

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

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

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

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

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

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

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 , Laws of 1995 (this act) may be deemed impliedly repealed by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

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

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30 or repealed hereby, unless the result would be clearly required in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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) A condominium or cooperative unit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **PART III. UNIFIED NONJUDICIAL FORECLOSURES**

2 **FORMER CHAPTER 61.24 RCW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **NOTICE OF TRUSTEE'S SALE**

24 I.

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

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

7 II.

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

14 III.

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

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

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

21
22

23 IV.

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

29 V.

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

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

14 VI.

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

18
19

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

28 VII.

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

32 VIII.

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

IX.

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

.
. Trustee
. Address
.
. Phone.

[Individual or corporate acknowledgment]

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

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

NOTICE OF FORECLOSURE

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

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

Estimated amount

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

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

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

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

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

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

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

7 DATED, 19. .
8
9 Trustee

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

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

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

31 Such notice shall be in substantially the following form:

32 **REQUEST FOR NOTICE**

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

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

3 (Legal Description)

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

7 Dated this day of, 19. .

8 Signature
9 Address
10
11 Phone

12 (Acknowledgment)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **PART IV. AMENDMENTS AND REPEALERS**

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

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

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

33 (2) On debts secured:

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) The judgment creditor shall:

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

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

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

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

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

32 (2) The sheriff shall:

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

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

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

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

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

20 TO: [Judgment Debtor]

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

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

26	Time:
27	Date:
28	Place:

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

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

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

9 NOTICE OF SALE OF REAL PROPERTY--FORM OF NOTICE TO JUDGMENT DEBTOR.

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

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

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

25 TO: [Judgment Debtor]

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

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

32 Time:
33 Date:
34 Place:

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

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

3 This property is subject to: (check one)

4 1 1. No redemption rights after sale.

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

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

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

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

29 SHERIFF-DIRECTOR, COUNTY, WASHINGTON.

30 By, Deputy

31 Address

32 City

33 Washington 9. . . .

34 Phone (. . .)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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