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**SUBSTITUTE SENATE BILL 6484**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senator Mullet)

AN ACT Relating to nuisance abatement and foreclosures; amending RCW 35.21.955, 61.24.030, 61.24.173, 61.24.040, and 61.24.163; adding a new section to chapter 35.21 RCW; adding a new section to chapter 61.24 RCW; and adding a new section to chapter 61.12 RCW.

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

**PART I. NUISANCE ABATEMENT**

**Sec.**  RCW 35.21.955 and 2016 c 100 s 1 are each amended to read as follows:

(1) A city or town that exercises its authority under chapter 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410, or other applicable law to abate a nuisance which threatens health or safety must provide prior notice to the property owner and any mortgage servicer identifiable through the notice of default or notice of trustee's sale that abatement is pending and a special assessment may be levied on the property for the expense of abatement, excluding any associated fines or penalties. Such special assessment authority is supplemental to any existing authority of a city or town to levy an assessment or obtain a lien for costs of abatement, unless the city or town has utilized the special assessment authority provided for in this act. The notice must be sent by regular mail.

(2) A city or town that exercises its authority under chapter 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410, or other applicable law to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance may levy a special assessment on the land or premises where the nuisance is situated to reimburse the city or town for the expense of abatement, excluding any associated fines or penalties. A city or town must, before levying a special assessment, notify the property owner and any identifiable mortgage holder that a special assessment will be levied on the property and provide the estimated amount of the special assessment. The notice must be sent by regular mail.

(3)(a) The special assessment authorized by this section constitutes a lien against the property, and is binding upon successors in title only from the date the lien is recorded in the county where the affected real property is located. Up to ((~~two~~)) ten thousand dollars of the recorded lien is of equal rank with state, county, and municipal taxes and shall be assessed against the real property upon which cost was incurred unless such amount is previously paid. After January 1, 2019, cities and towns may annually adjust the ten thousand dollar limit in this section for inflation for special assessments imposed in that calendar year.

(b) As used in this section, "inflation" shall be based on the consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the city or town issuing the special assessment shall be used.

(4) A city or town levying a special assessment under this section may contract with the county treasurer to collect the special assessment in accordance with RCW 84.56.035 and 84.56.020. Upon certification to him or her by the municipality, the county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020 for delinquent taxes, and when collected to be deposited to the credit of the general fund of the municipality.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

(1)(a) For properties where a city or town has determined there is a nuisance under chapter 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410 and a notice of default has been issued or a notice of trustee sale has been recorded with the county auditor, the city or town may, in addition to notifying any property owner, notify any mortgage servicer identifiable through the notice of default or the notice of trustee's sale of the nuisance and recover costs for nuisance abatement as outlined in this section.

(b) The notice to the property owner and any mortgage servicer identifiable through the notice of default or the notice of trustee's sale shall include an affidavit or declaration describing the nuisance conditions, and, if meeting the criterion in (c) of this subsection, a determination that the city or town official believes the property to be abandoned. The notice shall be delivered by certified mail.

(c) A city or town official signing the affidavit or declaration under penalty of perjury may only indicate that the property is abandoned if at least three of the following indications of abandonment are visible from the exterior and supported with time and date stamped photographs memorializing the following conditions:

(i) The absence of furnishings and personal items consistent with residential habitation;

(ii) The gas, electric, or water utility services have been disconnected;

(iii) Statements by neighbors, delivery agents, or government employees that the property is abandoned;

(iv) Multiple windows on the property are boarded up, closed off, or are smashed through, broken, or unhinged, or multiple window panes are broken and unrepaired;

(v) Doors on the residence are smashed through, broken off, unhinged, or continuously unlocked;

(vi) The property has been stripped of copper or other materials or interior fixtures have been removed;

(vii) Law enforcement officials have received at least one report of trespassing or vandalism or other illegal activity occurring on the property within the preceding six months;

(viii) The property has been declared unfit for occupancy and ordered to remain unoccupied pursuant to an order issued by a municipal or county authority or a court of competent jurisdiction;

(ix) Construction was initiated on the property and was discontinued before completion leaving a building unsuitable for occupancy, and construction has not taken place for at least six months;

(x) Newspapers, circulars, flyers, or mail has accumulated on the property or the United States postal service has discontinued delivery to the property;

(xi) Rubbish, trash, debris, neglected vegetation, or natural overgrowth has accumulated on the property;

(xii) Hazardous, noxious, or unhealthy substances or materials have accumulated on the property;

(xiii) Other credible evidence exists indicating the property owner's intent to abandon the property.

(2)(a) The mortgage servicer or its designee may perform ongoing inspections to ensure code enforcement compliance upon notice from a city or town that:

(i) A property that constitutes a nuisance under chapter 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410;

(ii) The city has reason to believe the property is abandoned under subsection (1) of this section; and

(iii) A notice of default has been issued by the mortgage servicer, or a notice of trustee's sale has been recorded.

(b) The mortgage servicer, or its designee, within the time limits provided for in the notice from the city, may enter the property for the purpose of abating the identified nuisance, preserving property, or preventing waste and may take the following steps to secure the property including, but not limited to:

(i) Installing missing locks on exterior doors. Working locks may not be removed or replaced, unless all doors are secured and there is no means of entry, and in such cases only one working lock may be removed and replaced;

(ii) Replacing or boarding broken or missing windows;

(iii) Winterizing, including draining pipes and disconnecting or turning on utilities;

(iv) Eliminating building code or other code violations;

(v) Securing exterior pools and spas;

(vi) Perform routine yard maintenance on the exterior of the home; and

(vii) Perform pest and insect control services.

(c) The mortgage servicer or its designee must date and time-stamp photographs of entry and document personal items inside the dwelling and manner of entry.

(d) The mortgage servicer or its designee may not remove personal items from the property, unless the items are hazardous or perishable, and must take inventory of items removed.

(e) Record of entry into property described in this section must be kept by the mortgage servicer or its designee for four years from date of entry.

(f) If a mortgage servicer is contacted by the borrower and notified that the property is not abandoned, the mortgage servicer shall no longer enter the property regardless of whether the home complies with local code enforcement standards and notify the city or town.

(3) Each time the mortgage servicer enters the property, the mortgage servicer or its designee must ensure a notice is posted on the property's front door that contains:

(a) A statement about the right of the property owner or lawful occupant to possession of the property until foreclosure is complete pursuant to RCW 7.28.230;

(b) A statement about the right of the property owner to have any locks installed by the mortgage servicer removed within twenty-four hours and replaced with new locks accessible by only the property owner;

(c) A local phone number that the property owner or lawful occupant can call twenty-four hours a day to gain immediate entry into the property;

(d) The phone number of the state foreclosure hotline approved by the housing finance commission, the phone number for civil legal aid, and a statement that the property owner may have the right to participate in foreclosure mediation pursuant to RCW 61.24.163.

(4) If a mortgage servicer is notified according to subsection (2) of this section and does not abate the nuisance within the time limits provided by the city or town, a city or town may exercise its authority under chapter 7.48 RCW, RCW 35.22.280, 35.23.440, or 35.27.410, or other applicable law to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance and may levy a special assessment on the land or premises where the nuisance is situated to reimburse the city or town for the expense of abatement, excluding any associated penalties and fines. The special assessment authorized by this section constitutes a lien against the property, and is binding upon successors in title only from the date the lien is recorded in the county where the affected real property is located. The special assessment shall be of equal rank with state, county, and municipal taxes and shall be assessed against the real property upon which cost was incurred unless such amount is previously paid.

(5) Nothing in this section shall impact the authority of associations provided for in chapters 64.32 RCW, 64.34 RCW, or 64.38 RCW to perform property preservation and maintenance activities.

**PART II. OWNER/HOLDER, DECEASED BORROWER, CHANGES TO NOTICE OF DEFAULT**

**Sec.**  RCW 61.24.030 and 2012 c 185 s 9 are each amended to read as follows:

It shall be requisite to a trustee's sale:

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

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

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

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

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

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

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the ((~~owner~~)) holder of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary or the authorized agent of the beneficiary made under the penalty of perjury stating that the beneficiary is the ((~~actual holder of the~~)) holder of any promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR**

**LOSING YOUR HOME.**

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

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

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

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

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

**SEEKING ASSISTANCE**

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

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

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

The United States Department of Housing and Urban Development

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

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

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

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

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

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

(i) The current beneficiary of the deed of trust;

(ii) The current mortgage servicer for the deed of trust; and

(iii) The current trustee for the deed of trust;

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

(10) That, in the case of a deceased borrower or grantor, the notice required under subsection (8) of this section must be sent to any known spouse, child, or parent of the borrower or grantor, at any address provided to the trustee or mortgage servicer, or discovered within the business records obtained by the trustee, and to the property addressed to the heirs and devisees of the borrower.

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

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

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

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

(b) If the mortgage servicer or trustee obtains or receives reasonable documentation of the death of the borrower or grantor from the claimant, or otherwise independently confirms the death of the borrower or grantor, then the servicer must request in writing documentation from the claimant demonstrating the ownership interest of the claimant in the real property. A claimant shall have sixty days from the date of the request to present this documentation;

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

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

(b) Being a successor in interest under this section does not impose an affirmative duty on a mortgage servicer or alter any obligation the mortgage servicer has to provide a loan modification to the successor in interest. If a successor in interest assumes the loan, he or she may be required to otherwise qualify for available foreclosure prevention alternatives offered by the mortgage servicer.

(c) Within ten days of a claimant being deemed a successor in interest pursuant to this subsection, a mortgage servicer shall provide the successor(s) in interest with information in writing about the loan. This information shall include, at a minimum, loan balance, interest rate and interest reset dates and amounts, balloon payments if any, prepayment penalties if any, the basis for the default, the monthly payment amount, reinstatement amounts or conditions, payoff amounts, and information on how and where payments should be made. The mortgage servicer shall also provide application materials and information or a description of the process necessary to request a loan assumption and/or modification; and

(13) Nothing in this section shall prejudice the right of the mortgage servicer or beneficiary from discontinuing any foreclosure action initiated under the deed of trust act in favor of other allowed methods for pursuit of foreclosure of the security interest.

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

(1) If a trustee under a deed of trust is named as a defendant in an action or proceeding in which that deed of trust is the subject, and if there are no substantive allegations that seek damages from the trustee and/or seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the trustee, including causes of action where the trustee is a codefendant alleged to be jointly or derivatively liable, a declaration shall be served not less than thirty-five days after service of the summons and complaint on the trustee. The declaration must be served on the parties in the manner set forth in Washington court rule 5.

(2) The declaration of nonmonetary status must set forth the following: The status of the trustee as trustee under the deed of trust that is the subject of the action or proceeding, that the complaint or pleading does not assert any substantive allegations that seek damages from the trustee and/or seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the trustee that it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust and that the trustee agrees to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust.

(3) The parties who have appeared in the action or proceeding have thirty days from the service of the declaration by the trustee in which to object to the nonmonetary judgment status of the trustee. Any objection must set forth the allegations against the trustee, any general facts which gave rise to the allegations, and must be served on the trustee. An objection that sets forth allegations against the trustee and general facts will be sufficient to defeat the declaration of nonmonetary status.

(4) If an objection is not served within the thirty-day objection period, the trustee is not required to participate any further in the action or proceeding, is not subject to any monetary awards, damages, attorneys' fees, or costs, is required to respond to any discovery requests as a nonparty; and is bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding. The trustee's nonmonetary status is not established until the thirty-day objection period has passed.

(5) If a timely objection to the declaration of nonmonetary status is made, the trustee must thereafter be required to participate in the action or proceeding.

(6) In the event parties elect not to or fail to timely object to the declaration of nonmonetary status, but later determine through discovery or other means that the trustee should participate in the action because of the performance of its duties as a trustee, the parties may file and serve on all parties and the trustee a motion pursuant to Washington court rule 15 that specifies the factual basis for the demand. Upon the court's granting of the motion, the trustee must thereafter be required to participate in the action or proceeding, and the court must provide sufficient time before trial for the trustee to be able to respond to the complaint, to conduct discovery, and to bring other pretrial motions in accordance with the Washington superior court civil rules.

(7) Upon the filing of the declaration of nonmonetary status, the time within which the trustee is required to file an answer or other responsive pleading is tolled for the period of time within which the opposing parties may respond to the declaration. Upon the timely service of an objection to the declaration of nonmonetary status, the trustee has thirty days from the date of service within which to file an answer or other responsive pleading to the complaint or cross-complaint.

(8) For purposes of this section, "trustee" includes any agent or employee of the trustee who performs some or all of the duties of a trustee under this chapter, and includes substitute trustees and agents of the beneficiary or trustee.

**PART IV. NOTICE OF JUDICIAL FORECLOSURE**

NEW SECTION. **Sec.**  A new section is added to chapter 61.12 RCW to read as follows:

(1) Before any mortgagee of residential real property commences any legal action under RCW 61.12.040 to foreclose any reverse residential mortgage, such person shall give the mortgagor notice of such intention at least thirty-three days in advance. For the purposes of this section "residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

(2) Notice of intention to take action as specified in subsection (1) of this section shall be in writing and sent to the residential mortgagor or, in case of a deceased mortgagor, to any known surviving spouse, by first-class and either certified or registered mail, return receipt requested, at his or her last known address and, if different, at the residence which is the subject of the residential mortgage.

(3) The written notice shall be in English and Spanish, in a form to be published by the department of commerce, and shall clearly and conspicuously state:

(a) The particular obligation or real estate security interest;

(b) The nature of the default claimed or the reason for acceleration of the mortgage;

(c) Except in cases where the acceleration is due to the death of the mortgagor, the right, if any, of the mortgagor to cure the default and exactly what performance, including what sum of money, if any, must be tendered to cure the default;

(d) Except in cases where the acceleration is due to the death of the borrower, the applicable time within which the mortgagor must cure the default;

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

"**If you do nothing to cure the default, if any, we intend to start a lawsuit to foreclose your mortgaged property. If the mortgage is foreclosed, your mortgaged property will be sold to pay off the mortgage debt. You should contact a housing counselor or attorney as soon as possible**."; and

(f) The toll-free telephone number to find a department-approved home equity conversion mortgage counseling agency from the United States department of housing and urban development, the toll-free numbers for the statewide foreclosure hotline recommended by the housing finance commission, and the statewide civil legal aid hotline for assistance and referrals.

(4) It is an unfair or deceptive act in trade or commerce and an unfair method of competition in violation of the consumer protection act, chapter 19.86 RCW, affecting the public interest, for any person or entity to:

(a) Fail to send the notice as required in this section at least thirty-three days before accelerating the maturity of any reverse residential mortgage obligation or commencing any legal action under RCW 61.12.040;

(b) Fail to state the nature of the default, the correct amount or action that is required to cure the default, if any, or the time and manner in which to cure if cure is possible;

(c) To send the notice required in this section without the advisory language and information about foreclosure assistance.

**PART V. SERVICES AND PROCESSES AVAILABLE**

**Sec.**  RCW 61.24.173 and 2016 c 196 s 2 are each amended to read as follows:

(1) Except as provided in subsections ((~~(4) and~~)) (5) and (6) of this section, beginning July 1, 2016, and every quarter thereafter, every beneficiary on whose behalf a notice of trustee's sale has been recorded pursuant to RCW 61.24.040 on residential real property under this chapter must:

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

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

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

(2) For each notice of trustee's sale recorded on residential real property, the beneficiary on whose behalf the notice of trustee's sale has been recorded shall remit ((~~two~~)) three hundred ((~~fifty~~)) twenty-five dollars to the department to be deposited, as provided under RCW 61.24.172, into the foreclosure fairness account. The ((~~two~~)) three hundred ((~~fifty~~)) twenty-five dollar payment is required for every recorded notice of trustee's sale for noncommercial loans on residential real property, but does not apply to the recording of an amended notice of trustee's sale. ((~~If the beneficiary previously made a payment under RCW 61.24.174, as it existed prior to July 1, 2016, for a notice of default supporting the recorded notice of trustee's sale, no payment is required under this section.~~)) Beginning on or before January 1, 2020, the department shall from time to time adjust the amount of the fee, not to exceed three hundred twenty-five dollars, at a sufficient level to defray the costs of the program. The beneficiary shall remit the total amount required in a lump sum each quarter.

(3) Any adjustment to the amount of the fee, pursuant to the authority of subsection (2) of this section, shall be made by rule adopted by the department in accordance with the provisions of chapter 34.05 RCW.

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

((~~(4)~~)) (5) This section does not apply to any beneficiary or loan servicer that is a federally insured depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of perjury that fewer than fifty notices of trustee's sale were recorded on its behalf in the preceding year.

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

((~~(6)~~)) (7) For purposes of this section, "residential real property" includes residential real property with up to four dwelling units, whether or not the property or any part thereof is owner-occupied.

**Sec.**  RCW 61.24.040 and 2012 c 185 s 10 are each amended to read as follows:

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

(1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in ((~~(f)~~)) subsection (2) of this ((~~subsection~~)) section in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in ((~~(f)~~)) subsection (2) of this ((~~subsection~~)) section to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i)(A) The borrower and grantor;

(B) In the case where the borrower or grantor is deceased, to any successors in interest. If no successor in interest has been established, then to any spouse, child, or parent of the borrower or grantor, at the addresses discovered by the trustee pursuant to RCW 61.24.030(10);

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

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

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

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

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

(c) Cause a copy of the notice of sale described in ((~~(f)~~)) subsection (2) of this ((~~subsection~~)) section to be transmitted by both first-class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in ((~~(f)~~)) subsection (2) of this ((~~subsection~~)) section to be transmitted by both first-class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in ((~~(f)~~)) subsection (2) of this ((~~subsection~~)) section to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property((~~;~~)).

((~~(f)~~)) (2)(a) The notice required in this subsection must include a cover sheet on which the name of the beneficiary is clearly indicated and whether the loan is commercial or noncommercial. In addition to any other indexing requirements, the auditor shall index the notice of trustee's sale by beneficiary name;

(b) If foreclosing on a commercial loan under RCW 61.24.173, the title of the document must be "Notice of Trustee's Sale of Commercial Loan(s)";

(c) In addition to all other indexing requirements, the notice required in subsection (1) of this section must clearly indicate on the first page the following information, which the auditor will index:

(i) The county or counties in which the deed of trust is recorded;

(ii) The document number or numbers given to the deed of trust upon recording;

(iii) The parcel number(s);

(iv) The grantor;

(v) The current beneficiary;

(vi) The current trustee; and

(vii) The current loan servicer;

(d) The notice ((~~shall~~)) must be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

Grantor:

Beneficiary:

Trustee:

Loan Servicer:

Reference Number of Deed of Trust:

Parcel Number(s):

I.

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

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

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

II.

No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

[If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

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

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

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

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal $ . . . . . ., together with interest as provided in the note or other instrument secured from the . . . . day of . . . . . ., . . ., and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

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

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following addresses:

|  |  |
| --- | --- |
|  |   |
|  |   |
|  |   |

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

VII.

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

VIII.

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

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040((~~(9)~~)) (11)]

|  |  |
| --- | --- |
|  |   |
|  |  , | Trustee |
|  |   |  |  |
|  |   |  | Address |
|  |   |  |  |
|  |   | } | Phone |

[Acknowledgment]

((~~(g)~~)) (3) If the borrower received a letter under RCW 61.24.031, the notice specified in subsection ((~~(1)(f)~~)) (2)(d) of this section shall also include the following additional language:

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

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

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

**SEEKING ASSISTANCE**

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

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

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

The United States Department of Housing and Urban Development

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

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

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

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

((~~(2)~~)) (4) In addition to providing the borrower and grantor the notice of sale described in subsection ((~~(1)(f)~~)) (2) of this section, the trustee shall include with the copy of the notice which is mailed to the grantor, a statement to the grantor in substantially the following form:

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,

Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to . . . . . ., the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the . . . . day of . . . . . ., . . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the . . . . day of . . . . . ., . . . [11 days before the sale date]. To date, these arrears and costs are as follows:

|  |  |  |
| --- | --- | --- |
|  |  | Estimated amount |
|  | Currently due | that will be due |
|  | to reinstate | to reinstate |
|  | on . . . . . | on . . . . . |
|  |  . . . . . . |  . . . . . . |
|  |  | (11 days before |
|  |  | the date set |
|  |  | for sale) |
| Delinquent payments |  |
| from . . . . . ., |  |  |
|  . . ., in the |  |  |
| amount of |  |  |
| $ . . . ./mo.: | $ . . . . | $ . . . . |
| Late charges in |  |  |
| the total |  |  |
| amount of: | $ . . . . | $ . . . . |
|  |  |  | Estimated |
|  |  |  | Amounts |
| Attorneys' fees: | $ . . . . | $ . . . . |
| Trustee's fee: | $ . . . . | $ . . . . |
| Trustee's expenses: |  |
| (Itemization) |  |  |
| Title report | $ . . . . | $ . . . . |
| Recording fees | $ . . . . | $ . . . . |
| Service/Postingof Notices | $ . . . . | $ . . . . |
| Postage/Copyingexpense | $ . . . . | $ . . . . |
| Publication | $ . . . . | $ . . . . |
| Telephonecharges | $ . . . . | $ . . . . |
| Inspection fees | $ . . . . | $ . . . . |
|  . . . . . . | $ . . . . | $ . . . . |
|  . . . . . . | $ . . . . | $ . . . . |
| TOTALS | $ . . . . | $ . . . . |

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

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

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

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

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

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

|  |  |  |
| --- | --- | --- |
|  | NAME: |   |
|  | ADDRESS: |   |
|  |  |   |
|  | TELEPHONE NUMBER: |   |

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

((~~(3)~~)) (5) In addition, the trustee shall cause a copy of the notice of sale described in subsection ((~~(1)(f)~~)) (2)(d) of this section (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

((~~(4)~~)) (6) In the case where no successor in interest has been established, and neither the beneficiary nor the trustee are able to ascertain the name and address of any spouse, child, or parent of the borrower or grantor in the manner described in RCW 61.24.030(10), then the trustee may, in addition to mailing notice to the property addressed to the unknown heirs and devisees of the grantor, serve the notice of sale by publication in a newspaper of general circulation in the county where the property is located once per week for six consecutive weeks. Upon this service by publication, to be completed not less than thirty days prior to the date the sale is conducted, all unknown heirs shall be deemed served with the notice of sale;

(7) If a servicer or trustee receives notification by someone claiming to be a successor in interest to the borrower, as under RCW 61.24.030(11), after the recording of the notice of sale, the trustee or servicer must immediately request written documentation demonstrating the ownership interest. Only If the servicer or trustee receives documentation confirming someone as successor in interest more than forty-five days before the scheduled sale must the servicer then provide the information in RCW 61.24.030(12)(c) to the claimant not less than twenty days prior to the sale;

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

((~~(5)~~)) (9) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

((~~(6)~~)) (10) The trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in subsection (1)(b)(i) and (ii) of this section to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in subsection (1)(b), (c), (d), and (e) of this section and publishing a copy of such notice once in the newspaper(s) described in subsection ((~~(3)~~)) (5) of this section, more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

((~~(7)~~)) (11) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under subsection (1) of this section, if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

((~~(8)~~)) (12) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured;

((~~(9)~~)) (13) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X. NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060;

((~~(10)~~)) (14) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties.

**Sec.**  RCW 61.24.163 and 2014 c 164 s 3 are each amended to read as follows:

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

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

(3) Within ten days of receiving the notice, the department shall:

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

(b) Select a mediator and notify the parties of the selection.

(4) Within twenty‑three days of the department's notice that the parties have been referred to mediation, the borrower shall transmit the documents required for mediation to the mediator and the beneficiary. The required documents include an initial ((~~Making Home Affordable Application (HAMP) package or such other equivalent~~)) homeowner financial information worksheet as required by the department. ((~~In the event the department is required to create a worksheet,~~)) The worksheet must include, at a minimum, the following information:

(a) The borrower's current and future income;

(b) Debts and obligations;

(c) Assets;

(d) Expenses;

(e) Tax returns for the previous two years;

(f) Hardship information;

(g) Other applicable information commonly required by any applicable federal mortgage relief program.

(5) Within twenty days of the beneficiary's receipt of the borrower's documents, the beneficiary shall transmit the documents required for mediation to the mediator and the borrower. The required documents include:

(a) An accurate statement containing the balance of the loan within thirty days of the date on which the beneficiary's documents are due to the parties;

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

(c) Proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust. Sufficient proof may be a copy of the declaration described in RCW 61.24.030(7)(a);

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

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

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

(g) All borrower‑related and mortgage‑related input data used in any net present values analysis. If no net present values analysis is required by the applicable federal mortgage relief program, then the input data required under the federal deposit insurance corporation and published in the federal deposit insurance corporation loan modification program guide, or if that calculation becomes unavailable, substantially similar input data as determined by the department;

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

(i) Appraisal or other broker price opinion most recently relied upon by the beneficiary not more than ninety days old at the time of the scheduled mediation; and

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

(6) Within seventy days of receiving the referral from the department, the mediator shall convene a mediation session in the county where the property is located, unless the parties agree on another location. The parties may agree to extend the time in which to schedule the mediation session. If the parties agree to extend the time, the beneficiary shall notify the trustee of the extension and the date the mediator is expected to issue the mediator's certification.

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

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

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

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

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

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

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

(9) The participants in mediation must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, or some other workout plan. To assist the parties in addressing issues of foreclosure, the mediator may require the participants to consider the following:

(a) The borrower's current and future economic circumstances, including the borrower's current and future income, debts, and obligations for the previous sixty days or greater time period as determined by the mediator;

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

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

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

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

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

(b) Failure of the borrower or the beneficiary to provide the documentation required before mediation or pursuant to the mediator's instructions;

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

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

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

(12) Within seven business days after the conclusion of the mediation session, the mediator must send a written certification to the department and the trustee and send copies to the parties of:

(a) The date, time, and location of the mediation session;

(b) The names of all persons attending in person and by telephone or videoconference, at the mediation session;

(c) Whether a resolution was reached by the parties, including whether the default was cured by reinstatement, modification, or restructuring of the debt, or some other alternative to foreclosure was agreed upon by the parties;

(d) Whether the parties participated in the mediation in good faith; and

(e) If a written agreement was not reached, a description of any net present value test used, along with a copy of the inputs, including the result of any net present value test expressed in a dollar amount.

(13) If the parties are unable to reach an agreement, the beneficiary may proceed with the foreclosure after receipt of the mediator's written certification.

(14)(a) The mediator's certification that the beneficiary failed to act in good faith in mediation constitutes a defense to the nonjudicial foreclosure action that was the basis for initiating the mediation. In any action to enjoin the foreclosure, the beneficiary is entitled to rebut the allegation that it failed to act in good faith.

(b) The mediator's certification that the beneficiary failed to act in good faith during mediation does not constitute a defense to a judicial foreclosure or a future nonjudicial foreclosure action if a modification of the loan is agreed upon and the borrower subsequently defaults.

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

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

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

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

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

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

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

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

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

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

**--- END ---**