

ESHB 2057 - H AMD 680

By Representative Orwall

ADOPTED 01/18/2018

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

3 "Sec. 1. RCW 61.24.173 and 2016 c 196 s 2 are each amended to
4 read as follows:

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

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

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

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

19 (2) For each notice of trustee's sale recorded on residential
20 real property, the beneficiary on whose behalf the notice of
21 trustee's sale has been recorded shall remit (~~((two))~~) three hundred
22 (~~((fifty))~~) twenty-five dollars to the department to be deposited, as
23 provided under RCW 61.24.172, into the foreclosure fairness account.
24 The (~~((two))~~) three hundred (~~((fifty))~~) twenty-five dollar payment is
25 required for every recorded notice of trustee's sale for
26 noncommercial loans on residential real property, but does not apply
27 to the recording of an amended notice of trustee's sale. (~~((If the~~
28 ~~beneficiary previously made a payment under RCW 61.24.174, as it~~
29 ~~existed prior to July 1, 2016, for a notice of default supporting the~~
30 ~~recorded notice of trustee's sale, no payment is required under this~~
31 ~~section.))~~ Beginning on or before January 1, 2020, the department
32 shall from time to time establish the amount of the fee, not to

1 exceed three hundred twenty-five dollars, at a sufficient level to
2 defray the costs of the program. The beneficiary shall remit the
3 total amount required in a lump sum each quarter.

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

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

10 ~~((4))~~ (5) This section does not apply to any beneficiary or
11 loan servicer that is a federally insured depository institution, as
12 defined in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under
13 penalty of perjury that fewer than fifty notices of trustee's sale
14 were recorded on its behalf in the preceding year.

15 ~~((5))~~ (6) This section does not apply to association
16 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

17 ~~((6))~~ (7) For purposes of this section, "residential real
18 property" includes residential real property with up to four dwelling
19 units, whether or not the property or any part thereof is owner-
20 occupied.

21 **Sec. 2.** RCW 61.24.040 and 2012 c 185 s 10 are each amended to
22 read as follows:

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

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

28 (a) Record a notice in the form described in (f) of this
29 subsection in the office of the auditor in each county in which the
30 deed of trust is recorded;

31 (b) To the extent the trustee elects to foreclose its lien or
32 interest, or the beneficiary elects to preserve its right to seek a
33 deficiency judgment against a borrower or grantor under RCW
34 61.24.100(3)(a), and if their addresses are stated in a recorded
35 instrument evidencing their interest, lien, or claim of lien, or an
36 amendment thereto, or are otherwise known to the trustee, cause a
37 copy of the notice of sale described in (f) of this subsection to be
38 transmitted by both first-class and either certified or registered

1 mail, return receipt requested, to the following persons or their
2 legal representatives, if any, at such address:

3 (i) The borrower and grantor;

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

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

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

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

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

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

37 (d) Cause a copy of the notice of sale described in (f) of this
38 subsection to be transmitted by both first-class and either certified
39 or registered mail, return receipt requested, to any person who has
40 recorded a request for notice in accordance with RCW 61.24.045, at

1 the address specified in such person's most recently recorded request
2 for notice;

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

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

12 (ii) The notice ((shall)) must be in substantially the following
13 form:

14 NOTICE OF TRUSTEE'S SALE

15 I.

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

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

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

37 II.

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

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

8 III.

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

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

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

14 IV.

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

20 V.

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

1 terms of the obligation and/or Deed of Trust, and curing all other
2 defaults.

3 VI.

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

6
7
8

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

16 VII.

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

20 VIII.

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

24 IX.

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

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

31
32 , Trustee

1 }
2 }
3 }

6 Address
7
8 } Phone

9 [Acknowledgment]

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

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

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

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

21 **SEEKING ASSISTANCE**

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

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

28 Telephone: Web site:

29 The United States Department of Housing and Urban Development

30 Telephone: Web site:

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

33 Telephone: Web
34 site:"

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

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

6 NOTICE OF FORECLOSURE

7 Pursuant to the Revised Code of Washington,
8 Chapter 61.24 RCW

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

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

	Currently due	Estimated amount
	to reinstate	that will be due
	on	to reinstate
	on
	
		(11 days before
		the date set
		for sale)
27	Delinquent payments	
28	from,	
29	. . . , in the	
30	amount of	
31	\$. . . /mo.:	\$ \$
32	Late charges in	
33	the total	
34	amount of:	\$ \$
35		Estimated
36		Amounts

1	Attorneys' fees:	\$....	\$....
2	Trustee's fee:	\$....	\$....
3	Trustee's expenses:		
4	(Itemization)		
5	Title report	\$....	\$....
6	Recording fees	\$....	\$....
7	Service/Posting		
8	of Notices	\$....	\$....
9	Postage/Copying		
10	expense	\$....	\$....
11	Publication	\$....	\$....
12	Telephone		\$....
13	charges	\$....	
14	Inspection fees	\$....	\$....
15	\$....	\$....
16	\$....	\$....
17	TOTALS	\$....	\$....

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

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

32	Default	Description of Action Required to Cure and
33		Documentation Necessary to Show Cure
34
35	
36	

1
2
3

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

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

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

8 NAME:
9 ADDRESS:
10
11 TELEPHONE NUMBER:

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

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

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

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

35 (6) The trustee has no obligation to, but may, for any cause the
36 trustee deems advantageous, continue the sale for a period or periods
37 not exceeding a total of one hundred twenty days by (a) a public
38 proclamation at the time and place fixed for sale in the notice of

1 sale and if the continuance is beyond the date of sale, by giving
2 notice of the new time and place of the sale by both first class and
3 either certified or registered mail, return receipt requested, to the
4 persons specified in subsection (1)(b)(i) and (ii) of this section to
5 be deposited in the mail (i) not less than four days before the new
6 date fixed for the sale if the sale is continued for up to seven
7 days; or (ii) not more than three days after the date of the
8 continuance by oral proclamation if the sale is continued for more
9 than seven days, or, alternatively, (b) by giving notice of the time
10 and place of the postponed sale in the manner and to the persons
11 specified in subsection (1)(b), (c), (d), and (e) of this section and
12 publishing a copy of such notice once in the newspaper(s) described
13 in subsection (3) of this section, more than seven days before the
14 date fixed for sale in the notice of sale. No other notice of the
15 postponed sale need be given;

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

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

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

39 X. NOTICE TO OCCUPANTS OR TENANTS

1 The purchaser at the trustee's sale is entitled to possession of the
2 property on the 20th day following the sale, as against the grantor
3 under the deed of trust (the owner) and anyone having an interest
4 junior to the deed of trust, including occupants who are not tenants.
5 After the 20th day following the sale the purchaser has the right to
6 evict occupants who are not tenants by summary proceedings under
7 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall
8 provide a tenant with written notice in accordance with RCW
9 61.24.060;

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

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

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

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

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

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

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

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

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

12 (b) Debts and obligations;

13 (c) Assets;

14 (d) Expenses;

15 (e) Tax returns for the previous two years;

16 (f) Hardship information;

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

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

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

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

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

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

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

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

38 (g) All borrower-related and mortgage-related input data used in
39 any net present values analysis. If no net present values analysis is
40 required by the applicable federal mortgage relief program, then the

1 input data required under the federal deposit insurance corporation
2 and published in the federal deposit insurance corporation loan
3 modification program guide, or if that calculation becomes
4 unavailable, substantially similar input data as determined by the
5 department;

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

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

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

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

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

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

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

38 (ii) A statement that a person with authority to agree to a
39 resolution, including a proposed settlement, loan modification, or
40 dismissal or continuation of the foreclosure proceeding, must be

1 present either in person or on the telephone or videoconference
2 during the mediation session; and

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

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

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

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

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

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

30 (c) Any affordable loan modification calculation and net present
31 value calculation when required under any federal mortgage relief
32 program(~~(, including the home affordable modification program (HAMP)~~
33 ~~as applicable to government sponsored enterprise and nongovernment-~~
34 ~~sponsored enterprise loans)) and any ((~~HAMP-related~~)) modification
35 program ((~~applicable~~)) related to loans insured by the federal
36 housing administration, the veterans administration, and the rural
37 housing service. If such a calculation is not provided or required,
38 then the beneficiary must provide the net present value data inputs
39 established by the federal deposit insurance corporation and
40 published in the federal deposit insurance corporation loan~~

1 modification program guide or other net present value data inputs as
2 designated by the department. The mediator may run the calculation in
3 order for a productive mediation to occur and to comply with the
4 mediator certification requirement; and

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

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

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

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

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

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

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

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

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

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

39 (c) Whether a resolution was reached by the parties, including
40 whether the default was cured by reinstatement, modification, or

1 restructuring of the debt, or some other alternative to foreclosure
2 was agreed upon by the parties;

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

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

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

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

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

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

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

32 (16)(a) If a borrower has been referred to mediation before a
33 notice of trustee sale has been recorded, a trustee may not record
34 the notice of sale until the trustee receives the mediator's
35 certification stating that the mediation has been completed. If the
36 trustee does not receive the mediator's certification, the trustee
37 may record the notice of sale after ten days from the date the
38 certification to the trustee was due. If, after a notice of sale is
39 recorded under this subsection (16)(a), the mediator subsequently
40 issues a certification finding that the beneficiary violated the duty

1 of good faith, the certification constitutes a basis for the borrower
2 to enjoin the foreclosure.

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

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

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

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

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

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

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

1 Correct the title.

EFFECT: Makes changes to the method and amount of beneficiary remittances, providing for continued remittance to the department of commerce for deposit into the foreclosure fairness account (rather than directing that remittances first be made to the county auditor as provided in ESHB 2057), and raising the fee amount from \$250 to \$325 per notice of trustee's sale (NOTS) for noncommercial loans on residential real property (rather than raising the fee amount from \$250 to \$300 as provided in ESHB 2057). Authorizes the department of commerce, via rule making, to adjust the fee; however, the fee may not exceed \$325. Continues to require that a NOTS include a cover sheet on which the name of the beneficiary is indicated, and continues to require the county auditor to index the NOTS by beneficiary name. Removes references to the expired federal home affordable modification program (HAMP). Strikes the other provisions of ESHB 2057 relating to abandoned properties, certificates of abandonment, and duties regarding ongoing maintenance.

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