

SHB 1108 - H AMD 15

By Representatives Walsh, Orwall

ADOPTED 01/29/2021

1 On page 1, after line 21, insert the following:

2 **"Sec. 2.** RCW 61.24.005 and 2014 c 164 s 1 are each amended to
3 read as follows:

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

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

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

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

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

19 (5) "Department" means the department of commerce or its
20 designee.

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

32 (7) "Grantor" means a person, or its successors, who executes a
33 deed of trust to encumber the person's interest in property as

1 security for the performance of all or part of the borrower's
2 obligations.

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

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

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

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

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

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

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

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

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

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

33 **Sec. 3.** RCW 61.24.030 and 2018 c 306 s 1 are each amended to
34 read as follows:

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

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

37 (2) That the deed of trust contains a statement that the real
38 property conveyed is not used principally for agricultural purposes;
39 provided, if the statement is false on the date the deed of trust was

1 granted or amended to include that statement, and false on the date
2 of the trustee's sale, then the deed of trust must be foreclosed
3 judicially. Real property is used for agricultural purposes if it is
4 used in an operation that produces crops, livestock, or aquatic
5 goods;

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

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

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

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

30 (7) (a) That, for residential real property of up to four units,
31 before the notice of trustee's sale is recorded, transmitted, or
32 served, the trustee shall have proof that the beneficiary is the
33 holder of any promissory note or other obligation secured by the deed
34 of trust. A declaration by the beneficiary made under the penalty of
35 perjury stating that the beneficiary is the holder of any promissory
36 note or other obligation secured by the deed of trust shall be
37 sufficient proof as required under this subsection.

38 (b) Unless the trustee has violated his or her duty under RCW
39 61.24.010(4), the trustee is entitled to rely on the beneficiary's
40 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**
20 to assess your situation and refer you to mediation if you might
21 benefit. Mediation **MUST** be requested between the time you receive the
22 Notice of Default and no later than twenty days after the Notice of
23 Trustee Sale is recorded.

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

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

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

31 **SEEKING ASSISTANCE**

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

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

1 Telephone: Website:
2 The United States Department of Housing and Urban Development
3 Telephone: Website:
4 The statewide civil legal aid hotline for assistance and referrals to
5 other housing counselors and attorneys
6 Telephone: Website:"

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

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

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

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

20 (9) That, for (~~owner-occupied~~) residential real property of up
21 to four units, before the notice of the trustee's sale is recorded,
22 transmitted, or served, the beneficiary has complied with RCW
23 61.24.031 and, if applicable, RCW 61.24.163;

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

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

35 (b) Reasonable diligence for the purposes of this subsection (10)
36 means the trustee shall search in the county where the property is
37 located, the public records and information for any obituary, will,
38 death certificate, or case in probate within the county for the
39 borrower and grantor;

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

8 (a) Acknowledges the notice in writing and requests reasonable
9 documentation of the death of the borrower or grantor from the
10 claimant including, but not limited to, a death certificate or other
11 written evidence of the death of the borrower or grantor. The
12 claimant must be allowed thirty days from the date of this request to
13 present this documentation. If the trustee or mortgage servicer has
14 already obtained sufficient proof of the borrower's death, it may
15 proceed by acknowledging the claimant's notice in writing and issuing
16 a request under (b) of this subsection.

17 (b) If the mortgage servicer or trustee obtains or receives
18 written documentation of the death of the borrower or grantor from
19 the claimant, or otherwise independently confirms the death of the
20 borrower or grantor, then the servicer or trustee must request in
21 writing documentation from the claimant demonstrating the ownership
22 interest of the claimant in the real property. A claimant has sixty
23 days from the date of the request to present this documentation.

24 (c) If the mortgage servicer or trustee receives written
25 documentation demonstrating the ownership interest of the claimant
26 prior to the expiration of the sixty days provided in (b) of this
27 subsection, then the servicer or trustee must, within twenty days of
28 receipt of proof of ownership interest, provide the claimant with, at
29 a minimum, the loan balance, interest rate and interest reset dates
30 and amounts, balloon payments if any, prepayment penalties if any,
31 the basis for the default, the monthly payment amount, reinstatement
32 amounts or conditions, payoff amounts, and information on how and
33 where payments should be made. The mortgage servicers shall also
34 provide the claimant application materials and information, or a
35 description of the process, necessary to request a loan assumption
36 and modification.

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

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

8 (f) The existence of a successor in interest under this section
9 does not impose an affirmative duty on a mortgage servicer or alter
10 any obligation the mortgage servicer has to provide a loan
11 modification to the successor in interest. If a successor in interest
12 assumes the loan, he or she may be required to otherwise qualify for
13 available foreclosure prevention alternatives offered by the mortgage
14 servicer.

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

18 (12) Nothing in this section shall prejudice the right of the
19 mortgage servicer or beneficiary from discontinuing any foreclosure
20 action initiated under the deed of trust act in favor of other
21 allowed methods for pursuit of foreclosure of the security interest
22 or deed of trust security interest.

23 **Sec. 4.** RCW 61.24.031 and 2014 c 164 s 2 are each amended to
24 read as follows:

25 (1)(a) A trustee, beneficiary, or authorized agent may not issue
26 a notice of default under RCW 61.24.030(8) until: (i) Thirty days
27 after satisfying the due diligence requirements as described in
28 subsection (5) of this section and the borrower has not responded; or
29 (ii) if the borrower responds to the initial contact, ninety days
30 after the initial contact with the borrower was initiated.

31 (b) A beneficiary or authorized agent shall make initial contact
32 with the borrower by letter to provide the borrower with information
33 required under (c) of this subsection and by telephone as required
34 under subsection (5) of this section. The letter required under this
35 subsection must be mailed in accordance with subsection (5)(a) of
36 this section and must include the information described in (c) of
37 this subsection and subsection (5)(e)(i) through (iv) of this
38 section.

1 (c) The letter required under this subsection, developed by the
2 department pursuant to RCW 61.24.033, at a minimum shall include:

3 (i) A paragraph printed in no less than twelve-point font and
4 bolded that reads:

5 "You must respond within thirty days of the date of this letter.
6 IF YOU DO NOT RESPOND within thirty days, a notice of default may be
7 issued and you may lose your home in foreclosure.

8 IF YOU DO RESPOND within thirty days of the date of this letter,
9 you will have an additional sixty days to meet with your lender
10 before a notice of default may be issued.

11 You should contact a housing counselor or attorney as soon as
12 possible. Failure to contact a housing counselor or attorney may
13 result in your losing certain opportunities, such as meeting with
14 your lender or participating in mediation in front of a neutral third
15 party. A housing counselor or attorney can help you work with your
16 lender to avoid foreclosure.

17 If you filed bankruptcy or have been discharged in bankruptcy,
18 this communication is not intended as an attempt to collect a debt
19 from you personally, but is notice of enforcement of the deed of
20 trust lien against the property. If you wish to avoid foreclosure and
21 keep your property, this notice sets forth your rights and options.";

22 (ii) The toll-free telephone number from the United States
23 department of housing and urban development to find a department-
24 approved housing counseling agency, the toll-free numbers for the
25 statewide foreclosure hotline recommended by the housing finance
26 commission, and the statewide civil legal aid hotline for assistance
27 and referrals to other housing counselors and attorneys;

28 (iii) A paragraph stating that a housing counselor may be
29 available at little or no cost to the borrower and that whether or
30 not the borrower contacts a housing counselor or attorney, the
31 borrower has the right to request a meeting with the beneficiary; and

32 (iv) A paragraph explaining how the borrower may respond to the
33 letter and stating that after responding the borrower will have an
34 opportunity to meet with his or her beneficiary in an attempt to
35 resolve and try to work out an alternative to the foreclosure and
36 that, after ninety days from the date of the letter, a notice of
37 default may be issued, which starts the foreclosure process.

38 (d) If the beneficiary has exercised due diligence as required
39 under subsection (5) of this section and the borrower does not
40 respond by contacting the beneficiary within thirty days of the

1 initial contact, the notice of default may be issued. "Initial
2 contact" with the borrower is considered made three days after the
3 date the letter required in (b) of this subsection is sent.

4 (e) If a meeting is requested by the borrower or the borrower's
5 housing counselor or attorney, the beneficiary or authorized agent
6 shall schedule the meeting to occur before the notice of default is
7 issued. An assessment of the borrower's financial ability to modify
8 or restructure the loan obligation and a discussion of options must
9 occur during the meeting scheduled for that purpose.

10 (f) The meeting scheduled to assess the borrower's financial
11 ability to modify or restructure the loan obligation and discuss
12 options to avoid foreclosure may be held telephonically, unless the
13 borrower or borrower's representative requests in writing that a
14 meeting be held in person. The written request for an in-person
15 meeting must be made within thirty days of the initial contact with
16 the borrower. If the meeting is requested to be held in person, the
17 meeting must be held in the county where the property is located
18 unless the parties agree otherwise. A person who is authorized to
19 agree to a resolution, including modifying or restructuring the loan
20 obligation or other alternative resolution to foreclosure on behalf
21 of the beneficiary, must be present either in person or on the
22 telephone or videoconference during the meeting.

23 (2) A notice of default issued under RCW 61.24.030(8) must
24 include a declaration, as provided in subsection (9) of this section,
25 from the beneficiary or authorized agent that it has contacted the
26 borrower as provided in subsection (1) of this section, it has tried
27 with due diligence to contact the borrower under subsection (5) of
28 this section, or the borrower has surrendered the property to the
29 trustee, beneficiary, or authorized agent. Unless the trustee has
30 violated his or her duty under RCW 61.24.010(4), the trustee is
31 entitled to rely on the declaration as evidence that the requirements
32 of this section have been satisfied, and the trustee is not liable
33 for the beneficiary's or its authorized agent's failure to comply
34 with the requirements of this section.

35 (3) If, after the initial contact under subsection (1) of this
36 section, a borrower has designated a housing counseling agency,
37 housing counselor, or attorney to discuss with the beneficiary or
38 authorized agent, on the borrower's behalf, options for the borrower
39 to avoid foreclosure, the borrower shall inform the beneficiary or
40 authorized agent and provide the contact information to the

1 beneficiary or authorized agent. The beneficiary or authorized agent
2 shall contact the designated representative for the borrower to meet.

3 (4) The beneficiary or authorized agent and the borrower or the
4 borrower's representative shall attempt to reach a resolution for the
5 borrower within the ninety days from the time the initial contact is
6 sent and the notice of default is issued. A resolution may include,
7 but is not limited to, a loan modification, an agreement to conduct a
8 short sale, or a deed in lieu of foreclosure transaction, or some
9 other workout plan. Any modification or workout plan offered at the
10 meeting with the borrower's designated representative by the
11 beneficiary or authorized agent is subject to approval by the
12 borrower.

13 (5) A notice of default may be issued under RCW 61.24.030(8) if a
14 beneficiary or authorized agent has initiated contact with the
15 borrower as required under subsection (1)(b) of this section and the
16 failure to meet with the borrower occurred despite the due diligence
17 of the beneficiary or authorized agent. Due diligence requires the
18 following:

19 (a) A beneficiary or authorized agent shall first attempt to
20 contact a borrower by sending, by both first-class and either
21 registered or certified mail, return receipt requested, a letter to
22 the address in the beneficiary's records for sending account
23 statements to the borrower and to the address of the property
24 encumbered by the deed of trust. The letter must be the letter
25 described in subsection (1)(c) of this section.

26 (b)(i) After the letter has been sent, the beneficiary or
27 authorized agent shall attempt to contact the borrower by telephone
28 at least three times at different hours and on different days.
29 Telephone calls must be made to the primary and secondary telephone
30 numbers on file with the beneficiary or authorized agent.

31 (ii) A beneficiary or authorized agent may attempt to contact a
32 borrower using an automated system to dial borrowers if the telephone
33 call, when answered, is connected to a live representative of the
34 beneficiary or authorized agent.

35 (iii) A beneficiary or authorized agent satisfies the telephone
36 contact requirements of this subsection (5)(b) if the beneficiary or
37 authorized agent determines, after attempting contact under this
38 subsection (5)(b), that the borrower's primary telephone number and
39 secondary telephone number or numbers on file, if any, have been
40 disconnected or are not good contact numbers for the borrower.

1 (iv) The telephonic contact under this subsection (5)(b) does not
2 constitute the meeting under subsection (1)(f) of this section.

3 (c) If the borrower does not respond within fourteen days after
4 the telephone call requirements of (b) of this subsection have been
5 satisfied, the beneficiary or authorized agent shall send a certified
6 letter, with return receipt requested, to the borrower at the address
7 in the beneficiary's records for sending account statements to the
8 borrower and to the address of the property encumbered by the deed of
9 trust. The letter must include the information described in (e)(i)
10 through (iv) of this subsection. The letter must also include a
11 paragraph stating: "Your failure to contact a housing counselor or
12 attorney may result in your losing certain opportunities, such as
13 meeting with your lender or participating in mediation in front of a
14 neutral third party."

15 (d) The beneficiary or authorized agent shall provide a means for
16 the borrower to contact the beneficiary or authorized agent in a
17 timely manner, including a toll-free telephone number or charge-free
18 equivalent that will provide access to a live representative during
19 business hours for the purpose of initiating and scheduling the
20 meeting under subsection (1)(f) of this section.

21 (e) The beneficiary or authorized agent shall post a link on the
22 home page of the beneficiary's or authorized agent's internet
23 website, if any, to the following information:

24 (i) Options that may be available to borrowers who are unable to
25 afford their mortgage payments and who wish to avoid foreclosure, and
26 instructions to borrowers advising them on steps to take to explore
27 those options;

28 (ii) A list of financial documents borrowers should collect and
29 be prepared to present to the beneficiary or authorized agent when
30 discussing options for avoiding foreclosure;

31 (iii) A toll-free telephone number or charge-free equivalent for
32 borrowers who wish to discuss options for avoiding foreclosure with
33 their beneficiary or authorized agent; and

34 (iv) The toll-free telephone number or charge-free equivalent
35 made available by the department to find a department-approved
36 housing counseling agency.

37 (6) Subsections (1) and (5) of this section do not apply if the
38 borrower has surrendered the property as evidenced by either a letter
39 confirming the surrender or delivery of the keys to the property to
40 the trustee, beneficiary, or authorized agent.

1 (7) (a) This section applies only to deeds of trust that are
2 recorded against (~~owner-occupied~~) residential real property of up
3 to four units. This section does not apply to deeds of trust: (i)
4 Securing a commercial loan; (ii) securing obligations of a grantor
5 who is not the borrower or a guarantor; or (iii) securing a
6 purchaser's obligations under a seller-financed sale.

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

9 (8) As used in this section:

10 (a) "Department" means the United States department of housing
11 and urban development.

12 (b) "Seller-financed sale" means a residential real property
13 transaction where the seller finances all or part of the purchase
14 price, and that financed amount is secured by a deed of trust against
15 the subject residential real property.

16 (9) The form of declaration to be provided by the beneficiary or
17 authorized agent as required under subsection (2) of this section
18 must be in substantially the following form:

19 **"FORECLOSURE LOSS MITIGATION FORM**

20 **Please select applicable option(s) below.**

21 The undersigned beneficiary or authorized agent for the
22 beneficiary hereby represents and declares under the penalty of
23 perjury that [check the applicable box and fill in any blanks so that
24 the beneficiary, authorized agent, or trustee can insert, on the
25 beneficiary's behalf, the applicable declaration in the notice of
26 default required under chapter 61.24 RCW]:

27 (1) [] The beneficiary or beneficiary's authorized agent has
28 contacted the borrower under, and has complied with, RCW 61.24.031
29 (contact provision to "assess the borrower's financial ability to pay
30 the debt secured by the deed of trust and explore options for the
31 borrower to avoid foreclosure") and the borrower responded but did
32 not request a meeting.

33 (2) [] The beneficiary or beneficiary's authorized agent has
34 contacted the borrower as required under RCW 61.24.031 and the
35 borrower or the borrower's designated representative requested a
36 meeting. A meeting was held on (insert date, time, and location/
37 telephonic here) in compliance with RCW 61.24.031.

38 (3) [] The beneficiary or beneficiary's authorized agent has
39 contacted the borrower as required in RCW 61.24.031 and the borrower

1 or the borrower's designated representative requested a meeting. A
2 meeting was scheduled for (insert date, time, and location/telephonic
3 here) and neither the borrower nor the borrower's designated
4 representative appeared.

5 (4) [] The beneficiary or beneficiary's authorized agent has
6 exercised due diligence to contact the borrower as required in RCW
7 61.24.031(5) and the borrower did not respond.

8 (5) [] The borrower has surrendered the secured property as
9 evidenced by either a letter confirming the surrender or by delivery
10 of the keys to the secured property to the beneficiary, the
11 beneficiary's authorized agent or to the trustee.

12 Additional Optional Explanatory Comments:
13

14 **Sec. 5.** RCW 61.24.165 and 2014 c 164 s 4 are each amended to
15 read as follows:

16 (1) RCW 61.24.163 applies only to deeds of trust that are
17 recorded against (~~owner-occupied~~) residential real property of up
18 to four units. (~~The property must have been owner-occupied as of the~~
19 ~~date the initial contact under RCW 61.24.031 was made.~~)

20 (2) (~~A borrower under a deed of trust on owner-occupied~~
21 ~~residential real property who has received a notice of default on or~~
22 ~~before July 22, 2011, may be referred to mediation under RCW~~
23 ~~61.24.163 by a housing counselor or attorney.~~

24 ~~(3))~~ RCW 61.24.163 does not apply to deeds of trust:

- 25 (a) Securing a commercial loan;
- 26 (b) Securing obligations of a grantor who is not the borrower or
27 a guarantor; or
- 28 (c) Securing a purchaser's obligations under a seller-financed
29 sale.

30 (~~(4))~~ (3) RCW 61.24.163 does not apply to association
31 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

32 (~~(5))~~ (4) For purposes of referral and mediation under RCW
33 61.24.163, a person may be referred to mediation if the borrower is
34 deceased and the person is a successor in interest of the deceased
35 borrower who occupies the property as his or her primary residence.
36 The referring counselor or attorney must determine a person's
37 eligibility under this section and indicate the grounds for
38 eligibility on the referral to mediation submitted to the department.
39 For the purposes of mediation under RCW 61.24.163, the person must be

1 treated as a "borrower." This subsection does not impose an
2 affirmative duty on the beneficiary to accept an assumption of the
3 loan.

4 ~~((6))~~ (5) For purposes of referral and mediation under RCW
5 61.24.163, a person may be referred to mediation if the person has
6 been awarded title to the property in a proceeding for dissolution or
7 legal separation. The referring counselor or attorney must determine
8 the person's eligibility under this section and indicate the grounds
9 for eligibility on the referral to mediation submitted to the
10 department. For the purposes of mediation under RCW 61.24.163, the
11 person must be treated as a "borrower." This subsection does not
12 impose an affirmative duty on the beneficiary to accept an assumption
13 of the loan."

14 Renumber the remaining sections consecutively, correct any
15 internal references accordingly, and correct the title.

16 On page 2, line 8, after "of" strike "owner-occupied" and insert
17 "~~(owner-occupied)~~"

18 On page 2, line 8, after "property" insert "of up to four units"

EFFECT: (1) Removes the requirement that residential real property of up to four units be owner-occupied for purposes of the application of the mediation requirement under the Foreclosure Fairness Program.

(2) Modifies the exemption from the mediation requirement so that the exemption is based on the number of trustee sales of residential real property of up to four units, rather than owner-occupied residential real property.

(3) Removes the "owner-occupied" requirement from the definition of "residential real property" and expands that definition to include residential real property of up to four units in the provisions that require a beneficiary declaration, notice of default, and compliance with the notice of default and mediation requirements prior to a trustee's sale.

(4) Extends the applicability of the provisions related to issuing a notice of default to residential real property of up to four units and removes the requirement that the residential real property be owner-occupied.

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