
SENATE BILL 5686

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

By Senators Orwall, Frame, Hasegawa, and Nobles

Read first time 02/06/25. Referred to Committee on Housing.

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. The
17 referral to mediation may be made any time after a notice of default
18 or notice of delinquency for past due assessments has been issued but
19 no later than 90 days prior to the date of sale listed in the notice
20 of trustee's sale. If an amended notice of trustee's sale is recorded
21 after the trustee sale has been stayed pursuant to RCW 61.24.130, the
22 borrower or unit owner may be referred to mediation no later than 25
23 days prior to the date of sale listed in the amended notice of
24 trustee's sale.

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

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

34 (6) Housing counselors shall provide information to the
35 department to assist the department in its annual report to the
36 legislature as required under RCW 61.24.163(~~(+18)~~) (19). The
37 information provided to the department by the housing counselors
38 should include outcomes of foreclosures and be similar to the
39 information requested in the national foreclosure mortgage counseling
40 client level foreclosure outcomes report form.

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

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

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

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

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

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

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

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

39 (b) Debts and obligations;

40 (c) Assets;

1 (d) Expenses;

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

3 (f) Hardship information;

4 (g) Other applicable information commonly required by any
5 applicable federal mortgage relief program.

6 (5) Within 20 days of the beneficiary's receipt of the borrower's
7 documents under subsection (4) of this section, the beneficiary shall
8 transmit the documents required for mediation to the mediator and the
9 borrower. The required documents include:

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

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

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

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

20 (e) An itemized list of the best estimate of fees and charges
21 outstanding;

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

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

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

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

39 (j) The portion or excerpt of the pooling and servicing agreement
40 or other investor restriction that prohibits the beneficiary from

1 implementing a modification, if the beneficiary claims it cannot
2 implement a modification due to limitations in a pooling and
3 servicing agreement or other investor restriction, and documentation
4 or a statement detailing the efforts of the beneficiary to obtain a
5 waiver of the pooling and servicing agreement or other investor
6 restriction provisions.

7 (6) If the mediation is related to a notice of delinquency for
8 past due assessments, within 23 days of the department's notice that
9 the parties have been referred to mediation, the parties shall
10 transmit the documents required for mediation to the mediator. The
11 documents shall be kept confidential by the mediator.

12 (a) The required documents to be submitted by the unit owner
13 includes the following information:

14 (i) The unit owner's current and future income;

15 (ii) Debts and obligations;

16 (iii) Assets;

17 (iv) Expenses; and

18 (v) Hardship information.

19 (b) The required documents to be submitted by the association
20 includes the following information:

21 (i) An itemized statement containing the balance of the past due
22 assessments, fees or charges, or other financial obligations related
23 to the assessments;

24 (ii) Copies of the association's lien and deed of trust;

25 (iii) Proof that the entity claiming to be the association is the
26 holder of any lien secured by the deed of trust;

27 (iv) The payment history and schedule for the preceding 12
28 months, or since the assessments became past due, whichever is
29 longer, including a breakdown of all fees, charges, or other
30 financial obligations related to the assessments claimed; and

31 (v) An explanation regarding any denial for a modification,
32 forbearance, or other alternative to foreclosure on the delinquent
33 assessments, fees, charges, or other financial obligations related to
34 the assessments claimed in sufficient detail for a reasonable person
35 to understand why the decision was made.

36 (7) Within 70 days of receiving the referral from the department,
37 the mediator shall convene a mediation session in the county where
38 the property is located, unless the parties agree on another
39 location. The parties may agree to extend the time in which to
40 schedule the mediation session. If the parties agree to extend the

1 time, the beneficiary or association shall notify the trustee of the
2 extension and the date the mediator is expected to issue the
3 mediator's certification.

4 ~~((7))~~ (8)(a) The mediator may schedule phone conferences,
5 consultations with the parties individually, and other communications
6 to ensure that the parties have all the necessary information and
7 documents to engage in a productive mediation.

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

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

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

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

27 ~~((8))~~ (9)(a) The borrower or unit owner, the beneficiary or
28 association or authorized agent, and the mediator must meet in person
29 for the mediation session. However, a person with authority to agree
30 to a resolution on behalf of the beneficiary or association may be
31 present over the telephone or videoconference during the mediation
32 session.

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

36 ~~((9))~~ (10) The participants in mediation must address the
37 issues of foreclosure that may enable the borrower or unit owner and
38 the beneficiary or association to reach a resolution, including but
39 not limited to reinstatement, modification of the loan, restructuring
40 of the debt, modification of a delinquent assessment, modification of

1 late fees or charges associated with a delinquent assessment, or some
2 other workout plan. To assist the parties in addressing issues of
3 foreclosure, the mediator may require the participants to consider
4 the following:

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

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

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

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

27 ~~((10))~~ (11) A violation of the duty to mediate in good faith as
28 required under this section may include:

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

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

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

37 (d) A request by a beneficiary or association that the borrower
38 or unit owner waive future claims he or she may have in connection
39 with the deed of trust, as a condition of agreeing to a modification,
40 except for rescission claims under the federal truth in lending act.

1 Nothing in this section precludes a beneficiary or association from
2 requesting that a borrower or unit owner dismiss with prejudice any
3 pending claims against the beneficiary or association, its agents,
4 loan servicer, or trustee, arising from the underlying deed of trust,
5 as a condition of modification.

6 ~~((11))~~ (12) If the mediator reasonably believes a borrower or
7 unit owner will not attend a mediation session based on the
8 borrower's or unit owner's conduct, such as the lack of response to
9 the mediator's communications, the mediator may cancel a scheduled
10 mediation session and send a written cancellation to the department
11 and the trustee and send copies to the parties. The beneficiary or
12 association may proceed with the foreclosure after receipt of the
13 mediator's written confirmation of cancellation.

14 ~~((12))~~ (13) Within seven business days after the conclusion of
15 the mediation session, the mediator must send a written certification
16 to the department and the trustee and send copies to the parties of:

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

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

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

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

26 (e) If a written agreement was not reached, a description of any
27 net present value test used, along with a copy of the inputs,
28 including the result of any net present value test expressed in a
29 dollar amount.

30 ~~((13))~~ (14) If the parties are unable to reach an agreement,
31 the beneficiary or association may proceed with the foreclosure after
32 receipt of the mediator's written certification.

33 ~~((14))~~ (15) (a) The mediator's certification that the
34 beneficiary or association failed to act in good faith in mediation
35 constitutes a defense to the nonjudicial foreclosure action that was
36 the basis for initiating the mediation. In any action to enjoin the
37 foreclosure, the beneficiary is entitled to rebut the allegation that
38 it failed to act in good faith.

39 (b) The mediator's certification that the beneficiary or
40 association failed to act in good faith during mediation does not

1 constitute a defense to a judicial foreclosure or a future
2 nonjudicial foreclosure action if a modification of the loan or
3 modification of obligations related to the payment of assessments is
4 agreed upon and the borrower subsequently defaults.

5 (c) If an affordable loan modification or modification of
6 obligations related to the payment of assessments is not offered in
7 the mediation or a written agreement was not reached and the
8 mediator's certification shows that the net present value of the
9 modified loan or the obligations related to the payment of delinquent
10 assessments including late fees and charges, exceeds the anticipated
11 net recovery at foreclosure, that showing in the certification
12 constitutes a basis for the borrower or unit owner to enjoin the
13 foreclosure.

14 (~~(15)~~) (16) The mediator's certification that the borrower or
15 unit owner failed to act in good faith in mediation authorizes the
16 beneficiary or association to proceed with the foreclosure.

17 (~~(16)~~) (17)(a) If a borrower or unit owner has been referred to
18 mediation before a notice of trustee sale has been recorded, a
19 trustee may not record the notice of sale until the trustee receives
20 the mediator's certification stating that the mediation has been
21 completed. If the trustee does not receive the mediator's
22 certification, the trustee may record the notice of sale after 10
23 days from the date the certification to the trustee was due. If,
24 after a notice of sale is recorded under this subsection (~~(16)~~)
25 (17)(a), the mediator subsequently issues a certification finding
26 that the beneficiary or association violated the duty of good faith,
27 the certification constitutes a basis for the borrower or unit owner
28 to enjoin the foreclosure.

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

33 (~~(17)~~) (18) A mediator may charge reasonable fees as authorized
34 by this subsection or as authorized by the department. Unless the fee
35 is waived, the parties agree otherwise, or the department otherwise
36 authorizes, a foreclosure mediator's fee may not exceed \$400 for
37 preparing, scheduling, and conducting a mediation session lasting
38 between one hour and three hours. For a mediation session exceeding
39 three hours, the foreclosure mediator may charge a reasonable fee, as
40 authorized by the department. The mediator must provide an estimated

1 fee before the mediation, and payment of the mediator's fee must be
2 divided equally between the beneficiary and the borrower, or between
3 the association and the unit owner. The beneficiary and the borrower,
4 or the association and the unit owner, must tender the loan
5 mediator's fee within 30 calendar days from receipt of the
6 department's letter referring the parties to mediation or pursuant to
7 the mediator's instructions.

8 ~~((18))~~ (19) Beginning December 1, 2012, and every year
9 thereafter, the department shall report annually to the legislature
10 on:

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

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

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

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

38 ~~((19))~~ (20) This section does not apply to certain federally
39 insured depository institutions, as specified in RCW 61.24.166.

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

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

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

6 (a) Securing a commercial loan;

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

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

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

15 (3) (~~RCW 61.24.163 does not apply to association beneficiaries~~
16 ~~subject to chapter 64.32, 64.34, or 64.38 RCW.~~

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

26 ~~((5))~~) (4) For purposes of referral and mediation under RCW
27 61.24.163, a person may be referred to mediation if the person has
28 been awarded title to the property in a proceeding for dissolution or
29 legal separation. The referring counselor or attorney must determine
30 the person's eligibility under this section and indicate the grounds
31 for eligibility on the referral to mediation submitted to the
32 department. For the purposes of mediation under RCW 61.24.163, the
33 person must be treated as a "borrower." This subsection does not
34 impose an affirmative duty on the beneficiary to accept an assumption
35 of the loan.

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

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

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

2 (a) Securing a commercial loan;

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

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

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

11 ~~(3) ((RCW 61.24.163 does not apply to association beneficiaries
12 subject to chapter 64.90 RCW.~~

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

22 ~~((5))~~ (4) For purposes of referral and mediation under RCW
23 61.24.163, a person may be referred to mediation if the person has
24 been awarded title to the property in a proceeding for dissolution or
25 legal separation. The referring counselor or attorney must determine
26 the person's eligibility under this section and indicate the grounds
27 for eligibility on the referral to mediation submitted to the
28 department. For the purposes of mediation under RCW 61.24.163, the
29 person must be treated as a "borrower." This subsection does not
30 impose an affirmative duty on the beneficiary to accept an assumption
31 of the loan.

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

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

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

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

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

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

10 ~~((4))~~ (5) "Commercial loan" means a loan that is not made
11 primarily for personal, family, or household purposes.

12 ~~((5))~~ (6) "Department" means the department of commerce or its
13 designee.

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

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

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

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

37 ~~((10))~~ (11) "Owner-occupied" means property that is the
38 principal residence of the borrower.

39 ~~((11))~~ (12) "Person" means any natural person, or legal or
40 governmental entity.

1 (~~(12)~~) (13) "Record" and "recorded" includes the appropriate
2 registration proceedings, in the instance of registered land.

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

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

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

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

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

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

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

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

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

1 and association at any time, including after the issuance of the
2 notice of delinquency for past due assessments.

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

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

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

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

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

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

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

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

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

39 (6) Housing counselors shall provide information to the
40 department to assist the department in its annual report to the

1 legislature as required under RCW 61.24.163(~~(+18)~~) (19). The
2 information provided to the department by the housing counselors
3 should include outcomes of foreclosures and be similar to the
4 information requested in the national foreclosure mortgage counseling
5 client level foreclosure outcomes report form.

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

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

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

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

1 percent to fund outreach; and (6) 10 percent to the department to be
2 used for implementation and operation of the foreclosure fairness
3 act. Funds provided under ((this)) subsection (3) of this section
4 must be used to supplement, not supplant, other federal, state, and
5 local funds((; and (4) seventeen percent to the department to be used
6 for implementation and operation of the foreclosure fairness act)).
7 If the program needs do not require the full use of the allocation as
8 set forth in this section, the department may reallocate those funds
9 to increase the percentage allocated to another agency or
10 organization authorized to receive those funds by this section.

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

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

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

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

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