
SUBSTITUTE SENATE BILL 5686

State of Washington

69th Legislature

2025 Regular Session

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

READ FIRST TIME 02/20/25.

1 AN ACT Relating to expanding and funding the foreclosure
2 mediation program; amending RCW 61.24.005, 61.24.160, 61.24.163,
3 61.24.165, 61.24.165, 61.24.005, 61.24.160, and 61.24.172; adding a
4 new section to chapter 31.04 RCW; providing effective dates; and
5 providing an expiration date.

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

7 **Sec. 1.** RCW 61.24.005 and 2021 c 151 s 2 are each amended to
8 read as follows:

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

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

13 (2) "Association" means an association subject to chapter 64.32,
14 64.34, 64.38, or 64.90 RCW.

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

18 ((+3)) (4) "Borrower" means a person or a general partner in a
19 partnership, including a joint venture, that is liable for all or
20 part of the obligations secured by the deed of trust under the
21 instrument or other document that is the principal evidence of such

1 obligations, or the person's successors if they are liable for those
2 obligations under a written agreement with the beneficiary.

3 ~~((4))~~ (5) "Commercial loan" means a loan that is not made
4 primarily for personal, family, or household purposes.

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

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

18 ~~((7))~~ (8) "Grantor" means a person, or its successors, who
19 executes a deed of trust to encumber the person's interest in
20 property as security for the performance of all or part of the
21 borrower's obligations.

22 ~~((8))~~ (9) "Guarantor" means any person and its successors who
23 is not a borrower and who guarantees any of the obligations secured
24 by a deed of trust in any written agreement other than the deed of
25 trust.

26 ~~((9))~~ (10) "Housing counselor" means a housing counselor that
27 has been approved by the United States department of housing and
28 urban development or approved by the Washington state housing finance
29 commission.

30 ~~((10))~~ (11) "Owner-occupied" means property that is the
31 principal residence of the borrower.

32 ~~((11))~~ (12) "Person" means any natural person, or legal or
33 governmental entity.

34 ~~((12))~~ (13) "Record" and "recorded" includes the appropriate
35 registration proceedings, in the instance of registered land.

36 ~~((13))~~ (14) "Residential real property" means property
37 consisting solely of a single-family residence, a residential
38 condominium unit, or a residential cooperative unit. For the purposes
39 of the application of RCW 61.24.163, residential real property
40 includes residential real property of up to four units.

1 (~~(14)~~) (15) "Senior beneficiary" means the beneficiary of a
2 deed of trust that has priority over any other deeds of trust
3 encumbering the same residential real property.

4 (~~(15)~~) (16) "Tenant-occupied property" means property
5 consisting solely of residential real property that is the principal
6 residence of a tenant subject to chapter 59.18 RCW or other building
7 with four or fewer residential units that is the principal residence
8 of a tenant subject to chapter 59.18 RCW.

9 (~~(16)~~) (17) "Trustee" means the person designated as the
10 trustee in the deed of trust or appointed under RCW 61.24.010(2).

11 (~~(17)~~) (18) "Trustee's sale" means a nonjudicial sale under a
12 deed of trust undertaken pursuant to this chapter.

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

15 **Sec. 2.** RCW 61.24.160 and 2023 c 206 s 4 are each amended to
16 read as follows:

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

28 (b) Nothing in RCW 61.24.031 or this section precludes a meeting
29 or negotiations between the housing counselor, borrower, and
30 beneficiary at any time, including after the issuance of the notice
31 of default. Nothing in RCW 64.32.200, 64.34.364, 64.38.100,
32 64.90.485, or this section precludes a meeting or negotiations
33 between the housing counselor, unit owner, and association at any
34 time, including after the issuance of the notice of delinquency for
35 past due assessments.

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

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

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

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

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

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

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

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

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

35 (6) Housing counselors shall provide information to the
36 department to assist the department in its annual report to the
37 legislature as required under RCW 61.24.163(~~((+18))~~) (22). The
38 information provided to the department by the housing counselors
39 should include outcomes of foreclosures and be similar to the

1 information requested in the national foreclosure mortgage counseling
2 client level foreclosure outcomes report form.

3 **Sec. 3.** RCW 61.24.163 and 2023 c 206 s 5 are each amended to
4 read as follows:

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

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

23 ~~(2))~~ (3) For association foreclosures undertaken pursuant to RCW
24 64.90.485, the referral to mediation may be made any time after a
25 notice of delinquency for past due assessments has been issued but no
26 later than 30 days prior to the date of sale. If the unit owner has
27 failed to elect to mediate within the applicable time frame, the unit
28 owner and the association may, but are under no duty to, agree in
29 writing to enter the foreclosure mediation program.

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

33 ~~((3))~~ (5) Within 10 days of receiving the notice, the
34 department shall:

35 (a) Send a notice to the beneficiary or association, the borrower
36 or unit owner, the housing counselor or attorney who referred the
37 borrower, and the trustee stating that the parties have been referred
38 to mediation. The notice must include the statements and list of
39 documents and information described in subsections ~~((4))~~ (6) and

1 ~~((5))~~ (7) of this section and a statement explaining each party's
2 responsibility to pay the mediator's fee; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~((g))~~ (vii) All borrower-related and mortgage-related input
39 data used in any net present values analysis. If no net present
40 values analysis is required by the applicable federal mortgage relief

1 program, then the input data required under the federal deposit
2 insurance corporation and published in the federal deposit insurance
3 corporation loan modification program guide, or if that calculation
4 becomes unavailable, substantially similar input data as determined
5 by the department;

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

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

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

21 ~~((6))~~ (7) For association foreclosures:

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

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

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

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

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

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

3 (ii) Statement of hardship, if relevant;

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

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

14 ~~((7))~~ (9)(a) The mediator may schedule phone conferences,
15 consultations with the parties individually, and other communications
16 to ensure that the parties have all the necessary information and
17 documents to engage in a productive mediation.

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

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

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

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

37 ~~((8))~~ (10)(a) The borrower or unit owner, the beneficiary or
38 association or authorized agent, and the mediator must meet in person
39 for the mediation session. However, a person with authority to agree
40 to a resolution on behalf of the beneficiary or association may be

1 present over the telephone or videoconference during the mediation
2 session.

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

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

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

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

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

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

37 ~~((10))~~ (12) For association foreclosures, the participants in
38 mediation must address the issues which led to foreclosure that may
39 enable the unit owner and the association to reach a resolution
40 including, but not limited to, a delinquent assessment payment plan,

1 waiver of association imposed late fees or attorney fees, or any
2 other workout plan.

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

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

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

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

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

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

25 ~~((11))~~ (14) If the mediator reasonably believes a borrower or
26 unit owner will not attend a mediation session based on the
27 borrower's or unit owner's conduct, such as the lack of response to
28 the mediator's communications, the mediator may cancel a scheduled
29 mediation session and send a written cancellation to the department
30 and the trustee and send copies to the parties. The beneficiary or
31 association may proceed with the foreclosure after receipt of the
32 mediator's written confirmation of cancellation.

33 ~~((12))~~ (15) Within seven business days after the conclusion of
34 the mediation session, the mediator must send a written certification
35 to the department and the trustee and send copies to the parties of:

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

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

39 (c) Whether a resolution was reached by the parties, including
40 whether the default or delinquency was cured by reinstatement,

1 modification, or restructuring of the debt, or repayment plan, or
2 some other alternative to foreclosure was agreed upon by the parties;

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

5 (e) ~~((15))~~ For deed of trust foreclosures, if a written agreement
6 was not reached, a description of any net present value test used,
7 along with a copy of the inputs, including the result of any net
8 present value test expressed in a dollar amount.

9 ~~((13))~~ (16) If the parties are unable to reach an agreement,
10 the beneficiary or association may proceed with the foreclosure after
11 receipt of the mediator's written certification.

12 ~~((14))~~ (17)(a) The mediator's certification that the
13 beneficiary or association failed to act in good faith in mediation
14 constitutes a defense to the nonjudicial foreclosure action that was
15 the basis for initiating the mediation. In any action to enjoin the
16 foreclosure, the beneficiary or association is entitled to rebut the
17 allegation that it failed to act in good faith.

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

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

30 ~~((15))~~ (18) The mediator's certification that the borrower or
31 unit owner failed to act in good faith in mediation authorizes the
32 beneficiary or association to proceed with the foreclosure.

33 ~~((16))~~ (19)(a) If a borrower or unit owner has been referred to
34 mediation before a notice of trustee sale has been recorded, a
35 trustee may not record the notice of sale until the trustee receives
36 the mediator's certification stating that the mediation has been
37 completed. If the trustee does not receive the mediator's
38 certification, the trustee may record the notice of sale after 10
39 days from the date the certification to the trustee was due. If,
40 after a notice of sale is recorded under this subsection ~~((16))~~

1 (19)(a), the mediator subsequently issues a certification finding
2 that the beneficiary or association violated the duty of good faith,
3 the certification constitutes a basis for the borrower or unit owner
4 to enjoin the foreclosure.

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

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

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

36 ~~((18))~~ (21) For association foreclosures, the unit owner and
37 the association shall be responsible for their own respective
38 attorney fees incurred during mediation under this section.

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

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

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

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

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

28 (~~(19)~~) (23) This section does not apply to certain federally
29 insured depository institutions, as specified in RCW 61.24.166.

30 **Sec. 4.** RCW 61.24.165 and 2023 c 206 s 6 are each amended to
31 read as follows:

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

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

35 (a) Securing a commercial loan;

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

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

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

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

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

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

29 **Sec. 5.** RCW 61.24.165 and 2024 c 321 s 413 are each amended to
30 read as follows:

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

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

34 (a) Securing a commercial loan;

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

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

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

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

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

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

28 **Sec. 6.** RCW 61.24.005 and 2021 c 151 s 2 are each amended to
29 read as follows:

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

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

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

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

1 ~~((3))~~ (4) "Borrower" means a person or a general partner in a
2 partnership, including a joint venture, that is liable for all or
3 part of the obligations secured by the deed of trust under the
4 instrument or other document that is the principal evidence of such
5 obligations, or the person's successors if they are liable for those
6 obligations under a written agreement with the beneficiary.

7 ~~((4))~~ (5) "Commercial loan" means a loan that is not made
8 primarily for personal, family, or household purposes.

9 ~~((5))~~ (6) "Department" means the department of commerce or its
10 designee.

11 ~~((6))~~ (7) "Fair value" means the value of the property
12 encumbered by a deed of trust that is sold pursuant to a trustee's
13 sale. This value shall be determined by the court or other
14 appropriate adjudicator by reference to the most probable price, as
15 of the date of the trustee's sale, which would be paid in cash or
16 other immediately available funds, after deduction of prior liens and
17 encumbrances with interest to the date of the trustee's sale, for
18 which the property would sell on such date after reasonable exposure
19 in the market under conditions requisite to a fair sale, with the
20 buyer and seller each acting prudently, knowledgeably, and for self-
21 interest, and assuming that neither is under duress.

22 ~~((7))~~ (8) "Grantor" means a person, or its successors, who
23 executes a deed of trust to encumber the person's interest in
24 property as security for the performance of all or part of the
25 borrower's obligations.

26 ~~((8))~~ (9) "Guarantor" means any person and its successors who
27 is not a borrower and who guarantees any of the obligations secured
28 by a deed of trust in any written agreement other than the deed of
29 trust.

30 ~~((9))~~ (10) "Housing counselor" means a housing counselor that
31 has been approved by the United States department of housing and
32 urban development or approved by the Washington state housing finance
33 commission.

34 ~~((10))~~ (11) "Owner-occupied" means property that is the
35 principal residence of the borrower.

36 ~~((11))~~ (12) "Person" means any natural person, or legal or
37 governmental entity.

38 ~~((12))~~ (13) "Record" and "recorded" includes the appropriate
39 registration proceedings, in the instance of registered land.

1 ~~((13))~~ (14) "Residential real property" means property
2 consisting solely of a single-family residence, a residential
3 condominium unit, or a residential cooperative unit. For the purposes
4 of the application of RCW 61.24.163, residential real property
5 includes residential real property of up to four units.

6 ~~((14))~~ (15) "Senior beneficiary" means the beneficiary of a
7 deed of trust that has priority over any other deeds of trust
8 encumbering the same residential real property.

9 ~~((15))~~ (16) "Tenant-occupied property" means property
10 consisting solely of residential real property that is the principal
11 residence of a tenant subject to chapter 59.18 RCW or other building
12 with four or fewer residential units that is the principal residence
13 of a tenant subject to chapter 59.18 RCW.

14 ~~((16))~~ (17) "Trustee" means the person designated as the
15 trustee in the deed of trust or appointed under RCW 61.24.010(2).

16 ~~((17))~~ (18) "Trustee's sale" means a nonjudicial sale under a
17 deed of trust undertaken pursuant to this chapter.

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

20 **Sec. 7.** RCW 61.24.160 and 2023 c 206 s 4 are each amended to
21 read as follows:

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

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

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

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

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

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

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

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

15 (3) A housing counselor or attorney assisting a borrower or unit
16 owner may refer the borrower or unit owner to mediation, pursuant to
17 RCW 61.24.163, if the housing counselor or attorney determines that
18 mediation is appropriate based on the individual circumstances and
19 the borrower or unit owner has received a notice of default. The
20 referral to mediation may be made any time after a notice of default
21 or notice of delinquency for past due assessments has been issued but
22 no later than 90 days prior to the date of sale listed in the notice
23 of trustee's sale. If an amended notice of trustee's sale is recorded
24 after the trustee sale has been stayed pursuant to RCW 61.24.130, the
25 borrower or unit owner may be referred to mediation no later than 25
26 days prior to the date of sale listed in the amended notice of
27 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 or unit owners, are not liable for civil damages
34 resulting from any acts or omissions in providing assistance, unless
35 the acts or omissions constitute gross negligence or willful or
36 wanton 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))~~) (22). The
40 information provided to the department by the housing counselors

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

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 31.04
5 RCW to read as follows:

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

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

16 The foreclosure fairness account is created in the custody of the
17 state treasurer. All receipts received under RCW 61.24.174, as it
18 existed prior to July 1, 2016, 61.24.173, ~~((and))~~ 61.24.190, and
19 section 8 of this act must be deposited into the account. Only the
20 director of the department of commerce or the director's designee may
21 authorize expenditures from the account. Funding to agencies and
22 organizations under this section must be provided by the department
23 through an interagency agreement or other applicable contract
24 instrument. The account is subject to allotment procedures under
25 chapter 43.88 RCW, but an appropriation is not required for
26 expenditures. ~~((Biennial expenditures from the account must be used~~
27 ~~as follows: Four hundred thousand dollars to fund the counselor~~
28 ~~referral hotline.))~~ The ~~((remaining))~~ funds shall be distributed as
29 follows: (1) ~~((Sixty-nine))~~ 50 percent for the purposes of providing
30 housing counseling activities to benefit borrowers; (2) eight percent
31 to the office of the attorney general to be used by the consumer
32 protection division to enforce this chapter; (3) ~~((six))~~ 16.5 percent
33 to the office of civil legal aid to be used for the purpose of
34 contracting with qualified legal aid programs for legal
35 representation of homeowners in matters relating to foreclosure; (4)
36 15 percent to fund the foreclosure prevention hotline; (5) 0.5
37 percent to fund outreach; and (6) 10 percent to the department to be
38 used for implementation and operation of the foreclosure fairness

1 act. Funds provided under (~~(this)~~) subsection (3) of this section
2 must be used to supplement, not supplant, other federal, state, and
3 local funds(~~(; and (4) seventeen percent to the department to be used~~
4 ~~for implementation and operation of the foreclosure fairness act)~~).
5 If the program needs do not require the full use of the allocation as
6 set forth in this section, the department may reallocate those funds
7 to increase the percentage allocated to another agency or
8 organization authorized to receive those funds by this section.

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

12 NEW SECTION. Sec. 10. (1) Sections 1 through 4 of this act take
13 effect January 1, 2026.

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

15 NEW SECTION. Sec. 11. Sections 1, 2, and 4 of this act expire
16 January 1, 2028.

--- END ---