross negligence.

13 (6) (a) Beginning on January 1, 2023, this section does not apply
14 to any beneficiary or loan servicer that is a federally insured
15 depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A),
16 and that certifies under penalty of perjury that it has issued, or
17 has directed a trustee or authorized agent to issue, fewer than 250
18 notices of default in the preceding year.

19 (b) During the 2023 calendar year, this section does not apply to
20 any beneficiary or loan servicer that is a federally insured
21 depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A),
22 and that certifies under penalty of perjury that fewer than 50
23 notices of trustee's sale were recorded on its behalf in 2019.

24 (c) This subsection (6) applies retroactively to January 1, 2023,
25 and prospectively beginning with the effective date of this section.

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

28 NEW SECTION. Sec. 9. A new section is added to chapter 61.24
29 RCW to read as follows:

30 (1) (a) The trustee shall continue a foreclosure sale for at least
31 30 days upon receipt of a written notice from the homeowner
32 assistance fund program administered by the Washington state housing
33 finance commission that an application has been submitted to the
34 homeowner assistance fund program on behalf of the applicant.

35 (b) The trustee shall continue the foreclosure sale for an
36 additional 30-day period upon receipt of a written notice from the
37 homeowner assistance fund program that the applicant is deemed
38 eligible for the program.

1 (c) An automated notice issued by the homeowner assistance fund
2 program does not qualify as written notice required in this section.

3 (2) (a) If an application to the homeowner assistance fund program
4 is approved in the amount that would cure the default and make the
5 beneficiary whole, a sale may not proceed while the approved
6 application is pending for payment.

7 (b) A sale may proceed if the homeowner assistance fund program
8 issues a written confirmation that an application has been denied or
9 that no funds from the program will be paid in response to the
10 application, and that any appeal process available to the applicant
11 has been exhausted and is no longer pending.

12 (3) The trustee has no duty to delay a sale if the applicant has
13 already received a continuance based on prior application to the
14 homeowner assistance fund program, unless the applicant demonstrates
15 to the trustee that a new application is pending based upon a
16 substantial change in circumstances supporting a new application and
17 that it has not been submitted solely for the purpose of delaying the
18 sale.

19 (4) (a) The trustee must comply with the process set forth in RCW
20 61.24.040(1) for giving notice of the continued sale.

21 (b) A continuance of a sale pursuant to this section shall not be
22 included in calculating the maximum sale continuance period of 120
23 days established in RCW 61.24.040(10).

24 (5) For purposes of this section, "applicant" means a person who:

25 (a) Is the borrower, a successor in interest to a deceased
26 borrower, or a person who has been awarded title to the property; and

27 (b) Has submitted an application to the homeowner assistance fund
28 program or on whose behalf an application to the program has been
29 submitted.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 61.12
31 RCW to read as follows:

32 (1) It is unlawful for any person to seek or receive from any
33 person or contract with any person for any fee or compensation for
34 locating, or purporting to purchase or otherwise acquire the right to
35 recover, funds held by a court or county that are proceeds from a
36 foreclosure under this chapter and subject to disposition under RCW
37 61.12.150 in excess of:

38 (a) Five percent of the value thereof returned to such owner; and

1 (b) Reasonable attorneys' fees and costs, upon a motion and a
2 hearing by a court of competent jurisdiction.

3 (2) Any person who violates this section is guilty of a
4 misdemeanor and shall be fined not less than the amount of the fee or
5 charge he or she has sought or received or contracted for, and not
6 more than 10 times such amount, or imprisoned for not more than 30
7 days, or both.

8 (3) The legislature finds that the practices covered by this
9 section are matters vitally affecting the public interest for the
10 purpose of applying the consumer protection act, chapter 19.86 RCW.
11 Any violation of this section is not reasonable in relation to the
12 development and preservation of business and is an unfair or
13 deceptive act in trade or commerce and an unfair method of
14 competition for the purpose of applying the consumer protection act,
15 chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are
16 cumulative and not exclusive.

17 (4) Every contract for any fee or compensation for locating or
18 purporting to purchase the right to recover funds held by a court
19 that are proceeds from a foreclosure under this chapter and subject
20 to disposition under RCW 61.12.150 must contain the following notice
21 in 10-point boldface type or larger directly above the space reserved
22 in the contract for the signature of the buyer:

23 "NOTICE TO HOMEOWNER:

24 (1) Do not sign this contract before you read it or if any spaces
25 intended for the agreed terms are left blank.

26 (2) You are entitled to a copy of this contract at the time you
27 sign it.

28 (3) You may cancel this contract within 10 days of signing by
29 sending notice of cancellation by regular United States mail to the
30 other party at his or her address shown on the contract, which notice
31 shall be posted not later than midnight of the 10th day (excluding
32 Sundays and holidays) following your signing of the contract."

33 **Sec. 11.** RCW 61.24.135 and 2021 c 151 s 5 are each amended to
34 read as follows:

35 (1) It is an unfair or deceptive act or practice under the
36 consumer protection act, chapter 19.86 RCW, for any person, acting
37 alone or in concert with others, to offer, or offer to accept or
38 accept from another, any consideration of any type not to bid, or to
39 reduce a bid, at a sale of property conducted pursuant to a power of

1 sale in a deed of trust. The trustee may decline to complete a sale
2 or deliver the trustee's deed and refund the purchase price, if it
3 appears that the bidding has been collusive or defective, or that the
4 sale might have been void. However, it is not an unfair or deceptive
5 act or practice for any person, including a trustee, to state that a
6 property subject to a recorded notice of trustee's sale or subject to
7 a sale conducted pursuant to this chapter is being sold in an "as-is"
8 condition, or for the beneficiary to arrange to provide financing for
9 a particular bidder or to reach any good faith agreement with the
10 borrower, grantor, any guarantor, or any junior lienholder.

11 (2) It is an unfair or deceptive act in trade or commerce and an
12 unfair method of competition in violation of the consumer protection
13 act, chapter 19.86 RCW, for any person or entity to: (a) Violate the
14 duty of good faith under RCW 61.24.163; (b) fail to comply with the
15 requirements of RCW 61.24.174, as it existed prior to July 1, 2016,
16 61.24.173, or 61.24.190; or (c) fail to initiate contact with a
17 borrower and exercise due diligence as required under RCW 61.24.031.

18 (3) (a) It is unlawful for any person to seek or receive from any
19 person or contract with any person for any fee or compensation for
20 locating, or purporting to purchase or otherwise acquire the right to
21 recover, funds held by a court or county that are proceeds from a
22 foreclosure under this chapter and subject to disposition under RCW
23 61.24.080 in excess of:

24 (i) Five percent of the value thereof returned to such owner; and

25 (ii) Reasonable attorneys' fees and costs, upon a motion and a
26 hearing by a court of competent jurisdiction.

27 (b) Any person who violates (a) of this subsection is guilty of a
28 misdemeanor and shall be fined not less than the amount of the fee or
29 charge he or she has sought or received or contracted for, and not
30 more than 10 times such amount, or imprisoned for not more than 30
31 days, or both.

32 (c) The legislature finds that the practices covered by (a) of
33 this subsection are matters vitally affecting the public interest for
34 the purpose of applying the consumer protection act, chapter 19.86
35 RCW. Any violation of (a) of this subsection is not reasonable in
36 relation to the development and preservation of business and is an
37 unfair or deceptive act in trade or commerce and an unfair method of
38 competition for the purpose of applying the consumer protection act,
39 chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are
40 cumulative and not exclusive.

1 (4) Every contract for any fee or compensation for locating or
2 purporting to purchase the right to recover funds held by a court
3 that are proceeds from a foreclosure under this chapter and subject
4 to disposition under RCW 61.24.080 must contain the following notice
5 in 10-point boldface type or larger directly above the space reserved
6 in the contract for the signature of the buyer:

7 "NOTICE TO HOMEOWNER:

8 (1) Do not sign this contract before you read it or if any spaces
9 intended for the agreed terms are left blank.

10 (2) You are entitled to a copy of this contract at the time you
11 sign it.

12 (3) You may cancel this contract within 10 days of signing by
13 sending notice of cancellation by regular United States mail to the
14 other party at his or her address shown on the contract, which notice
15 shall be posted not later than midnight of the 10th day (excluding
16 Sundays and holidays) following your signing of the contract."

17 NEW SECTION. Sec. 12. (1) Section 9 of this act expires upon
18 the expiration and permanent closure of the homeowner assistance fund
19 program.

20 (2) The Washington state housing finance commission must provide
21 written notice of the expiration date of section 9 of this act to the
22 chief clerk of the house of representatives, the secretary of the
23 senate, the office of the code reviser, and others as deemed
24 appropriate by the commission.

25 NEW SECTION. Sec. 13. Sections 7 through 9 and 12 of this act
26 are necessary for the immediate preservation of the public peace,
27 health, or safety, or support of the state government and its
28 existing public institutions, and take effect immediately."

HB 1349 - S AMD 310
By Senator Kuderer

ADOPTED 04/06/2023

29 On page 1, line 1 of the title, after "protections;" strike the
30 remainder of the title and insert "amending RCW 61.24.008, 61.24.030,
31 61.24.040, 61.24.160, 61.24.163, 61.24.165, 61.24.166, 61.24.190, and
32 61.24.135; adding a new section to chapter 61.24 RCW; adding a new

1 section to chapter 61.12 RCW; providing a contingent expiration date;
2 and declaring an emergency."

EFFECT: (1) Further clarifies what may constitute reasonable documentation of the death of the borrower or grantor and what may demonstrate ownership interest to a trustee or mortgage servicer when the borrower or grantor in default is deceased and someone is claiming to be a successor in interest to the borrower's or grantor's property rights.

(2) Adds provisions limiting fees associated with the recovery of surplus funds resulting from a foreclosure of a deed of trust or from a foreclosure under chapter 61.12 RCW to five percent of the value of the property reasonably expected to be recovered and reasonable attorneys' fees and costs.

(3) Provides that a violation of either provision related to the recovery of surplus funds resulting from a foreclosure constitutes a per se violation of the Consumer Protection Act and prescribes penalties.

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