

ESHB 1108 - S COMM AMD

By Committee on Business, Financial Services & Trade

ADOPTED 04/03/2021

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

28 (3) "Borrower" means a person or a general partner in a
29 partnership, including a joint venture, that is liable for all or
30 part of the obligations secured by the deed of trust under the
31 instrument or other document that is the principal evidence of such

1 obligations, or the person's successors if they are liable for those
2 obligations under a written agreement with the beneficiary.

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

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

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

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

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

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

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

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

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

35 (13) "Residential real property" means property consisting solely
36 of a single-family residence, a residential condominium unit, or a
37 residential cooperative unit. For the purposes of the application of
38 RCW 61.24.163, (~~owner-occupied~~) residential real property includes
39 residential real property of up to four units.

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

4 (15) "Tenant-occupied property" means property consisting solely
5 of residential real property that is the principal residence of a
6 tenant subject to chapter 59.18 RCW or other building with four or
7 fewer residential units that is the principal residence of a tenant
8 subject to chapter 59.18 RCW.

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

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

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

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

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

17 (2) That the deed of trust contains a statement that the real
18 property conveyed is not used principally for agricultural purposes;
19 provided, if the statement is false on the date the deed of trust was
20 granted or amended to include that statement, and false on the date
21 of the trustee's sale, then the deed of trust must be foreclosed
22 judicially. Real property is used for agricultural purposes if it is
23 used in an operation that produces crops, livestock, or aquatic
24 goods;

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

28 (4) That no action commenced by the beneficiary of the deed of
29 trust is now pending to seek satisfaction of an obligation secured by
30 the deed of trust in any court by reason of the grantor's default on
31 the obligation secured: PROVIDED, That (a) the seeking of the
32 appointment of a receiver, or the filing of a civil case to obtain
33 court approval to access, secure, maintain, and preserve property
34 from waste or nuisance, shall not constitute an action for purposes
35 of this chapter; and (b) if a receiver is appointed, the grantor
36 shall be entitled to any rents or profits derived from property
37 subject to a homestead as defined in RCW 6.13.010. If the deed of
38 trust was granted to secure a commercial loan, this subsection shall
39 not apply to actions brought to enforce any other lien or security

1 interest granted to secure the obligation secured by the deed of
2 trust being foreclosed;

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

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

10 (7) (a) That, for residential real property of up to four units,
11 before the notice of trustee's sale is recorded, transmitted, or
12 served, the trustee shall have proof that the beneficiary is the
13 holder of any promissory note or other obligation secured by the deed
14 of trust. A declaration by the beneficiary made under the penalty of
15 perjury stating that the beneficiary is the holder of any promissory
16 note or other obligation secured by the deed of trust shall be
17 sufficient proof as required under this subsection.

18 (b) Unless the trustee has violated his or her duty under RCW
19 61.24.010(4), the trustee is entitled to rely on the beneficiary's
20 declaration as evidence of proof required under this subsection.

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

23 (8) That at least thirty days before notice of sale shall be
24 recorded, transmitted or served, written notice of default and, for
25 residential real property of up to four units, the beneficiary
26 declaration specified in subsection (7)(a) of this section shall be
27 transmitted by the beneficiary or trustee to the borrower and grantor
28 at their last known addresses by both first-class and either
29 registered or certified mail, return receipt requested, and the
30 beneficiary or trustee shall cause to be posted in a conspicuous
31 place on the premises, a copy of the notice, or personally served on
32 the borrower and grantor. This notice shall contain the following
33 information:

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

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

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

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

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

10 (f) A statement showing the total of (d) and (e) of this
11 subsection, designated clearly and conspicuously as the amount
12 necessary to reinstate the note and deed of trust before the
13 recording of the notice of sale;

14 (g) A statement that failure to cure the alleged default within
15 thirty days of the date of mailing of the notice, or if personally
16 served, within thirty days of the date of personal service thereof,
17 may lead to recordation, transmittal, and publication of a notice of
18 sale, and that the property described in (a) of this subsection may
19 be sold at public auction at a date no less than one hundred twenty
20 days in the future, or no less than one hundred fifty days in the
21 future if the borrower received a letter under RCW 61.24.031;

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

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

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

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

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

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

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

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

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

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

13 **SEEKING ASSISTANCE**

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

18 The statewide foreclosure hotline for assistance and referral to
19 housing counselors recommended by the Housing Finance Commission
20 Telephone: Website:

21 The United States Department of Housing and Urban Development
22 Telephone: Website:

23 The statewide civil legal aid hotline for assistance and referrals to
24 other housing counselors and attorneys
25 Telephone: Website:"

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

28 (l) In the event the property secured by the deed of trust is
29 residential real property of up to four units, the name and address
30 of the holder of any promissory note or other obligation secured by
31 the deed of trust and the name, address, and telephone number of a
32 party acting as a servicer of the obligations secured by the deed of
33 trust;

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

- 36 (i) The current beneficiary of the deed of trust;
- 37 (ii) The current mortgage servicer for the deed of trust; and
- 38 (iii) The current trustee for the deed of trust;

1 (9) That, for (~~owner-occupied~~) residential real property of up
2 to four units, before the notice of the trustee's sale is recorded,
3 transmitted, or served, the beneficiary has complied with RCW
4 61.24.031 and, if applicable, RCW 61.24.163;

5 (10) That, in the case where the borrower or grantor is known to
6 the mortgage servicer or trustee to be deceased, the notice required
7 under subsection (8) of this section must be sent to any spouse,
8 child, or parent of the borrower or grantor known to the trustee or
9 mortgage servicer, and to any owner of record of the property, at any
10 address provided to the trustee or mortgage servicer, and to the
11 property addressed to the heirs and devisees of the borrower.

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

16 (b) Reasonable diligence for the purposes of this subsection (10)
17 means the trustee shall search in the county where the property is
18 located, the public records and information for any obituary, will,
19 death certificate, or case in probate within the county for the
20 borrower and grantor;

21 (11) Upon written notice identifying the property address and the
22 name of the borrower to the servicer or trustee by someone claiming
23 to be a successor in interest to the borrower's or grantor's property
24 rights, but who is not a party to the loan or promissory note or
25 other obligation secured by the deed of trust, a trustee shall not
26 record a notice of sale pursuant to RCW 61.24.040 until the trustee
27 or mortgage servicer completes the following:

28 (a) Acknowledges the notice in writing and requests reasonable
29 documentation of the death of the borrower or grantor from the
30 claimant including, but not limited to, a death certificate or other
31 written evidence of the death of the borrower or grantor. The
32 claimant must be allowed thirty days from the date of this request to
33 present this documentation. If the trustee or mortgage servicer has
34 already obtained sufficient proof of the borrower's death, it may
35 proceed by acknowledging the claimant's notice in writing and issuing
36 a request under (b) of this subsection.

37 (b) If the mortgage servicer or trustee obtains or receives
38 written documentation of the death of the borrower or grantor from
39 the claimant, or otherwise independently confirms the death of the
40 borrower or grantor, then the servicer or trustee must request in

1 writing documentation from the claimant demonstrating the ownership
2 interest of the claimant in the real property. A claimant has sixty
3 days from the date of the request to present this documentation.

4 (c) If the mortgage servicer or trustee receives written
5 documentation demonstrating the ownership interest of the claimant
6 prior to the expiration of the sixty days provided in (b) of this
7 subsection, then the servicer or trustee must, within twenty days of
8 receipt of proof of ownership interest, provide the claimant with, at
9 a minimum, the loan balance, interest rate and interest reset dates
10 and amounts, balloon payments if any, prepayment penalties if any,
11 the basis for the default, the monthly payment amount, reinstatement
12 amounts or conditions, payoff amounts, and information on how and
13 where payments should be made. The mortgage servicers shall also
14 provide the claimant application materials and information, or a
15 description of the process, necessary to request a loan assumption
16 and modification.

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

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

28 (f) The existence of a successor in interest under this section
29 does not impose an affirmative duty on a mortgage servicer or alter
30 any obligation the mortgage servicer has to provide a loan
31 modification to the successor in interest. If a successor in interest
32 assumes the loan, he or she may be required to otherwise qualify for
33 available foreclosure prevention alternatives offered by the mortgage
34 servicer.

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

38 (12) Nothing in this section shall prejudice the right of the
39 mortgage servicer or beneficiary from discontinuing any foreclosure
40 action initiated under the deed of trust act in favor of other

1 allowed methods for pursuit of foreclosure of the security interest
2 or deed of trust security interest.

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

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

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

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

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

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

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

29 You should contact a housing counselor or attorney as soon as
30 possible. Failure to contact a housing counselor or attorney may
31 result in your losing certain opportunities, such as meeting with
32 your lender or participating in mediation in front of a neutral third
33 party. A housing counselor or attorney can help you work with your
34 lender to avoid foreclosure.

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

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

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

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

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

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

29 (f) The meeting scheduled to assess the borrower's financial
30 ability to modify or restructure the loan obligation and discuss
31 options to avoid foreclosure may be held telephonically, unless the
32 borrower or borrower's representative requests in writing that a
33 meeting be held in person. The written request for an in-person
34 meeting must be made within thirty days of the initial contact with
35 the borrower. If the meeting is requested to be held in person, the
36 meeting must be held in the county where the property is located
37 unless the parties agree otherwise. A person who is authorized to
38 agree to a resolution, including modifying or restructuring the loan
39 obligation or other alternative resolution to foreclosure on behalf

1 of the beneficiary, must be present either in person or on the
2 telephone or videoconference during the meeting.

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

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

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

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

39 (a) A beneficiary or authorized agent shall first attempt to
40 contact a borrower by sending, by both first-class and either

1 registered or certified mail, return receipt requested, a letter to
2 the address in the beneficiary's records for sending account
3 statements to the borrower and to the address of the property
4 encumbered by the deed of trust. The letter must be the letter
5 described in subsection (1)(c) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (8) As used in this section:

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

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

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

39 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

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

19 (3) [] The beneficiary or beneficiary's authorized agent has
20 contacted the borrower as required in RCW 61.24.031 and the borrower
21 or the borrower's designated representative requested a meeting. A
22 meeting was scheduled for (insert date, time, and location/telephonic
23 here) and neither the borrower nor the borrower's designated
24 representative appeared.

25 (4) [] The beneficiary or beneficiary's authorized agent has
26 exercised due diligence to contact the borrower as required in RCW
27 61.24.031(5) and the borrower did not respond.

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

32 Additional Optional Explanatory Comments:

33

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

36 (1) It is an unfair or deceptive act or practice under the
37 consumer protection act, chapter 19.86 RCW, for any person, acting
38 alone or in concert with others, to offer, or offer to accept or

1 accept from another, any consideration of any type not to bid, or to
2 reduce a bid, at a sale of property conducted pursuant to a power of
3 sale in a deed of trust. The trustee may decline to complete a sale
4 or deliver the trustee's deed and refund the purchase price, if it
5 appears that the bidding has been collusive or defective, or that the
6 sale might have been void. However, it is not an unfair or deceptive
7 act or practice for any person, including a trustee, to state that a
8 property subject to a recorded notice of trustee's sale or subject to
9 a sale conducted pursuant to this chapter is being sold in an "as-is"
10 condition, or for the beneficiary to arrange to provide financing for
11 a particular bidder or to reach any good faith agreement with the
12 borrower, grantor, any guarantor, or any junior lienholder.

13 (2) It is an unfair or deceptive act in trade or commerce and an
14 unfair method of competition in violation of the consumer protection
15 act, chapter 19.86 RCW, for any person or entity to: (a) Violate the
16 duty of good faith under RCW 61.24.163; (b) fail to comply with the
17 requirements of RCW 61.24.174, as it existed prior to July 1, 2016,
18 ~~((~~or~~)) RCW 61.24.173, or section 11 of this act;~~ or (c) fail to
19 initiate contact with a borrower and exercise due diligence as
20 required under RCW 61.24.031.

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

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

27 ~~((A borrower under a deed of trust on owner-occupied
28 residential real property who has received a notice of default on or
29 before July 22, 2011, may be referred to mediation under RCW
30 61.24.163 by a housing counselor or attorney.~~

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

32 (a) Securing a commercial loan;

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

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

37 (d) Where the grantor is a partnership, corporation, or limited
38 liability company, or where the property is vested in a partnership,

1 corporation, or limited liability company at the time the notice of
2 default is issued.

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

5 ((5)) (4) For purposes of referral and mediation under RCW
6 61.24.163, a person may be referred to mediation if the borrower is
7 deceased and the person is a successor in interest of the deceased
8 borrower who occupies the property as his or her primary residence.
9 The referring counselor or attorney must determine a person's
10 eligibility under this section and indicate the grounds for
11 eligibility on the referral to mediation submitted to the department.
12 For the purposes of mediation under RCW 61.24.163, the person must be
13 treated as a "borrower." This subsection does not impose an
14 affirmative duty on the beneficiary to accept an assumption of the
15 loan.

16 ((6)) (5) For purposes of referral and mediation under RCW
17 61.24.163, a person may be referred to mediation if the person has
18 been awarded title to the property in a proceeding for dissolution or
19 legal separation. The referring counselor or attorney must determine
20 the person's eligibility under this section and indicate the grounds
21 for eligibility on the referral to mediation submitted to the
22 department. For the purposes of mediation under RCW 61.24.163, the
23 person must be treated as a "borrower." This subsection does not
24 impose an affirmative duty on the beneficiary to accept an assumption
25 of the loan.

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

28 ((The)) Beginning on January 1, 2023, the provisions of RCW
29 61.24.163 do not apply to any federally insured depository
30 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
31 certifies to the department under penalty of perjury that it was not
32 a beneficiary of deeds of trust in more than two hundred fifty
33 trustee sales of ((owner-occupied)) residential real property of up
34 to four units that occurred in this state during the preceding
35 calendar year. A federally insured depository institution certifying
36 that RCW 61.24.163 does not apply must do so annually, beginning no
37 later than ((thirty days after July 22, 2011)) January 31, 2023, and
38 no later than January 31st of each year thereafter.

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

10 (2) During the 2022 calendar year, the provisions of RCW
11 61.24.163 do not apply to any federally insured depository
12 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
13 certifies to the department under penalty of perjury that it was not
14 a beneficiary of deeds of trust in more than 250 trustee sales of
15 owner-occupied residential property that occurred in this state
16 during 2019. A federally insured depository institution certifying
17 that RCW 61.24.163 does not apply pursuant to this subsection must do
18 so no later than January 31, 2022.

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

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

22 The foreclosure fairness account is created in the custody of the
23 state treasurer. All receipts received under RCW 61.24.174, as it
24 existed prior to July 1, 2016, (~~and~~) RCW 61.24.173, and section 11
25 of this act must be deposited into the account. Only the director of
26 the department of commerce or the director's designee may authorize
27 expenditures from the account. Funding to agencies and organizations
28 under this section must be provided by the department through an
29 interagency agreement or other applicable contract instrument. The
30 account is subject to allotment procedures under chapter 43.88 RCW,
31 but an appropriation is not required for expenditures. Biennial
32 expenditures from the account must be used as follows: Four hundred
33 thousand dollars to fund the counselor referral hotline. The
34 remaining funds shall be distributed as follows: (1) Sixty-nine
35 percent for the purposes of providing housing counseling activities
36 to benefit borrowers; (2) eight percent to the office of the attorney
37 general to be used by the consumer protection division to enforce
38 this chapter; (3) six percent to the office of civil legal aid to be
39 used for the purpose of contracting with qualified legal aid programs

1 for legal representation of homeowners in matters relating to
2 foreclosure. Funds provided under this subsection (3) must be used to
3 supplement, not supplant, other federal, state, and local funds; and
4 (4) seventeen percent to the department to be used for implementation
5 and operation of the foreclosure fairness act.

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

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

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

16 (a) Report to the department the number of notices of trustee's
17 sale recorded for each residential property during the previous
18 quarter;

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

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

25 (2) For each notice of trustee's sale recorded on residential
26 real property, the beneficiary on whose behalf the notice of
27 trustee's sale has been recorded shall remit (~~((three hundred twenty-~~
28 ~~five dollars))~~ \$325 to the department to be deposited, as provided
29 under RCW 61.24.172, into the foreclosure fairness account. The
30 (~~((three hundred twenty-five dollar))~~ \$325 payment is required for
31 every recorded notice of trustee's sale for noncommercial loans on
32 residential real property, but does not apply to the recording of an
33 amended notice of trustee's sale. No later than January 1, 2020, the
34 department may from time to time adjust the amount of the fee, not to
35 exceed (~~((three hundred twenty-five dollars))~~ \$325, at a sufficient
36 level to defray the costs of the program. The beneficiary shall remit
37 the total amount required in a lump sum each quarter.

38 (3) Any adjustment to the amount of the fee, pursuant to the
39 authority of subsection (2) of this section, shall be made by rule

1 adopted by the department in accordance with the provisions of
2 chapter 34.05 RCW.

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

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

12 (b) During the 2021 and 2022 calendar years, this section does
13 not apply to any beneficiary or loan servicer that is a federally
14 insured depository institution, as defined in 12 U.S.C. Sec.
15 461(b)(1)(A), and that certifies under penalty of perjury that fewer
16 than 50 notices of trustee's sale were recorded on its behalf in
17 2019.

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

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

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

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

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

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

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

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

7 (2) For each residential real property for which a notice of
8 default has been issued, the beneficiary issuing the notice of
9 default, or causing the notice of default to be issued on the
10 beneficiary's behalf, shall remit \$250 to the department to be
11 deposited, as provided under RCW 61.24.172, into the foreclosure
12 fairness account. The \$250 payment is required per property and not
13 per notice of default. The beneficiary shall remit the total amount
14 required in a lump sum each quarter.

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

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

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

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

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

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

35 Information obtained by the department of commerce under section
36 11 of this act that reveals the name or other personal information of
37 the borrower or the street address of the residential real property
38 on which a notice of default was issued is exempt from disclosure
39 under this chapter.

1 NEW SECTION. **Sec. 13.** RCW 61.24.173 (Required payment for each
2 property subject to notice of trustee's sale—Residential real
3 property—Exceptions—Deposit into foreclosure fairness account) and
4 2018 c 306 s 7 & 2016 c 196 s 2 are each repealed.

5 NEW SECTION. **Sec. 14.** The repeal in section 13 of this act does
6 not affect any existing right acquired or liability or obligation
7 incurred under the section repealed or under any rule or order
8 adopted under that section, nor does it affect any proceeding
9 instituted under that section.

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

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

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

ESHB 1108 - S COMM AMD

By Committee on Business, Financial Services & Trade

ADOPTED 04/03/2021

18 On page 1, line 2 of the title, after "process;" strike the
19 remainder of the title and insert "amending RCW 61.24.005, 61.24.030,
20 61.24.031, 61.24.135, 61.24.165, 61.24.166, 61.24.172, and 61.24.173;
21 adding a new section to chapter 61.24 RCW; adding a new section to
22 chapter 42.56 RCW; creating new sections; repealing RCW 61.24.173;
23 providing effective dates; providing an expiration date; and
24 declaring an emergency."

EFFECT: (1) Shifts the remittance requirement and remittance
payment amount to be based on Notices of Default (NOD) rather than
Notices of Trustee Sales (NOTS). The NOTS remittance payment of \$325
is eliminated, and replaced with a NOD remittance payment of \$250
effective January 1, 2022.

(2) Bases the remittance exemption for calendar year 2022 on NOD
activity in 2019. Beginning on January 1, 2023, the provisions of the
mediation program do not apply to any federally insured depository

institution that certifies to the Department of Commerce that it was not a beneficiary in deeds of trust in more than 250 trustee sales of residential property of up to four units that occurred in Washington during the preceding calendar year.

(3) Exempts from the mediation requirement deeds of trust where the grantor is a partnership, corporation, or limited liability company, or where the property is vested in a partnership, corporation, or limited liability company at the time the notice of default is issued.

(4) Provides clarifying language that ensures that some Notice of Default or Notice of Trustee Sale activity occurring in the second half of 2021 are still subject to the required payment for each property subject to notice of trustee's sale.

(5) Expands various provisions of the Foreclosure Fairness Act, including mediation, to be applicable to nonowner occupied residential real property of up to 4 units.

(6) Updates a reference to trustee sales in the Consumer Protection Act to accommodate the shift from the NOTS to NOD.

(7) Establishes an expiration date for a section that creates a temporary exemption for the Foreclosure mediation program in 2021 and 2022 of June 30, 2023.

(8) NOD information collected under the remittance requirements is exempt from the Public Records Act effective January 1, 2022.

(9) Effective June 30, 2023, the section of law that establishes exceptions for deposits into the foreclosure fairness account is repealed without affecting any existing right acquired or liability or obligation incurred.

(10) Sections 5, 9, and 11 through 14 of the bill are made exempt from the emergency clause.

--- END ---