S-1664.1

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**SUBSTITUTE SENATE BILL 5686**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senate Housing (originally sponsored by Senators Orwall, Frame, Hasegawa, and Nobles)

AN ACT Relating to expanding and funding the foreclosure mediation program; amending RCW 61.24.005, 61.24.160, 61.24.163, 61.24.165, 61.24.165, 61.24.005, 61.24.160, and 61.24.172; adding a new section to chapter 31.04 RCW; providing effective dates; and providing an expiration date.

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

**Sec.**  RCW 61.24.005 and 2021 c 151 s 2 are each amended to read as follows:

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

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

(2) "Association" means an association subject to chapter 64.32, 64.34, 64.38, or 64.90 RCW.

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

((~~(3)~~)) (4) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

((~~(4)~~)) (5) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

((~~(5)~~)) (6) "Department" means the department of commerce or its designee.

((~~(6)~~)) (7) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

((~~(7)~~)) (8) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

((~~(8)~~)) (9) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

((~~(9)~~)) (10) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.

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

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

((~~(12)~~)) (13) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

((~~(13)~~)) (14) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit. For the purposes of the application of RCW 61.24.163, residential real property includes residential real property of up to four units.

((~~(14)~~)) (15) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property.

((~~(15)~~)) (16) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW.

((~~(16)~~)) (17) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

((~~(17)~~)) (18) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

(19) "Unit owner" means an owner of an apartment, unit, or lot in an association subject to chapter 64.32, 64.34, 64.38, or 64.90 RCW.

**Sec.**  RCW 61.24.160 and 2023 c 206 s 4 are each amended to read as follows:

(1)(a) A housing counselor who is contacted by a borrower under RCW 61.24.031 or a unit owner, has a duty to act in good faith to attempt to reach a resolution with the beneficiary on behalf of the borrower, or with the association on behalf of the unit owner, within the 90 days provided from the date the beneficiary or association initiates contact with the borrower or unit owner and the date the notice of default or notice of delinquency for past due assessments is issued. A resolution may include, but is not limited to, modification of the loan, an agreement to conduct a short sale, a deed in lieu of foreclosure transaction, a delinquent assessment payment plan, or some other workout plan.

(b) Nothing in RCW 61.24.031 or this section precludes a meeting or negotiations between the housing counselor, borrower, and beneficiary at any time, including after the issuance of the notice of default. Nothing in RCW 64.32.200, 64.34.364, 64.38.100, 64.90.485, or this section precludes a meeting or negotiations between the housing counselor, unit owner, and association at any time, including after the issuance of the notice of delinquency for past due assessments.

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

(2) Housing counselors have a duty to act in good faith to assist borrowers or unit owners by:

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

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

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

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

(3) A housing counselor or attorney assisting a borrower or unit owner may refer the borrower or unit owner to mediation, pursuant to RCW 61.24.163, if the housing counselor or attorney determines that mediation is appropriate based on the individual circumstances and the borrower or unit owner has received a notice of default or notice of delinquency for past due assessments, respectively. The referral to mediation may be made any time after a notice of default or notice of delinquency for past due assessments has been issued but no later than 90 days prior to the date of sale listed in the notice of trustee's sale. If an amended notice of trustee's sale is recorded after the trustee sale has been stayed pursuant to RCW 61.24.130, the borrower or unit owner may be referred to mediation no later than 25 days prior to the date of sale listed in the amended notice of trustee's sale.

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

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

(6) Housing counselors shall provide information to the department to assist the department in its annual report to the legislature as required under RCW 61.24.163((~~(18)~~)) (22). The information provided to the department by the housing counselors should include outcomes of foreclosures and be similar to the information requested in the national foreclosure mortgage counseling client level foreclosure outcomes report form.

**Sec.**  RCW 61.24.163 and 2023 c 206 s 5 are each amended to read as follows:

(1) The foreclosure mediation program established in this section applies only to borrowers or unit owners who have been referred to mediation by a housing counselor or attorney. The mediation program under this section is not governed by chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.

(2) For deed of trust foreclosure, the referral to mediation may be made any time after a notice of default has been issued but no later than 90 days prior to the date of sale listed in the notice of trustee's sale. If an amended notice of trustee's sale is recorded after the trustee sale has been stayed pursuant to RCW 61.24.130, the borrower may be referred to mediation no later than 25 days prior to the date of sale listed in the amended notice of trustee's sale. If the borrower has failed to elect to mediate within the applicable time frame, the borrower and the beneficiary may, but are under no duty to, agree in writing to enter the foreclosure mediation program. ((~~The mediation program under this section is not governed by chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.~~

~~(2)~~)) (3) For association foreclosures undertaken pursuant to RCW 64.90.485, the referral to mediation may be made any time after a notice of delinquency for past due assessments has been issued but no later than 30 days prior to the date of sale. If the unit owner has failed to elect to mediate within the applicable time frame, the unit owner and the association may, but are under no duty to, agree in writing to enter the foreclosure mediation program.

(4) A housing counselor or attorney referring a borrower or unit owner to mediation shall send a notice to the borrower or unit owner and the department, stating that mediation is appropriate.

((~~(3)~~)) (5) Within 10 days of receiving the notice, the department shall:

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

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

((~~(4) Within~~)) (6) For deed of trust foreclosures:

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

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

((~~(b)~~)) (ii) Debts and obligations;

((~~(c)~~)) (iii) Assets;

((~~(d)~~)) (iv) Expenses;

((~~(e)~~)) (v) Tax returns for the previous two years;

((~~(f)~~)) (vi) Hardship information;

((~~(g)~~)) (vii) Other applicable information commonly required by any applicable federal mortgage relief program.

((~~(5)~~)) (b) Within 20 days of the beneficiary's receipt of the borrower's documents under this subsection, the beneficiary shall transmit the documents required for mediation to the mediator and the borrower. The required documents include:

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

((~~(b)~~)) (ii) Copies of the note and deed of trust;

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

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

((~~(e)~~)) (v) An itemized list of the best estimate of fees and charges outstanding;

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

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

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

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

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

((~~(6)~~)) (7) For association foreclosures:

(a) Within 23 days of the department's notice that the parties have been referred to mediation, the association shall transmit the documents required for mediation to the mediator and the unit owner. The required documents include:

(i) An itemized ledger for the preceding 12 months, or since the assessments became past due, whichever is longer. The ledger shall include an itemized list of all dues, fines, special assessments, and any other charges owed, with the date and amount for each item. The ledger should include the total balance owed at the time the ledger is transmitted, accurate within 30 days of the date on which the association's documents are due to the parties;

(ii) Copy of all association liens placed against the property;

(iii) Copies of the current association declarations, bylaws, and any other governing documents for the association.

(b) Within 20 days of the unit owner's receipt of the association's documents, the unit owner shall transmit the documents required for mediation to the mediator and the association. The required documents include:

(i) Evidence of any unit owner payments to the association that are not reflected on the association ledger, if any;

(ii) Statement of hardship, if relevant;

(iii) If the unit owner is interested in a payment plan, a proposed schedule of payments to resolve the arrears.

(8) Within 70 days of receiving the referral from the department, the mediator shall convene a mediation session in the county where the property is located, unless the parties agree on another location. The parties may agree to extend the time in which to schedule the mediation session. If the parties agree to extend the time, the beneficiary or association shall notify the trustee, if applicable, of the extension and the date the mediator is expected to issue the mediator's certification.

((~~(7)~~)) (9)(a) The mediator may schedule phone conferences, consultations with the parties individually, and other communications to ensure that the parties have all the necessary information and documents to engage in a productive mediation.

(b) The mediator must send written notice of the time, date, and location of the mediation session to the borrower or unit owner, the beneficiary or association, and the department at least 30 days prior to the mediation session. At a minimum, the notice must contain:

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

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

(iii) A statement that the parties have a duty to mediate in good faith and that failure to mediate in good faith may impair the beneficiary's or association's ability to foreclose on the property or the borrower's or unit owner's ability to modify the loan, modify obligations relating to the payment of assessments, or take advantage of other alternatives to foreclosure.

((~~(8)~~)) (10)(a) The borrower or unit owner, the beneficiary or association or authorized agent, and the mediator must meet in person for the mediation session. However, a person with authority to agree to a resolution on behalf of the beneficiary or association may be present over the telephone or videoconference during the mediation session.

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

((~~(9) The~~)) (11) For deed of trust foreclosures, the participants in mediation must address the issues of foreclosure that may enable the borrower or unit owner and the beneficiary or association to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, modification of a delinquent assessment, modification of late fees or charges associated with a delinquent assessment, or some other workout plan. To assist the parties in addressing issues of foreclosure, the mediator may require the participants to consider the following:

(a) The borrower's or unit owner's current and future economic circumstances, including the borrower's or unit owner's current and future income, debts, and obligations for the previous 60 days or greater time period as determined by the mediator;

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

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

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

((~~(10)~~)) (12) For association foreclosures, the participants in mediation must address the issues which led to foreclosure that may enable the unit owner and the association to reach a resolution including, but not limited to, a delinquent assessment payment plan, waiver of association imposed late fees or attorney fees, or any other workout plan.

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

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

(b) Failure of the borrower ((~~or~~)), the unit owner, the beneficiary, or the association to provide the documentation required before mediation or pursuant to the mediator's instructions;

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

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

(e) A request by the association that the unit owner waive future claims against the association. Nothing in this section precludes an association from requesting that a unit owner dismiss any filed civil claims against the association related to the present delinquency.

((~~(11)~~)) (14) If the mediator reasonably believes a borrower or unit owner will not attend a mediation session based on the borrower's or unit owner's conduct, such as the lack of response to the mediator's communications, the mediator may cancel a scheduled mediation session and send a written cancellation to the department and the trustee and send copies to the parties. The beneficiary or association may proceed with the foreclosure after receipt of the mediator's written confirmation of cancellation.

((~~(12)~~)) (15) Within seven business days after the conclusion of the mediation session, the mediator must send a written certification to the department and the trustee and send copies to the parties of:

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

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

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

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

(e) ((~~If~~)) For deed of trust foreclosures, if a written agreement was not reached, a description of any net present value test used, along with a copy of the inputs, including the result of any net present value test expressed in a dollar amount.

((~~(13)~~)) (16) If the parties are unable to reach an agreement, the beneficiary or association may proceed with the foreclosure after receipt of the mediator's written certification.

((~~(14)~~)) (17)(a) The mediator's certification that the beneficiary or association failed to act in good faith in mediation constitutes a defense to the nonjudicial foreclosure action that was the basis for initiating the mediation. In any action to enjoin the foreclosure, the beneficiary or association is entitled to rebut the allegation that it failed to act in good faith.

(b) The mediator's certification that the beneficiary or association failed to act in good faith during mediation does not constitute a defense to a judicial foreclosure or a future nonjudicial foreclosure action if a modification of the loan or delinquent assessment payment plan is agreed upon and the borrower subsequently defaults or unit owner fails to pay assessments.

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

((~~(15)~~)) (18) The mediator's certification that the borrower or unit owner failed to act in good faith in mediation authorizes the beneficiary or association to proceed with the foreclosure.

((~~(16)~~)) (19)(a) If a borrower or unit owner has been referred to mediation before a notice of trustee sale has been recorded, a trustee may not record the notice of sale until the trustee receives the mediator's certification stating that the mediation has been completed. If the trustee does not receive the mediator's certification, the trustee may record the notice of sale after 10 days from the date the certification to the trustee was due. If, after a notice of sale is recorded under this subsection ((~~(16)~~)) (19)(a), the mediator subsequently issues a certification finding that the beneficiary or association violated the duty of good faith, the certification constitutes a basis for the borrower or unit owner to enjoin the foreclosure.

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

((~~(17)~~)) (c) If a unit owner has been referred to mediation before the filing of a judicial foreclosure, the association may not file a complaint for judicial foreclosure until the association receives the mediator's certification stating that the mediation has been completed. If the association does not receive the mediator's certification, the association may file for judicial foreclosure after 10 days from the date the certification to the association was due. If, after a judicial filing for foreclosure has been made pursuant to this subsection (19)(c), the mediator subsequently issues a certification finding that the association violated the duty of good faith, the certification constitutes a basis for the unit owner to enjoin the judicial foreclosure.

(20) A mediator may charge reasonable fees as authorized by this subsection or as authorized by the department. Unless the fee is waived, the parties agree otherwise, or the department otherwise authorizes, a foreclosure mediator's fee may not exceed $400 for preparing, scheduling, and conducting a mediation session lasting between one hour and three hours. For a mediation session exceeding three hours, the foreclosure mediator may charge a reasonable fee, as authorized by the department. The mediator must provide an estimated fee before the mediation, and payment of the mediator's fee must be divided equally between the beneficiary and the borrower, or between the association and the unit owner. The beneficiary and the borrower, or the association and the unit owner, must tender the loan mediator's fee within 30 calendar days from receipt of the department's letter referring the parties to mediation or pursuant to the mediator's instructions.

((~~(18)~~)) (21) For association foreclosures, the unit owner and the association shall be responsible for their own respective attorney fees incurred during mediation under this section.

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

(a) The performance of the program, including the number((~~s~~)) of borrowers who are referred to mediation by a housing counselor or attorney. Beginning December 1, 2026, the report must also include the number of unit owners who are referred to mediation by a housing counselor or attorney;

(b) The results of the mediation program, including the number of mediations requested by housing counselors and attorneys, the number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified, the change in the borrower's monthly payment for principal and interest and the number of principal write-downs and interest rate reductions, and, to the extent practical, the number of borrowers who report a default within a year of restructuring or modification. Beginning December 1, 2026, the report must also include the number of unit owners and associations who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the number of debts for delinquent assessments restructured or modified, the change in the unit owner's periodic assessment payments including any reductions in late charges or interest rates, and, to the extent practical, the number of unit owners who report a delinquency within a year of restructuring or modification;

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

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

((~~(19)~~)) (23) This section does not apply to certain federally insured depository institutions, as specified in RCW 61.24.166.

**Sec.**  RCW 61.24.165 and 2023 c 206 s 6 are each amended to read as follows:

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

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

(a) Securing a commercial loan;

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

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

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

(3) RCW 61.24.163 does ((~~not~~)) apply to ((~~association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.~~)) associations seeking to foreclose liens or deficiencies via nonjudicial or judicial foreclosure.

(4) For purposes of referral and mediation under RCW 61.24.163, a person may be referred to mediation if the borrower or unit owner is deceased and the person is a successor in interest of the deceased borrower or unit owner. The referring counselor or attorney must determine a person's eligibility under this section and indicate the grounds for eligibility on the referral to mediation submitted to the department. For the purposes of mediation under RCW 61.24.163, the person must be treated as a "borrower" or "unit owner." This subsection does not impose an affirmative duty on the beneficiary to accept an assumption of the loan.

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

**Sec.**  RCW 61.24.165 and 2024 c 321 s 413 are each amended to read as follows:

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

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

(a) Securing a commercial loan;

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

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

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

(3) RCW 61.24.163 does ((~~not~~)) apply to ((~~association beneficiaries subject to chapter 64.90 RCW.~~)) associations seeking to foreclose liens or deficiencies via nonjudicial or judicial foreclosure.

(4) For purposes of referral and mediation under RCW 61.24.163, a person may be referred to mediation if the borrower is deceased and the person is a successor in interest of the deceased borrower. The referring counselor or attorney must determine a person's eligibility under this section and indicate the grounds for eligibility on the referral to mediation submitted to the department. For the purposes of mediation under RCW 61.24.163, the person must be treated as a "borrower." This subsection does not impose an affirmative duty on the beneficiary to accept an assumption of the loan.

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

**Sec.**  RCW 61.24.005 and 2021 c 151 s 2 are each amended to read as follows:

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

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

(2) "Association" means an association subject to chapter 64.90 RCW.

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

((~~(3)~~)) (4) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person's successors if they are liable for those obligations under a written agreement with the beneficiary.

((~~(4)~~)) (5) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

((~~(5)~~)) (6) "Department" means the department of commerce or its designee.

((~~(6)~~)) (7) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

((~~(7)~~)) (8) "Grantor" means a person, or its successors, who executes a deed of trust to encumber the person's interest in property as security for the performance of all or part of the borrower's obligations.

((~~(8)~~)) (9) "Guarantor" means any person and its successors who is not a borrower and who guarantees any of the obligations secured by a deed of trust in any written agreement other than the deed of trust.

((~~(9)~~)) (10) "Housing counselor" means a housing counselor that has been approved by the United States department of housing and urban development or approved by the Washington state housing finance commission.

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

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

((~~(12)~~)) (13) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

((~~(13)~~)) (14) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit. For the purposes of the application of RCW 61.24.163, residential real property includes residential real property of up to four units.

((~~(14)~~)) (15) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property.

((~~(15)~~)) (16) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other building with four or fewer residential units that is the principal residence of a tenant subject to chapter 59.18 RCW.

((~~(16)~~)) (17) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

((~~(17)~~)) (18) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

(19) "Unit owner" means an owner of an apartment, unit, or lot in an association subject to chapter 64.90 RCW.

**Sec.**  RCW 61.24.160 and 2023 c 206 s 4 are each amended to read as follows:

(1)(a) A housing counselor who is contacted by a borrower under RCW 61.24.031 or a unit owner, has a duty to act in good faith to attempt to reach a resolution with the beneficiary on behalf of the borrower, or with the association on behalf of the unit owner, within the 90 days provided from the date the beneficiary or association initiates contact with the borrower or unit owner and the date the notice of default or notice of delinquency for past due assessments is issued. A resolution may include, but is not limited to, modification of the loan, an agreement to conduct a short sale, a deed in lieu of foreclosure transaction, a delinquent assessment payment plan, or some other workout plan.

(b) Nothing in RCW 61.24.031 or this section precludes a meeting or negotiations between the housing counselor, borrower, and beneficiary at any time, including after the issuance of the notice of default. Nothing in RCW 64.90.485 or this section precludes a meeting or negotiations between the housing counselor, unit owner, and association at any time, including after the issuance of the notice of delinquency for past due assessments.

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

(2) Housing counselors have a duty to act in good faith to assist borrowers or unit owners by:

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

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

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

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

(3) A housing counselor or attorney assisting a borrower or unit owner may refer the borrower or unit owner to mediation, pursuant to RCW 61.24.163, if the housing counselor or attorney determines that mediation is appropriate based on the individual circumstances and the borrower or unit owner has received a notice of default. The referral to mediation may be made any time after a notice of default or notice of delinquency for past due assessments has been issued but no later than 90 days prior to the date of sale listed in the notice of trustee's sale. If an amended notice of trustee's sale is recorded after the trustee sale has been stayed pursuant to RCW 61.24.130, the borrower or unit owner may be referred to mediation no later than 25 days prior to the date of sale listed in the amended notice of trustee's sale.

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

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

(6) Housing counselors shall provide information to the department to assist the department in its annual report to the legislature as required under RCW 61.24.163((~~(18)~~)) (22). The information provided to the department by the housing counselors should include outcomes of foreclosures and be similar to the information requested in the national foreclosure mortgage counseling client level foreclosure outcomes report form.

NEW SECTION. **Sec.**  A new section is added to chapter 31.04 RCW to read as follows:

For each residential mortgage loan originated, excepting only reverse mortgage loans issued to seniors over the age of 61, a foreclosure prevention fee of $80 shall be assessed and remitted at the time of closing by the escrow company processing the loan closing into the foreclosure fairness account created under RCW 61.24.172. This foreclosure prevention fee may be financed in the loan and paid from the loan proceeds or from any borrower cash contribution at the time of closing.

**Sec.**  RCW 61.24.172 and 2021 c 151 s 9 are each amended to read as follows:

The foreclosure fairness account is created in the custody of the state treasurer. All receipts received under RCW 61.24.174, as it existed prior to July 1, 2016, 61.24.173, ((~~and~~)) 61.24.190, and section 8 of this act must be deposited into the account. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. Funding to agencies and organizations under this section must be provided by the department through an interagency agreement or other applicable contract instrument. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. ((~~Biennial expenditures from the account must be used as follows: Four hundred thousand dollars to fund the counselor referral hotline.~~)) The ((~~remaining~~)) funds shall be distributed as follows: (1) ((~~Sixty-nine~~)) 50 percent for the purposes of providing housing counseling activities to benefit borrowers; (2) eight percent to the office of the attorney general to be used by the consumer protection division to enforce this chapter; (3) ((~~six~~)) 16.5 percent to the office of civil legal aid to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure; (4) 15 percent to fund the foreclosure prevention hotline; (5) 0.5 percent to fund outreach; and (6) 10 percent to the department to be used for implementation and operation of the foreclosure fairness act. Funds provided under ((~~this~~)) subsection (3) of this section must be used to supplement, not supplant, other federal, state, and local funds((~~; and (4) seventeen percent to the department to be used for implementation and operation of the foreclosure fairness act~~)). If the program needs do not require the full use of the allocation as set forth in this section, the department may reallocate those funds to increase the percentage allocated to another agency or organization authorized to receive those funds by this section.

The department shall enter into interagency agreements to contract with the Washington state housing finance commission and other appropriate entities to implement the foreclosure fairness act.

NEW SECTION. **Sec.**  (1) Sections 1 through 4 of this act take effect January 1, 2026.

(2) Sections 5 through 7 of this act take effect January 1, 2028.

NEW SECTION. **Sec.**  Sections 1, 2, and 4 of this act expire January 1, 2028.

**--- END ---**