



1        NEW SECTION.    **Sec. 101.**        TITLE.    Chapter . . . , Laws of 1995  
2 (this act) may be known and cited as the Washington Unified Real  
3 Property Security Interest Foreclosure Act.

4        NEW SECTION.    **Sec. 102.**    PURPOSES.    The purposes of chapter . . . ,  
5 Laws of 1995 (this act) are as follows:

6        (1) To provide a uniform and consistent procedure for the judicial  
7 and nonjudicial foreclosure of all consensual security interests in  
8 real estate created by a security agreement;

9        (2) To make the law regarding deficiency judgments and redemption  
10 rights in judicial foreclosures of consensual real estate security  
11 interests consistent with those that apply to the nonjudicial  
12 foreclosure of such interests; and

13        (3) To provide a specific procedure applicable to the sale of real  
14 estate under a judgment and decree of foreclosure of a consensual  
15 security interest in the real estate.

16        NEW SECTION.    **Sec. 103.**    CONSTRUCTION.    (1) The sections of chapter  
17 . . . , Laws of 1995 (this act) must:

18        (a) Be considered part of a general act that is intended as unified  
19 coverage of the subject matter, and to this end no part of chapter  
20 . . . , Laws of 1995 (this act) may be deemed impliedly repealed by  
21 later legislation if the construction can be reasonably avoided;

22        (b) Not be held invalid because of the invalidity of other sections  
23 or provisions of the act as long as the section or provision in  
24 question can be given effect without regard to the invalid section or  
25 provision, and to this end the sections and provisions of chapter  
26 . . . , Laws of 1995 (this act) are declared to be severable; and

27        (c) Not be applied to repeal, modify, or amend statutory or case  
28 law of this state applicable to consensual security interests in real  
29 estate, other than those acts and those sections specifically amended  
30 or repealed hereby, unless the result would be clearly required in  
31 order to give effect to the purpose of chapter . . . , Laws of 1995  
32 (this act).

33        (2) Unless the context in which they are used otherwise requires,  
34 words used in the singular include the plural, and in the plural  
35 include the singular, and words of the masculine and feminine genders  
36 include the other gender and the neuter gender, and the neuter gender  
37 may refer to any gender.

1        NEW SECTION.    **Sec. 104.**    DEFINITIONS.    Unless the context clearly  
2 requires otherwise, the definitions in this section apply throughout  
3 this chapter and chapters 61.-- and 61.-- RCW (sections 201 through 319  
4 of this act).

5        (1) "Business day" means any day included in a business week that  
6 is not a legal holiday.

7        (2) "Business week" means Monday through Friday inclusive.

8        (3) "Costs and fees" in judicial proceedings means both prejudgment  
9 and postjudgment costs and attorney's fees and expenses incurred in  
10 enforcing the obligation and the security agreement, whether imposed by  
11 law or permitted by the security agreement.    In a nonjudicial  
12 foreclosure proceeding, "costs and fees" includes the expenses actually  
13 incurred by the trustee in enforcing the obligation and security  
14 agreement, whether imposed by law or permitted by the security  
15 agreement, including reasonable trustee's and attorney's fees and costs  
16 of recording and mailing the notices and other documents required by  
17 chapter 61.-- RCW (sections 301 through 319 of this act).

18        (4) "Debtor" means a person who under a security agreement has  
19 granted a security interest in real estate to secure the payment of a  
20 debt or the performance of an obligation, or both, or the successor to  
21 such a grantor.    For the purpose of this chapter and chapters 61.-- and  
22 61.-- RCW (sections 201 through 319 of this act), the grantor  
23 designated in a deed of trust, and the vendee or purchaser designated  
24 in a real estate contract, is a "debtor."

25        (a) If at the time an action for foreclosure is commenced the  
26 debtor and the owner of real estate that is subject to the security  
27 interest are not the same person, "debtor" means the owner of the real  
28 estate in a provision of this chapter and chapters 61.-- and 61.-- RCW  
29 (sections 201 through 319 of this act) dealing with the real estate  
30 that is subject to the security interest, and the obligor in a  
31 provision dealing with a payment or performance of an obligation.  
32 Under this subsection (4)(a), "debtor" also includes both the owner and  
33 the obligor if the context requires.

34        (b) A debtor is a "judgment debtor" if necessary to give effect to  
35 the levy, sale, and execution provisions of Title 6 RCW.

36        (5) "Default" means the failure of a debtor to timely make any  
37 payment or to timely perform any obligation when required under a  
38 security agreement or under a separate writing or document secured by  
39 the security agreement.

1 (6) "Family farm" means real property used in a farming operation  
2 by a family farmer.

3 (7) "Family farmer" means a debtor who, at the time a security  
4 agreement is executed and at the time judicial or nonjudicial  
5 foreclosure proceedings thereon are initiated, satisfies the conditions  
6 in (a) or (b) of this subsection, whichever applies.

7 (a) An individual "family farmer" means an individual, an  
8 individual and the individual's spouse, or a marital community engaged  
9 in a farming operation and whose aggregate community and separate  
10 income from the farming operation is more than fifty percent of the  
11 aggregate community and separate gross income of the individual,  
12 individuals, or marital community.

13 (b) An entity "family farmer" means a corporation, limited  
14 liability company, limited partnership, or partnership engaged in a  
15 farming operation and in which:

16 (i) More than fifty percent of the outstanding stock or equity  
17 interest is held by one or more of the following individuals: The  
18 debtor; the debtor's spouse; or the ancestors and descendants,  
19 stepchildren, brothers, sisters, nephews, and nieces of the debtor or  
20 the debtor's spouse;

21 (ii) One or more of such individuals is responsible for, actually  
22 manages, and is receiving more than fifty percent of his or her gross  
23 income from the farming operation; and

24 (iii) The corporate stock or equity interests are not publicly  
25 traded.

26 (8) "Family residence" means the dwelling house constituting the  
27 debtor's principal residence at the time that a security agreement is  
28 executed and at the time that judicial or nonjudicial foreclosure  
29 proceedings thereon are initiated, or that the debtor, at the time the  
30 security agreement is executed, intends to occupy as a principal  
31 residence and does occupy at the time of foreclosure, together with  
32 appurtenant structures and so much of the land on which the residence  
33 and structures are situated, and by which the residence and structures  
34 are surrounded, as is reasonably necessary for the residential  
35 purposes. "Family residence" includes the following types of dwellings  
36 occupied by a debtor as the debtor's principal residence:

37 (a) A condominium or cooperative unit;

38 (b) A building occupied by the debtor both as a principal residence  
39 and for a business conducted by the debtor; and

1 (c) A mobile or manufactured home that has become real property  
2 under the law of this state.

3 (9) "Farming operation" means agriculture or farming activities  
4 such as the following: Tillage of the soil; dairy farming; ranching;  
5 production or raising of crops, poultry, fish, shellfish, or livestock;  
6 and production of poultry or livestock products in an unmanufactured  
7 state.

8 (10) "Real estate" and "real property" mean land and an estate or  
9 interest in, over, or under land that by custom, usage, or law passes  
10 with a conveyance of land even though the estate or interest is not  
11 specifically described or mentioned in the contract of sale or  
12 instrument of conveyance. "Real estate" and "real property" include a  
13 lease of land and rental from the land unless the lease or rental would  
14 be considered personal property under other law of this state.

15 (11) "Real estate contract" means any written agreement for the  
16 sale of real property which provides that legal title to the real  
17 property is retained by the seller as security for payment of the  
18 purchase money. "Real estate contract" does not include earnest money  
19 agreements and options to purchase.

20 (12) "Record" and "recorded" include the appropriate registration  
21 proceedings in the case of registered land.

22 (13) "Secured creditor" means a lender, seller, or other person who  
23 under a security agreement has been granted a security interest in real  
24 estate to secure the payment of a debt or the performance of an  
25 obligation, or both, or the successor to such a grantee. If the  
26 security interest arises under a deed of trust or a real estate  
27 contract, the beneficiary designated in the deed of trust, or the  
28 vendor or seller designated in the real estate contract, is the  
29 "secured creditor" for the purposes of this chapter and chapters 61.--  
30 and 61.-- RCW (sections 201 through 319 of this act). A secured  
31 creditor is a "judgment creditor" if necessary to give effect to the  
32 levy, sale, and execution provisions of Title 6 RCW.

33 (14) "Security agreement" means a mortgage or other writing treated  
34 as a mortgage under Washington law, a deed of trust, or a real estate  
35 contract, whether executed by the debtor prior to or subsequent to the  
36 effective date of this act.

37 (15) "Security interest" means an interest in real property given  
38 by a debtor to secure the payment of a debt or the performance of an

1 obligation, or both. A security interest is created by, and at the  
2 time of, the debtor's execution of a security agreement.

3 (16) "Seller's security interest" means a security interest taken  
4 or retained by the seller of real property at the time of sale to  
5 secure the payment of all or a portion of the purchase price thereof.

6 NEW SECTION. **Sec. 105.** EXCLUSIVE FORECLOSURE REMEDY--FORFEITURE  
7 RIGHT IS EQUIVALENT TO ACCELERATION RIGHT--OTHER REMEDIES PRESERVED.

8 (1) The rights and interests of a purchaser under a real estate  
9 contract are not subject to forfeiture. Real estate contracts and  
10 other real property security agreements may be foreclosed only under  
11 this chapter and chapters 61.-- and 61.-- RCW (sections 201 through 319  
12 of this act).

13 (2) For the purposes of this chapter and chapters 61.-- and 61.--  
14 RCW (sections 201 through 319 of this act), a provision in a real  
15 estate contract that the secured creditor has a right to forfeit the  
16 debtor's rights and interests upon the debtor's default is the  
17 equivalent of a right to accelerate the debt upon default and entitles  
18 the secured creditor to bid the unpaid balance of the purchase price at  
19 a judicial or nonjudicial foreclosure sale.

20 (3) If a security agreement is not foreclosed under this chapter  
21 and chapters 61.-- and 61.-- RCW (sections 201 through 319 of this  
22 act), the debt or other obligation secured by the agreement may be  
23 enforced by any other means provided by law.

24 NEW SECTION. **Sec. 106.** WHEN FORECLOSURE PERMITTED THROUGH OTHER  
25 ACTIONS COMMENCED. A secured creditor is not precluded from judicially  
26 or nonjudicially foreclosing a security interest in real estate because  
27 the secured creditor previously commenced an action in the courts of  
28 this state for any of the following reasons:

29 (1) To obtain the appointment of a receiver or to enforce a right  
30 to collect the rents, issues, and profits from the real estate, or  
31 both;

32 (2) To foreclose or enforce any other lien or security rights  
33 granted to secure the same obligation, either separately or in  
34 conjunction with the foreclosure of another obligation, if the security  
35 interest being foreclosed was not granted to secure an obligation  
36 incurred primarily for personal, family, or household purposes; or

1 (3) To enforce an arbitration provision contained in any security  
2 agreement.

3 NEW SECTION. **Sec. 107.** DISPOSITION OF EXCESS PROCEEDS FROM SALE.

4 (1) If, following a sale of real estate under a judgment and decree of  
5 foreclosure as provided in chapter 61.-- RCW (sections 201 through 210  
6 of this act), any excess proceeds remain after payment of all sums due  
7 to the secured creditor as required by the applicable provisions of  
8 chapter 61.-- RCW (sections 201 through 210 of this act), the excess on  
9 deposit with the clerk shall be distributed pursuant to this section.

10 (2) If the sale of the real estate was a nonjudicial sale under  
11 chapter 61.-- RCW (sections 301 through 319 of this act), the trustee  
12 shall deposit any excess remaining after payment of all sums due to the  
13 secured creditor as required by the applicable provisions of chapter  
14 61.-- RCW (sections 301 through 319 of this act), less the clerk's  
15 filing fee, together with a copy of the recorded notice of sale, with  
16 the clerk of the superior court of the county in which the sale took  
17 place, and the clerk shall index such funds under the name of the  
18 debtor as set out in the recorded notice, and the excess shall be  
19 distributed pursuant to this section.

20 (3) Interests in or liens or claims of liens against the property  
21 eliminated by a judicial or nonjudicial sale under this chapter and  
22 chapters 61.-- and 61.-- RCW (sections 201 through 319 of this act),  
23 shall attach to the excess proceeds in the same order of priority that  
24 they had in the real estate sold. The clerk may not disburse such  
25 excess except in accordance with the directions contained in a  
26 disbursement order of the superior court.

27 (4) The debtor, or any other person claiming an interest in the  
28 excess, may apply to the court for the entry of an order directing the  
29 manner in which the excess shall be disbursed by the clerk. If more  
30 than one person claims a right, title, or interest in and to the  
31 excess, notice of the time and place of the hearing on the applications  
32 shall be given to all such claimants at least fifteen days prior to the  
33 hearing date.

34 NEW SECTION. **Sec. 108.** MANNER AND EFFECT OF CURING DEFAULTS. (1)

35 Any person seeking to terminate a judicial or nonjudicial foreclosure  
36 by curing defaults within the periods provided in chapters 61.-- and  
37 61.-- RCW (sections 201 through 319 of this act) may cause such

1 termination by curing all defaults existing at the time of cure, as  
2 follows:

3 (a) By paying all accumulated interest plus the amount required to  
4 reduce the unpaid balance of the obligation secured to the amount that  
5 would not then be due had no default occurred;

6 (b) By paying all taxes, insurance, and other amounts required to  
7 be paid by the debtor pursuant to the terms of the security agreement  
8 and the note or other obligation secured, that are delinquent or that  
9 were paid by the secured creditor to protect its interest;

10 (c) By paying all costs and fees actually incurred by the plaintiff  
11 or trustee in enforcing the terms of the note or other obligation and  
12 in filing or recording the documents required to give notice of the  
13 discontinuance and termination of the judicial or nonjudicial  
14 proceedings; and

15 (d) In the case of a default that is other than the failure to make  
16 required payments, by either correcting such defaults or paying to the  
17 plaintiff or trustee the costs and expenses incurred in correcting such  
18 defaults.

19 (2) The lien of any person who has a subordinate lien of record on  
20 the real property and who has cured the default or defaults pursuant to  
21 this section shall thereafter include all payments made to cure any  
22 defaults, including interest thereon at the legal maximum rate  
23 permitted in RCW 19.52.020 at the time of the payment of the amount  
24 required to cure the default, payments made for trustee's fees, and the  
25 plaintiff's or trustee's costs and fees.

26 **PART II. UNIFIED JUDICIAL FORECLOSURE PROVISIONS**

27 NEW SECTION. **Sec. 201.** WHEN JUDICIAL FORECLOSURE PERMITTED--  
28 VENUE. Upon the occurrence of a default, the secured creditor may  
29 proceed to judicially foreclose the security interest and the equity of  
30 redemption in the superior court of the county where the land, or some  
31 part of it, lies.

32 NEW SECTION. **Sec. 202.** CONCURRENT ACTIONS NOT PERMITTED IN STATE  
33 COURTS. Except when permitted in section 106 of this act, a secured  
34 creditor may not proceed to foreclose a security interest in a court of  
35 this state while prosecuting another action in a court of this state  
36 for the same debt or for an obligation that is secured by the security

1 interest, or while seeking to obtain execution of a judgment in a court  
2 of this state in the other action. A secured creditor may not  
3 prosecute another action in a court of this state for the same debt or  
4 obligation while foreclosing the security interest or prosecuting a  
5 judgment of foreclosure in a court of this state.

6 NEW SECTION. **Sec. 203.** REDEMPTION RIGHTS AFTER SALE, IN GENERAL.  
7 Except as otherwise provided in section 204 of this act, a debtor and  
8 third parties having an interest in the real property constituting the  
9 security have the rights of redemption, and possession incident  
10 thereto, provided in chapter 6.23 RCW.

11 NEW SECTION. **Sec. 204.** WHEN PROSPECTIVE REDEMPTION RIGHTS MAY BE  
12 TERMINATED--EFFECT OF CURE OF DEFAULTS. (1) Subject to subsection (2)  
13 of this section and to compliance with section 205 of this act, the  
14 purchaser at a sheriff's sale takes title in and to, and possession of,  
15 the real property free from all redemption rights, and rights of  
16 possession incident thereto, of the debtor and third parties provided  
17 in chapter 6.23 RCW in the following cases:

18 (a) In all cases of the foreclosure of a seller's security  
19 interest; and

20 (b) In all other cases unless the debtor is a family farmer as  
21 defined in section 104 of this act.

22 (2) To terminate the rights of redemption, the secured creditor  
23 must waive any possible right to a deficiency judgment and grant to the  
24 debtor and each additional defendant who would otherwise be entitled to  
25 rights of redemption a period of one hundred twenty days to cure all  
26 defaults. The one hundred twenty day period for cure of defaults  
27 commences, as to each defendant, on the day following the date of  
28 service on that defendant of the summons and complaint in the action.  
29 Should the one hundred twentieth day following the service of the  
30 summons and complaint on a defendant fall on a Saturday, Sunday, or  
31 legal holiday, the period of time within which that defendant may cure  
32 all defaults extends to the next business day.

33 (3) Payment of all amounts due and the performance of any other  
34 obligation required to cure all defaults alleged in the complaint and  
35 occurring thereafter, and payment of the secured creditor's costs and  
36 fees, within the one hundred twenty day period cancels the acceleration  
37 of the debt, reinstates the obligation, and terminates the foreclosure

1 action. Such termination is without prejudice to the rights of the  
2 secured creditor to accelerate the debt, to commence a later action for  
3 the entry of a judgment and decree of foreclosure, and either to waive  
4 or to enforce a deficiency judgment, if otherwise permitted by this  
5 chapter and chapters 61.-- and 61.-- RCW (sections 101 through 319 of  
6 this act), for defaults occurring after those that were cured in order  
7 to effect such termination.

8 NEW SECTION. **Sec. 205.** HOW REDEMPTION RIGHTS MAY BE TERMINATED.

9 (1) The waiver of deficiency judgment and grant of the right to cure  
10 that are required to enable a secured creditor to terminate rights of  
11 redemption, as provided in section 204 of this act, are established by  
12 the secured creditor alleging in its complaint substantially as  
13 follows:

14 (a) The right to a deficiency judgment is waived;

15 (b) The debtor and any other defendant otherwise entitled to rights  
16 of redemption may cancel an acceleration, reinstate the obligation, and  
17 terminate the foreclosure by curing all current and subsequent defaults  
18 existing at the time of cure and paying the secured creditor's costs  
19 and fees within a one hundred twenty day period commencing with the day  
20 following the date on which the debtor or other defendant was served  
21 with a summons and complaint in the action;

22 (c) If the one hundred twentieth day after the date of service of  
23 the summons and complaint on a party falls on a Saturday, Sunday, or  
24 legal holiday, the period of time within which such party may cure the  
25 defaults is extended to the next business day;

26 (d) At any time on or before the last day of the one hundred twenty  
27 day period, a defendant may, upon written application, obtain a  
28 statement from the secured creditor, or the secured creditor's  
29 attorney, of the amount required to be paid and the other actions that  
30 are required to be taken by the debtor to cure such defaults;

31 (e) The real property will be sold without rights of redemption if  
32 neither the debtor nor any other defendant otherwise entitled to  
33 redemption rights cures all defaults and pays the secured creditor's  
34 costs and fees within the one hundred twenty day period following the  
35 date upon which the debtor or other defendant was served with the  
36 summons and complaint in the action; and

37 (f) Should the debtor or any other defendant have any question  
38 about legal rights or about the nature and consequences of the

1 proceedings, or question any of the amounts claimed to be due or other  
2 actions alleged to be required in order to cure the defaults claimed,  
3 the debtor or other defendant is entitled to be represented by an  
4 attorney of choice in the proceedings.

5 (2) The court shall enter a final judgment and decree of  
6 foreclosure that terminates the rights of redemption, and the rights of  
7 possession incident thereto, and directs the sale of the real property  
8 that is subject to the security interest foreclosed without such rights  
9 upon finding the following:

10 (a) The rights of redemption may be terminated pursuant to section  
11 204 of this act;

12 (b) The plaintiff has complied with subsection (1) of this section;

13 (c) The one hundred twenty day period within which the debtor and  
14 each additional defendant is entitled to cure defaults has expired as  
15 to all such parties; and

16 (d) The defaults have not been cured within such period.

17 (3) The findings required by subsection (2) of this section may be  
18 based upon uncontroverted affidavits filed in the proceedings.

19 NEW SECTION. **Sec. 206.** UPSET PRICE FOR SALE OF FAMILY FARM OR  
20 FAMILY RESIDENCE IF DEFICIENCY JUDGMENT NOT WAIVED. If the secured  
21 creditor does not waive a deficiency judgment as provided in this  
22 chapter, upon application made prior to the entry of a judgment and  
23 decree of foreclosure of a security interest in a family farm or family  
24 residence, the court in ordering the foreclosure sale may, in its  
25 discretion, take judicial notice of economic conditions and, after a  
26 proper hearing, establish the value of the real property and fix a  
27 minimum or upset price that the secured creditor must credit upon the  
28 judgment as a condition to confirmation of the sale. The amount of the  
29 credit must not exceed the amount of the judgment plus interest and the  
30 secured creditor's costs and fees. If the amount of credit is equal to  
31 the amount of judgment plus interest and the secured creditor's costs  
32 and fees, then the court shall direct in the judgment and decree of  
33 foreclosure that the remedy of the secured creditor is confined to the  
34 sale of the real property subject to the security agreement.

35 NEW SECTION. **Sec. 207.** JUDGMENT AND DECREE OF FORECLOSURE--WHEN  
36 DEFICIENCY JUDGMENT PERMITTED. (1) In the judgment and decree of  
37 foreclosure, the court shall describe the real property subject to the

1 security interest foreclosed and shall order the sheriff to sell it, or  
2 so much of it as may be necessary, to satisfy the judgment, including  
3 the secured creditor's costs and fees.

4 (2) Except as provided in subsection (3) of this section, if there  
5 is an express provision for the payment of a sum of money contained in  
6 the security agreement or in a separate instrument or document secured  
7 by the security agreement, the court shall also direct in the judgment  
8 and decree of foreclosure that the balance of the judgment and costs  
9 and fees that may remain unsatisfied after the sale of the real  
10 property may be satisfied from other property of the debtor.

11 (3) If there is no express provision in the security agreement  
12 providing for the payment of a specific sum nor in a separate  
13 instrument or document, or if the secured creditor has expressly waived  
14 a right to a deficiency judgment in the complaint in accordance with  
15 sections 204 and 205 of this act, the court shall direct in the  
16 judgment and decree of foreclosure that the remedy of the secured  
17 creditor is confined to the sale of the real property subject to the  
18 security agreement.

19 NEW SECTION. **Sec. 208.** LIEN OF JUDGMENT FOR DEFICIENCY--  
20 ENFORCEMENT. If section 207 of this act permits enforcement of a  
21 judgment for the balance remaining unsatisfied after application of the  
22 proceeds received from the sheriff's sale of the real property, the  
23 judgment for such deficiency is similar in all respects to other  
24 judgments for the recovery of money and is a lien upon the property of  
25 a judgment debtor from the same time, for the same period, and under  
26 the same conditions as other money judgments. Such deficiency judgment  
27 may be enforced solely in accordance with the levy, execution, and sale  
28 procedures in Title 6 RCW.

29 NEW SECTION. **Sec. 209.** PROCEDURES FOR SALE OF PROPERTY UNDER  
30 JUDGMENT AND DECREE OF FORECLOSURE--NOTICES TO BE GIVEN BY SECURED  
31 CREDITOR. (1) The secured creditor shall initiate a sale of the real  
32 property subject to the security interest foreclosed by delivering to  
33 the sheriff a certified copy of the judgment and decree of foreclosure  
34 directing sale of the real property.

35 (2) The sheriff shall endorse the time of receipt on the certified  
36 copy and proceed to sell the property described in the judgment and

1 decree of foreclosure in accordance with the procedure for sales in  
2 chapter 6.21 RCW, after giving the notices required by RCW 6.21.030(2).

3 (3) At least thirty days before the date of the sheriff's sale, the  
4 secured creditor shall give the notices in accordance with RCW  
5 6.21.030(1).

6 NEW SECTION. **Sec. 210.** FORECLOSURE FOR UNPAID INSTALLMENTS  
7 WITHOUT ACCELERATION. (1) Proceedings on the security agreement must  
8 be stayed, subject to being enforced upon a later default, if a  
9 complaint is filed for the foreclosure of a security agreement upon  
10 which interest or an installment of the principal is due and another  
11 installment is not due and has not been accelerated, and if the debtor  
12 pays into the court the principal and interest required to reduce the  
13 unpaid balance of the obligation secured to the amount that would be  
14 due had all installments been timely made, plus the secured creditor's  
15 costs and fees, and cures all other defaults before the entry of final  
16 judgment. In the final judgment, the court shall direct at what time  
17 and upon what default a later execution issues.

18 (2) After final judgment is entered for an installment due, the  
19 court shall ascertain whether the real property can be sold in parcels.  
20 If the real property can be sold in parcels without injury to the  
21 interests of a party, the court shall direct that only so much of the  
22 real property be sold as is sufficient to pay the amount due on the  
23 security agreement with costs and fees. The judgment remains and may  
24 be enforced by execution upon a later default, unless the amount due on  
25 the later default is paid before the sheriff's sale under the  
26 execution.

27 (3) If the real property subject to the security interest cannot be  
28 sold in parcels, the court shall order the whole to be sold, and the  
29 proceeds of the sale must be applied first to the payment of the  
30 principal and interest due, and costs and fees, and then to the  
31 unmatured balance of the debt or obligation secured by the real  
32 property subject to the security interest, or both. If the balance  
33 does not bear interest, a deduction must be made from the balance by  
34 discounting the then current rate of prejudgment interest. If the  
35 proceeds of the sale are more than sufficient to pay the amount secured  
36 by the security agreement and costs and fees, the excess must be placed  
37 on deposit with the county clerk as provided in section 107 of this  
38 act.

1                   **PART III. UNIFIED NONJUDICIAL FORECLOSURES**

2                                   **FORMER CHAPTER 61.24 RCW**

3           NEW SECTION.   **Sec. 301.**   WHEN NONJUDICIAL FORECLOSURE PERMITTED.

4 Subject to section 304 of this act, upon the occurrence of a default,  
5 a secured creditor may proceed to nonjudicially foreclose a security  
6 interest in real property and the equity of redemption, and the real  
7 property subject thereto may be sold by a trustee pursuant to the  
8 procedures of this chapter.

9           NEW SECTION.   **Sec. 302.**   TRUSTEE'S POWER TO FORECLOSE AND SELL.

10 The trustee designated in a deed conveying real property to a trustee  
11 in trust to secure the performance of an obligation of the debtor or  
12 another, or a trustee otherwise appointed by a secured creditor for the  
13 purpose of nonjudicially foreclosing a security interest in real  
14 property, has the powers of foreclosure and sale provided in this  
15 chapter. Such powers exist by virtue of the debtor-creditor  
16 relationship and need not be expressly provided in the security  
17 agreement.

18           NEW SECTION.   **Sec. 303.**   WHO MAY BE TRUSTEE--RESIGNATION OF

19 TRUSTEE--SUCCESSOR TRUSTEES. (1) The trustee designated in a deed of  
20 trust or a trustee who is otherwise appointed by a secured creditor to  
21 nonjudicially foreclose a security interest under this chapter shall  
22 be:

23           (a) Any domestic corporation incorporated under Title 23B, 30, 31,  
24 32, or 33 RCW;

25           (b) Any title insurance company authorized to insure title to real  
26 property under the laws of this state, or its agents;

27           (c) Any attorney who is an active member of the Washington state  
28 bar association at the time designated or appointed as trustee;

29           (d) Any professional corporation incorporated under chapter 18.100  
30 RCW, all of whose shareholders are licensed attorneys;

31           (e) Any agency or instrumentality of the United States government;  
32 or

33           (f) Any national bank, savings bank, or savings and loan  
34 association chartered under the laws of the United States.

35           (2) No person, corporation, or association listed in subsection (1)  
36 of this section may be both a trustee and secured creditor under the

1 same security agreement, except that any agency of the United States  
2 government may be both a trustee and beneficiary under the same  
3 security agreement.

4 (3) A trustee designated in a deed of trust or otherwise appointed  
5 by a secured creditor to nonjudicially foreclose a security interest  
6 pursuant to this chapter, or a successor of either, shall resign at the  
7 request of the secured creditor and may resign voluntarily. Upon the  
8 resignation, incapacity, disability, or death of the trustee, the  
9 secured creditor shall nominate in writing a successor trustee. Upon  
10 recording in the mortgage records of the county or counties in which  
11 the real property is located of either an appointment of a successor  
12 trustee or a notice of trustee's sale that satisfies section 308(2) of  
13 this act, the successor trustee shall be vested with all powers of the  
14 original trustee.

15 NEW SECTION. **Sec. 304.** REQUISITES FOR NONJUDICIAL FORECLOSURE.

16 Each of the following is a requisite to the nonjudicial foreclosure of  
17 a security interest in real property and the sale of real property  
18 subject thereto under this chapter:

19 (1) The real property subject to the security interest that is to  
20 be foreclosed is not a family farm; except that the fact that such real  
21 property is a family farm does not preclude nonjudicial foreclosure of  
22 a seller's security interest;

23 (2) A default has occurred in the obligation secured or a covenant  
24 of the debtor which, pursuant to the terms and provisions of the  
25 security agreement or the obligation secured, entitles a secured  
26 creditor to accelerate the debt;

27 (3) No action commenced by the secured creditor or the secured  
28 creditor's successor is pending in the courts of this state to seek  
29 satisfaction of an obligation secured by the security interest  
30 foreclosed by reason of the debtor's default on the obligation secured  
31 other than those permitted in section 106 of this act;

32 (4) The security agreement has been recorded in each county in  
33 which the real property or some part thereof is located;

34 (5) At least thirty days before a notice of trustee's sale is  
35 recorded, transmitted by mail, and posted or served, the secured  
36 creditor or the trustee shall cause a written notice of default in the  
37 form provided in section 306 of this act, to be:

1 (a) Mailed to the debtor or the debtor's successor in interest at  
2 the last known address of such debtor or successor; and

3 (b) Posted in a conspicuous place on the real property or  
4 personally served on the debtor or the debtor's successor in interest;

5 (6) The nonjudicial foreclosure sale shall not take place less than  
6 one hundred twenty days from the date of default in any of the  
7 obligations secured if the security interest foreclosed is a seller's  
8 security interest, and not less than one hundred ninety days from the  
9 date of default in any of the obligations secured in all other cases;

10 (7) At least ninety days prior to the nonjudicial foreclosure sale  
11 a notice of trustee's sale shall be recorded, and the notice of  
12 trustee's sale and a notice of foreclosure shall be given to the  
13 persons, and in the form and manner, required in section 307 of this  
14 act;

15 (8) At any time on or before the second Friday preceding the date  
16 set by the trustee for the sale in the recorded notice of trustee's  
17 sale, or, in the event the trustee continues the sale pursuant to  
18 section 312 of this act, at any time on or before the second Friday  
19 preceding the day to which the sale is continued, the debtor or the  
20 debtor's successor in interest, any secured creditor under a  
21 subordinate security agreement, or any person having a subordinate lien  
22 or encumbrance of record on the real property to be sold, or any part  
23 thereof, shall be entitled to terminate the sale proceedings by curing  
24 all defaults as provided in section 108 of this act;

25 (9) The notice of trustee's sale, excluding the acknowledgement,  
26 shall be published in a legal newspaper in each county in which the  
27 property or any part thereof is situated, once during the fourth  
28 business week preceding the business week during which the sale date is  
29 set, and once during the business week immediately preceding the  
30 business week during which the sale date is set;

31 (10) The nonjudicial foreclosure sale shall be held on a Friday  
32 that is not a legal holiday during the hours set by statute for the  
33 conduct of sales of real property on execution; and

34 (11) The place of the nonjudicial foreclosure sale shall be any  
35 designated public place within the county where the real property is  
36 located or in any county in which a portion of the real property is  
37 located.

1        NEW SECTION. Sec. 305. HOW MAILED NOTICE TRANSMITTED. (1) Mailed  
2 notice when required by this chapter shall be transmitted by both first  
3 class and either certified or registered mail, return receipt  
4 requested. As an alternative to mailing, the required notice may be  
5 personally served upon the person entitled to receive it.

6        (2) For the purposes of this chapter, mailed notice is given on the  
7 date that it is deposited in the United States mail. Proof of mailing  
8 of any notice required by this chapter may be established by an  
9 affidavit in the possession of the trustee.

10       NEW SECTION. Sec. 306. FORM--"NOTICE OF DEFAULT." The notice of  
11 default that is required to be mailed and posted or served under  
12 section 304(5) of this act shall contain the following information:

13        (1) A description of the real property that is then subject to the  
14 security agreement;

15        (2) The book and the page of the book of records wherein the  
16 security agreement is recorded;

17        (3) A statement that the secured creditor has declared the debtor  
18 or any successor in interest to be in default, and a concise statement  
19 of the default alleged;

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

22        (5) An itemized account of all other specific charges, costs, and  
23 fees that the debtor is or may be obliged to pay to reinstate the  
24 security agreement before the recording of the notice of trustee's  
25 sale;

26        (6) The total of subsections (4) and (5) of this section,  
27 designated clearly and conspicuously as the amount necessary to  
28 reinstate the note or other obligation and the security agreement  
29 before the recording of the notice of trustee's sale;

30        (7) A statement that failure to cure the alleged default within  
31 thirty days of the date of mailing or personal service of the notice  
32 may lead to the initiation of nonjudicial foreclosure proceedings by  
33 the recordation, transmittal, and publication of a notice of trustee's  
34 sale by a trustee who is either designated in the deed of trust or  
35 otherwise appointed by the secured creditor to nonjudicially foreclose  
36 the security interest and that the real property described in  
37 subsection (1) of this section may be sold by such trustee at public  
38 auction at a date no less than one hundred twenty days after the

1 mailing, posting, or service of the notice of default, whichever occurs  
2 first;

3 (8) A statement that the effect of the recording, transmittal, and  
4 publication of a notice of trustee's sale will be to: (a) Increase the  
5 costs and fees; and (b) publicize the default and advertise the  
6 debtor's property for sale;

7 (9) A statement that the effect of the sale of the debtor's  
8 property by the trustee will be to deprive the debtor or any successor  
9 in interest of all interest in the real property described in  
10 subsection (1) of this section; and

11 (10) A statement that the debtor or any successor in interest has  
12 recourse to the courts pursuant to section 319 of this act to contest  
13 the alleged default or defaults on any proper ground.

14 NEW SECTION. Sec. 307. HOW NONJUDICIAL FORECLOSURE IS INITIATED.  
15 A trustee shall initiate nonjudicial foreclosure proceedings as  
16 follows:

17 (1) By recording the notice of trustee's sale in the office of the  
18 auditor in each county in which the security agreement is recorded;

19 (2) By mailing to the debtor or the debtor's successor in interest  
20 at the last known address, the notice of trustee's sale together with  
21 the notice of foreclosure in the forms provided in sections 308 and 309  
22 of this act;

23 (3) By mailing the notice of trustee's sale to the following  
24 persons, or their legal representatives, at their addresses stated in  
25 a recorded instrument evidencing their interest, lien, or claim of  
26 lien, or an amendment thereto, or in a recorded request for notice of  
27 the sale, or at their addresses otherwise known to the trustee:

28 (a) The secured creditor under any security agreement that was  
29 recorded subsequent to the recording of the security agreement being  
30 foreclosed and before the recording of the notice of sale;

31 (b) The vendee of any real estate contract, the lessee in any  
32 lease, or the holder of any conveyance of any interest or estate, in  
33 any portion or all of the real property described in such notice, if  
34 that contract, lease, or conveyance, or a memorandum or other notice  
35 thereof, was recorded after the recording of the security agreement  
36 being foreclosed and before the recording of the notice of sale;

37 (c) The last holder of record of any other lien or claim of lien  
38 against, or interest in, the real property that is subject to a

1 subordination to the security agreement being foreclosed that was  
2 recorded before the recording of the notice of sale;

3 (d) The last holder of record of the lien of any judgment  
4 subordinate to the security agreement being foreclosed;

5 (e) The plaintiff or the plaintiff's attorney of record in any  
6 court action to foreclose a lien or other encumbrance on all or any  
7 part of the real property that is subordinate to the security interest  
8 foreclosed, provided the court action is pending and a lis pendens in  
9 connection therewith is recorded in the office of the auditor of any  
10 county in which all or part of the real property is located on the date  
11 the notice is recorded; and

12 (f) Any person who has recorded a request for notice in accordance  
13 with section 310 of this act, at the address in such person's most  
14 recently recorded request for notice; and

15 (4) By posting a copy of the notice of trustee's sale described in  
16 section 308 of this act in a conspicuous place on the property, or in  
17 lieu of posting, by causing a copy of the notice to be served upon any  
18 occupant of the property.

19 NEW SECTION. **Sec. 308.** FORM--NOTICE OF TRUSTEE'S SALE. (1) The  
20 notice of trustee's sale that is required to be mailed, recorded,  
21 posted or personally served, and published pursuant to section 307 of  
22 this act shall be substantially in the following form:

23 **NOTICE OF TRUSTEE'S SALE**

24 I.

25 NOTICE IS HEREBY GIVEN that the undersigned, who is the Trustee  
26 designated in a Security Agreement or otherwise appointed by the  
27 Secured Creditor to initiate nonjudicial foreclosure and sale  
28 procedures pursuant to the laws of the State of Washington, will on the  
29 . . . . . day of . . . . ., 19. ., at the hour of . . . . .  
30 o'clock . . . . . M. at . . . . . [street address and location if  
31 inside a building] in the City of . . . . ., State of Washington,  
32 sell at public auction to the highest and best bidder, payable at the  
33 time of sale, the following described real property, situated in the  
34 County(ies) of . . . . . State of Washington, to-wit: . . . . .  
35 which is subject to that certain Security Agreement dated . . . . .  
36 19. ., recorded . . . . ., 19. ., under Auditor's File No.  
37 . . . . ., records of . . . . . County, Washington, executed by

1 . . . . ., as Debtor, and . . . . ., as Secured Creditor, to secure  
2 an obligation in favor of the Secured Creditor, the security interest  
3 in which was assigned by the Secured Creditor under an Assignment  
4 recorded under Auditor's File No. . . . . [Include recording  
5 information for all counties if the Security Agreement is recorded in  
6 more than one county.]

7 II.

8 No separate action commenced by the Secured Creditor under the  
9 Security Agreement or by the Secured Creditor's successor is now  
10 pending to seek satisfaction of the obligation in any Court of this  
11 State by reason of the Debtor's default on the obligation secured by  
12 the Security Agreement other than such separate actions as are  
13 expressly permitted by statute.

14 III.

15 The default(s) for which this foreclosure is made is/are as  
16 follows:

17 [If default is for other than payment of money, set forth the  
18 particulars]

19 Failure to pay when due the following amounts which are now in  
20 arrears:

21 . . . . .  
22 . . . . .

23 IV.

24 The sum owing on the obligation secured by the Security Agreement  
25 is: Principal \$. . . . ., together with interest as provided in the  
26 note or other obligation secured from the . . . . . day of . . . . .,  
27 19. ., and such other costs and fees as are due under the note or other  
28 obligation secured, and as are provided by statute.

29 V.

30 The above-described real property will be sold to satisfy the  
31 expense of sale and the obligation secured by the Security Agreement as  
32 provided by statute. The sale will be made without warranty, express  
33 or implied, regarding title, possession, or encumbrances on the  
34 . . . . . day of . . . . ., 19. . . The default(s) referred to in

1 paragraph III must be cured on or before . . . . . day of . . . . . ,  
2 19. . (the second Friday preceding the sale date), to cause a  
3 termination of the sale. The sale will be terminated if at any time on  
4 or before the . . . . . day of . . . . . , 19. . (the second Friday  
5 preceding the sale date), the default(s) as set forth in paragraph III  
6 is/are cured and the Trustee's costs and fees are paid. The sale may  
7 be terminated any time after the . . . . . day of . . . . . , 19. .  
8 (the second Friday preceding the sale date), and before the sale by the  
9 Debtor or the Debtor's successor in interest or the holder of any  
10 recorded junior lien or encumbrance paying the entire principal and  
11 interest secured by the Security Agreement, plus costs and fees and  
12 advances, if any, made pursuant to the terms of the obligation and/or  
13 Security Agreement, and curing all other defaults.

14 VI.

15 A written notice of default was transmitted by the Secured Creditor  
16 or Trustee to the Debtor or the Debtor's successor in interest at the  
17 following address:

18 . . . . .  
19 . . . . .

20 by both first class and certified mail on the . . . . . day of  
21 . . . . . , 19. ., proof of which is in the possession of the  
22 Trustee; and the Debtor or the Debtor's successor in interest was  
23 personally served on the . . . . . day of . . . . . , 19. ., with  
24 said written notice of default or the written notice of default was  
25 posted in a conspicuous place on the real property described in  
26 paragraph I above, and the Trustee has possession of proof of such  
27 service or posting.

28 VII.

29 The Trustee whose name and address are set forth below will provide  
30 in writing to anyone requesting it, a statement of all costs and fees  
31 due at any time prior to the sale.

32 VIII.

33 The effect of the sale will be to deprive the Debtor and all those  
34 who hold by, through, or under the Debtor of all their interest in the  
35 above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to section 319 of this act. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

. . . . .  
. . . . . Trustee  
. . . . . Address  
. . . . .  
. . . . . Phone.

[Individual or corporate acknowledgment]

(2) If a recorded notice of trustee's sale is signed by both the trustee and the secured creditor, it shall be conclusive proof that the trustee so signing has been appointed by the secured creditor to initiate nonjudicial foreclosure and sale proceedings pursuant to the security agreement and this chapter, and shall, in those instances where another person has previously been designated as trustee in, or pursuant to a security agreement, terminate the powers of such person to initiate nonjudicial foreclosure and sale proceedings.

NEW SECTION. **Sec. 309.** FORM--NOTICE OF FORECLOSURE. The notice of foreclosure that is required to be mailed under section 307 of this act shall be substantially in the following form:

**NOTICE OF FORECLOSURE**

THE ATTACHED NOTICE OF TRUSTEE'S SALE is a consequence of your default(s) in your obligation(s) to . . . . ., the Secured Creditor under your Security Agreement and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the . . . . . day of . . . . ., 19. . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs and fees, advances, and attorney's fees as set forth below on or before the . . . . . day of . . . . ., 19. . (the second Friday preceding the sale date). To date, these arrears and costs are as follows:

Estimated amount

1	Currently due		that will be due
2	to reinstate		to reinstate on
3	on . . . . .		. . . . .
4			(the 2nd Friday
5			preceding the
6			sale date)
7	Delinquent payments		
8	from . . . . .,		
9	19. ., in the		
10	amount of		
11	\$. . . . . /mo.:	\$ . . . . .	\$ . . . . .
12	Late charges in		
13	the total		
14	amount of:	\$ . . . . .	\$ . . . . .
15			Estimated
16			Amounts
17	Attorney's fees:	\$ . . . . .	\$ . . . . .
18	Trustee's fees:	\$ . . . . .	\$ . . . . .
19	Trustee's expenses:		
20	(Itemization)		
21	Title report	\$ . . . . .	\$ . . . . .
22	Recording fees	\$ . . . . .	\$ . . . . .
23	Service/Posting	\$ . . . . .	\$ . . . . .
24	of Notices		
25	Postage/Copying	\$ . . . . .	\$ . . . . .
26	expense		
27	Publication	\$ . . . . .	\$ . . . . .
28	Telephone charges	\$ . . . . .	\$ . . . . .
29	Inspection fees	\$ . . . . .	\$ . . . . .
30	. . . . .	\$ . . . . .	\$ . . . . .
31	. . . . .	\$ . . . . .	\$ . . . . .
32	TOTALS	\$ . . . . .	\$ . . . . .

33 As to the defaults which do not involve payment of money to the  
34 Secured Creditor of your Security Agreement, you must cure each such  
35 default. Listed below are the defaults which do not involve payment of  
36 money to the Secured Creditor under your Security Agreement. Opposite  
37 each such listed default is a brief description of the action necessary

1 to cure the default and a description of the documentation necessary to  
2 show that the default has been cured.

3	Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
5	. . . . .	. . . . .
6	. . . . .	. . . . .

7 You may reinstate your Security Agreement and the obligation(s)  
8 secured thereby at any time up to and including the . . . . . day of  
9 . . . . ., 19. . (the second Friday preceding the sale date), by  
10 paying the amount set forth or estimated above and by curing any other  
11 defaults described above. Of course, as time passes other payments may  
12 become due, and any further payments coming due and any additional late  
13 charges must be added to your reinstating payment. Any new defaults  
14 not involving payment of money that occur after the date of this notice  
15 must also be cured in order to effect reinstatement. In addition,  
16 because some of the charges can only be estimated at this time, and  
17 because the amount necessary to reinstate may include presently unknown  
18 expenditures required to preserve the property or to comply with state  
19 or local law, it will be necessary for you to contact the Trustee  
20 before the time you tender reinstatement so that you may be advised of  
21 the exact amount you will be required to pay. Tender of payment or  
22 performance must be made to: . . . . ., whose address is . . . . .,  
23 telephone ( ) . . . . . AFTER THE . . . . . DAY OF . . . . .,  
24 19. . . YOU MAY NOT REINSTATE YOUR Security Agreement BY PAYING THE  
25 BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS  
26 OUTLINED ABOVE. In such a case, you will only be able to stop the sale  
27 by paying, before the sale, the total principal balance (\$. . . . .)  
28 plus accrued interest, costs and fees, and any advances made pursuant  
29 to the terms of the documents and by curing the other defaults as  
30 outlined above.

31 You may contest this default by bringing a suit in the Superior  
32 Court of the county in which the sale is to be held. In such action,  
33 you may raise any legitimate defenses you have to this default. A copy  
34 of your Security Agreement and documents evidencing the obligation  
35 secured thereby are enclosed. You may wish to consult a lawyer. Legal  
36 action on your part may prevent or restrain the sale, but only if you  
37 persuade the court of the merits of your defense.

1 If you do not reinstate the secured obligation and your Security  
2 Agreement in the manner set forth above, or if you do not succeed in  
3 restraining the sale by court action, your property will be sold to  
4 satisfy the obligations secured by your Security Agreement. The effect  
5 of such sale will be to deprive you and all those who hold by, through  
6 or under you of all interest in the property.

7 DATED . . . . ., 19. .  
8 . . . . .  
9 Trustee

10 NEW SECTION. **Sec. 310.** REQUEST TO RECEIVE COPIES OF NOTICE OF  
11 TRUSTEE'S SALE. Any person desiring a copy of any notice of trustee's  
12 sale described in section 308 of this act other than a person entitled  
13 to receive such a notice under section 307(3) (a) through (e) of this  
14 act must, after the recording of the security agreement and before the  
15 recording of the notice of trustee's sale, cause to be filed for  
16 record, in the office of the auditor of any county in which the  
17 security agreement is recorded, a duly acknowledged request for a copy  
18 of any notice of trustee's sale.

19 The request shall be signed and acknowledged by the person to be  
20 notified or such person's agent, attorney, or representative; shall set  
21 forth the name, mailing address, and telephone number, if any, of the  
22 person or persons to be notified; and shall identify the security  
23 agreement by stating the names of the parties thereto, the date the  
24 security agreement was recorded, the legal description of the property  
25 encumbered by the security agreement, and the auditor's file number  
26 under which the security agreement is recorded.

27 A request for notice under this section shall not affect title to,  
28 or be deemed notice to any person that any person has any right, title,  
29 interest in, lien, or charge upon, the property described in the  
30 request for notice.

31 Such notice shall be in substantially the following form:

32 **REQUEST FOR NOTICE**

33 Request is hereby made that a copy of any notice of sale  
34 described in section 308 of this act under that certain  
35 Security Agreement dated . . . . ., 19. ., recorded on  
36 . . . . ., 19. ., under Auditor's File No. . . . .,  
37 records of . . . . . County, Washington, to secure an

1 obligation of . . . . ., Debtor, to . . . . ., as Creditor,  
2 and affecting the following described real property:

3 (Legal Description)

4 be sent by both first class and either registered or certified  
5 mail, return receipt requested, to, or personally served on,  
6 . . . . . at the address stated below.

7 Dated this . . . . . day of . . . . ., 19. .

8 . . . . . Signature

9 . . . . . Address

10 . . . . .

11 . . . . . Phone

12 (Acknowledgment)

13 NEW SECTION. **Sec. 311.** RIGHT TO COMMENCE SUIT TO DETERMINING  
14 REASONABLENESS OF FEES--EFFECT OF CURE OF DEFAULTS--RECORDING NOTICE OF  
15 TERMINATION OF TRUSTEE'S SALE. (1) Any person entitled to cure the  
16 defaults shall have the right, before or after reinstatement, to  
17 commence suit in any court, excluding a small claims court, for  
18 disputes within the jurisdictional limits of that court, to determine  
19 the reasonableness of any fees demanded or paid as a condition to  
20 reinstatement. The court may make such determination as it deems  
21 appropriate, which may include an award to the prevailing party of its  
22 costs and reasonable attorney's fees, and render judgment accordingly.  
23 An action to determine fees shall not forestall any sale or affect its  
24 validity.

25 (2) Upon the cure of defaults as provided in section 108 of this  
26 act, the proceedings shall be terminated, the security agreement shall  
27 be reinstated, and the obligation shall remain as though no  
28 acceleration had taken place. The trustee shall properly execute,  
29 acknowledge, and cause to be recorded a notice of termination of  
30 trustee's sale under such security agreement. A notice of termination  
31 of trustee's sale when so executed and acknowledged is entitled to be  
32 recorded and shall be sufficient if it sets forth a record of the  
33 security agreement and the auditor's file number under which the  
34 security agreement is recorded, a reference to the notice of trustee's  
35 sale and the auditor's file number under which the notice of trustee's  
36 sale is recorded, and a notice that the sale is terminated.

1        NEW SECTION.    **Sec. 312.**    TRUSTEE'S POWER TO CONTINUE OR TERMINATE  
2 SALE--RECORDING OF NOTICE OF TERMINATION OF TRUSTEE'S SALE.    (1) The  
3 trustee may for any cause the trustee deems advantageous, continue the  
4 sale for a period or periods not exceeding a total of one hundred  
5 twenty days by public proclamation at the time and place fixed for the  
6 sale in the notice of trustee's sale or, alternatively, by giving  
7 notice of the time and place of the postponed sale in the manner and to  
8 the persons specified in section 307 (2) and (3) of this act and  
9 publishing a copy of such notice once in the newspaper or newspapers  
10 described in section 304(9) of this act more than seven days before the  
11 date fixed for sale in the notice of sale.    No other notice of the  
12 postponed sale need be given.

13        (2) The trustee may also terminate the sale proceedings at any time  
14 prior to the sale for any reason that the trustee deems to be  
15 advantageous and thereafter reinitiate nonjudicial foreclosure  
16 proceedings.    The trustee shall mail a notice of termination of  
17 trustee's sale to each person to whom a notice of trustee's sale was  
18 mailed and record a copy thereof in the office of the county auditor of  
19 each county where the real property constituting the security is  
20 located.    A notice of termination of trustee's sale when so executed  
21 and acknowledged is entitled to be recorded and shall be sufficient if  
22 it sets forth a notice that such sale is terminated, the auditor's file  
23 number under which the security agreement is recorded, and the  
24 auditor's file number under which the notice of trustee's sale is  
25 recorded.

26        NEW SECTION.    **Sec. 313.**    SALE AT AUCTION TO HIGHEST BIDDER--SALE IN  
27 PARCELS.    On the date and at the time of the sale, the trustee or its  
28 authorized agent shall sell the real property at public auction to the  
29 highest bidder.    The trustee may sell the property in gross or in  
30 parcels as the trustee deems most advantageous, provided that if the  
31 property is sold in parcels, each parcel shall be sold to the highest  
32 bidder therefor.

33        NEW SECTION.    **Sec. 314.**    WHO MAY BID AT TRUSTEE'S SALE--HOW BID  
34 AMOUNT TO BE PAID.    The secured creditor and any person other than the  
35 trustee may be a bidder at the sale.    If the highest bidder is other  
36 than the secured creditor, the amount bid shall be paid by the  
37 successful bidder, in full, in cash or by certified funds, forthwith

1 unless the time for the payment of such bid is extended by the trustee.  
2 If the highest bidder is the secured creditor, the amount bid shall be  
3 paid by applying the total amount owed by the debtor to the secured  
4 creditor against the amount bid; if the amount bid by the secured  
5 creditor was in excess of the total amount owed by the debtor, such  
6 excess shall be paid in cash or by certified funds as required in this  
7 section.

8 NEW SECTION. **Sec. 315.** TRUSTEE'S DEED--WHAT IS CONVEYED--EFFECT  
9 OF FAILURE TO GIVE REQUIRED NOTICE. Upon receipt of full payment of  
10 the purchase price the trustee shall execute to the purchaser its deed,  
11 which shall convey the interest in the property that the debtor had or  
12 had the power to convey at the time of execution of the deed of trust  
13 or thereafter acquired. The deed shall recite the facts showing that  
14 the sale was conducted in compliance with all of the requirements of  
15 this chapter and of the security agreement, which recital shall be  
16 prima facie evidence of such compliance and conclusive evidence thereof  
17 in favor of bona fide purchasers and encumbrancers for value, but such  
18 recitals shall not affect the lien or interest of any person entitled  
19 to be mailed a notice of trustee's sale pursuant to section 307 of this  
20 act if the trustee fails to give the required notice to such person.  
21 In such case, the lien or interest of the omitted person shall not be  
22 affected by the sale and the omitted person shall be treated as if such  
23 person was the holder of the same lien or interest and was omitted as  
24 a party defendant in a judicial foreclosure proceeding.

25 NEW SECTION. **Sec. 316.** HOW PROCEEDS OF SALE TO BE APPLIED. The  
26 trustee shall apply the proceeds of the sale as follows:

27 (1) To the trustee's costs and fees relating to sale, including a  
28 reasonable charge by the trustee and by the trustee's attorney, but the  
29 total of the trustee's and attorney's fees shall not exceed the amount  
30 that would, by the superior court of the county in which the trustee's  
31 sale occurred, have been deemed reasonable attorney's fees, had the  
32 security agreement been judicially foreclosed in a noncontested action  
33 in that court;

34 (2) To the obligation secured by the deed of trust; and

35 (3) Should the proceeds from such sale exceed the amounts provided  
36 in subsections (1) and (2) of this section, such excess, less required  
37 filing fees, shall be deposited with the clerk of the superior court as

1 required by section 107 of this act, and the trustee shall be  
2 discharged from all further responsibility for such excess.

3 NEW SECTION. **Sec. 317.** RIGHT TO POSSESSION OF PURCHASER OF SALE.  
4 The purchaser at the trustee's sale shall be entitled to possession of  
5 the property on the twentieth day following the sale, as against the  
6 debtor under the security agreement or anyone claiming through the  
7 debtor, and shall have a right to the summary proceedings to obtain  
8 possession of real property provided in chapter 59.12 RCW.

9 NEW SECTION. **Sec. 318.** EFFECT OF FORECLOSURE--NO DEFICIENCY  
10 JUDGMENT--WHEN FORECLOSURE PERMITTED ON OTHER COLLATERAL--NO REDEMPTION  
11 RIGHT. (1) Except as provided in subsection (2) of this section,  
12 foreclosure as provided in this chapter satisfies the obligation  
13 secured by the security interest foreclosed regardless of the sale  
14 price or fair value, and no deficiency decree or other judgment shall  
15 thereafter be obtained on such obligation alone or with other  
16 obligations.

17 (2) If the security interest foreclosed pursuant to subsection (1)  
18 of this section secured an obligation that was not incurred primarily  
19 for personal, family, or household purposes, such foreclosure does not  
20 preclude any judicial or nonjudicial foreclosure of any other security  
21 interests or liens covering other real or personal property created by  
22 the debtor to secure the same obligation.

23 (3) After sale as provided in this chapter, no person has any right  
24 by statute or otherwise to redeem from the security agreement or from  
25 the sale.

26 NEW SECTION. **Sec. 319.** RESTRAINT OF SALE BY COURT--DISSOLUTION OF  
27 STAY--STAY IN BANKRUPTCY. (1) Nothing contained in this chapter shall  
28 prejudice the right of the debtor, the debtor's successor in interest,  
29 or any person who has an interest in or a lien or claim of lien against  
30 the property, or some part thereof, to restrain, on any proper ground,  
31 a trustee's sale. The court shall require as a condition of granting  
32 the restraining order or injunction that the applicant pay to the clerk  
33 of the court the sums that would be due on the obligation secured by  
34 the security agreement if the security agreement was not being  
35 foreclosed:

1 (a) In the case of default in making the periodic payment of  
2 principal, interest, and reserves, such sums shall be the periodic  
3 payment of principal, interest, and reserves paid to the clerk of the  
4 court every thirty days.

5 (b) In the case of default in making payment of an obligation then  
6 fully payable by its terms, such sums shall be the amount of interest  
7 accruing monthly on said obligation at the nondefault rate, paid to the  
8 clerk of the court every thirty days.

9 In the case of default in performance of any nonmonetary obligation  
10 secured by the security agreement, the court shall impose such  
11 conditions as it deems just.

12 In addition, the court may condition granting the restraining order  
13 or injunction upon the giving of security by the applicant, in such  
14 form and amount as the court deems proper, for the payment of such  
15 costs and damages, including attorney's fees, as may be later found by  
16 the court to have been incurred or suffered by any party by reason of  
17 the restraining order or injunction. The court may consider, upon  
18 proper showing, the debtor's equity in the property in determining the  
19 amount of said security.

20 (2) No court may grant a restraining order or injunction to a  
21 trustee's sale unless the person seeking the restraint gives five days'  
22 notice to the trustee and the secured creditor of the time when, where,  
23 and the judge before whom the application for the restraining order or  
24 injunction is to be made. No judge may act on such application unless  
25 it is accompanied by proof, evidenced by a return of a sheriff, the  
26 sheriff's deputy, or any person eighteen years of age or over who is  
27 competent to be a witness, that notice has been served on the trustee.

28 (3) If the restraining order or injunction is dissolved after the  
29 date of the trustee's sale set forth in the notice of trustee's sale in  
30 section 308 of this act and after the period for continuing sale as  
31 allowed by section 312 of this act, the court granting such restraining  
32 order or injunction, or before whom the order or injunction is  
33 returnable, may set a new sale date, which shall be not less than  
34 forty-five days from the date of the order dissolving the restraining  
35 order. At least thirty days before the new sale date, the trustee  
36 shall:

37 (a) Prepare a new notice of trustee's sale and comply with section  
38 307 (1), (2), and (3) of this act; and

1 (b) Cause a copy of the new notice of trustee's sale as provided in  
2 section 308 of this act to be published once during each of the three  
3 business weeks preceding the business week during which the sale occurs  
4 in a legal newspaper in each county in which the property or any part  
5 thereof is situated.

6 (4) If a trustee's sale has been stayed as a result of the filing  
7 of a petition in federal bankruptcy court and after the period for  
8 continuing sale as allowed by section 312 of this act, an order is  
9 entered in federal bankruptcy court granting relief from the stay or  
10 closing or dismissing the case, or discharging the debtor with the  
11 effect of removing the stay, the trustee may set a new sale date, which  
12 shall not be less than forty-five days after the date of the bankruptcy  
13 court's order. The trustee shall:

14 (a) Prepare a new notice of trustee's sale and comply with section  
15 307 (1), (2) and (3) of this act at least thirty days before the new  
16 sale date; and

17 (b) Cause a copy of the new notice of trustee's sale as provided in  
18 section 308 of this act to be published in a legal newspaper in each  
19 county in which the property or any part thereof is situated, once  
20 during the fourth business week preceding the business week during  
21 which the sale date is set, and once during the business week  
22 immediately preceding the business week during which the sale date is  
23 set.

24 **PART IV. AMENDMENTS AND REPEALERS**

25 **Sec. 401.** RCW 6.13.080 and 1993 c 200 s 4 are each amended to read  
26 as follows:

27 HOMESTEAD EXEMPTION, WHEN NOT AVAILABLE. The homestead exemption  
28 is not available against an execution or forced sale in satisfaction of  
29 judgments obtained:

30 (1) On debts secured by mechanic's, laborer's, construction,  
31 maritime, automobile repair, materialmen's or vendor's liens arising  
32 out of and against the particular property claimed as a homestead;

33 (2) On debts secured:

34 (a) By security agreements describing as collateral the property  
35 that is claimed as a homestead; or

1 (b) By mortgages ((or)), deeds of trust, or real estate contracts  
2 on the premises that have been executed and acknowledged by the husband  
3 and wife or by any unmarried claimant;

4 (3) On one spouse's or the community's debts existing at the time  
5 of that spouse's bankruptcy filing where (a) bankruptcy is filed by  
6 both spouses within a six-month period, other than in a joint case or  
7 a case in which their assets are jointly administered, and (b) the  
8 other spouse exempts property from property of the estate under the  
9 bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

10 (4) On debts arising from a lawful court order or decree or  
11 administrative order establishing a child support obligation or  
12 obligation to pay spousal maintenance; or

13 (5) On debts secured by a condominium's or homeowner association's  
14 lien. In order for an association to be exempt under this provision,  
15 the association must have provided a homeowner with notice that  
16 nonpayment of the association's assessment may result in foreclosure of  
17 the association lien and that the homestead protection under this  
18 chapter shall not apply. An association has complied with this notice  
19 requirement by mailing the notice, by first class mail, to the address  
20 of the owner's lot or unit. The notice required in this subsection  
21 shall be given within thirty days from the date the association learns  
22 of a new owner, but in all cases the notice must be given prior to the  
23 initiation of a foreclosure. The phrase "learns of a new owner" in  
24 this subsection means actual knowledge of the identity of a homeowner  
25 acquiring title after June 9, 1988, and does not require that an  
26 association affirmatively ascertain the identity of a homeowner.  
27 Failure to give the notice specified in this subsection affects an  
28 association's lien only for debts accrued up to the time an association  
29 complies with the notice provisions under this subsection.

30 **Sec. 402.** RCW 6.17.070 and 1987 c 442 s 407 are each amended to  
31 read as follows:

32 EXECUTION IN PARTICULAR CASES. (1) When any judgment of a court of  
33 this state requires the payment of money or the delivery of real or  
34 personal property, it may be enforced by execution.

35 (2) When a judgment of a court of record requires the performance  
36 of any other act, a certified copy of the judgment may be served on the  
37 party against whom it is given or the person or officer who is required  
38 by the judgment or by law to obey the same, and a writ may be issued

1 commanding the person or officer to obey or enforce the judgment.  
2 Refusal to do so may be punished by the court as for contempt.

3 (3) A judgment and decree of foreclosure of a security interest in  
4 real property may be enforced only as provided in section 209 of this  
5 act.

6 **Sec. 403.** RCW 6.21.030 and 1987 c 442 s 603 are each amended to  
7 read as follows:

8 NOTICE OF SALE--REAL PROPERTY--FORM FOR PUBLICATION. Before the  
9 sale of real property under execution, order of sale, or decree, notice  
10 of the sale shall be given as follows:

11 (1) The judgment creditor shall:

12 (a) Not less than thirty days prior to the date of sale, cause a  
13 copy of the notice of sale in the form provided in RCW 6.21.040 to be:

14 (i) Served on the judgment debtor or debtors and each of them in the  
15 same manner as a summons in a civil action((~~7~~)); or (ii) transmitted  
16 both by regular mail and by certified mail, return receipt requested,  
17 to the judgment debtor or debtors, and to each of them separately if  
18 there is more than one judgment debtor, at each judgment debtor's last  
19 known address; ((and))

20 (b) Not less than thirty days prior to the date of sale, mail a  
21 copy of the notice of sale to the attorney of record for the judgment  
22 debtor, if any; ((and))

23 (c) When real property is sold under a judgment and decree of  
24 foreclosure, cause a copy of the notice of sale also to be served on or  
25 mailed to all parties who have entered a written notice of appearance  
26 in the action and who have not had an order of default entered against  
27 them, in the manner required in (a) of this subsection, and mailed to  
28 such parties' attorneys, if any, in the manner required in (b) of this  
29 subsection; and

30 (d) File an affidavit with the court that the judgment creditor has  
31 complied with the notice requirements of this section.

32 (2) The sheriff shall:

33 (a) For a period of not less than four weeks prior to the date of  
34 sale, post a notice in the form provided in RCW 6.21.040, particularly  
35 describing the property, in two public places in the county in which  
36 the property is located, one of which shall be at the courthouse door,  
37 where the property is to be sold, and in case of improved real estate,

1 one of which shall be at the front door of the principal building  
2 constituting such improvement; and

3 (b) Publish a notice of the sale once a week, consecutively, for  
4 the same period, in any daily or weekly legal newspaper of general  
5 circulation published in the county in which the real property to be  
6 sold is situated, but if there is more than one legal newspaper  
7 published in the county, then the plaintiff or moving party in the  
8 action, suit, or proceeding has the exclusive right to designate in  
9 which of the qualified newspapers the notice shall be published, and if  
10 there is no qualified legal newspaper published in the county, then the  
11 notice shall be published in a qualified legal newspaper published in  
12 a contiguous county, as designated by the plaintiff or moving party.  
13 The published notice shall be in substantially the following form:

14 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR . . . . COUNTY

15	Plaintiff,	CAUSE NO.
16		
17	vs.	SHERIFF'S PUBLIC
18		NOTICE OF SALE
19	Defendant.	OF REAL PROPERTY

20 TO: [Judgment Debtor]

21 The Superior Court of . . . . . County has directed the undersigned  
22 Sheriff of . . . . . County to sell the property described below to  
23 satisfy a judgment in the above-entitled action. If developed, the  
24 property address is: . . . . .

25 The sale of the above-described property is to take place:

26	Time: . . . . .
27	Date: . . . . .
28	Place: . . . . .

29 The judgment debtor can avoid the sale by paying the judgment amount of  
30 \$. . . . , together with interest, costs, and fees, before the sale  
31 date. For the exact amount, contact the sheriff at the address stated  
32 below:

1 . . . . . SHERIFF-DIRECTOR, . . . . . COUNTY, WASHINGTON.  
2 By . . . . ., Deputy  
3 Address . . . . .  
4 City . . . . .  
5 Washington 9. . . .  
6 Phone (. . .) . . . . .

7 **Sec. 404.** RCW 6.21.040 and 1987 c 442 s 604 are each amended to  
8 read as follows:

9 NOTICE OF SALE OF REAL PROPERTY--FORM OF NOTICE TO JUDGMENT DEBTOR.  
10 The notice of sale shall be printed or typed and shall be in  
11 substantially the following form, except that if the sale is not  
12 pursuant to a judgment and decree of foreclosure of a mortgage, deed of  
13 trust, real estate contract, or ((a)) statutory lien, the notice shall  
14 also contain a statement that the sheriff has been informed that there  
15 is not sufficient personal property to satisfy the judgment and that if  
16 the judgment debtor or debtors do have sufficient personal property to  
17 satisfy the judgment, the judgment debtor or debtors should contact the  
18 sheriff's office immediately:

19 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR . . . . COUNTY

20 Plaintiff, CAUSE NO.  
21  
22 vs. SHERIFF'S NOTICE TO  
23 JUDGMENT DEBTOR OF  
24 Defendant. SALE OF REAL PROPERTY

25 TO: [Judgment Debtor]  
26 The Superior Court of . . . . . County has directed the undersigned  
27 Sheriff of . . . . . County to sell the property described below to  
28 satisfy a judgment in the above-entitled action. The property to be  
29 sold is described on the reverse side of this notice. If developed,  
30 the property address is: . . . . .

31 The sale of the above-described property is to take place:  
32 Time: . . . . .  
33 Date: . . . . .  
34 Place: . . . . .

35 The judgment debtor can avoid the sale by paying the judgment amount of  
36 \$. . . ., together with interest, costs, and fees, before the sale

1 date. For the exact amount, contact the sheriff at the address stated  
2 below:

3 This property is subject to: (check one)

4 1 1. No redemption rights after sale.

5 1 2. A redemption period of eight months which will expire at  
6 4:30 p.m. on the . . . . day of . . . . ., 19. . .

7 1 3. A redemption period of one year which will expire at 4:30  
8 p.m. on the . . . . day of . . . . ., 19. . .

9 The judgment debtor or debtors or any of them may redeem the above\_  
10 described property at any time up to the end of the redemption period  
11 by paying the amount bid at the sheriff's sale plus additional costs,  
12 taxes, assessments, certain other amounts, fees, and interest. If you  
13 are interested in redeeming the property contact the undersigned  
14 sheriff at the address stated below to determine the exact amount  
15 necessary to redeem.

16 IMPORTANT NOTICE: IF THE JUDGMENT DEBTOR OR DEBTORS DO NOT REDEEM  
17 THE PROPERTY BY 4:30 p.m. ON THE . . . . DAY OF . . . . ., 19. . . ,  
18 THE END OF THE REDEMPTION PERIOD, THE PURCHASER AT THE SHERIFF'S SALE  
19 WILL BECOME THE OWNER AND MAY EVICT THE OCCUPANT FROM THE PROPERTY  
20 UNLESS THE OCCUPANT IS A TENANT HOLDING UNDER AN UNEXPIRED LEASE. IF  
21 THE PROPERTY TO BE SOLD IS OCCUPIED AS A PRINCIPAL RESIDENCE BY THE  
22 JUDGMENT DEBTOR OR DEBTORS AT THE TIME OF SALE, HE, SHE, THEY, OR ANY  
23 OF THEM MAY HAVE THE RIGHT TO RETAIN POSSESSION DURING THE REDEMPTION  
24 PERIOD, IF ANY, WITHOUT PAYMENT OF ANY RENT OR OCCUPANCY FEE. THE  
25 JUDGMENT DEBTOR MAY ALSO HAVE A RIGHT TO RETAIN POSSESSION DURING ANY  
26 REDEMPTION PERIOD IF THE PROPERTY IS USED FOR FARMING OR IF THE  
27 PROPERTY IS BEING SOLD UNDER A ((MORTGAGE)) JUDGMENT AND DECREE OF  
28 FORECLOSURE THAT SO PROVIDES.

29 . . . . . SHERIFF-DIRECTOR, . . . . . COUNTY, WASHINGTON.

30 By . . . . ., Deputy

31 Address . . . . .

32 City . . . . .

33 Washington 9. . . .

34 Phone (. . .) . . . . .

35 **Sec. 405.** RCW 6.21.110 and 1994 c 185 s 3 are each amended to read  
36 as follows:

1 CONFIRMATION OF SALE--OBJECTIONS--RESALE--DISTRIBUTION OF SALE  
2 PROCEEDS--FILING OF CERTIFICATE. (1) Upon the return of any sale of  
3 real estate, the clerk: (a) (~~Shall enter the cause, on which the~~  
4 ~~execution or order of sale issued, by its title, on the motion docket,~~  
5 ~~and mark opposite the same:—"Sale of land for confirmation"; (b))~~)  
6 Shall mail notice of the filing of the return of sale to all parties  
7 who have entered a written notice of appearance in the action and who  
8 have not had an order of default entered against them; ~~((e))~~ (b)  
9 shall file proof of such mailing in the action; ~~((d))~~ and (c) shall  
10 apply the proceeds of the sale returned by the sheriff, or so much  
11 thereof as may be necessary, to satisfaction of the judgment, including  
12 interest as provided in the judgment, as directed in the court's order  
13 for disbursement, and shall pay any excess proceeds as provided in  
14 subsection (5) of this section (~~by direction of court order; and (e)~~  
15 ~~upon confirmation of the sale, shall deliver the original certificate~~  
16 ~~of sale to the purchaser)).~~

17 (2) The judgment creditor or successful purchaser at the sheriff's  
18 sale is entitled to an order confirming the sale at any time after  
19 twenty days have elapsed from the clerk's mailing of the notice of the  
20 filing of the sheriff's return, (~~on motion~~) upon the judgment  
21 creditor's or purchaser's motion noted in accordance with local court  
22 requirements, with notice (~~given~~) to all parties who have entered a  
23 written notice of appearance in the action and who have not had an  
24 order of default entered against them, unless the judgment debtor, or  
25 in case of the judgment debtor's death, the representative, or any  
26 nondefaulting party to whom notice was sent (~~shall~~) files objections  
27 to confirmation with the clerk within twenty days after the mailing of  
28 the notice of the filing of (~~such~~) the return.

29 (3) If objections to confirmation are filed, the court shall  
30 nevertheless allow the order confirming the sale, unless on the hearing  
31 of the motion, it (~~shall~~) satisfactorily appears that there were  
32 substantial irregularities in the proceedings concerning the sale, to  
33 the probable loss or injury of the party objecting. In the latter  
34 case, the court shall disallow the motion and direct that the property  
35 be resold, in whole or in part, as the case may be, as upon an  
36 execution received as of that date.

37 (4) Upon a resale, the bid of the purchaser at the former sale  
38 shall be deemed to be renewed and continue in force, and no bid shall  
39 be taken, except for a greater amount. If on resale the property sells

1 for a greater amount to any person other than the former purchaser, the  
2 clerk shall first repay to the former purchaser out of the proceeds of  
3 the resale the amount of the former purchaser's bid together with  
4 interest as is provided in the judgment.

5 (5) Except when real property is sold pursuant to judgment and  
6 decree of foreclosure of a mortgage, deed of trust, or real estate  
7 contract, if, after the satisfaction of the judgment, ((there be)) any  
8 proceeds of the sale ((remaining)) remain, the clerk shall pay ((such))  
9 the excess proceeds to the judgment debtor, or the judgment debtor's  
10 representative, as the case may be, before the order is made upon the  
11 motion to confirm the sale only if the party files with the clerk a  
12 waiver of all objections made or to be made to the proceedings  
13 concerning the sale together with an order of the court directing the  
14 clerk to disburse the proceeds; otherwise ((the excess proceeds shall  
15 remain in the custody of)) the clerk shall retain the excess proceeds  
16 until the filing of the order confirming the sale ((of the property has  
17 been disposed of)); but if the sale ((be)) is confirmed, ((such)) the  
18 clerk shall pay the excess proceeds ((shall be paid)) to the judgment  
19 debtor or representative as ((a matter of course)) directed in the  
20 court's order for disbursement. If real property has been sold under  
21 a judgment and decree of foreclosure, the clerk shall hold and  
22 distribute the excess proceeds as provided in section 107 of this act.

23 (6) Upon confirmation of the sale, the clerk shall deliver the  
24 original certificate of sale to the purchaser. The purchaser shall  
25 file the original certificate of sale for record with the recording  
26 officer in the county in which the property is located.

27 **Sec. 406.** RCW 6.21.120 and 1987 c 442 s 612 are each amended to  
28 read as follows:

29 SHERIFF'S DEED TO REAL PROPERTY SOLD. In all cases where real  
30 estate has been, or may hereafter be sold by virtue of an execution or  
31 other process, it shall be the duty of the sheriff or other officer  
32 making such sale to execute and deliver to the purchaser, or other  
33 person entitled to the same, a deed of conveyance of the real estate so  
34 sold. The deeds shall be issued upon request immediately after the  
35 confirmation of sale by the court in those instances where redemption  
36 rights have been precluded pursuant to ((RCW 61.12.093 et seq.))  
37 sections 204, 205, and 317 of this act, or immediately after the time  
38 for redemption from such sale has expired in those instances in which

1 there are redemption rights, as provided in RCW 6.23.060. In case the  
2 term of office of the sheriff or other officer making such sale shall  
3 have expired before a sufficient deed has been executed, then the  
4 successor in office of such sheriff shall, within the time specified in  
5 this section, execute and deliver to the purchaser or other person  
6 entitled to the same a deed of the premises so sold, and such deeds  
7 shall be as valid and effectual to convey to the grantee the lands or  
8 premises so sold, as if the deed had been made by the sheriff or other  
9 officer who made the sale.

10 **Sec. 407.** RCW 6.23.010 and 1987 c 442 s 701 are each amended to  
11 read as follows:

12 REDEMPTION FROM SALE--WHO MAY REDEEM--TERMS INCLUDE SUCCESSORS.  
13 (1) Real property sold subject to redemption, as provided in RCW  
14 6.21.080, or any part thereof separately sold, may be redeemed by the  
15 following persons, or their successors in interest:

16 (a) The judgment debtor, in the whole or any part of the property  
17 separately sold.

18 (b) A creditor having a lien by judgment(~~(-)~~) or decree, ((deed of  
19 trust, or mortgage)), or the secured creditor under a security  
20 agreement as defined in section 104 of this act, on any portion of the  
21 property, or any portion of any part thereof, separately sold,  
22 subsequent in time to that on which the property was sold. The persons  
23 mentioned in this subsection are termed redemptioners.

24 (2) As used in this chapter, the terms "judgment debtor,"  
25 "redemptioner," and "purchaser," refer also to their respective  
26 successors in interest.

27 **Sec. 408.** RCW 6.23.020 and 1987 c 442 s 702 are each amended to  
28 read as follows:

29 TIME FOR REDEMPTION FROM PURCHASER--AMOUNT TO BE PAID. (1) Unless  
30 redemption rights have been precluded pursuant to ~~((RCW 61.12.093 et~~  
31 ~~seq.))~~ sections 204, 205, and 317 of this act, the judgment debtor or  
32 any redemptioner may redeem the property from the purchaser at any time  
33 ~~((a) within eight months after the date of the sale if the sale is~~  
34 ~~pursuant to judgment and decree of foreclosure of any mortgage executed~~  
35 ~~after June 30, 1961, which mortgage declares in its terms that the~~  
36 ~~mortgaged property is not used principally for agricultural or farming~~  
37 ~~purposes, and in which complaint the judgment creditor has expressly~~

1 ~~waived any right to a deficiency judgment, or (b) otherwise))~~ within  
2 one year after the date of the sale.

3 (2) The person who redeems from the purchaser must pay: (a) The  
4 amount of the bid, with interest thereon at the rate provided in the  
5 judgment to the time of redemption, together with (b) the amount of any  
6 assessment or taxes which the purchaser has paid thereon after  
7 purchase, and like interest on such amount from time of payment to time  
8 of redemption, together with (c) any sum paid by the purchaser on a  
9 prior lien or obligation secured by an interest in the property to the  
10 extent the payment was necessary for the protection of the interest of  
11 the judgment debtor or a redemptioner, and like interest upon every  
12 payment made from the date of payment to the time of redemption, and  
13 (d) if the redemption is by a redemptioner and if the purchaser is also  
14 a creditor having a lien, by judgment, decree, deed of trust, or  
15 mortgage, prior to that of the redemptioner, other than the judgment  
16 under which such purchase was made, the redemptioner shall also pay the  
17 amount of such lien with like interest: PROVIDED, HOWEVER, That a  
18 purchaser who makes any payment as mentioned in (c) of this subsection  
19 shall submit to the sheriff the affidavit required by RCW 6.23.080, and  
20 any purchaser who pays any taxes or assessments or has or acquires any  
21 such lien as mentioned in (d) of this subsection must file the  
22 statement required in RCW 6.23.050 and provide evidence of the lien as  
23 required by RCW 6.23.080.

24 NEW SECTION. **Sec. 409.** REPEAL OF PRESENT MORTGAGE FORECLOSURE  
25 PROVISIONS, DEED OF TRUST PROVISIONS, AND REAL ESTATE CONTRACT  
26 FORFEITURE ACT. The following acts or parts of acts are each repealed:

27 (1) RCW 61.12.040 and Code 1881 s 609, 1877 p 127 s 614, 1869 p 145  
28 s 563, & 1854 p 207 s 408;

29 (2) RCW 61.12.050 and Code 1881 s 610, 1877 p 127 s 615, 1869 p 146  
30 s 564, & 1854 p 207 s 409;

31 (3) RCW 61.12.060 and 1935 c 125 s 1, Code 1881 s 611, 1877 p 127  
32 s 616, 1869 p 146 s 565, & 1854 p 207 s 410;

33 (4) RCW 61.12.061 and 1935 c 125 s 1 1/2;

34 (5) RCW 61.12.070 and 1961 c 196 s 4, Code 1881 s 612, 1877 p 127  
35 s 617, 1869 p 146 s 566, & 1854 p 208 s 411;

36 (6) RCW 61.12.080 and Code 1881 s 622, 1877 p 129 s 612, & 1869 p  
37 148 s 575;

38 (7) RCW 61.12.090 and 1988 c 231 s 36 & 1899 c 53 s 1;

1 (8) RCW 61.12.093 and 1965 c 80 s 1 & 1963 c 34 s 1;  
2 (9) RCW 61.12.094 and 1965 c 80 s 2 & 1963 c 34 s 2;  
3 (10) RCW 61.12.095 and 1965 c 80 s 3 & 1963 c 34 s 3;  
4 (11) RCW 61.12.100 and Code 1881 s 620, 1877 p 127 s 623, 1873 p  
5 151 s 571, & 1869 p 148 s 573;  
6 (12) RCW 61.12.110 and Code 1881 s 621, 1877 p 129 s 624, & 1869 p  
7 148 s 574;  
8 (13) RCW 61.12.120 and Code 1881 s 614, 1877 p 128 s 619, 1869 p  
9 146 s 568, & 1854 p 208 s 413;  
10 (14) RCW 61.12.130 and Code 1881 s 615, 1877 p 128 s 620, 1869 p  
11 147 s 569, & 1854 p 208 s 414;  
12 (15) RCW 61.12.140 and Code 1881 s 616, 1877 p 128 s 620, 1869 p  
13 147 s 570, & 1854 p 208 s 415;  
14 (16) RCW 61.12.150 and Code 1881 s 617, 1877 p 128 s 621, 1869 p  
15 147 s 571, & 1854 p 208 s 416;  
16 (17) RCW 61.24.010 and 1991 c 72 s 58, 1987 c 352 s 1, 1981 c 161  
17 s 1, 1975 1st ex.s. c 129 s 1, & 1965 c 74 s 1;  
18 (18) RCW 61.24.020 and 1985 c 193 s 2, 1975 1st ex.s. c 129 s 2, &  
19 1965 c 74 s 2;  
20 (19) RCW 61.24.030 and 1990 c 111 s 1, 1987 c 362 s 2, 1985 c 193  
21 s 3, 1975 1st ex.s. c 129 s 3, & 1965 s 74 s 3;  
22 (20) RCW 61.24.040 and 1989 c 361 s 1, 1987 c 352 s 3, 1985 c 193  
23 s 4, 1981 c 161 s 3, 1975 1st ex.s. c 129 s 4, 1967 c 30 s 1, & 1965 c  
24 74 s 4;  
25 (21) RCW 61.24.045 and 1985 c 193 s 1;  
26 (22) RCW 61.24.050 and 1965 c 74 s 5;  
27 (23) RCW 61.24.060 and 1967 c 30 s 2 & 1965 c 74 s 6;  
28 (24) RCW 61.24.070 and 1965 c 74 s 7;  
29 (25) RCW 61.24.080 and 1981 c 161 s 5, 1967 c 30 s 3, & 1965 c 74  
30 s 8;  
31 (26) RCW 61.24.090 and 1987 c 352 s 4, 1981 c 161 s 6, 1975 1st  
32 ex.s. c 129 s 5, 1967 c 30 s 4, & 1965 c 74 s 9;  
33 (27) RCW 61.24.100 and 1990 c 111 s 2 & 1965 c 74 s 10;  
34 (28) RCW 61.24.110 and 1981 c 161 s 7 & 1965 c 74 s 11;  
35 (29) RCW 61.24.120 and 1965 c 74 s 12;  
36 (30) RCW 61.24.130 and 1987 c 352 s 5, 1981 c 161 s 8, 1975 1st  
37 ex.s. c 129 s 6, & 1965 c 74 s 13;  
38 (31) RCW 61.30.010 and 1988 c 86 s 1 & 1985 c 237 s 1;  
39 (32) RCW 61.30.020 and 1988 c 86 s 2 & 1985 c 237 s 2;

- 1 (33) RCW 61.30.030 and 1988 c 86 s 3 & 1985 c 237 s 3;  
2 (34) RCW 61.30.040 and 1988 c 86 s 4 & 1985 c 237 s 4;  
3 (35) RCW 61.30.050 and 1988 c 86 s 5 & 1985 c 237 s 5;  
4 (36) RCW 61.30.060 and 1988 c 86 s 6 & 1985 c 237 s 6;  
5 (37) RCW 61.30.070 and 1988 c 86 s 7 & 1985 c 237 s 7;  
6 (38) RCW 61.30.080 and 1988 c 86 s 8 & 1985 c 237 s 8;  
7 (39) RCW 61.30.090 and 1988 c 86 s 9 & 1985 c 237 s 9;  
8 (40) RCW 61.30.100 and 1988 c 86 s 10 & 1985 c 237 s 10;  
9 (41) RCW 61.30.110 and 1988 c 86 s 11 & 1985 c 237 s 11;  
10 (42) RCW 61.30.120 and 1988 c 86 s 12 & 1985 c 237 s 12;  
11 (43) RCW 61.30.130 and 1988 c 86 s 13 & 1985 c 237 s 13;  
12 (44) RCW 61.30.140 and 1988 c 86 s 14 & 1985 c 237 s 14;  
13 (45) RCW 61.30.150 and 1988 c 86 s 15 & 1985 c 237 s 15;  
14 (46) RCW 61.30.160 and 1985 c 237 s 16;  
15 (47) RCW 61.30.900 and 1985 c 237 s 17;  
16 (48) RCW 61.30.905 and 1985 c 237 s 19;  
17 (49) RCW 61.30.910 and 1985 c 237 s 21; and  
18 (50) RCW 61.30.911 and 1988 c 86 s 16.

19 NEW SECTION. **Sec. 410.** A new section is added to chapter 61.24  
20 RCW to read as follows:

21 The county auditor shall record a deed of trust as a mortgage and  
22 shall index the name of the grantor as mortgagor and the names of the  
23 trustee and beneficiary as mortgagee.

24 NEW SECTION. **Sec. 411.** A new section is added to chapter 61.24  
25 RCW to read as follows:

26 Except as provided in chapters 61.--, 61.--, and 61.-- RCW  
27 (sections 101 through 319 of this act), a deed of trust is subject to  
28 all laws relating to mortgages on real property.

29 NEW SECTION. **Sec. 412.** A new section is added to chapter 61.24  
30 RCW to read as follows:

31 If a receiver is appointed on the application of a grantee under a  
32 deed of trust, the grantor shall be entitled to any rents or profits  
33 derived from property subject to a homestead as defined in RCW  
34 6.13.010.

1        NEW SECTION.    **Sec. 413.**    A new section is added to chapter 61.24  
2 RCW to read as follows:

3        (1) The trustee shall reconvey all or any part of the property  
4 covered by a deed of trust to the person entitled thereto on written  
5 request of the beneficiary or upon satisfaction of the obligation  
6 secured and written request for reconveyance made by the beneficiary or  
7 the person entitled thereto.

8        (2) The recording by a secured creditor of a notice of release of  
9 security interest, that is signed by the secured creditor,  
10 acknowledged, and recorded in each county in which the real property to  
11 be released from the security interest is located, and that contains  
12 the legal description of the real property to be released from the  
13 security interest if the release is partial, the date of recording of  
14 the deed of trust, and the book and page of the records of the county  
15 in which such deed of trust was recorded, shall be the equivalent of a  
16 reconveyance pursuant to subsection (1) of this section. Upon the  
17 recording of such notice, all powers of any trustee to nonjudicially  
18 foreclose a security interest in and sell the real property released,  
19 and all other interest of any trustee and the beneficiary therein,  
20 shall terminate.

21        NEW SECTION.    **Sec. 414.**    CODIFICATION OF ACT IN RCW.    (1) Sections  
22 101 through 108 of this act shall constitute a new chapter in Title 61  
23 RCW.

24        (2) Sections 201 through 210 of this act shall constitute a new  
25 chapter in Title 61 RCW.

26        (3) Sections 301 through 319 of this act shall constitute a new  
27 chapter in Title 61 RCW.

28        NEW SECTION.    **Sec. 415.**    EFFECTIVE DATE.    This act shall take  
29 effect July 1, 1996.

30        NEW SECTION.    **Sec. 416.**    Captions and part headings used in this  
31 act constitute no part of the law.

32        NEW SECTION.    **Sec. 417.**    ACT REMEDIAL--WHEN NOT RETROACTIVE.    This  
33 act is to be considered remedial, and except as to the nonjudicial  
34 foreclosure of mortgages executed prior to the effective date of this  
35 act, must be applied both prospectively, and to the extent otherwise

1 permitted by law, retroactively to the judicial and nonjudicial  
2 foreclosure of security interests in real estate commenced or initiated  
3 after the effective date of this act regardless of whether the security  
4 agreement creating the security interest was executed prior to the  
5 effective date of this act.

6 NEW SECTION. **Sec. 418.** SAVINGS CLAUSE. The repeals in section  
7 409 of this act shall not be construed as affecting any existing right  
8 acquired or liability or obligation incurred under the statutes  
9 repealed in prior or pending proceedings, nor as affecting any  
10 proceeding instituted under them prior to the effective date of this  
11 act.

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