CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 2614

Chapter 185, Laws of 2012

62nd Legislature
2012 Regular Session

HOMEOWNERS IN CRISIS--ASSISTANCE

EFFECTIVE DATE: 06/07/12 - Except section 12, which becomes effective 03/29/12.

Passed by the House March 6, 2012
Yeas 97  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 5, 2012
Yeas 47  Nays 1

BRAD OWEN
President of the Senate

Approved March 29, 2012, 7:19 p.m.

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2614 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER
Chief Clerk

FILED
March 29, 2012

CHRISTINE GREGOIRE
Governor of the State of Washington

Secretary of State
State of Washington

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

NEW SECTION. Sec. 1. A new section is added to chapter 64.04 RCW to read as follows:

(1) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to release its deed of trust or mortgage in the real property for less than full payment of the secured debt, it shall provide upon its first written notice to the borrower the following information in substantially the following form:

"To: [Name of borrower] DATE:

Please take note that [name of beneficiary or mortgagee, or its assignees], in releasing its security interest in this owner-occupied real property, [waives or reserves] the right to collect that amount
that constitutes full payment of the secured debt. The amount of debt outstanding as of the date of this letter is $. . . . . . . . However, nothing in this letter precludes the borrower from negotiating with the [name of beneficiary or mortgagee, or its assignees] for a full release of this outstanding debt.

If [name of beneficiary or mortgagee, or its assignees] does not initiate a court action to collect the outstanding debt within three years on the date which it released its security interest, the right to collect the outstanding debt is forfeited."

(2) If the beneficiary or mortgagee, or its assignees, of debt secured by owner-occupied real property intends to pursue collection of the outstanding debt, it must initiate a court action to collect the remaining debt within three years from the date on which it released its deed of trust or mortgage in the owner-occupied real property or else it forfeits any right to collect the remaining debt.

(3) This section applies only to debts incurred by individuals primarily for personal, family, or household purposes. This section does not apply to debts for business, commercial, or agricultural purposes.

(4) For the purposes of this section, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower.

Sec. 2. RCW 18.86.120 and 1997 c 217 s 7 are each amended to read as follows:

(1) The pamphlet required under RCW 18.86.030(1)(f) shall consist of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040 through 18.86.110 with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12-point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

The Law of Real Estate Agency
This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:
Sec. 1. Definitions. Defines the specific terms used in the law.
Sec. 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant—unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client—unless the parties agree in writing that both licensees are dual agents.
Sec. 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.
Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.
Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.
Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.
Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.
Sec. 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship.
brokers to receive compensation from more than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

(2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also include the following disclosure: When the seller of owner-occupied residential real property enters into a listing agreement with a real estate licensee where the proceeds from the sale may be insufficient to cover the costs at closing, it is the responsibility of the real estate licensee to disclose to the seller in writing that the decision by any beneficiary or mortgagee, or its assignees, to release its interest in the real property, for less than the amount the borrower owes, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including fees such as the real estate licensee's commission.

(b) For the purposes of this subsection, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower.

Sec. 3. RCW 4.16.040 and 2007 c 124 s 1 are each amended to read as follows:

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in section 1(2) of this act.

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession,
whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

Sec. 4. RCW 61.24.031 and 2011 c 58 s 5 are each amended to read as follows:

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

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

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

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

"You must respond within thirty days of the date of this letter. IF YOU DO NOT RESPOND within thirty days, a notice of default may be issued and you may lose your home in foreclosure. IF YOU DO RESPOND within thirty days of the date of this letter, you will have an additional sixty days to meet with your lender before a notice of default may be issued. You should contact a housing counselor or attorney as soon as possible. Failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party. A housing counselor or attorney can help you work with your lender to avoid foreclosure."

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

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

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

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

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

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

(f) The meeting scheduled to assess the borrower's financial ability to modify or restructure the loan obligation and discuss options to avoid foreclosure (must be in person, unless the requirement to meet in person is waived in writing by the borrower or the borrower's representative. A person who is authorized to modify
the loan obligation or reach an alternative resolution to foreclosure
on behalf of the beneficiary may participate by telephone or video
conference, so long as a representative of the beneficiary is at the
meeting in person) may be held telephonically, unless the borrower or
borrower's representative requests in writing that a meeting be held in
person. The written request for an in-person meeting must be made
within thirty days of the initial contact with the borrower. If the
meeting is requested to be held in person, the meeting must be held in
the county where the borrower resides. A person who is authorized to
agree to a resolution, including modifying or restructuring the loan
obligation or other alternative resolution to foreclosure on behalf of
the beneficiary, must be present either in person or on the telephone
or video conference during the meeting.

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

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

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

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

(a) A beneficiary or authorized agent shall first attempt to contact a borrower by sending a first-class letter to the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must be the letter described in subsection (1)(c) of this section.

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

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

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

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

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

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

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

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

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

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

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

(6) Subsections (1) and (5) of this section do not apply if ((any of the following occurs:

(a)) the borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the trustee, beneficiary, or authorized agent((; or

(b) The borrower has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust)).
This section applies only to deeds of trust that are recorded against owner-occupied residential real property. This section does not apply to deeds of trust: (i) Securing a commercial loan; (ii) securing obligations of a grantor who is not the borrower or a guarantor; or (iii) securing a purchaser's obligations under a seller-financed sale.

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

(8) As used in this section:

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

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

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

"FORECLOSURE LOSS MITIGATION FORM

Please select applicable option(s) below.

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

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

(2) [ ] The beneficiary or beneficiary's authorized agent has contacted the borrower as required under RCW 61.24.031 and the borrower or the borrower's designated representative requested a meeting. A meeting was held in compliance with RCW 61.24.031.

(3) [ ] The beneficiary or beneficiary's authorized agent has
exercised due diligence to contact the borrower as required in RCW 61.24.031(5).

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

((5) [ ] Under RCW 61.24.031, the beneficiary or the beneficiary's authorized agent has verified information that, on or before the date of this declaration, the borrower(s) has filed for bankruptcy, and the bankruptcy stay remains in place, or the borrower has filed for bankruptcy and the bankruptcy court has granted relief from the bankruptcy stay allowing the enforcement of the deed of trust.))"

Sec. 5. RCW 61.24.160 and 2011 c 58 s 6 are each amended to read as follows:

(1)(a) A housing counselor who is contacted by a borrower under RCW 61.24.031 has a duty to act in good faith to attempt to reach a resolution with the beneficiary on behalf of the borrower within the ninety days provided from the date the beneficiary initiates contact with the borrower and the date the notice of default is issued. A resolution may include, but is not limited to, modification of the loan, an agreement to conduct a short sale, a deed in lieu of foreclosure transaction, or some other workout plan.

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

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

(2) Housing counselors have a duty to act in good faith to assist borrowers by:

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

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

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

(d) Providing other guidance, advice, and education as the housing counselor considers necessary.
(3) A housing counselor or attorney assisting a borrower may refer the borrower to ((a)) mediation ((program)), pursuant to RCW 61.24.163, if(

(a)) the housing counselor or attorney determines that mediation is appropriate based on the individual circumstances((; and

(b) A notice of sale on the deed of trust has not been recorded.

(4)) and the borrower has received a notice of default. The referral to mediation may be made any time after a notice of default has been issued but no later than twenty days after the date a notice of sale has been recorded.

(4) For borrowers who have received a letter under RCW 61.24.031 before the effective date of this section, a referral to mediation by a housing counselor or attorney does not preclude a trustee issuing a notice of default if the requirements of RCW 61.24.031 have been met.

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

(6) Housing counselors shall provide information to the department to assist the department in its annual report to the legislature as required under RCW 61.24.163((15)) (18). The information provided to the department by the housing counselors should include outcomes of foreclosures and be similar to the information requested in the national foreclosure mortgage counseling client level foreclosure outcomes report form.

Sec. 6. RCW 61.24.163 and 2011 2nd sp.s. c 4 s 1 are each amended to read as follows:

(1) The foreclosure mediation program established in this section applies only to borrowers who have been referred to mediation by a housing counselor or attorney. The referral to mediation may be made any time after a notice of default has been issued but no later than twenty days after the date a notice of sale has been recorded. The mediation program under this section is not governed by chapter 7.07 RCW and does not preclude mediation required by a court or other provision of law.

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

(3) Within ten days of receiving the notice, the department shall:
   (a) Send a notice to the beneficiary, the borrower, the housing counselor or attorney who referred the borrower, and the trustee stating that the parties have been referred to mediation. The notice must include the statements and list of documents and information described in subsections (4) and (5) of this section and a statement explaining each party's responsibility to pay the mediator's fee; and
   (b) Select a mediator and notify the parties of the selection.

(4) Within twenty-three days of the department's notice that the parties have been referred to mediation, the borrower shall transmit the documents required for mediation to the mediator and the beneficiary. The required documents include an initial Making Home Affordable Application (HAMP) package or such other equivalent homeowner financial information worksheet as required by the department. In the event the department is required to create a worksheet, the worksheet must include, at a minimum, the following information:
   (a) The borrower's current and future income;
   (b) Debts and obligations;
   (c) Assets;
   (d) Expenses;
   (e) Tax returns for the previous two years;
   (f) Hardship information;
   (g) Other applicable information commonly required by any applicable federal mortgage relief program.

(5) Within twenty days of the beneficiary's receipt of the borrower's documents, the beneficiary shall transmit the documents required for mediation to the mediator and the borrower. The required documents include:
   (a) An accurate statement containing the balance of the loan within thirty days of the date on which the beneficiary's documents are due to the parties;
   (b) Copies of the note and deed of trust;
   (c) Proof that the entity claiming to be the beneficiary is the
owner_of_any_promissory_note_or_obligation_secured_by_the_deed_of

trust. Sufficient proof may be a copy of the declaration described in

RCW 61.24.030(7)(a);

(d) The best estimate of any arrearage and an itemized statement of

the arrearages;

(e) An itemized list of the best estimate of fees and charges

outstanding;

(f) The payment history and schedule for the preceding twelve

months, or since default, whichever is longer, including a breakdown of

all fees and charges claimed;

(g) All borrower-related and mortgage-related input data used in

any net present values analysis. If no net present values analysis is

required by the applicable federal mortgage relief program, then the

input data required under the federal deposit insurance corporation and

published in the federal deposit insurance corporation loan

modification program guide, or if that calculation becomes unavailable,

substantially similar input data as determined by the department;

(h) An explanation regarding any denial for a loan modification,

forbearance, or other alternative to foreclosure in sufficient detail

for a reasonable person to understand why the decision was made;

(i) Appraisal or other broker price opinion most recently relied

upon by the beneficiary not more than ninety days old at the time of

the scheduled mediation; and

(j) The portion or excerpt of the pooling and servicing agreement

that prohibits the beneficiary from implementing a modification, if the

beneficiary claims it cannot implement a modification due solely to

limitations in a pooling and servicing agreement, and documentation or

a statement detailing the efforts of the beneficiary to obtain a waiver

of the pooling and servicing agreement provisions.

(6) Within seventy days of receiving the referral from the

department, the mediator shall convene a mediation session in the

county where the borrower resides, unless the parties agree on another

location. The parties may agree ((in writing)) to extend the time in

which to schedule the mediation session. If the parties agree to

extend the time, the beneficiary shall notify the trustee of the

extension and the date the mediator is expected to issue the mediator's

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

(b) The mediator must send written notice of the time, date, and location of the mediation session to the borrower, the beneficiary, and the department at least thirty days prior to the mediation session. At a minimum, the notice must contain:

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

(ii) A statement that a person with authority to agree to a resolution, including a proposed settlement, loan modification, or dismissal or continuation of the foreclosure proceeding, must be present either in person or on the telephone or video conference during the mediation session; and

(iii) A complete list of documents and information required by this section that the parties must provide to the mediator and the deadlines for providing the documents and information; and

(iv)) A statement that the parties have a duty to mediate in good faith and that failure to mediate in good faith may impair the beneficiary's ability to foreclose on the property or the borrower's ability to modify the loan or take advantage of other alternatives to foreclosure.

(8)(a) The borrower, the beneficiary or authorized agent, and the mediator must meet in person for the mediation session. However, a person with authority to agree to a resolution on behalf of the beneficiary may be present over the telephone or video conference during the mediation session.

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

(9) The participants in mediation must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, or some other workout plan. To assist the parties in addressing issues of foreclosure, the mediator may require the participants to consider the following:
(a) The borrower's current and future economic circumstances, including the borrower's current and future income, debts, and obligations for the previous sixty days or greater time period as determined by the mediator;

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

(c) Any affordable loan modification calculation and net present value calculation when required under any federal mortgage relief program, including the home affordable modification program (HAMP) as applicable to government-sponsored enterprise and nongovernment-sponsored enterprise loans and any HAMP-related modification program applicable to loans insured by the federal housing administration, the veterans administration, and the rural housing service. If such a calculation is not provided or required, then the beneficiary must provide the net present value data inputs established by the federal deposit insurance corporation and published in the federal deposit insurance corporation loan modification program guide or other net present value data inputs as designated by the department. The mediator may run the calculation in order for a productive mediation to occur and to comply with the mediator certification requirement; and

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

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

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

(b) Failure of the borrower or the beneficiary to provide the following documentation to the borrower and mediator at least ten days before the mediation or pursuant to the mediator's instructions:

(i) An accurate statement containing the balance of the loan as of the first day of the month in which the mediation occurs;

(ii) Copies of the note and deed of trust;

(iii) Proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust. Sufficient proof may be a copy of the declaration described in RCW 61.24.030(7)(a);
(iv) The best estimate of any arrearage and an itemized statement of the arrearages;

(v) An itemized list of the best estimate of fees and charges outstanding;

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

(vii) All borrower-related and mortgage-related input data used in any net present value analysis;

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

(ix) The most recently available appraisal or other broker-price opinion most recently relied upon by the beneficiary; and

(x) The portion or excerpt of the pooling and servicing agreement that prohibits the beneficiary from implementing a modification, if the beneficiary claims it cannot implement a modification due solely to limitations in a pooling and servicing agreement, and documentation or a statement detailing the efforts of the beneficiary to obtain a waiver of the pooling and servicing agreement provisions;

(e) Failure of the borrower to provide documentation to the beneficiary and mediator, at least ten days before the mediation or pursuant to the mediator's instruction, showing the borrower's current and future income, debts and obligations, and tax returns for the past two years;

(d) Failure of either party to pay the respective portion of the mediation fee in advance of the mediation as required under this section;

((e))) documentation required before mediation or pursuant to the mediator's instructions;

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

(((f))) (d) A request by a beneficiary that the borrower waive future claims he or she may have in connection with the deed of trust, as a condition of agreeing to a modification, except for rescission claims under the federal truth in lending act. Nothing in this section precludes a beneficiary from requesting that a borrower dismiss with
prejudice any pending claims against the beneficiary, its agents, loan
servicer, or trustee, arising from the underlying deed of trust, as a
condition of modification.

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

(12) Within seven business days after the conclusion of the
mediation session, the mediator must send a written certification to
the department and the trustee and send copies to the parties of:
(a) The date, time, and location of the mediation session;
(b) The names of all persons attending in person and by telephone
or video conference, at the mediation session;
(c) Whether a resolution was reached by the parties, including
whether the default was cured by reinstatement, modification, or
restructuring of the debt, or some other alternative to foreclosure was
agreed upon by the parties;
(d) Whether the parties participated in the mediation in good
faith; and
(e) If a written agreement was not reached, a description of
any net present value test used, along with a copy of the
inputs, including the result of any net present value test
expressed in a dollar amount.

((10)) (13) If the parties are unable to reach an agreement,
and the mediator certifies that the parties acted in good faith, the
beneficiary may proceed with the foreclosure.

an agreement, the beneficiary may proceed with the
foreclosure after receipt of the mediator's written certification.

(14) (a) The mediator's certification that the beneficiary failed to
act in good faith in mediation constitutes a defense to the nonjudicial
foreclosure action that was the basis for initiating the mediation. In
any action to enjoin the foreclosure, the beneficiary is entitled to rebut the allegation that it failed to act in good faith.
(b) The mediator's certification that the beneficiary failed to act
in good faith during mediation does not constitute a defense to a
judicial foreclosure or a future nonjudicial foreclosure action if a
modification of the loan is agreed upon and the borrower subsequently
defaults.

(c) If an affordable loan modification is not offered in the
mediation or a written agreement was not reached and the mediator's
certification shows that the net present value of the modified loan
exceeds the anticipated net recovery at foreclosure, that showing in
the certification ((shall)) constitutes a basis for the borrower to
enjoin the foreclosure.

((12)) (15) The mediator's certification that the borrower failed
to act in good faith in mediation authorizes the beneficiary to proceed
with the foreclosure.

((13)) (16)(a) If a borrower has been referred to mediation
before a notice of trustee sale has been recorded, a trustee may not
record the notice of sale until the trustee receives the mediator's
certification stating that the mediation has been completed. ((b)) If
the trustee does not receive the mediator's certification, the trustee
may record the notice of sale after ten days from the date the
certification to the trustee was due. If ((the)), after a notice of
sale is recorded under this subsection ((13)(b) and)) (16)(a), the
mediator subsequently issues a certification ((alleging)) finding that
the beneficiary violated the duty of good faith, ((the trustee may not
proceed with the sale.

(14)) the certification constitutes a basis for the borrower to
enjoin the foreclosure.

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

(17) A mediator may charge reasonable fees as authorized by this
subsection and by the department. Unless the fee is waived or the
parties agree otherwise, a foreclosure mediator's fee may not exceed
four hundred dollars for preparing, scheduling, and conducting a
mediation session lasting between one hour and three hours. For a
mediation session exceeding three hours, the foreclosure mediator may
charge a reasonable fee, as authorized by the department. The mediator
must provide an estimated fee before the mediation, and payment of the
mediator's fee must be divided equally between the beneficiary and the
borrower. The beneficiary and the borrower must tender the loan mediator's fee ((seven)) within thirty calendar days ((before the commencement of the)) from receipt of the department's letter referring the parties to mediation or pursuant to the mediator's instructions. 

(45) (18) Beginning December 1, 2012, and every year thereafter, the department shall report annually to the legislature on:

(a) The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney;

(b) The results of the mediation program, including the number of mediations requested by housing counselors and attorneys, the number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified, the change in the borrower's monthly payment for principal and interest and the number of principal write-downs and interest rate reductions, and, to the extent practical, the number of borrowers who report a default within a year of restructuring or modification;

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

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

Sec. 7. RCW 61.24.169 and 2011 2nd sp.s. c 4 s 2 are each amended to read as follows:

(1) For the purposes of RCW 61.24.163, the department must maintain a list of approved foreclosure mediators. The department may approve the following persons to serve as foreclosure mediators under this section if the person has completed ten mediations and either a forty-hour mediation course and sixty hours of mediating or has two hundred hours experience mediating:

(a) Attorneys who are active members of the Washington state bar association;

(b) Employees of United States department of housing and urban development-approved housing counseling agencies or approved by the Washington state housing finance commission;
(c) Employees or volunteers of dispute resolution centers under chapter 7.75 RCW; and

(d) Retired judges of Washington courts; and

(e) Other experienced mediators.

(2) The department may establish a required training program for foreclosure mediators and may require mediators to acquire training before being approved. The mediators must be familiar with relevant aspects of the law, have knowledge of community-based resources and mortgage assistance programs, and refer borrowers to these programs where appropriate.

(3) The department may remove any mediator from the approved list of mediators.

(4)(a) A mediator under this section who is an employee or volunteer of a dispute resolution center under chapter 7.75 RCW) is immune from suit in any civil action based on any proceedings or other official acts performed in his or her capacity as a foreclosure mediator, except in cases of willful or wanton misconduct.

(b) A mediator is not subject to discovery or compulsory process to testify in any litigation pertaining to a foreclosure action between the parties. However, the mediator's certification and all information and material presented as part of the mediation process may be deemed admissible evidence, subject to court rules, in any litigation pertaining to a foreclosure action between the parties.

Sec. 8. RCW 61.24.174 and 2011 1st sp.s. c 24 s 1 are each amended to read as follows:

(1) Except as provided in subsection (((4))) (5) of this section, beginning October 1, 2011, and every quarter thereafter, every beneficiary issuing notices of default, or directing that a trustee or authorized agent issue the notice of default, on owner-occupied residential real property under this chapter must:

(a) Report to the department the number of owner-occupied residential real properties for which the beneficiary has issued a notice of default during the previous quarter; and

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

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

(2) For each owner-occupied residential real property for which a
notice of default has been issued, the beneficiary issuing the notice
of default, or directing that a trustee or authorized agent issue the
notice of default, shall remit two hundred fifty dollars to the
department to be deposited, as provided under RCW 61.24.172, into the
foreclosure fairness account. The two hundred fifty dollar payment is
required per property and not per notice of default. The beneficiary
shall remit the total amount required in a lump sum each quarter.

(3) Reporting and payments under subsections (1) and (2) of this
section are due within forty-five days of the end of each quarter.

(4) No later than thirty days after April 14, 2011, the
beneficiaries required to report and remit to the department under this
section shall determine the number of owner-occupied residential real
properties for which notices of default were issued during the three
months prior to April 14, 2011. The beneficiary shall remit to the
department a one-time sum of two hundred fifty dollars multiplied by
the number of properties. In addition, by July 31, 2011, the
beneficiaries required to report and remit to the department under this
section shall remit to the department another one-time sum of two
hundred fifty dollars multiplied by the number of owner-occupied
residential real properties for which notices of default were issued
from April 14, 2011, through June 30, 2011. The department shall
deposit the funds into the foreclosure fairness account as provided
under RCW 61.24.172.

((4+)) (5) This section does not apply to any beneficiary or loan
servicer that is a federally insured depository institution, as defined
in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of
perjury that it has issued, or has directed a trustee or authorized
agent to issue, fewer than two hundred fifty notices of default in the
preceding year.

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

Sec. 9. RCW 61.24.030 and 2011 c 58 s 4 are each amended to read
as follows:
It shall be requisite to a trustee's sale:

(1) That the deed of trust contains a power of sale;
(2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural 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 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 granted to secure 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;
(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 maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;
(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.
(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

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

(8) 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 at their last known 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 the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

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

(b) A statement identifying 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) A statement that the beneficiary has declared the borrower or grantor 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) A statement showing the total of (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) A statement that failure to cure 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 recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the
future, or no less than one hundred fifty days in the future if the
borrower received a letter under RCW 61.24.031;

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

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

(k) In the event the property secured by the deed of trust is owner-occupied residential real property, a statement, prominently set out at the beginning of the notice, which shall state as follows:

("You should take care to protect your interest in your home. This notice of default (your failure to pay) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

Can you pay and stop the foreclosure process?
Do you dispute the failure to pay?
Can you sell your property to preserve your equity?
Are you able to refinance this loan or obligation with a new loan or obligation from another lender with payments, terms, and fees that are more affordable?
Do you qualify for any government or private homeowner assistance programs?
Do you know if filing for bankruptcy is an option? What are the pros and cons of doing so?

Do not ignore this notice; because if you do nothing, you could lose your home at a foreclosure sale. (No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until thirty days after this notice.) Also, if you do nothing to pay what you owe, be careful of people who claim they can help you. There are many individuals and businesses that watch for the notices of sale in order to unfairly profit as a result of borrowers' distress."
You may feel you need help understanding what to do. There are a number of professional resources available, including home loan counselors and attorneys, who may assist you. Many legal services are lower-cost or even free, depending on your ability to pay. If you desire legal help in understanding your options or handling this default, you may obtain a referral (at no charge) by contacting the county bar association in the county where your home is located. These legal referral services also provide information about lower-cost or free legal services for those who qualify. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.

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

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

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

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

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

REFER TO THE CONTACTS BELOW for sources of assistance.

SEEKING ASSISTANCE

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

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission
Telephone: . . . . . . . Web site: . . . . . . .

The United States Department of Housing and Urban Development
The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

Telephone: . . . . . . . Web site: . . . . . . .

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

(1) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust; and

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, RCW 61.24.163.

Sec. 10. RCW 61.24.040 and 2009 c 292 s 9 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, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection 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 (f) of this subsection 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;
(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 (f) of this subsection 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 (f) of this subsection 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 (f) of this subsection 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 . . . . day of . . . . . . , . . . , at the hour of . . . . o'clock . . . . M. at . . . . . . . . . . . . . . . . . . . . . . . . [street address and location if inside a building] 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 . . . . . . . , . . . , recorded . . . . . . , . . . , 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 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 . . . . . . , . . . , 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 . . . . . . , . . . . The default(s) referred to in paragraph III must be cured by the . . . . day of . . . . . . , . . . (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 . . . . . . , . . . , (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 . . . . . . , . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, 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 at the following addresses:
by both first-class and certified mail on the . . . . day of . . . . , . . . , proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on the . . . . day of . . . . , . . . , 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

...........  }

...........  }

...........  } Phone

[Acknowledgment]
(g) If the borrower received a letter under RCW 61.24.031, the notice specified in subsection (1)(f) of this section shall also include the following additional language:

"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.

You have only 20 DAYS from the recording date on this notice to pursue mediation.

DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

SEEKING ASSISTANCE

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

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission
Telephone: . . . . . . . Web site: . . . . . . . .

The United States Department of Housing and Urban Development
Telephone: . . . . . . . Web site: . . . . . . . .

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys
Telephone: . . . . . . . Web site: . . . . . . . .

The beneficiary or trustee shall obtain the toll-free numbers and web site information from the department for inclusion in the notice.

(2) In addition to providing the borrower and grantor the notice of sale described in subsection (1)(f) of this section, the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,
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 . . . . . . , . . .

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 . . . . . ., . . . [11 days before the sale date]. To date, these arrears and costs are as follows:

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(Itemization)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title report</td>
<td>$....</td>
<td>$....</td>
</tr>
<tr>
<td>Recording fees</td>
<td>$....</td>
<td>$....</td>
</tr>
<tr>
<td>Service/Posting of Notices</td>
<td>$....</td>
<td>$....</td>
</tr>
<tr>
<td>Postage/Copying expense</td>
<td>$....</td>
<td>$....</td>
</tr>
<tr>
<td>Publication</td>
<td>$....</td>
<td>$....</td>
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<tr>
<td>Telephone charges</td>
<td>$....</td>
<td></td>
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<tr>
<td>Inspection fees</td>
<td>$....</td>
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</tbody>
</table>

**TOTALS** $.... $....

To pay off the entire obligation secured by your Deed of Trust as of the . . . . . day of . . . . . you must pay a total of $ . . . . . in principal, $. . . . . in interest, plus other costs and advances estimated to date in the amount of $. . . . . . From and after the date of this notice you must submit a written request to the Trustee to obtain the total amount to pay off the entire obligation secured by your Deed of Trust as of the payoff date.

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.

| Default | Description of Action Required to Cure and Documentation Necessary to Show Cure |
|---------|---------------------------------------------------------------------------------
| . . .   |                                                                                 |
| . . .   |                                                                                 |
| . . .   |                                                                                 |

ESHB 2614.SL p. 34
You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . . day of . . . . . . . , . . . [11 days before the sale date], 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 or to pay off the entire indebtedness 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 or the payoff amount 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 . . . . . . . , . . . , 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. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. 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.

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. You may contact the Department of Financial Institutions or the statewide civil legal aid hotline for possible assistance or referrals.
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. 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 subsection (1)(f) of this section (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-fifth and twenty-eighth day before the date of sale, and once on or between the 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 has no obligation to, but 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) a public...
proclamation at the time and place fixed for sale in the notice of sale
and if the continuance is beyond the date of sale, by giving notice of
the new time and place of the sale by both first class and either
certified or registered mail, return receipt requested, to the persons
specified in subsection (1)(b)(i) and (ii) of this section to be
deposited in the mail (i) not less than four days before the new date
fixed for the sale if the sale is continued for up to seven days; or
(ii) not more than three days after the date of the continuance by oral
proclamation if the sale is continued for more than seven days, or,
alternatively, (b) by giving notice of the time and place of the
postponed sale in the manner and to the persons specified in subsection
(1)(b), (c), (d), and (e) of this section and publishing a copy of such
notice once in the newspaper(s) described in subsection (3) of this
section, 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 subsection (1) of this section,
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 who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060; (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. 11. A new section is added to chapter 61.24 RCW to read as follows:

(1) A borrower who has been referred to mediation before the effective date of this section may continue through the mediation process and does not lose his or her right to mediation.

(2) A borrower who has not been referred to mediation as of the effective date of this section may only be referred to mediation after a notice of default has been issued but no later than twenty days from the date a notice of sale is recorded.

(3) A borrower who has not been referred to mediation as of the effective date of this section and who has had a notice of sale recorded may only be referred to mediation if the referral is made before twenty days have passed from the date the notice of sale was recorded.

Sec. 12. RCW 61.24.172 and 2011 c 58 s 11 are each amended to read as follows:

The foreclosure fairness account is created in the custody of the state treasurer. All receipts received under RCW 61.24.174 must be deposited into the account. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. Funding to agencies and organizations under this section must be provided by the department through an interagency agreement or other applicable contract instrument. The account is subject to allotment...
procedures under chapter 43.88 RCW, but an appropriation is not
required for expenditures. Expenditures from the account must be used
as follows: (1) No less than ((eighty)) seventy-six percent must be
used for the purposes of providing housing ((counselors—))
counseling activities to benefit borrowers, except that this amount may
be less than ((eighty)) seventy-six percent only if necessary to meet
the funding level specified for the office of the attorney general
under subsection (2) of this section and the department under
subsection (4) of this section; (2) up to six percent, or six hundred
fifty-five thousand dollars per biennium, whichever amount is greater,
to the office of the attorney general to be used by the consumer
protection division to enforce this chapter; (3) up to two percent to
the office of civil legal aid to be used for the purpose of contracting
with qualified legal aid programs for legal representation of
homeowners in matters relating to foreclosure. Funds provided under
this subsection (3) must be used to supplement, not supplant, other
federal, state, and local funds; (4) up to ((nine)) thirteen percent,
or ((four hundred fifty-one)) five hundred ninety thousand dollars per
biennium, whichever amount is greater, to the department to be used for
implementation and operation of the foreclosure fairness act; and (5)
up to three percent to the department of financial institutions to
conduct homeowner prepurchase and postpurchase outreach and education
programs as defined in RCW 43.320.150.

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

Sec. 13. RCW 61.24.010 and 2009 c 292 s 7 are each amended to read
as follows:

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

(a) Any domestic corporation or domestic limited liability
corporation incorporated under Title 23B, 25, 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 any title insurance agent
licensed under chapter 48.17 RCW; or

(c) Any attorney who is an active member of the Washington state
bar association at the time the attorney is named trustee; or
(d) Any professional corporation incorporated under chapter 18.100 RCW, 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.

(2) The trustee 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 appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

(3) The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust.

(4) The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.

Sec. 14. RCW 61.24.050 and 1998 c 295 s 7 are each amended to read as follows:

(1) Upon physical delivery of the trustee's deed to the purchaser, or a different grantee as designated by the purchaser following the trustee's sale, 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 of the deed of trust, and such as the
grantor may have thereafter acquired. Except as provided in subsection (2) of this section, 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, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale.

(2)(a) Up to the eleventh day following the trustee's sale, the trustee, beneficiary, or authorized agent for the beneficiary may declare the trustee's sale and trustee's deed void for the following reasons:

(i) The trustee, beneficiary, or authorized agent for the beneficiary assert that there was an error with the trustee foreclosure sale process including, but not limited to, an erroneous opening bid amount made by or on behalf of the foreclosing beneficiary at the trustee's sale;

(ii) The borrower and beneficiary, or authorized agent for the beneficiary, had agreed prior to the trustee's sale to a loan modification agreement, forbearance plan, shared appreciation mortgage, or other loss mitigation agreement to postpone or discontinue the trustee's sale; or

(iii) The beneficiary or authorized agent for the beneficiary had accepted funds that fully reinstated or satisfied the loan even if the beneficiary or authorized agent for the beneficiary had no legal duty to do so.

(b) This subsection does not impose a duty upon the trustee any different than the obligations set forth under RCW 61.24.010 (3) and (4).

(3) The trustee must refund the bid amount to the purchaser no later than the third day following the postmarked mailing of the rescission notice described under subsection (4) of this section.

(4) No later than fifteen days following the voided trustee's sale date, the trustee shall send a notice in substantially the following form by first-class mail and certified mail, return receipt requested, to all parties entitled to notice under RCW 61.24.040(1) (b) through (e):

NOTICE OF RESCISSION OF TRUSTEE'S SALE
NOTICE IS HEREBY GIVEN that the trustee's sale that occurred on 
(trustee's sale date) is rescinded and declared void because (insert 
the applicable reason(s) permitted under RCW 61.24.050(2)(a)). 

The trustee's sale occurred pursuant to that certain Notice of 
Trustee's Sale dated . . . , recorded . . . , under 
Auditor's File No. . . , records of . . . County, Washington, and 
that certain Deed of Trust dated . . . , recorded . . . , 
under Auditor's File No. . . , records of . . . County, 
Washington, from . . . , as Grantor, to . . . , as . . . , as 
original Beneficiary, concerning the following described property, 
situated in the County(ies) of . . . , State of Washington, to wit: 

(Legal description) 

Commonly known as (common property address) 

(5) If the reason for the rescission stems from subsection (2)(a) 
(i) or (ii) of this section, the trustee may set a new sale date not 
less than forty-five days following the mailing of the notice of 
rescission of trustee's sale. 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 of the property 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. 

NEW SECTION. Sec. 15. Section 12 of this act is necessary for the 
immediate preservation of the public peace, health, or safety, or 
support of the state government and its existing public institutions, 
and takes effect immediately. 

Passed by the House March 6, 2012. 
Passed by the Senate March 5, 2012. 
Approved by the Governor March 29, 2012. 
Filed in Office of Secretary of State March 29, 2012.