

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1108

67th Legislature
2021 Regular Session

Passed by the House April 12, 2021
Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate April 3, 2021
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1108** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1108

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Orwall, Ortiz-Self, Kloba, Hackney, Chopp, Santos, Macri, Pollet, and Harris-Talley)

READ FIRST TIME 01/26/21.

1 AN ACT Relating to maintaining funding and assistance for
2 homeowners navigating the foreclosure process; amending RCW
3 61.24.005, 61.24.030, 61.24.031, 61.24.135, 61.24.165, 61.24.166,
4 61.24.172, and 61.24.173; adding a new section to chapter 61.24 RCW;
5 adding a new section to chapter 42.56 RCW; creating new sections;
6 repealing RCW 61.24.173; providing effective dates; providing an
7 expiration date; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that whether
10 mediation, reporting, and payment provisions of the foreclosure
11 fairness act apply to any particular beneficiary in a given year is
12 tied to the number of trustee's sales and number of notices of
13 trustee's sale recorded in the preceding year. The legislature
14 further finds that, due to the federal foreclosure moratorium in
15 place from at least March of 2020 through December of 2020 and into
16 the year 2021, it is likely that, absent legislative action, the
17 mediation, reporting, and payment provisions of the foreclosure
18 fairness act will apply to very few if any beneficiaries in calendar
19 year 2021 or 2022 because the threshold numbers that trigger
20 application of these provisions will not be met. The legislature
21 therefore intends to put in place a temporary stopgap remedy so that

1 vital assistance provisions of the foreclosure fairness act are not
2 lost at the very time that foreclosure activity is likely to be
3 increasing.

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

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

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

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

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

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

21 (5) "Department" means the department of commerce or its
22 designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) That the deed of trust contains a statement that the real
36 property conveyed is not used principally for agricultural purposes;
37 provided, if the statement is false on the date the deed of trust was
38 granted or amended to include that statement, and false on the date
39 of the trustee's sale, then the deed of trust must be foreclosed

1 judicially. Real property is used for agricultural purposes if it is
2 used in an operation that produces crops, livestock, or aquatic
3 goods;

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

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

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

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

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

36 (b) Unless the trustee has violated his or her duty under RCW
37 61.24.010(4), the trustee is entitled to rely on the beneficiary's
38 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

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

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

38 (h) A statement that the effect of the recordation, transmittal,
39 and publication of a notice of sale will be to (i) increase the costs

1 and fees and (ii) publicize the default and advertise the grantor's
2 property for sale;

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

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

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

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

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

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

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

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

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

29 **SEEKING ASSISTANCE**

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

34 The statewide foreclosure hotline for assistance and referral to
35 housing counselors recommended by the Housing Finance Commission
36 Telephone: Website:

37 The United States Department of Housing and Urban Development

1 Telephone: Website:

2 The statewide civil legal aid hotline for assistance and referrals to
3 other housing counselors and attorneys

4 Telephone: Website:"

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

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

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

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

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

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

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

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

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

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

38 (11) Upon written notice identifying the property address and the
39 name of the borrower to the servicer or trustee by someone claiming
40 to be a successor in interest to the borrower's or grantor's property

1 rights, but who is not a party to the loan or promissory note or
2 other obligation secured by the deed of trust, a trustee shall not
3 record a notice of sale pursuant to RCW 61.24.040 until the trustee
4 or mortgage servicer completes the following:

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

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

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

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

38 (e) There may be more than one successor in interest to the
39 borrower's property rights. The trustee and mortgage servicer shall
40 apply the provisions of this section to each successor in interest.

1 In the case of multiple successors in interest, where one or more do
2 not wish to assume the loan as coborrowers or coapplicants, a
3 mortgage servicer may require any nonapplicant successor in interest
4 to consent in writing to the application for loan assumption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (d) If the beneficiary has exercised due diligence as required
35 under subsection (5) of this section and the borrower does not
36 respond by contacting the beneficiary within thirty days of the
37 initial contact, the notice of default may be issued. "Initial
38 contact" with the borrower is considered made three days after the
39 date the letter required in (b) of this subsection is sent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (7)(a) This section applies only to deeds of trust that are
40 recorded against (~~owner-occupied~~) residential real property of up

1 to four units. This section does not apply to deeds of trust: (i)
2 Securing a commercial loan; (ii) securing obligations of a grantor
3 who is not the borrower or a guarantor; or (iii) securing a
4 purchaser's obligations under a seller-financed sale.

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

7 (8) As used in this section:

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

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

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

17 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

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

36 (3) [] The beneficiary or beneficiary's authorized agent has
37 contacted the borrower as required in RCW 61.24.031 and the borrower
38 or the borrower's designated representative requested a meeting. A
39 meeting was scheduled for (insert date, time, and location/telephonic

1 here) and neither the borrower nor the borrower's designated
2 representative appeared.

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

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

10 Additional Optional Explanatory Comments:

11

12 **Sec. 5.** RCW 61.24.135 and 2016 c 196 s 3 are each amended to
13 read as follows:

14 (1) It is an unfair or deceptive act or practice under the
15 consumer protection act, chapter 19.86 RCW, for any person, acting
16 alone or in concert with others, to offer, or offer to accept or
17 accept from another, any consideration of any type not to bid, or to
18 reduce a bid, at a sale of property conducted pursuant to a power of
19 sale in a deed of trust. The trustee may decline to complete a sale
20 or deliver the trustee's deed and refund the purchase price, if it
21 appears that the bidding has been collusive or defective, or that the
22 sale might have been void. However, it is not an unfair or deceptive
23 act or practice for any person, including a trustee, to state that a
24 property subject to a recorded notice of trustee's sale or subject to
25 a sale conducted pursuant to this chapter is being sold in an "as-is"
26 condition, or for the beneficiary to arrange to provide financing for
27 a particular bidder or to reach any good faith agreement with the
28 borrower, grantor, any guarantor, or any junior lienholder.

29 (2) It is an unfair or deceptive act in trade or commerce and an
30 unfair method of competition in violation of the consumer protection
31 act, chapter 19.86 RCW, for any person or entity to: (a) Violate the
32 duty of good faith under RCW 61.24.163; (b) fail to comply with the
33 requirements of RCW 61.24.174, as it existed prior to July 1, 2016,
34 (~~(e)~~) RCW 61.24.173, or section 11 of this act; or (c) fail to
35 initiate contact with a borrower and exercise due diligence as
36 required under RCW 61.24.031.

37 **Sec. 6.** RCW 61.24.165 and 2014 c 164 s 4 are each amended to
38 read as follows:

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

5 (2) (~~A borrower under a deed of trust on owner-occupied~~
6 ~~residential real property who has received a notice of default on or~~
7 ~~before July 22, 2011, may be referred to mediation under RCW~~
8 ~~61.24.163 by a housing counselor or attorney.~~

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

10 (a) Securing a commercial loan;

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

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

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

19 (~~(4))~~ (3) RCW 61.24.163 does not apply to association
20 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

21 (~~(5))~~ (4) For purposes of referral and mediation under RCW
22 61.24.163, a person may be referred to mediation if the borrower is
23 deceased and the person is a successor in interest of the deceased
24 borrower who occupies the property as his or her primary residence.
25 The referring counselor or attorney must determine a person's
26 eligibility under this section and indicate the grounds for
27 eligibility on the referral to mediation submitted to the department.
28 For the purposes of mediation under RCW 61.24.163, the person must be
29 treated as a "borrower." This subsection does not impose an
30 affirmative duty on the beneficiary to accept an assumption of the
31 loan.

32 (~~(6))~~ (5) For purposes of referral and mediation under RCW
33 61.24.163, a person may be referred to mediation if the person has
34 been awarded title to the property in a proceeding for dissolution or
35 legal separation. The referring counselor or attorney must determine
36 the person's eligibility under this section and indicate the grounds
37 for eligibility on the referral to mediation submitted to the
38 department. For the purposes of mediation under RCW 61.24.163, the
39 person must be treated as a "borrower." This subsection does not

1 impose an affirmative duty on the beneficiary to accept an assumption
2 of the loan.

3 **Sec. 7.** RCW 61.24.166 and 2011 c 58 s 9 are each amended to read
4 as follows:

5 ((The)) Beginning on January 1, 2023, the provisions of RCW
6 61.24.163 do not apply to any federally insured depository
7 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
8 certifies to the department under penalty of perjury that it was not
9 a beneficiary of deeds of trust in more than two hundred fifty
10 trustee sales of (~~owner-occupied~~) residential real property of up
11 to four units that occurred in this state during the preceding
12 calendar year. A federally insured depository institution certifying
13 that RCW 61.24.163 does not apply must do so annually, beginning no
14 later than (~~thirty days after July 22, 2011~~) January 31, 2023, and
15 no later than January 31st of each year thereafter.

16 NEW SECTION. **Sec. 8.** (1) During the 2021 calendar year, the
17 provisions of RCW 61.24.163 do not apply to any federally insured
18 depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A),
19 that certifies to the department under penalty of perjury that it was
20 not a beneficiary of deeds of trust in more than 250 trustee sales of
21 owner-occupied residential real property that occurred in this state
22 during 2019. A federally insured depository institution certifying
23 that RCW 61.24.163 does not apply pursuant to this subsection must do
24 so no later than 30 days after the effective date of this section.

25 (2) During the 2022 calendar year, the provisions of RCW
26 61.24.163 do not apply to any federally insured depository
27 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
28 certifies to the department under penalty of perjury that it was not
29 a beneficiary of deeds of trust in more than 250 trustee sales of
30 owner-occupied residential property that occurred in this state
31 during 2019. A federally insured depository institution certifying
32 that RCW 61.24.163 does not apply pursuant to this subsection must do
33 so no later than January 31, 2022.

34 (3) This section expires December 31, 2022.

35 **Sec. 9.** RCW 61.24.172 and 2016 c 196 s 1 are each amended to
36 read as follows:

1 The foreclosure fairness account is created in the custody of the
2 state treasurer. All receipts received under RCW 61.24.174, as it
3 existed prior to July 1, 2016, (~~and~~) RCW 61.24.173, and section 11
4 of this act must be deposited into the account. Only the director of
5 the department of commerce or the director's designee may authorize
6 expenditures from the account. Funding to agencies and organizations
7 under this section must be provided by the department through an
8 interagency agreement or other applicable contract instrument. The
9 account is subject to allotment procedures under chapter 43.88 RCW,
10 but an appropriation is not required for expenditures. Biennial
11 expenditures from the account must be used as follows: Four hundred
12 thousand dollars to fund the counselor referral hotline. The
13 remaining funds shall be distributed as follows: (1) Sixty-nine
14 percent for the purposes of providing housing counseling activities
15 to benefit borrowers; (2) eight percent to the office of the attorney
16 general to be used by the consumer protection division to enforce
17 this chapter; (3) six percent to the office of civil legal aid to be
18 used for the purpose of contracting with qualified legal aid programs
19 for legal representation of homeowners in matters relating to
20 foreclosure. Funds provided under this subsection (3) must be used to
21 supplement, not supplant, other federal, state, and local funds; and
22 (4) seventeen percent to the department to be used for implementation
23 and operation of the foreclosure fairness act.

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

27 **Sec. 10.** RCW 61.24.173 and 2018 c 306 s 7 are each amended to
28 read as follows:

29 (1) Except as provided in subsections (5) and (6) of this
30 section, beginning July 1, 2016, and every quarter thereafter, every
31 beneficiary on whose behalf a notice of trustee's sale has been
32 recorded pursuant to RCW 61.24.040 on residential real property under
33 this chapter must:

34 (a) Report to the department the number of notices of trustee's
35 sale recorded for each residential property during the previous
36 quarter;

37 (b) Remit the amount required under subsection (2) of this
38 section; and

1 (c) Report and update beneficiary contact information for the
2 person and work group responsible for the beneficiary's compliance
3 with the requirements of the foreclosure fairness act created in this
4 chapter.

5 (2) For each notice of trustee's sale recorded on residential
6 real property, the beneficiary on whose behalf the notice of
7 trustee's sale has been recorded shall remit (~~((three hundred twenty-~~
8 ~~five dollars))~~ \$325 to the department to be deposited, as provided
9 under RCW 61.24.172, into the foreclosure fairness account. The
10 (~~((three hundred twenty-five dollar))~~ \$325 payment is required for
11 every recorded notice of trustee's sale for noncommercial loans on
12 residential real property, but does not apply to the recording of an
13 amended notice of trustee's sale. No later than January 1, 2020, the
14 department may from time to time adjust the amount of the fee, not to
15 exceed (~~((three hundred twenty-five dollars))~~ \$325, at a sufficient
16 level to defray the costs of the program. The beneficiary shall remit
17 the total amount required in a lump sum each quarter.

18 (3) Any adjustment to the amount of the fee, pursuant to the
19 authority of subsection (2) of this section, shall be made by rule
20 adopted by the department in accordance with the provisions of
21 chapter 34.05 RCW.

22 (4) Reporting and payments under subsections (1) and (2) of this
23 section are due within (~~((forty-five))~~ 45 days of the end of each
24 quarter.

25 (5) (~~((This))~~ (a) Except as provided in (b) of this subsection,
26 this section does not apply to any beneficiary or loan servicer that
27 is a federally insured depository institution, as defined in 12
28 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of perjury
29 that fewer than ((fifty)) 50 notices of trustee's sale were recorded
30 on its behalf in the preceding year.

31 (b) During the 2021 and 2022 calendar years, this section does
32 not apply to any beneficiary or loan servicer that is a federally
33 insured depository institution, as defined in 12 U.S.C. Sec.
34 461(b)(1)(A), and that certifies under penalty of perjury that fewer
35 than 50 notices of trustee's sale were recorded on its behalf in
36 2019.

37 (6) This section does not apply to association beneficiaries
38 subject to chapter 64.32, 64.34, or 64.38 RCW.

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

4 (8) After the effective date of section 11 of this act, the
5 requirements of this section apply only with respect to notices of
6 trustee's sale for which remittance and reporting on a notice of
7 default for that same residential real property was not made pursuant
8 to section 11 of this act.

9 NEW SECTION. Sec. 11. A new section is added to chapter 61.24
10 RCW to read as follows:

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

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

20 (b) Remit the amount required under subsection (2) of this
21 section; and

22 (c) Report and update beneficiary contact information for the
23 person and work group responsible for the beneficiary's compliance
24 with the requirements of the foreclosure fairness act created in this
25 chapter.

26 (2) For each residential real property for which a notice of
27 default has been issued, the beneficiary issuing the notice of
28 default, or causing the notice of default to be issued on the
29 beneficiary's behalf, shall remit \$250 to the department to be
30 deposited, as provided under RCW 61.24.172, into the foreclosure
31 fairness account. The \$250 payment is required per property and not
32 per notice of default. The beneficiary shall remit the total amount
33 required in a lump sum each quarter.

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

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

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

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

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

14 NEW SECTION. **Sec. 12.** A new section is added to chapter 42.56
15 RCW to read as follows:

16 Information obtained by the department of commerce under section
17 11 of this act that reveals the name or other personal information of
18 the borrower or the street address of the residential real property
19 on which a notice of default was issued is exempt from disclosure
20 under this chapter.

21 NEW SECTION. **Sec. 13.** RCW 61.24.173 (Required payment for each
22 property subject to notice of trustee's sale—Residential real
23 property—Exceptions—Deposit into foreclosure fairness account) and
24 2018 c 306 s 7 & 2016 c 196 s 2 are each repealed.

25 NEW SECTION. **Sec. 14.** The repeal in section 13 of this act does
26 not affect any existing right acquired or liability or obligation
27 incurred under the section repealed or under any rule or order
28 adopted under that section, nor does it affect any proceeding
29 instituted under that section.

30 NEW SECTION. **Sec. 15.** Sections 1 through 4, 6 through 8, and 10
31 of this act are necessary for the immediate preservation of the
32 public peace, health, or safety, or support of the state government
33 and its existing public institutions, and take effect immediately.

34 NEW SECTION. **Sec. 16.** Sections 5, 9, 11, and 12 of this act
35 take effect January 1, 2022.

1 NEW SECTION. **Sec. 17.** Sections 13 and 14 of this act take
2 effect June 30, 2023.

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