

HB 1349 - S COMM AMD
By Committee on Housing

NOT ADOPTED 04/06/2023

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

3 **"Sec. 1.** RCW 61.24.008 and 2012 c 185 s 11 are each amended to
4 read as follows:

5 (1) A borrower who has been referred to mediation before June 7,
6 2012, may continue through the mediation process and does not lose
7 his or her right to mediation.

8 (2) A borrower who has not been referred to mediation as of June
9 7, 2012, may only be referred to mediation after a notice of default
10 has been issued but no later than (~~twenty days from the date a~~
11 ~~notice of sale is recorded~~) 90 days prior to the date of sale listed
12 in the notice of trustee's sale. If an amended notice of trustee's
13 sale is recorded after the trustee sale has been stayed pursuant to
14 RCW 61.24.130, the borrower may be referred to mediation no later
15 than 25 days prior to the date of sale listed in the amended notice
16 of trustee's sale.

17 (3) A borrower who has not been referred to mediation as of June
18 7, 2012, and who has had a notice of sale recorded may only be
19 referred to mediation if the referral is made (~~before twenty days~~
20 ~~have passed from the date the notice of sale was recorded~~) at least
21 90 days prior to the date of sale listed in the notice of trustee's
22 sale. If an amended notice of trustee's sale is recorded, the
23 borrower may be referred to mediation no later than 25 days prior to
24 the date of sale listed in the amended notice of trustee's sale.

25 **Sec. 2.** RCW 61.24.030 and 2021 c 151 s 3 are each amended to
26 read as follows:

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

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

29 (2) That the deed of trust contains a statement that the real
30 property conveyed is not used principally for agricultural purposes;

1 provided, if the statement is false on the date the deed of trust was
2 granted or amended to include that statement, and false on the date
3 of the trustee's sale, then the deed of trust must be foreclosed
4 judicially. Real property is used for agricultural purposes if it is
5 used in an operation that produces crops, livestock, or aquatic
6 goods;

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

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

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

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

31 (7) (a) That, for residential real property of up to four units,
32 before the notice of trustee's sale is recorded, transmitted, or
33 served, the trustee shall have proof that the beneficiary is the
34 holder of any promissory note or other obligation secured by the deed
35 of trust. A declaration by the beneficiary made under the penalty of
36 perjury stating that the beneficiary is the holder of any promissory
37 note or other obligation secured by the deed of trust shall be
38 sufficient proof as required under this subsection.

1 (b) Unless the trustee has violated his or her duty under RCW
2 61.24.010(4), the trustee is entitled to rely on the beneficiary's
3 declaration as evidence of proof required under this subsection.

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

6 (8) That at least (~~thirty~~) 30 days before notice of sale shall
7 be recorded, transmitted or served, written notice of default and,
8 for residential real property of up to four units, the beneficiary
9 declaration specified in subsection (7)(a) of this section shall be
10 transmitted by the beneficiary or trustee to the borrower and grantor
11 at their last known addresses by both first-class and either
12 registered or certified mail, return receipt requested, and the
13 beneficiary or trustee shall cause to be posted in a conspicuous
14 place on the premises, a copy of the notice, or personally served on
15 the borrower and grantor. This notice shall contain the following
16 information:

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

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

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

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

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

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

35 (g) A statement that failure to cure the alleged default within
36 (~~thirty~~) 30 days of the date of mailing of the notice, or if
37 personally served, within (~~thirty~~) 30 days of the date of personal
38 service thereof, may lead to recordation, transmittal, and
39 publication of a notice of sale, and that the property described in
40 (a) of this subsection may be sold at public auction at a date no

1 less than (~~one hundred twenty~~) 120 days in the future, or no less
2 than (~~one hundred fifty~~) 150 days in the future if the borrower
3 received a letter under RCW 61.24.031;

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

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

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

14 (k) In the event the property secured by the deed of trust is
15 residential real property of up to four units, a statement,
16 prominently set out at the beginning of the notice, which shall state
17 as follows:

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

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

22 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**
23 to assess your situation and refer you to mediation if you might
24 benefit. Mediation **MUST** be requested between the time you receive the
25 Notice of Default and no later than (~~twenty days after the Notice of~~
26 ~~Trustee Sale is recorded~~) **90 calendar days BEFORE the date of sale**
27 **listed in the Notice of Trustee Sale. If an amended Notice of Trustee**
28 **Sale is recorded providing a 45-day notice of the sale, mediation**
29 **must be requested no later than 25 calendar days BEFORE the date of**
30 **sale listed in the amended Notice of Trustee Sale.**

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

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

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

SEEKING ASSISTANCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

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: Website:

The United States Department of Housing and Urban Development

Telephone: Website:

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

Telephone: Website:"

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

(l) In the event the property secured by the deed of trust is residential real property of up to four units, the name and address of the holder of any promissory note or other obligation 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;

(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 residential real property of up to four units, 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 where the borrower or grantor is known to the mortgage servicer or trustee to be deceased, the notice required under subsection (8) of this section must be sent to any spouse, child, or parent of the borrower or grantor known to the trustee or mortgage servicer, and to any owner of record of the property, at any address provided to the trustee or mortgage servicer, 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

1 reasonable diligence, the trustee must execute and record with the
2 notice of sale a declaration attesting to the same.

3 (b) Reasonable diligence for the purposes of this subsection (10)
4 means the trustee shall search in the county where the property is
5 located, the public records and information for any obituary, will,
6 death certificate, or case in probate within the county for the
7 borrower and grantor;

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

15 (a) Acknowledges the notice in writing and requests reasonable
16 documentation of the death of the borrower or grantor from the
17 claimant including, but not limited to, a death certificate or other
18 written evidence of the death of the borrower or grantor. Other
19 written evidence of the death of the borrower or grantor may include
20 an obituary, a published death notice, or documentation of an open
21 probate action for the estate of the borrower or grantor. The
22 claimant must be allowed (~~(thirty)~~) 30 days from the date of this
23 request to present this documentation. If the trustee or mortgage
24 servicer has already obtained sufficient proof of the borrower's
25 death, it may proceed by acknowledging the claimant's notice in
26 writing and issuing a request under (b) of this subsection.

27 (b) If the mortgage servicer or trustee obtains or receives
28 written documentation of the death of the borrower or grantor from
29 the claimant, or otherwise independently confirms the death of the
30 borrower or grantor, then the servicer or trustee must request in
31 writing documentation from the claimant demonstrating the ownership
32 interest of the claimant in the real property. A claimant has
33 (~~(sixty)~~) 60 days from the date of the request to present this
34 documentation. Documentation demonstrating the ownership interest of
35 the claimant in the real property includes, but is not limited to,
36 one of the following:

37 (i) Excerpts of a trust document noting the claimant as a
38 beneficiary of a trust with title to the real property;

39 (ii) A will of the borrower or grantor listing the claimant as an
40 heir or devisee with respect to the real property;

1 (iii) A probate order or finding of heirship issued by any court
2 documenting the claimant as an heir or devisee or awarding the real
3 property to the claimant;

4 (iv) A recorded lack of probate affidavit signed by any heir
5 listing the claimant as an heir of the borrower or grantor pursuant
6 to the laws of intestacy;

7 (v) A deed, such as a personal representative's deed, trustee's
8 deed issued on behalf of a trust, statutory warranty deed, transfer
9 on death deed, or other deed, giving any ownership interest to the
10 claimant resulting from the death of the borrower or grantor or
11 executed by the borrower or grantor for estate planning purposes; and

12 (vi) Other proof documenting the claimant as an heir of the
13 borrower or grantor pursuant to state rules of intestacy set forth in
14 chapter 11.04 RCW.

15 (c) If the mortgage servicer or trustee receives written
16 documentation demonstrating the ownership interest of the claimant
17 prior to the expiration of the ((~~sixty~~)) 60 days provided in (b) of
18 this subsection, then the servicer or trustee must, within ((~~twenty~~))
19 20 days of receipt of proof of ownership interest, provide the
20 claimant with, at a minimum, the loan balance, interest rate and
21 interest reset dates and amounts, balloon payments if any, prepayment
22 penalties if any, the basis for the default, the monthly payment
23 amount, reinstatement amounts or conditions, payoff amounts, and
24 information on how and where payments should be made. The mortgage
25 servicers shall also provide the claimant application materials and
26 information, or a description of the process, necessary to request a
27 loan assumption and modification.

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

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

39 (f) The existence of a successor in interest under this section
40 does not impose an affirmative duty on a mortgage servicer or alter

1 any obligation the mortgage servicer has to provide a loan
2 modification to the successor in interest. If a successor in interest
3 assumes the loan, he or she may be required to otherwise qualify for
4 available foreclosure prevention alternatives offered by the mortgage
5 servicer.

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

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

14 **Sec. 3.** RCW 61.24.040 and 2018 c 306 s 2 are each amended to
15 read as follows:

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

18 (1) At least (~~ninety~~) 90 days before the sale, or if a letter
19 under RCW 61.24.031 is required, at least (~~one hundred twenty~~) 120
20 days before the sale, the trustee shall:

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

24 (b) To the extent the trustee elects to foreclose its lien or
25 interest, or the beneficiary elects to preserve its right to seek a
26 deficiency judgment against a borrower or grantor under RCW
27 61.24.100(3)(a), and if their addresses are stated in a recorded
28 instrument evidencing their interest, lien, or claim of lien, or an
29 amendment thereto, or are otherwise known to the trustee, cause a
30 copy of the notice of sale described in subsection (2) of this
31 section to be transmitted by both first-class and either certified or
32 registered mail, return receipt requested, to the following persons
33 or their legal representatives, if any, at such address:

34 (i) (A) The borrower and grantor;

35 (B) In the case where the borrower or grantor is deceased, to any
36 successors in interest. If no successor in interest has been
37 established, then to any spouse, child, or parent of the borrower or
38 grantor, at the addresses discovered by the trustee pursuant to RCW
39 61.24.030(10);

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

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

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

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

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

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

34 (d) Cause a copy of the notice of sale described in subsection
35 (2) of this section to be transmitted by both first-class and either
36 certified or registered mail, return receipt requested, to any person
37 who has recorded a request for notice in accordance with RCW
38 61.24.045, at the address specified in such person's most recently
39 recorded request for notice;

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

5 (2)(a) If foreclosing on a commercial loan under RCW
6 61.24.005(4), the title of the document must be "Notice of Trustee's
7 Sale of Commercial Loan(s)";

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

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

14 (ii) The parcel number(s);

15 (iii) The grantor;

16 (iv) The current beneficiary of the deed of trust;

17 (v) The current trustee of the deed of trust; and

18 (vi) The current loan mortgage servicer of the deed of trust;

19 (c) Nothing in this section:

20 (i) Requires a trustee or beneficiary to cause to be recorded any
21 new notice of trustee's sale upon transfer of the beneficial interest
22 in a deed of trust or the servicing rights for the associated
23 mortgage loan;

24 (ii) Relieves a mortgage loan servicer of any obligation to
25 provide the borrower with notice of a transfer of servicing rights or
26 other legal obligations related to the transfer; or

27 (iii) Prevents the trustee from disclosing the beneficiary's
28 identity to the borrower and to county and municipal officials
29 seeking to abate nuisance and abandoned property in foreclosure
30 pursuant to chapter 35.21 RCW.

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

32 NOTICE OF TRUSTEE'S SALE

33 Grantor:

34 Current beneficiary of the deed of trust:

35 Current trustee of the deed of trust:

36 Current mortgage servicer of the deed of trust:

37 Reference number of the deed of trust:

38 Parcel number(s):

39 I.

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

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

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

22 II.

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

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

30 III.

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

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

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

36 IV.

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

6 V.

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

25 VI.

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

28
29
30

31 by both first-class and certified mail on the day
32 of, . . ., proof of which is in the possession of the
33 Trustee; and the Borrower and Grantor were personally served on
34 the day of, . . ., with said written notice of
35 default or the written notice of default was posted in a conspicuous

1 place on the real property described in paragraph I above, and the
2 Trustee has possession of proof of such service or posting.

3 VII.

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

7 VIII.

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

11 IX.

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

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

18

19 , Trustee

20 }
21 }
22 }

23 Address

24
25

26 } Phone
27

28 [Acknowledgment]

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

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

34 You have only (~~20 DAYS from the recording date on this notice to~~
35 ~~pursue mediation~~) **until 90 calendar days BEFORE the date of sale**

1 listed in this Notice of Trustee Sale to be referred to mediation. If
2 this is an amended Notice of Trustee Sale providing a 45-day notice
3 of the sale, mediation must be requested no later than 25 calendar
4 days BEFORE the date of sale listed in this amended Notice of Trustee
5 Sale.

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

10 **SEEKING ASSISTANCE**

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

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

17 Telephone: Website:

18 The United States Department of Housing and Urban Development

19 Telephone: Website:

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

22 Telephone: Website:"

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

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

30 NOTICE OF FORECLOSURE

31 Pursuant to the Revised Code of Washington,
32 Chapter 61.24 RCW

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

1 To cure the default(s), you must bring the payments current, cure
 2 any other defaults, and pay accrued late charges and other costs,
 3 advances, and attorneys' fees as set forth below by the day
 4 of, . . . [11 days before the sale date]. To date, these
 5 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)	
14	Delinquent payments		
15	from,		
16	. . ., in the		
17	amount of		
18	\$. . . /mo.:	\$	\$
19	Late charges in		
20	the total		
21	amount of:	\$	\$
22			Estimated
23			Amounts
24	Attorneys' fees:	\$	\$
25	Trustee's fee:	\$	\$
26	Trustee's expenses:		
27	(Itemization)		
28	Title report	\$	\$
29	Recording fees	\$	\$
30	Service/Posting		
31	of Notices	\$	\$
32	Postage/Copying		
33	expense	\$	\$
34	Publication	\$	\$

1	Telephone		\$....
2	charges	\$....	
3	Inspection fees	\$....	\$....
4	\$....	\$....
5	\$....	\$....
6	TOTALS	\$....	\$....

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

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

21	Default	Description of Action Required to Cure and
22		Documentation Necessary to Show Cure
23
24	
25	
26
27	
28	

29 You may reinstate your Deed of Trust and the obligation secured
30 thereby at any time up to and including the day
31 of, . . . [11 days before the sale date], by paying the
32 amount set forth or estimated above and by curing any other defaults
33 described above. Of course, as time passes other payments may become
34 due, and any further payments coming due and any additional late
35 charges must be added to your reinstating payment. Any new defaults
36 not involving payment of money that occur after the date of this
37 notice must also be cured in order to effect reinstatement. In

1 addition, because some of the charges can only be estimated at this
2 time, and because the amount necessary to reinstate or to pay off the
3 entire indebtedness may include presently unknown expenditures
4 required to preserve the property or to comply with state or local
5 law, it will be necessary for you to contact the Trustee before the
6 time you tender reinstatement or the payoff amount so that you may be
7 advised of the exact amount you will be required to pay. Tender of
8 payment or performance must be made to:, whose address
9 is, telephone () AFTER THE DAY
10 OF, . . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY
11 PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER
12 DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written
13 request for current payoff or reinstatement amounts within (~~ten~~) 10
14 days of receipt of your written request. In such a case, you will
15 only be able to stop the sale by paying, before the sale, the total
16 principal balance (\$) plus accrued interest, costs and
17 advances, if any, made pursuant to the terms of the documents and by
18 curing the other defaults as outlined above.

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

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

35 NAME:

36 ADDRESS:

37

38 TELEPHONE NUMBER:

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

6 (5) In addition, the trustee shall cause a copy of the notice of
7 sale described in subsection (2)(d) of this section (excluding the
8 acknowledgment) to be published in a legal newspaper in each county
9 in which the property or any part thereof is situated, once on or
10 between the (~~thirty-fifth~~) 35th and (~~twenty-eighth~~) 28th day
11 before the date of sale, and once on or between the (~~fourteenth~~)
12 14th and seventh day before the date of sale;

13 (6) In the case where no successor in interest has been
14 established, and neither the beneficiary nor the trustee are able to
15 ascertain the name and address of any spouse, child, or parent of the
16 borrower or grantor in the manner described in RCW 61.24.030(10),
17 then the trustee may, in addition to mailing notice to the property
18 addressed to the unknown heirs and devisees of the grantor, serve the
19 notice of sale by publication in a newspaper of general circulation
20 in the county or city where the property is located once per week for
21 three consecutive weeks. Upon this service by publication, to be
22 completed not less than (~~thirty~~) 30 days prior to the date the sale
23 is conducted, all unknown heirs shall be deemed served with the
24 notice of sale;

25 (7)(a) If a servicer or trustee receives notification by someone
26 claiming to be a successor in interest to the borrower or grantor, as
27 under RCW 61.24.030(11), after the recording of the notice of sale,
28 the trustee or servicer must request written documentation within
29 five days demonstrating the ownership interest, provided that, the
30 trustee may, but is not required to, postpone a trustee's sale upon
31 receipt of such notification by someone claiming to be a successor in
32 interest.

33 (b) Upon receipt of documentation establishing a claimant as a
34 successor in interest, the servicer must provide the information in
35 RCW 61.24.030(11)(c). Only if the servicer or trustee receives the
36 documentation confirming someone as successor in interest more than
37 (~~forty-five~~) 45 days before the scheduled sale must the servicer
38 then provide the information in RCW 61.24.030(11)(c) to the claimant
39 not less than (~~twenty~~) 20 days prior to the sale.

1 (c) (b) of this subsection (7) does not apply to association
2 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

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

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

14 (10) The trustee has no obligation to, but may, for any cause the
15 trustee deems advantageous, continue the sale for a period or periods
16 not exceeding a total of (~~one hundred twenty~~) 120 days by (a) a
17 public proclamation at the time and place fixed for sale in the
18 notice of sale and if the continuance is beyond the date of sale, by
19 giving notice of the new time and place of the sale by both first
20 class and either certified or registered mail, return receipt
21 requested, to the persons specified in subsection (1)(b)(i) and (ii)
22 of this section to be deposited in the mail (i) not less than four
23 days before the new date fixed for the sale if the sale is continued
24 for up to seven days; or (ii) not more than three days after the date
25 of the continuance by oral proclamation if the sale is continued for
26 more than seven days, or, alternatively, (b) by giving notice of the
27 time and place of the postponed sale in the manner and to the persons
28 specified in subsection (1)(b), (c), (d), and (e) of this section and
29 publishing a copy of such notice once in the newspaper(s) described
30 in subsection (5) of this section, more than seven days before the
31 date fixed for sale in the notice of sale. No other notice of the
32 postponed sale need be given;

33 (11) The purchaser shall forthwith pay the price bid (~~and on~~
34 ~~payment~~). On payment and subject to RCW 61.24.050, the trustee shall
35 execute to the purchaser its deed(~~;~~~~the~~). The deed shall recite the
36 facts showing that the sale was conducted in compliance with all of
37 the requirements of this chapter and of the deed of trust, which
38 recital shall be prima facie evidence of such compliance and
39 conclusive evidence thereof in favor of bona fide purchasers and
40 encumbrancers for value, except that these recitals shall not affect

1 the lien or interest of any person entitled to notice under
2 subsection (1) of this section, if the trustee fails to give the
3 required notice to such person. In such case, the lien or interest of
4 such omitted person shall not be affected by the sale and such
5 omitted person shall be treated as if such person was the holder of
6 the same lien or interest and was omitted as a party defendant in a
7 judicial foreclosure proceeding;

8 (12) The sale as authorized under this chapter shall not take
9 place less than (~~one hundred ninety~~) 190 days from the date of
10 default in any of the obligations secured;

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

17 X. NOTICE TO OCCUPANTS OR TENANTS

18 The purchaser at the trustee's sale is entitled to possession of the
19 property on the 20th day following the sale, as against the grantor
20 under the deed of trust (the owner) and anyone having an interest
21 junior to the deed of trust, including occupants who are not tenants.
22 After the 20th day following the sale the purchaser has the right to
23 evict occupants who are not tenants by summary proceedings under
24 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall
25 provide a tenant with written notice in accordance with RCW
26 61.24.060;

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

32 **Sec. 4.** RCW 61.24.160 and 2012 c 185 s 5 are each amended to
33 read as follows:

34 (1)(a) A housing counselor who is contacted by a borrower under
35 RCW 61.24.031 has a duty to act in good faith to attempt to reach a
36 resolution with the beneficiary on behalf of the borrower within the
37 (~~ninety~~) 90 days provided from the date the beneficiary initiates
38 contact with the borrower and the date the notice of default is

1 issued. A resolution may include, but is not limited to, modification
2 of the loan, an agreement to conduct a short sale, a deed in lieu of
3 foreclosure transaction, or some other workout plan.

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

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

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

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

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

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

17 (d) Providing other guidance, advice, and education as the
18 housing counselor considers necessary.

19 (3) A housing counselor or attorney assisting a borrower may
20 refer the borrower to mediation, pursuant to RCW 61.24.163, if the
21 housing counselor or attorney determines that mediation is
22 appropriate based on the individual circumstances and the borrower
23 has received a notice of default. The referral to mediation may be
24 made any time after a notice of default has been issued but no later
25 than ~~((twenty days after the date a notice of sale has been
26 recorded))~~ 90 days prior to the date of sale listed in the notice of
27 trustee's sale. If an amended notice of trustee's sale is recorded
28 after the trustee sale has been stayed pursuant to RCW 61.24.130, the
29 borrower may be referred to mediation no later than 25 days prior to
30 the date of sale listed in the amended notice of trustee's sale.

31 (4) For borrowers who have received a letter under RCW 61.24.031
32 before June 7, 2012, a referral to mediation by a housing counselor
33 or attorney does not preclude a trustee issuing a notice of default
34 if the requirements of RCW 61.24.031 have been met.

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

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

8 **Sec. 5.** RCW 61.24.163 and 2018 c 306 s 6 are each amended to
9 read as follows:

10 (1) The foreclosure mediation program established in this section
11 applies only to borrowers who have been referred to mediation by a
12 housing counselor or attorney. The referral to mediation may be made
13 any time after a notice of default has been issued but no later than
14 (~~twenty days after the date a notice of sale has been recorded~~) 90
15 days prior to the date of sale listed in the notice of trustee's
16 sale. If an amended notice of trustee's sale is recorded after the
17 trustee sale has been stayed pursuant to RCW 61.24.130, the borrower
18 may be referred to mediation no later than 25 days prior to the date
19 of sale listed in the amended notice of trustee's sale. If the
20 borrower has failed to elect to mediate within the applicable time
21 frame, the borrower and the beneficiary may, but are under no duty
22 to, agree in writing to enter the foreclosure mediation program. The
23 mediation program under this section is not governed by chapter 7.07
24 RCW and does not preclude mediation required by a court or other
25 provision of law.

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

29 (3) Within (~~ten~~) 10 days of receiving the notice, the
30 department shall:

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

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

38 (4) Within (~~twenty-three~~) 23 days of the department's notice
39 that the parties have been referred to mediation, the borrower shall

1 transmit the documents required for mediation to the mediator and the
2 beneficiary. The required documents include an initial homeowner
3 financial information worksheet as required by the department. The
4 worksheet must include, at a minimum, the following information:

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

6 (b) Debts and obligations;

7 (c) Assets;

8 (d) Expenses;

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

10 (f) Hardship information;

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

13 (5) Within (~~twenty~~) 20 days of the beneficiary's receipt of the
14 borrower's documents, the beneficiary shall transmit the documents
15 required for mediation to the mediator and the borrower. The required
16 documents include:

17 (a) An accurate statement containing the balance of the loan
18 within (~~thirty~~) 30 days of the date on which the beneficiary's
19 documents are due to the parties;

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

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

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

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

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

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

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

4 (i) Appraisal or other broker price opinion most recently relied
5 upon by the beneficiary not more than (~~ninety~~) 90 days old at the
6 time of the scheduled mediation; and

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

15 (6) Within (~~seventy~~) 70 days of receiving the referral from the
16 department, the mediator shall convene a mediation session in the
17 county where the property is located, unless the parties agree on
18 another location. The parties may agree to extend the time in which
19 to schedule the mediation session. If the parties agree to extend the
20 time, the beneficiary shall notify the trustee of the extension and
21 the date the mediator is expected to issue the mediator's
22 certification.

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

27 (b) The mediator must send written notice of the time, date, and
28 location of the mediation session to the borrower, the beneficiary,
29 and the department at least (~~thirty~~) 30 days prior to the mediation
30 session. At a minimum, the notice must contain:

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

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

38 (iii) A statement that the parties have a duty to mediate in good
39 faith and that failure to mediate in good faith may impair the
40 beneficiary's ability to foreclose on the property or the borrower's

1 ability to modify the loan or take advantage of other alternatives to
2 foreclosure.

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

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

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

18 (a) The borrower's current and future economic circumstances,
19 including the borrower's current and future income, debts, and
20 obligations for the previous (~~sixty~~) 60 days or greater time period
21 as determined by the mediator;

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

25 (c) Any affordable loan modification calculation and net present
26 value calculation when required under any federal mortgage relief
27 program and any modification program related to loans insured by the
28 federal housing administration, the veterans administration, and the
29 rural housing service. If such a calculation is not provided or
30 required, then the beneficiary must provide the net present value
31 data inputs established by the federal deposit insurance corporation
32 and published in the federal deposit insurance corporation loan
33 modification program guide or other net present value data inputs as
34 designated by the department. The mediator may run the calculation in
35 order for a productive mediation to occur and to comply with the
36 mediator certification requirement; and

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

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

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

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

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

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

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

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

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

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

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

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

38 (e) If a written agreement was not reached, a description of any
39 net present value test used, along with a copy of the inputs,

1 including the result of any net present value test expressed in a
2 dollar amount.

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

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

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

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

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

26 (16)(a) If a borrower has been referred to mediation before a
27 notice of trustee sale has been recorded, a trustee may not record
28 the notice of sale until the trustee receives the mediator's
29 certification stating that the mediation has been completed. If the
30 trustee does not receive the mediator's certification, the trustee
31 may record the notice of sale after (~~ten~~) 10 days from the date the
32 certification to the trustee was due. If, after a notice of sale is
33 recorded under this subsection (16)(a), the mediator subsequently
34 issues a certification finding that the beneficiary violated the duty
35 of good faith, the certification constitutes a basis for the borrower
36 to enjoin the foreclosure.

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

1 (17) A mediator may charge reasonable fees as authorized by this
2 subsection or as authorized by the department. Unless the fee is
3 waived, the parties agree otherwise, or the department otherwise
4 authorizes, a foreclosure mediator's fee may not exceed (~~four~~
5 ~~hundred dollars~~) \$400 for preparing, scheduling, and conducting a
6 mediation session lasting between one hour and three hours. For a
7 mediation session exceeding three hours, the foreclosure mediator may
8 charge a reasonable fee, as authorized by the department. The
9 mediator must provide an estimated fee before the mediation, and
10 payment of the mediator's fee must be divided equally between the
11 beneficiary and the borrower. The beneficiary and the borrower must
12 tender the loan mediator's fee within (~~thirty~~) 30 calendar days
13 from receipt of the department's letter referring the parties to
14 mediation or pursuant to the mediator's instructions.

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

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

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

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

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

34 (19) This section does not apply to certain federally insured
35 depository institutions, as specified in RCW 61.24.166.

36 **Sec. 6.** RCW 61.24.165 and 2021 c 151 s 6 are each amended to
37 read as follows:

38 (1) RCW 61.24.163 applies only to deeds of trust that are
39 recorded against residential real property of up to four units.

1 (2) RCW 61.24.163 does not apply to deeds of trust:

2 (a) Securing a commercial loan;

3 (b) Securing obligations of a grantor who is not the borrower or
4 a guarantor;

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

7 (d) Where the grantor is a partnership, corporation, or limited
8 liability company, or where the property is vested in a partnership,
9 corporation, or limited liability company at the time the notice of
10 default is issued.

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

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

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

33 **Sec. 7.** RCW 61.24.166 and 2021 c 151 s 7 are each amended to
34 read as follows:

35 (1) Beginning on January 1, ~~((2023))~~ 2024, the provisions of RCW
36 61.24.163 do not apply to any federally insured depository
37 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
38 certifies to the department under penalty of perjury that it was not
39 a beneficiary of deeds of trust in more than ~~((two hundred fifty))~~

1 250 trustee sales of residential real property of up to four units
2 that occurred in this state during the preceding calendar year. A
3 federally insured depository institution certifying that RCW
4 61.24.163 does not apply must do so annually, beginning no later than
5 January 31, (~~2023~~) 2024, and no later than January 31st of each
6 year thereafter.

7 (2) During the 2023 calendar year, the provisions of RCW
8 61.24.163 do not apply to any federally insured depository
9 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
10 certifies to the department under penalty of perjury that it was not
11 a beneficiary of deeds of trust in more than 250 trustee sales of
12 owner-occupied residential real property that occurred in this state
13 during 2019. A federally insured depository institution certifying
14 that RCW 61.24.163 does not apply pursuant to this subsection must do
15 so no later than 30 days after the effective date of this section.

16 (3) This section applies retroactively to January 1, 2023, and
17 prospectively beginning with the effective date of this section.

18 **Sec. 8.** RCW 61.24.190 and 2021 c 151 s 11 are each amended to
19 read as follows:

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

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

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

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

35 (2) For each residential real property for which a notice of
36 default has been issued, the beneficiary issuing the notice of
37 default, or causing the notice of default to be issued on the
38 beneficiary's behalf, shall remit \$250 to the department to be
39 deposited, as provided under RCW 61.24.172, into the foreclosure

1 fairness account. The \$250 payment is required per property and not
2 per notice of default. The beneficiary shall remit the total amount
3 required in a lump sum each quarter.

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

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

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

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

20 (b) During the 2023 calendar year, this section does not apply to
21 any beneficiary or loan servicer that is a federally insured
22 depository institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A),
23 and that certifies under penalty of perjury that fewer than 50
24 notices of trustee's sale were recorded on its behalf in 2019.

25 (c) This subsection (6) applies retroactively to January 1, 2023,
26 and prospectively beginning with the effective date of this section.

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

29 NEW SECTION. Sec. 9. A new section is added to chapter 61.24
30 RCW to read as follows:

31 (1) (a) The trustee shall continue a foreclosure sale for at least
32 30 days upon receipt of a written notice from the homeowner
33 assistance fund program administered by the Washington state housing
34 finance commission that an application has been submitted to the
35 homeowner assistance fund program on behalf of the applicant.

36 (b) The trustee shall continue the foreclosure sale for an
37 additional 30-day period upon receipt of a written notice from the
38 homeowner assistance fund program that the applicant is deemed
39 eligible for the program.

1 (c) An automated notice issued by the homeowner assistance fund
2 program does not qualify as written notice required in this section.

3 (2) (a) If an application to the homeowner assistance fund program
4 is approved in the amount that would cure the default and make the
5 beneficiary whole, a sale may not proceed while the approved
6 application is pending for payment.

7 (b) A sale may proceed if the homeowner assistance fund program
8 issues a written confirmation that an application has been denied or
9 that no funds from the program will be paid in response to the
10 application, and that any appeal process available to the applicant
11 has been exhausted and is no longer pending.

12 (3) The trustee has no duty to delay a sale if the applicant has
13 already received a continuance based on prior application to the
14 homeowner assistance fund program, unless the applicant demonstrates
15 to the trustee that a new application is pending based upon a
16 substantial change in circumstances supporting a new application and
17 that it has not been submitted solely for the purpose of delaying the
18 sale.

19 (4) (a) The trustee must comply with the process set forth in RCW
20 61.24.040(1) for giving notice of the continued sale.

21 (b) A continuance of a sale pursuant to this section shall not be
22 included in calculating the maximum sale continuance period of 120
23 days established in RCW 61.24.040(10).

24 (5) For purposes of this section, "applicant" means a person who:

25 (a) Is the borrower, a successor in interest to a deceased
26 borrower, or a person who has been awarded title to the property; and

27 (b) Has submitted an application to the homeowner assistance fund
28 program or on whose behalf an application to the program has been
29 submitted.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 61.12
31 RCW to read as follows:

32 (1) It is unlawful for any person to seek or receive from any
33 person or contract with any person for any fee or compensation for
34 locating, or purporting to purchase or otherwise acquire the right to
35 recover, funds held by a court or county that are proceeds from a
36 foreclosure under this chapter and subject to disposition under RCW
37 61.12.150 in excess of:

38 (a) Five percent of the value thereof returned to such owner; and

1 (b) Reasonable attorneys' fees and costs, upon a motion and a
2 hearing by a court of competent jurisdiction.

3 (2) Any person who violates this section is guilty of a
4 misdemeanor and shall be fined not less than the amount of the fee or
5 charge he or she has sought or received or contracted for, and not
6 more than 10 times such amount, or imprisoned for not more than 30
7 days, or both.

8 (3) The legislature finds that the practices covered by this
9 section are matters vitally affecting the public interest for the
10 purpose of applying the consumer protection act, chapter 19.86 RCW.
11 Any violation of this section is not reasonable in relation to the
12 development and preservation of business and is an unfair or
13 deceptive act in trade or commerce and an unfair method of
14 competition for the purpose of applying the consumer protection act,
15 chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are
16 cumulative and not exclusive.

17 (4) Every contract for any fee or compensation for locating or
18 purporting to purchase the right to recover funds held by a court
19 that are proceeds from a foreclosure under this chapter and subject
20 to disposition under RCW 61.12.150 must contain the following notice
21 in 10-point boldface type or larger directly above the space reserved
22 in the contract for the signature of the buyer:

23 "NOTICE TO HOMEOWNER:

24 (1) Do not sign this contract before you read it or if any spaces
25 intended for the agreed terms are left blank.

26 (2) You are entitled to a copy of this contract at the time you
27 sign it.

28 (3) You may cancel this contract within 10 days of signing by
29 sending notice of cancellation by regular United States mail to the
30 other party at his or her address shown on the contract, which notice
31 shall be posted not later than midnight of the 10th day (excluding
32 Sundays and holidays) following your signing of the contract."

33 **Sec. 11.** RCW 61.24.135 and 2021 c 151 s 5 are each amended to
34 read as follows:

35 (1) It is an unfair or deceptive act or practice under the
36 consumer protection act, chapter 19.86 RCW, for any person, acting
37 alone or in concert with others, to offer, or offer to accept or
38 accept from another, any consideration of any type not to bid, or to
39 reduce a bid, at a sale of property conducted pursuant to a power of

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

11 (2) It is an unfair or deceptive act in trade or commerce and an
12 unfair method of competition in violation of the consumer protection
13 act, chapter 19.86 RCW, for any person or entity to: (a) Violate the
14 duty of good faith under RCW 61.24.163; (b) fail to comply with the
15 requirements of RCW 61.24.174, as it existed prior to July 1, 2016,
16 61.24.173, or 61.24.190; or (c) fail to initiate contact with a
17 borrower and exercise due diligence as required under RCW 61.24.031.

18 (3) (a) It is unlawful for any person to seek or receive from any
19 person or contract with any person for any fee or compensation for
20 locating, or purporting to purchase or otherwise acquire the right to
21 recover, funds held by a court or county that are proceeds from a
22 foreclosure under this chapter and subject to disposition under RCW
23 61.24.080 in excess of:

24 (i) Five percent of the value thereof returned to such owner; and
25 (ii) Reasonable attorneys' fees and costs, upon a motion and a
26 hearing by a court of competent jurisdiction.

27 (b) Any person who violates (a) of this subsection is guilty of a
28 misdemeanor and shall be fined not less than the amount of the fee or
29 charge he or she has sought or received or contracted for, and not
30 more than 10 times such amount, or imprisoned for not more than 30
31 days, or both.

32 (c) The legislature finds that the practices covered by (a) of
33 this subsection are matters vitally affecting the public interest for
34 the purpose of applying the consumer protection act, chapter 19.86
35 RCW. Any violation of (a) of this subsection is not reasonable in
36 relation to the development and preservation of business and is an
37 unfair or deceptive act in trade or commerce and an unfair method of
38 competition for the purpose of applying the consumer protection act,
39 chapter 19.86 RCW. Remedies provided by chapter 19.86 RCW are
40 cumulative and not exclusive.

1 (4) Every contract for any fee or compensation for locating or
2 purporting to purchase the right to recover funds held by a court
3 that are proceeds from a foreclosure under this chapter and subject
4 to disposition under RCW 61.24.080 must contain the following notice
5 in 10-point boldface type or larger directly above the space reserved
6 in the contract for the signature of the buyer:

7 "NOTICE TO HOMEOWNER:

8 (1) Do not sign this contract before you read it or if any spaces
9 intended for the agreed terms are left blank.

10 (2) You are entitled to a copy of this contract at the time you
11 sign it.

12 (3) You may cancel this contract within 10 days of signing by
13 sending notice of cancellation by regular United States mail to the
14 other party at his or her address shown on the contract, which notice
15 shall be posted not later than midnight of the 10th day (excluding
16 Sundays and holidays) following your signing of the contract."

17 NEW SECTION. Sec. 12. (1) Section 9 of this act expires upon
18 the expiration and permanent closure of the homeowner assistance fund
19 program.

20 (2) The Washington state housing finance commission must provide
21 written notice of the expiration date of section 9 of this act to the
22 chief clerk of the house of representatives, the secretary of the
23 senate, the office of the code reviser, and others as deemed
24 appropriate by the commission.

25 NEW SECTION. Sec. 13. Sections 7 through 9 and 12 of this act
26 are necessary for the immediate preservation of the public peace,
27 health, or safety, or support of the state government and its
28 existing public institutions, and take effect immediately."

HB 1349 - S COMM AMD
By Committee on Housing

NOT ADOPTED 04/06/2023

29 On page 1, line 1 of the title, after "protections;" strike the
30 remainder of the title and insert "amending RCW 61.24.008, 61.24.030,
31 61.24.040, 61.24.160, 61.24.163, 61.24.165, 61.24.166, 61.24.190, and
32 61.24.135; adding a new section to chapter 61.24 RCW; adding a new

1 section to chapter 61.12 RCW; providing a contingent expiration date;
2 and declaring an emergency."

EFFECT: (1) Further clarifies what may constitute reasonable documentation of the death of the borrower or grantor and what may demonstrate ownership interest to a trustee or mortgage servicer when the borrower or grantor in default is deceased and someone is claiming to be a successor in interest to the borrower's or grantor's property rights.

(2) Adds provisions limiting fees associated with the recovery of surplus funds resulting from a foreclosure of a deed of trust or from a foreclosure under chapter 61.12 RCW to five percent of the value of the property reasonably expected to be recovered or reasonable attorneys' fees and costs.

(3) Provides that a violation of either provision related to the recovery of surplus funds resulting from a foreclosure constitutes a per se violation of the Consumer Protection Act and prescribes penalties.

--- END ---