CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 6191

Chapter 295, Laws of 1998

55th Legislature
1998 Regular Session

DEEDS OF TRUST--REVISIONS

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 7, 1998
YEAS 49   NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 3, 1998
YEAS 98   NAYS 0

CLYDE BALLARD
Speaker of the House of Representatives

CERTIFICATE
I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE SENATE BILL 6191 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O’CONNELL
Secretary

GARY LOCKE
Governor of the State of Washington

FILED
April 2, 1998 - 2:36 p.m.

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

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

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

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

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

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

(4) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).
(5) "Borrower" means a person or a general partner in a partnership, including a joint venture, that is liable for all or part of the obligations secured by the deed of trust under the instrument or other document that is the principal evidence of such obligations, or the person’s successors if they are liable for those obligations under a written agreement with the beneficiary.

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

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

(8) "Trustee’s sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

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

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

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

Sec. 2. RCW 61.24.010 and 1991 c 72 s 58 are each amended to read as follows:

(1) ((The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

(2)) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; or
(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time (he) the attorney is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, (all of whose shareholders are licensed attorneys) any professional limited liability company formed under chapter 25.15 RCW, any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys, or any domestic corporation wholly owned by any of the entities under this subsection (1)(d); or

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

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

((3))) (2) The trustee ((shall)) may resign ((at the request of the beneficiary and may resign)) at its own election(=) or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall ((nominate in writing)) appoint a trustee or a successor trustee. Upon recording ((in the mortgage records of the county or counties)) the appointment of a successor trustee in each county in which the ((trust)) deed of trust is recorded, ((of the appointment of a successor trustee,)) the successor trustee shall be vested with all powers of ((the)) an original trustee.

Sec. 3. RCW 61.24.020 and 1985 c 193 s 2 are each amended to read as follows:

Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be
foreclosed (as in this chapter provided) by trustee’s sale. The county auditor shall record (such) the deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: PROVIDED, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. A deed of trust conveying real property that is used principally for agricultural purposes may be foreclosed as a mortgage. Pursuant to RCW 62A.9-501(4), when a deed of trust encumbers both real and personal property, the trustee is authorized to sell all or any portion of the grantor’s interest in that real and personal property at a trustee’s sale.

Sec. 4. RCW 61.24.030 and 1990 c 111 s 1 are each amended to read as follows:

It shall be requisite((, to foreclosure under this chapter)) to a trustee’s sale:

(1) That the deed of trust contains a power of sale;
(2) That the deed of trust (provides in its terms) contains a statement that the real property conveyed is not used principally for agricultural ((or farming)) purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee’s sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
(4) That no action commenced by the beneficiary of the deed of trust ((or the beneficiary’s successor)) is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor’s default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was ((not)) granted to secure ((an...
obligation incurred primarily for personal, family, or household purposes) a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;

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

(6) That prior to the date of the notice of trustee’s sale and continuing thereafter through the date of the trustee’s sale, the trustee must have a street address in this state where personal service of process may be made; and

(7) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor ((or any successor in interest)) at ((his)) their last known ((address)) addresses by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on ((said)) the premises, a copy of ((said)) the notice, or personally served on the borrower and grantor ((or his successor in interest)). This notice shall contain the following information:

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

(b) ((The book and the page of the book of records wherein the deed of trust is recorded)) Each county in which the deed of trust is recorded and the document number given to the deed of trust upon recording by each county auditor or recording officer;

(c) That the beneficiary has declared the borrower or grantor ((or any successor in interest)) to be in default, and a concise statement of the default alleged;

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

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

(f) The total of ((subparagraphs)) (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;
(g) That failure to cure (\textit{said}) the alleged default within thirty
days of the date of mailing of the notice, or if personally served,
within thirty days of the date of personal service thereof, may lead to
recording, transmittal, and publication of a notice of sale, and that
the property described in ((subparagraph)) (a) of this subsection may
be sold at public auction at a date no less than one hundred twenty
days in the future;

(h) That the effect of the recording, transmittal, and
publication of a notice of sale will be to (i) increase the costs and
fees and (ii) publicize the default and advertise the grantor’s
property for sale;

(i) That the effect of the sale of the grantor’s property by the
trustee will be to deprive the grantor ((or his successor in interest
and all those who hold by, through or under him)) of all their interest
in the property described in ((subsection)) (a) of this subsection; and

(j) That the borrower, grantor ((or any successor in interest)),
and any guarantor has recourse to the courts pursuant to RCW 61.24.130
to contest the alleged default on any proper ground.

\textbf{Sec. 5.} RCW 61.24.040 and 1989 c 361 s 1 are each amended to read
as follows:

A deed of trust foreclosed under this chapter shall be foreclosed
as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form described in RCW 61.24.040(1)(f) in
the office of the auditor in each county in which the deed of trust is
recorded;

(b) To the extent the trustee elects to foreclose its lien or
interest, or the beneficiary elects to preserve its right to seek a
deficiency judgment against a borrower or grantor under RCW
61.24.100(3)(a), and if their addresses are stated in a recorded
instrument evidencing their interest, lien, or claim of lien, or an
amendment thereto, or are otherwise known to the trustee, cause a copy
of the notice of sale described in RCW 61.24.040(1)(f) to be
transmitted by both first class and either certified or registered
mail, return receipt requested, to the following persons or their legal
representatives, if any, at such address:

(i) The borrower and grantor ((or the grantor’s successor in
interest));
(ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale; 

(v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and

(vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant’s rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff’s attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person’s most recently recorded request for notice;
(e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE’S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . . . . . . . , (([date])), . . . . . . . . . , at the hour of . . . . . . o’clock . . . . , M. at . . . . . . . . . . . . . . . in the City of . . . . . . . . . . . . , State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of . . . . . . . , State of Washington, to-wit:

[If any personal property is to be included in the trustee’s sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated . . . . . . . , (([date])), . . . . , recorded . . . . . . . , (([date])), . . . , under Auditor’s File No. . . . . . . . . , records of . . . . . . . County, Washington, from . . . . . . . . . , as Grantor, to . . . . . . . . . , as Trustee, to secure an obligation in favor of . . . . . . . . . , as Beneficiary, the beneficial interest in which was assigned by . . . . . . . . . , under an Assignment recorded under Auditor’s File No. . . . . . . . . . . [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust ((or the Beneficiary’s successor)) is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower’s or Grantor’s default on the obligation secured by the Deed of Trust.
[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

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

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

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

IV.

The sum owing on the obligation secured by the Deed of Trust is:

Principal $ . . . . . . , together with interest as provided in the note or other instrument secured from the . . . . day of . . . . . . . , ((19)) . . . , and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the . . . . . day of . . . . . . , ((19)) . . . . (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the . . . . day of . . . . . . , ((19)) . . . . (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee’s fees and costs are paid. The sale may be terminated any time after the . . . . day of . . . . . . , ((19)) . . . . (11 days before the sale date), and before the sale by the Borrower, Grantor ((or the Grantor’s successor in interest)), any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and
interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor (or the Grantor’s successor in interest) at the following (address) addresses:

........................................
........................................
........................................

by both first class and certified mail on the .... day of ...., ((19))...., proof of which is in the possession of the Trustee; and the Borrower and Grantor (or the Grantor’s successor in interest was) were personally served on the .... day of ...., ((19))...., with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

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

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the 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 RCW 61.24.130.
Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee’s sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

......, Trustee
......]
......} Address
......]}
......} Phone

[(((Individual or corporate)) Acknowledgment]

(2) In addition to providing the borrower and grantor ((or the grantor’s successor in interest)) the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor ((or the grantor’s successor in interest)), a statement to the grantor ((or the grantor’s successor in interest)) in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

The attached Notice of Trustee’s Sale is a consequence of default(s) in the obligation to . . . . . . , the Beneficiary of your Deed of Trust 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, advances, and attorneys’ fees as set forth below by the . . . . day of . . . . . , ((19)). . . ((+)) 11 days before the sale date((+)) 1. To date, these arrears and costs are as follows:
Currently due to reinstate on. . . .

. . . .

Estimated amount that will be due to reinstate on. . . .

. . . .

(11 days before the date set for sale)

Delinquent payments from . . . . . . , ((19)), . . . , in the amount of

$ . . . . /mo.: $ . . . . $ . . . .

Late charges in the total amount of:

$ . . . . $ . . . .

Attorneys’ fees:

$ . . . . $ . . . .

Trustee’s fee:

$ . . . . $ . . . .

Trustee’s expenses:

(Itemization)

Title report

$ . . . . $ . . . .

Recording fees

$ . . . . $ . . . .

Service/Posting of Notices

$ . . . . $ . . . .

Postage/Copying expense

$ . . . . $ . . . .

Publication

$ . . . . $ . . . .

Telephone charges

$ . . . . $ . . . .

Inspection fees

$ . . . . $ . . . .

. . . . .

$ . . . . $ . . . .

. . . . .

$ . . . . $ . . . .

TOTALS

$ . . . . $ . . . .

Estimated Amounts

Attorneys’ fees: $ . . . . $ . . . .

Trustee’s fee: $ . . . . $ . . . .

Trustee’s expenses:

(Itemization)

Title report $ . . . . $ . . . .

Recording fees $ . . . . $ . . . .

Service/Posting of Notices $ . . . . $ . . . .

Postage/Copying expense $ . . . . $ . . . .

Publication $ . . . . $ . . . .

Telephone charges $ . . . . $ . . . .

Inspection fees $ . . . . $ . . . .

$ . . . .

$ . . . .

$ . . . .

$ . . . .

$ . . . .

TOTALS $ . . . . $ . . . .
As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

<table>
<thead>
<tr>
<th>Default</th>
<th>Description of Action Required to Cure and Documentation Necessary to Show Cure</th>
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You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the ... day of ..., ((19))... ((+))\textsuperscript{11} days before the sale date((+))\textsuperscript{11}, by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to: ........, whose address is ........, telephone ( ) ........ AFTER THE .... DAY OF ........, ((19))... , YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance ($ ... ...) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

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

The court may grant a restraining order or injunction to restrain a trustee’s sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

NAME: ............
ADDRESS: ............

TELEPHONE NUMBER: .......

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold (to satisfy the obligations secured by your Deed of Trust). The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the ((thirty-seventy-second)) thirty-fifth and twenty-eighth day before the date of sale, and once on or between the ((eleventh)) fourteenth and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where
the property is located. The sale shall be on Friday, or if Friday is
a legal holiday on the following Monday, and during the hours set by
statute for the conduct of sales of real estate at execution;
(6) The trustee may for any cause the trustee deems advantageous,
continue the sale for a period or periods not exceeding a total of one
hundred twenty days by a public proclamation at the time and place
fixed for sale in the notice of sale or, alternatively, by giving
notice of the time and place of the postponed sale in the manner and to
the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and
publishing a copy of such notice once in the newspaper(s) described in
RCW 61.24.040(3), more than seven days before the date fixed for sale
in the notice of sale. No other notice of the postponed sale need be
given;
(7) The purchaser shall forthwith pay the price bid and on payment
the trustee shall execute to the purchaser its deed; the deed shall
recite the facts showing that the sale was conducted in compliance with
all of the requirements of this chapter and of the deed of trust, which
recital shall be prima facie evidence of such compliance and conclusive
evidence thereof in favor of bona fide purchasers and encumbrancers for
value, except that these recitals shall not affect the lien or interest
of any person entitled to notice under RCW 61.24.040(1), if the trustee
fails to give the required notice to such person. In such case, the
lien or interest of such omitted person shall not be affected by the
sale and such omitted person shall be treated as if such person was the
holder of the same lien or interest and was omitted as a party
defendant in a judicial foreclosure proceeding;
(8) The sale as authorized under this chapter shall not take place
less than one hundred ninety days from the date of default in any of
the obligations secured.
(9) If the trustee elects to foreclose the interest of any occupant
or tenant of property comprised solely of a single-family residence, or
a condominium, cooperative, or other dwelling unit in a multiplex or
other building containing fewer than five residential units, the
following notice shall be included as Part X of the Notice of Trustee’s
Sale:

X.

NOTICE TO OCCUPANTS OR TENANTS
The purchaser at the trustee’s sale is entitled to possession of the
property on the 20th day following the sale, as against the grantor
under the deed of trust (the owner) and anyone having an interest
junior to the deed of trust, including occupants and tenants. After
the 20th day following the sale the purchaser has the right to evict
occupants and tenants by summary proceedings under the unlawful
detainer act, chapter 59.12 RCW.

(10) Only one copy of all notices required by this chapter need be
given to a person who is both the borrower and the grantor. All
notices required by this chapter that are given to a general
partnership are deemed given to each of its general partners, unless
otherwise agreed by the parties.

NEW SECTION. Sec. 6. A new section is added to chapter 61.24 RCW
to read as follows:

The beneficiary may give the notices of default, trustee’s sale,
and foreclosure referred to in RCW 61.24.030(7) and 61.24.040 to any
one or more of the guarantors of a commercial loan at the time they are
given to the grantor. In addition to the information contained in the
notices provided to the grantor, these notices shall state that (1) the
guarantor may be liable for a deficiency judgment to the extent the
sale price obtained at the trustee’s sale is less than the debt secured
by the deed of trust; (2) the guarantor has the same rights to
reinstate the debt, cure the default, or repay the debt as is given to
the grantor in order to avoid the trustee’s sale; (3) the guarantor
will have no right to redeem the property after the trustee’s sale; (4)
subject to such longer periods as are provided in the Washington deed
of trust act, chapter 61.24 RCW, any action brought to enforce a
guaranty must be commenced within one year after the trustee’s sale, or
the last trustee’s sale under any deed of trust granted to secure the
same debt; and (5) in any action for a deficiency, the guarantor will
have the right to establish the fair value of the property as of the
date of the trustee’s sale, less prior liens and encumbrances, and to
limit its liability for a deficiency to the difference between the debt
and the greater of such fair value or the sale price paid at the
trustee’s sale, plus interest and costs. The failure of the
beneficiary to provide any guarantor the notice referred to in this
section does not invalidate either the notices given to the borrower or
the grantor, or the trustee’s sale.
Sec. 7. RCW 61.24.050 and 1965 c 74 s 5 are each amended to read as follows:

(1) The deed of the trustee, executed to the purchaser, when delivered to the purchaser, the trustee’s deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee’s sale which the grantor had or had the power to convey at the time of the execution (by him) of the deed of trust, and such as (he) the grantor may have thereafter acquired. If the trustee accepts a bid, then the trustee’s sale is final as of the date and time of such acceptance if the trustee’s deed is recorded within fifteen days thereafter. After a trustee’s sale, (as in this chapter provided,) no person shall have any right, by statute or otherwise, to redeem ((from the deed of trust or from)) the property sold at the trustee’s sale.

Sec. 8. RCW 61.24.060 and 1967 c 30 s 2 are each amended to read as follows:

The purchaser at the trustee’s sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust ((or anyone claiming through him,)) and anyone having an interest junior to the deed of trust, including occupants and tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

Sec. 9. RCW 61.24.070 and 1965 c 74 s 7 are each amended to read as follows:

(1) The trustee may not bid at the trustee’s sale. Any other person, including the beneficiary ((under the deed of trust)) may bid at the trustee’s sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary’s bid all or any part of the monetary obligations secured by the deed of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the
form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof.

Sec. 10. RCW 61.24.080 and 1981 c 161 s 5 are each amended to read as follows:
The trustee shall apply the proceeds of the sale as follows:
(1) To the expense of sale, including a reasonable charge by the trustee and by his or her attorney: PROVIDED, That the aggregate of the charges by the trustee and his or her attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee’s sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in ((the said)) that court;
(2) To the obligation secured by the deed of trust; and
(3) The surplus, if any, less the clerk’s filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the ((recorded)) notice of trustee’s sale, and an affidavit of mailing as provided in this subsection, with the clerk of the superior court of the county in which the sale took place. The trustee shall mail copies of the notice of the surplus, the notice of trustee’s sale, and the affidavit of mailing to each party to whom the notice of trustee’s sale was sent pursuant to RCW 61.24.040(1). The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon ((depositing such surplus)) compliance with this subsection, the trustee shall be discharged from all further responsibilities ((therefor)) for the surplus. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to ((such)) the surplus in the order of priority that it had attached to the property. A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed in the manner specified in RCW 61.24.040(1)(b), to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such surplus except upon order of the superior court of such county.
Sec. 11. RCW 61.24.090 and 1987 c 352 s 4 are each amended to read as follows:

(1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower, grantor (or his successor in interest), any guarantor, any beneficiary under a subordinate deed of trust, or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee’s fee, together with the trustee’s reasonable attorney’s fees, together with costs of recording the notice of discontinuance of notice of trustee’s sale.

(2) Any person entitled to cause a discontinuance of the sale proceedings shall have the right, before or after reinstatement, to request any court, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement. The court shall make such determination as it deems appropriate, which may include an award to the prevailing party of its costs and reasonable attorneys’ fees, and render judgment accordingly. An action to determine fees shall not forestall any sale or affect its validity.

(3) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(4) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee’s fees as set forth in subsection (1)(b) of this section.
(5) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees’ costs and fees incurred as authorized (herein), and (his) reasonable attorney’s fees and costs incurred resulting from any judicial action commenced to enforce his or her rights to advances under this section.

(6) If the default is cured and the obligation and the deed of trust reinstated in the manner (hereinabove) provided, the trustee shall properly execute, acknowledge, and cause to be recorded a notice of discontinuance of trustee’s sale under (such) that deed of trust. A notice of discontinuance of trustee’s sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the auditor’s file number under which the deed of trust is recorded, and a reference to the notice of sale and the auditor’s file number under which the notice of sale is recorded, and a notice that (such) the sale is discontinued.

(7) Any payments required under this section as a condition precedent to reinstatement of the deed of trust shall be tendered to the trustee in the form of cash, certified check, cashier’s check, money order, or funds received by verified electronic transfer, or any combination thereof.

Sec. 12. RCW 61.24.100 and 1990 c 111 s 2 are each amended to read as follows:

(Forclosures, as in this chapter provided, shall satisfy the obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency decree or other judgment shall thereafter be obtained on such obligation, except that if such obligation was not incurred primarily for personal, family, or household purposes, such foreclosure shall not preclude any judicial or nonjudicial foreclosure of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law.)
commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee’s sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee’s sale being given pursuant to this chapter or after the discontinuance of the trustee’s sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee’s sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee’s sale under a deed of trust securing a commercial loan executed after the effective date of this section:

(a)(i) To the extent the fair value of the property sold at the trustee’s sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee’s sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee’s sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under section 6 of this act.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee’s sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure.
is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee’s sale under a deed of trust securing a commercial loan or if trustee’s sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee’s sales.

(5) In any action against a guarantor following a trustee’s sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee’s sale, less the fair value of the property sold at the trustee’s sale or the sale price paid at the trustee’s sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee’s sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor’s liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee’s sale, shall be added to the fair value of the property sold at the trustee’s sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee’s sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee’s sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor’s principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee’s sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor’s obligation.
(7) A beneficiary’s acceptance of a deed in lieu of a trustee’s sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee’s sale.

(10) A trustee’s sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee’s sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee’s sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to the effective date of this section shall be determined in accordance with the laws existing prior to the effective date of this section.

Sec. 13. RCW 61.24.110 and 1981 c 161 s 7 are each amended to read as follows:

The trustee shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

Sec. 14. RCW 61.24.130 and 1987 c 352 s 5 are each amended to read as follows:

(1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, ((the grantor’s successor in interest)) any guarantor, or any person who has an interest in, lien, or claim of lien...
against the property or some part thereof, to restrain, on any proper
ground, a trustee’s sale. The court shall require as a condition of
granting the restraining order or injunction that the applicant pay to
the clerk of the court the sums that would be due on the obligation
secured by the deed of trust if the deed of trust was not being
foreclosed:

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

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

In the case of default in performance of any nonmonetary obligation
secured by the deed of trust, the court shall impose such conditions as
it deems just.

In addition, the court may condition granting the restraining order
or injunction upon the giving of security by the applicant, in such
form and amount as the court deems proper, for the payment of such
costs and damages, including attorneys’ fees, as may be later found by
the court to have been incurred or suffered by any party by reason of
the restraining order or injunction. The court may consider, upon
proper showing, the grantor’s equity in the property in determining the
amount of said security.

(2) No court may grant a restraining order or injunction to
restrain a trustee’s sale unless the person seeking the restraint gives
five days notice to the trustee (and the beneficiary) of the time
when, place where, and the judge before whom the application for the
restraining order or injunction is to be made. This notice shall
include copies of all pleadings and related documents to be given to
the judge. No judge may act upon such application unless it is
accompanied by proof, evidenced by return of a sheriff, the sheriff’s
deputy, or by any person eighteen years of age or over who is competent
to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the
date of the trustee’s sale set forth in the notice as provided in RCW
61.24.040(1)(f) (and after the period for continuing sale as allowed
by RCW 61.24.040(6)), the court granting such restraining order or
injunction, or before whom the order or injunction is returnable, ((has the right to)) shall, at the request of the trustee, set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. ((At least thirty days before the new sale date,)) The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee’s sale as provided in RCW 61.24.040(1)(f) to be published ((once weekly during the three weeks preceding the time of sale)) in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee’s sale has been stayed as a result of the filing of a petition in federal bankruptcy court and((, after the period for continuing sale as allowed by RCW 61.24.040(6),)) an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court’s order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee’s sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the ((thirty-second)) thirty-fifth and twenty-eighth day before the sale and once between the ((eleventh)) fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee’s sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW 61.24.040(6).

NEW SECTION. Sec. 15. A new section is added to chapter 61.24 RCW to read as follows:

It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in
concert with others, to offer, or offer to accept or accept from
another, any consideration of any type not to bid, or to reduce a bid,
at a sale of property conducted pursuant to a power of sale in a deed
of trust. However, it is not an unfair or deceptive act or practice
for any person, including a trustee, to state that a property subject
to a recorded notice of trustee’s sale or subject to a sale conducted
pursuant to this chapter is being sold in an "as-is" condition, or for
the beneficiary to arrange to provide financing for a particular bidder
or to reach any good faith agreement with the borrower, grantor, any
 guarantor, or any junior lienholder.

NEW SECTION.  Sec. 16. A new section is added to chapter 61.24 RCW
to read as follows:
The beneficiary shall not enforce or attempt to enforce an
assignment of rents by demanding or collecting rent from a tenant
occupying property consisting solely of a single-family residence, or
a condominium, cooperative, or other dwelling unit in a multiplex or
other building containing fewer than five residential units, without
first giving the tenant either a court order authorizing payment of
rent to the beneficiary or a written consent by the tenant’s landlord
to the payment. It is a defense to an eviction based on nonpayment of
rent that the tenant paid the rent due to the beneficiary pursuant to
a court order or a landlord’s written consent.

Sec. 17. RCW 7.28.300 and 1937 c 124 s 1 are each amended to read
as follows:
The record owner of real estate may maintain an action to quiet
title against the lien of a mortgage or deed of trust on the real
estate where an action to foreclose such mortgage or deed of trust
would be barred by the statute of limitations, and, upon proof
sufficient to satisfy the court, may have judgment quieting title
against such ((mortgage)) a lien.

Sec. 18. RCW 7.60.020 and 1937 c 47 s 1 are each amended to read
as follows:
A receiver may be appointed by the court in the following cases:
(1) In an action by a vendor to vacate a fraudulent purchase of
property, or by a creditor to subject any property or fund to his or
her claim;
(2) In an action between partners, or other persons jointly interested in any property or fund;

(3) In all actions where it is shown that the property, fund, or rents and profits in controversy are in danger of being lost, removed, or materially injured;

(4) In an action or proceeding by a mortgagee or beneficiary for the foreclosure of a mortgage or deed of trust and the sale of the mortgaged property; when the mortgagee or beneficiary has a perfected assignment of rents pursuant to RCW 7.28.230(3); or when it appears that such property is in danger of being lost, removed, or materially injured; (or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had);

(5) When a corporation has been dissolved, or is in the process of dissolution or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, and when the court in its sound discretion deems that the appointment of a receiver is necessary to secure ample justice to the parties;

(6) In such other cases as may be provided by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties: PROVIDED, That no party or attorney or other person interested in an action shall be appointed receiver therein.

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