

CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 5810**

Chapter 292, Laws of 2009

61st Legislature  
2009 Regular Session

DEEDS OF TRUST--FORECLOSURES

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 20, 2009  
YEAS 46 NAYS 2

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 9, 2009  
YEAS 98 NAYS 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Approved April 30, 2009, 10:48 a.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5810** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

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**Secretary**

FILED

May 1, 2009

**Secretary of State  
State of Washington**

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**ENGROSSED SENATE BILL 5810**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

**State of Washington                      61st Legislature                      2009 Regular Session**

**By** Senators Kauffman, Berkey, Shin, Franklin, Keiser, Tom, and Kohl-Welles; by request of Governor Gregoire

Read first time 02/03/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1            AN ACT Relating to foreclosures on deeds of trust; amending RCW  
2 61.24.005, 61.24.010, 61.24.040, and 61.24.060; reenacting and amending  
3 RCW 61.24.030; adding new sections to chapter 61.24 RCW; adding a new  
4 section to chapter 59.12 RCW; creating a new section; and providing an  
5 expiration date.

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

7            **Sec. 1.** RCW 61.24.005 and 1998 c 295 s 1 are each amended to read  
8 as follows:

9            The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11            (1) "Grantor" means a person, or its successors, who executes a  
12 deed of trust to encumber the person's interest in property as security  
13 for the performance of all or part of the borrower's obligations.

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

17            (3) "Affiliate of beneficiary" means any entity which controls, is  
18 controlled by, or is under common control with a beneficiary.

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

3 (5) "Borrower" means a person or a general partner in a  
4 partnership, including a joint venture, that is liable for all or part  
5 of the obligations secured by the deed of trust under the instrument or  
6 other document that is the principal evidence of such obligations, or  
7 the person's successors if they are liable for those obligations under  
8 a written agreement with the beneficiary.

9 (6) "Guarantor" means any person and its successors who is not a  
10 borrower and who guarantees any of the obligations secured by a deed of  
11 trust in any written agreement other than the deed of trust.

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

14 (8) "Trustee's sale" means a nonjudicial sale under a deed of trust  
15 undertaken pursuant to this chapter.

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

27 (10) "Record" and "recorded" includes the appropriate registration  
28 proceedings, in the instance of registered land.

29 (11) "Person" means any natural person, or legal or governmental  
30 entity.

31 (12) "Owner-occupied" means property that is the principal  
32 residence of the borrower.

33 (13) "Residential real property" means property consisting solely  
34 of a single-family residence, a residential condominium unit, or a  
35 residential cooperative unit.

36 (14) "Tenant-occupied property" means property consisting solely of  
37 residential real property that is the principal residence of a tenant

1 subject to chapter 59.18 RCW or other building with four or fewer  
2 residential units that is the principal residence of a tenant subject  
3 to chapter 59.18 RCW.

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

6 (1)(a) A trustee, beneficiary, or authorized agent may not issue a  
7 notice of default under RCW 61.24.030(8) until thirty days after  
8 initial contact with the borrower is made as required under (b) of this  
9 subsection or thirty days after satisfying the due diligence  
10 requirements as described in subsection (5) of this section.

11 (b) A beneficiary or authorized agent shall contact the borrower by  
12 letter and by telephone in order to assess the borrower's financial  
13 ability to pay the debt secured by the deed of trust and explore  
14 options for the borrower to avoid foreclosure. The letter required  
15 under this subsection must be mailed in accordance with subsection  
16 (5)(a) of this section and must include the information described in  
17 subsection (5)(a) and (e)(i) through (iv) of this section.

18 (c) During the initial contact, the beneficiary or authorized agent  
19 shall advise the borrower that he or she has the right to request a  
20 subsequent meeting and, if requested, the beneficiary or authorized  
21 agent shall schedule the meeting to occur within fourteen days of the  
22 request. The assessment of the borrower's financial ability to repay  
23 the debt and a discussion of options may occur during the initial  
24 contact or at a subsequent meeting scheduled for that purpose. At the  
25 initial contact, the borrower must be provided the toll-free telephone  
26 number made available by the department to find a department-certified  
27 housing counseling agency and the toll-free numbers for the department  
28 of financial institutions and the statewide civil legal aid hotline for  
29 possible assistance and referrals.

30 (d) Any meeting under this section may occur telephonically.

31 (2) A notice of default issued under RCW 61.24.030(8) must include  
32 a declaration, as provided in subsection (9) of this section, from the  
33 beneficiary or authorized agent that it has contacted the borrower as  
34 provided in subsection (1)(b) of this section, it has tried with due  
35 diligence to contact the borrower under subsection (5) of this section,  
36 or the borrower has surrendered the property to the trustee,  
37 beneficiary, or authorized agent. Unless the trustee has violated his

1 or her duty under RCW 61.24.010(4), the trustee is entitled to rely on  
2 the declaration as evidence that the requirements of this section have  
3 been satisfied, and the trustee is not liable for the beneficiary's or  
4 its authorized agent's failure to comply with the requirements of this  
5 section.

6 (3) A beneficiary's or authorized agent's loss mitigation personnel  
7 may participate by telephone during any contact required under this  
8 section.

9 (4) Within fourteen days after the initial contact under subsection  
10 (1) of this section, if a borrower has designated a department-  
11 certified housing counseling agency, attorney, or other advisor to  
12 discuss with the beneficiary or authorized agent, on the borrower's  
13 behalf, options for the borrower to avoid foreclosure, the borrower  
14 shall inform the beneficiary or authorized agent and provide the  
15 contact information. The beneficiary or authorized agent shall contact  
16 the designated representative for the borrower for the discussion  
17 within fourteen days after the representative is designated by the  
18 borrower. Any deed of trust modification or workout plan offered at  
19 the meeting with the borrower's designated representative by the  
20 beneficiary or authorized agent is subject to approval by the borrower.

21 (5) A notice of default may be issued under RCW 61.24.030(8) if a  
22 beneficiary or authorized agent has not contacted a borrower as  
23 required under subsection (1)(b) of this section and the failure to  
24 contact the borrower occurred despite the due diligence of the  
25 beneficiary or authorized agent. Due diligence requires the following:

26 (a) A beneficiary or authorized agent shall first attempt to  
27 contact a borrower by sending a first-class letter to the address in  
28 the beneficiary's records for sending account statements to the  
29 borrower and to the address of the property encumbered by the deed of  
30 trust. The letter must include the toll-free telephone number made  
31 available by the department to find a department-certified housing  
32 counseling agency, and the following information:

33 "You may contact the Department of Financial Institutions, the  
34 Washington State Bar Association, or the statewide civil legal aid  
35 hotline for possible assistance or referrals."

36 (b)(i) After the letter has been sent, the beneficiary or  
37 authorized agent shall attempt to contact the borrower by telephone at

1 least three times at different hours and on different days. Telephone  
2 calls must be made to the primary and secondary telephone numbers on  
3 file with the beneficiary or authorized agent.

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

8 (iii) A beneficiary or authorized agent satisfies the telephone  
9 contact requirements of this subsection (5)(b) if the beneficiary or  
10 authorized agent determines, after attempting contact under this  
11 subsection (5)(b), that the borrower's primary telephone number and  
12 secondary telephone number or numbers on file, if any, have been  
13 disconnected or are not good contact numbers for the borrower.

14 (c) If the borrower does not respond within fourteen days after the  
15 telephone call requirements of (b) of this subsection have been  
16 satisfied, the beneficiary or authorized agent shall send a certified  
17 letter, with return receipt requested, to the borrower at the address  
18 in the beneficiary's records for sending account statements to the  
19 borrower and to the address of the property encumbered by the deed of  
20 trust. The letter must include the information described in (e)(i)  
21 through (iv) of this subsection.

22 (d) The beneficiary or authorized agent shall provide a means for  
23 the borrower to contact the beneficiary or authorized agent in a timely  
24 manner, including a toll-free telephone number or charge-free  
25 equivalent that will provide access to a live representative during  
26 business hours.

27 (e) The beneficiary or authorized agent shall post a link on the  
28 home page of the beneficiary's or authorized agent's internet web site,  
29 if any, to the following information:

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

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

37 (iii) A toll-free telephone number or charge-free equivalent for

1 borrowers who wish to discuss options for avoiding foreclosure with  
2 their beneficiary or authorized agent; and

3 (iv) The toll-free telephone number or charge-free equivalent made  
4 available by the department to find a department-certified housing  
5 counseling agency.

6 (6) Subsections (1) and (5) of this section do not apply if any of  
7 the following occurs:

8 (a) The borrower has surrendered the property as evidenced by  
9 either a letter confirming the surrender or delivery of the keys to the  
10 property to the trustee, beneficiary, or authorized agent; or

11 (b) The borrower has filed for bankruptcy, and the bankruptcy stay  
12 remains in place, or the borrower has filed for bankruptcy and the  
13 bankruptcy court has granted relief from the bankruptcy stay allowing  
14 enforcement of the deed of trust.

15 (7)(a) This section applies only to deeds of trust made from  
16 January 1, 2003, to December 31, 2007, inclusive, that are recorded  
17 against owner-occupied residential real property. This section does  
18 not apply to deeds of trust: (i) Securing a commercial loan; (ii)  
19 securing obligations of a grantor who is not the borrower or a  
20 guarantor; or (iii) securing a purchaser's obligations under a seller-  
21 financed sale.

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

24 (8) As used in this section:

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

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

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

34 **"FORECLOSURE LOSS MITIGATION FORM**

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

36 The undersigned beneficiary or authorized agent for the beneficiary  
37 hereby represents and declares under the penalty of perjury that [check

1 the applicable box and fill in any blanks so that the trustee can  
2 insert, on the beneficiary's behalf, the applicable declaration in the  
3 notice of default required under chapter 61.24 RCW]:

4 (1) [ ] The beneficiary or beneficiary's authorized agent has  
5 contacted the borrower under, and has complied with, section 2 of this  
6 act (contact provision to "assess the borrower's financial ability to  
7 pay the debt secured by the deed of trust and explore options for the  
8 borrower to avoid foreclosure").

9 (2) [ ] The beneficiary or beneficiary's authorized agent has  
10 exercised due diligence to contact the borrower as required in section  
11 2(5) of this act and, after waiting fourteen days after the  
12 requirements in section 2 of this act were satisfied, the beneficiary  
13 or the beneficiary's authorized agent sent to the borrower(s), by  
14 certified mail, return receipt requested, the letter required under  
15 section 2 of this act.

16 (3) [ ] The borrower has surrendered the secured property as  
17 evidenced by either a letter confirming the surrender or by delivery of  
18 the keys to the secured property to the beneficiary, the beneficiary's  
19 authorized agent or to the trustee.

20 (4) [ ] Under section 2 of this act, the beneficiary or the  
21 beneficiary's authorized agent has verified information that, on or  
22 before the date of this declaration, the borrower(s) has filed for  
23 bankruptcy, and the bankruptcy stay remains in place, or the borrower  
24 has filed for bankruptcy and the bankruptcy court has granted relief  
25 from the bankruptcy stay allowing the enforcement of the deed of  
26 trust."

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 61.24 RCW  
28 to read as follows:

29 If the trustee elects to foreclose the interest of any occupant of  
30 tenant-occupied property, upon posting a notice of trustee's sale under  
31 RCW 61.24.040, the trustee or its authorized agent shall post in the  
32 manner required under RCW 61.24.040(1)(e) and shall mail at the same  
33 time in an envelope addressed to the "Resident of property subject to  
34 foreclosure sale" the following notice:

35 "The foreclosure process has begun on this property, which may  
36 affect your right to continue to live in this property. Ninety days or  
37 more after the date of this notice, this property may be sold at



1 foreclosure. If you are renting this property, the new property owner  
2 may either give you a new rental agreement or provide you with a sixty-  
3 day notice to vacate the property. You may wish to contact a lawyer or  
4 your local legal aid or housing counseling agency to discuss any rights  
5 that you may have."

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 61.24 RCW  
7 to read as follows:

8 (1) A tenant or subtenant in possession of a residential real  
9 property at the time the property is sold in foreclosure must be given  
10 sixty days' written notice to vacate before the tenant or subtenant may  
11 be removed from the property as prescribed in chapter 59.12 RCW.  
12 Notwithstanding the notice requirement in this subsection, a tenant may  
13 be evicted for waste or nuisance in an unlawful detainer action under  
14 chapter 59.12 RCW.

15 (2) This section does not prohibit the new owner of a property  
16 purchased pursuant to a trustee's sale from negotiating a new purchase  
17 or rental agreement with a tenant or subtenant.

18 (3) This section does not apply if the borrower or grantor remains  
19 on the property as a tenant, subtenant, or occupant.

20 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act apply only to  
21 the foreclosure of tenant-occupied property.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 61.24 RCW  
23 to read as follows:

24 (1) The failure of the borrower or grantor to bring a civil action  
25 to enjoin a foreclosure sale under this chapter may not be deemed a  
26 waiver of a claim for damages asserting:

27 (a) Common law fraud or misrepresentation;

28 (b) A violation of Title 19 RCW; or

29 (c) Failure of the trustee to materially comply with the provisions  
30 of this chapter.

31 (2) The nonwaived claims listed under subsection (1) of this  
32 section are subject to the following limitations:

33 (a) The claim must be asserted or brought within two years from the  
34 date of the foreclosure sale or within the applicable statute of  
35 limitations for such claim, whichever expires earlier;

1 (b) The claim may not seek any remedy at law or in equity other  
2 than monetary damages;

3 (c) The claim may not affect in any way the validity or finality of  
4 the foreclosure sale or a subsequent transfer of the property;

5 (d) A borrower or grantor who files such a claim is prohibited from  
6 recording a lis pendens or any other document purporting to create a  
7 similar effect, related to the real property foreclosed upon;

8 (e) The claim may not operate in any way to encumber or cloud the  
9 title to the property that was subject to the foreclosure sale, except  
10 to the extent that a judgment on the claim in favor of the borrower or  
11 grantor may, consistent with RCW 4.56.190, become a judgment lien on  
12 real property then owned by the judgment debtor; and

13 (f) The relief that may be granted for judgment upon the claim is  
14 limited to actual damages. However, if the borrower or grantor brings  
15 in the same civil action a claim for violation of chapter 19.86 RCW,  
16 arising out of the same alleged facts, relief under chapter 19.86 RCW  
17 is limited to actual damages, treble damages as provided for in RCW  
18 19.86.090, and the costs of suit, including a reasonable attorney's  
19 fee.

20 (4) This section applies only to foreclosures of owner-occupied  
21 residential real property.

22 (5) This section does not apply to the foreclosure of a deed of  
23 trust used to secure a commercial loan.

24 **Sec. 7.** RCW 61.24.010 and 2008 c 153 s 1 are each amended to read  
25 as follows:

26 (1) The trustee of a deed of trust under this chapter shall be:

27 (a) Any domestic corporation incorporated under Title 23B, 30, 31,  
28 32, or 33 RCW of which at least one officer is a Washington resident;  
29 or

30 (b) Any title insurance company authorized to insure title to real  
31 property under the laws of this state, or (~~its agents~~) any title  
32 insurance agent licensed under chapter 48.17 RCW; or

33 (c) Any attorney who is an active member of the Washington state  
34 bar association at the time the attorney is named trustee; or

35 (d) Any professional corporation incorporated under chapter 18.100  
36 RCW, any professional limited liability company formed under chapter  
37 25.15 RCW, any general partnership, including limited liability

1 partnerships, formed under chapter 25.04 RCW, all of whose  
2 shareholders, members, or partners, respectively, are either licensed  
3 attorneys or entities, provided all of the owners of those entities are  
4 licensed attorneys, or any domestic corporation wholly owned by any of  
5 the entities under this subsection (1)(d); or

6 (e) Any agency or instrumentality of the United States government;  
7 or

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

10 (2) The trustee may resign at its own election or be replaced by  
11 the beneficiary. The trustee shall give prompt written notice of its  
12 resignation to the beneficiary. The resignation of the trustee shall  
13 become effective upon the recording of the notice of resignation in  
14 each county in which the deed of trust is recorded. If a trustee is  
15 not appointed in the deed of trust, or upon the resignation,  
16 incapacity, disability, absence, or death of the trustee, or the  
17 election of the beneficiary to replace the trustee, the beneficiary  
18 shall appoint a trustee or a successor trustee. Only upon recording  
19 the appointment of a successor trustee in each county in which the deed  
20 of trust is recorded, the successor trustee shall be vested with all  
21 powers of an original trustee.

22 (3) The trustee or successor trustee shall have no fiduciary duty  
23 or fiduciary obligation to the grantor or other persons having an  
24 interest in the property subject to the deed of trust.

25 (4) ~~((The trustee or successor trustee shall act impartially~~  
26 ~~between the borrower, grantor, and beneficiary.))~~ The trustee or  
27 successor trustee has a duty of good faith to the borrower,  
28 beneficiary, and grantor.

29 **Sec. 8.** RCW 61.24.030 and 2008 c 153 s 2 and 2008 c 108 s 22 are  
30 each reenacted and amended to read as follows:

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

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

33 (2) That the deed of trust contains a statement that the real  
34 property conveyed is not used principally for agricultural purposes;  
35 provided, if the statement is false on the date the deed of trust was  
36 granted or amended to include that statement, and false on the date of

1 the trustee's sale, then the deed of trust must be foreclosed  
2 judicially. Real property is used for agricultural purposes if it is  
3 used in an operation that produces crops, livestock, or aquatic goods;

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

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

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

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

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

33 (b) Unless the trustee has violated his or her duty under RCW  
34 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
35 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

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

27       (g) A statement that failure to cure the alleged default within  
28 thirty days of the date of mailing of the notice, or if personally  
29 served, within thirty days of the date of personal service thereof, may  
30 lead to recordation, transmittal, and publication of a notice of sale,  
31 and that the property described in (a) of this subsection may be sold  
32 at public auction at a date no less than one hundred twenty days in the  
33 future;

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

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

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

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

10 "You should take care to protect your interest in your home. This  
11 notice of default (your failure to pay) is the first step in a process  
12 that could result in you losing your home. You should carefully review  
13 your options. For example:

14 Can you pay and stop the foreclosure process?

15 Do you dispute the failure to pay?

16 Can you sell your property to preserve your equity?

17 Are you able to refinance this loan or obligation with a new loan  
18 or obligation from another lender with payments, terms, and fees that  
19 are more affordable?

20 Do you qualify for any government or private homeowner assistance  
21 programs?

22 Do you know if filing for bankruptcy is an option? What are the  
23 pros and cons of doing so?

24 Do not ignore this notice; because if you do nothing, you could  
25 lose your home at a foreclosure sale. (No foreclosure sale can be held  
26 any sooner than ninety days after a notice of sale is issued and a  
27 notice of sale cannot be issued until thirty days after this notice.)  
28 Also, if you do nothing to pay what you owe, be careful of people who  
29 claim they can help you. There are many individuals and businesses  
30 that watch for the notices of sale in order to unfairly profit as a  
31 result of borrowers' distress.

32 You may feel you need help understanding what to do. There are a  
33 number of professional resources available, including home loan  
34 counselors and attorneys, who may assist you. Many legal services are  
35 lower-cost or even free, depending on your ability to pay. If you  
36 desire legal help in understanding your options or handling this  
37 default, you may obtain a referral (at no charge) by contacting the  
38 county bar association in the county where your home is located. These

1 legal referral services also provide information about lower-cost or  
2 free legal services for those who qualify. You may contact the  
3 Department of Financial Institutions or the statewide civil legal aid  
4 hotline for possible assistance or referrals; and

5 (1) In the event the property secured by the deed of trust is  
6 residential real property, the name and address of the owner of any  
7 promissory notes or other obligations secured by the deed of trust and  
8 the name, address, and telephone number of a party acting as a servicer  
9 of the obligations secured by the deed of trust."

10 **Sec. 9.** RCW 61.24.040 and 2008 c 153 s 3 are each amended to read  
11 as follows:

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

14 (1) At least ninety days before the sale, the trustee shall:

15 (a) Record a notice in the form described in ((RCW  
16 ~~61.24.040(1)~~))(f) of this subsection in the office of the auditor in  
17 each county in which the deed of trust is recorded;

18 (b) To the extent the trustee elects to foreclose its lien or  
19 interest, or the beneficiary elects to preserve its right to seek a  
20 deficiency judgment against a borrower or grantor under RCW  
21 61.24.100(3)(a), and if their addresses are stated in a recorded  
22 instrument evidencing their interest, lien, or claim of lien, or an  
23 amendment thereto, or are otherwise known to the trustee, cause a copy  
24 of the notice of sale described in ((RCW ~~61.24.040(1)~~))(f) of this  
25 subsection to be transmitted by both first-class and either certified  
26 or registered mail, return receipt requested, to the following persons  
27 or their legal representatives, if any, at such address:

28 (i) The borrower and grantor;

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

34 (iii) The vendee in any real estate contract, the lessee in any  
35 lease, or the holder of any conveyances of any interest or estate in  
36 any portion or all of the property described in such notice, if that  
37 contract, lease, or conveyance of such interest or estate, or a

1 memorandum or other notice thereof, was recorded after the recordation  
2 of the deed of trust being foreclosed and before the recordation of the  
3 notice of sale;

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

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

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

16 (c) Cause a copy of the notice of sale described in ((RCW  
17 ~~61.24.040(1)~~))(f) of this subsection to be transmitted by both first-  
18 class and either certified or registered mail, return receipt  
19 requested, to the plaintiff or the plaintiff's attorney of record, in  
20 any court action to foreclose a lien or other encumbrance on all or any  
21 part of the property, provided a court action is pending and a lis  
22 pendens in connection therewith is recorded in the office of the  
23 auditor of any county in which all or part of the property is located  
24 on the date the notice is recorded;

25 (d) Cause a copy of the notice of sale described in ((RCW  
26 ~~61.24.040(1)~~))(f) of this subsection to be transmitted by both first-  
27 class and either certified or registered mail, return receipt  
28 requested, to any person who has recorded a request for notice in  
29 accordance with RCW 61.24.045, at the address specified in such  
30 person's most recently recorded request for notice;

31 (e) Cause a copy of the notice of sale described in ((RCW  
32 ~~61.24.040(1)~~))(f) of this subsection to be posted in a conspicuous  
33 place on the property, or in lieu of posting, cause a copy of said  
34 notice to be served upon any occupant of the property;

35 (f) The notice shall be in substantially the following form:

36 NOTICE OF TRUSTEE'S SALE

37 I.



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

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

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

20 II.

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

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

28 III.

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

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

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

33 IV.

34 The sum owing on the obligation secured by the Deed of Trust is:  
35 Principal \$ . . . . ., together with interest as provided in the note

1 or other instrument secured from the . . . . day of . . . . ., . . . .,  
2 and such other costs and fees as are due under the note or other  
3 instrument secured, and as are provided by statute.

4 V.

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

22 VI.

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

25 .....  
26 .....  
27 .....

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

35 VII.

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

4 VIII.

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

8 IX.

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

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

15  
16 .....  
17 ..... , Trustee  
18 ..... }  
19 ..... } Address  
20 ..... }  
21 ..... } Phone

22 [Acknowledgment]

23 (2) In addition to providing the borrower and grantor the notice of  
24 sale described in ((~~RCW 61.24.040~~)) subsection (1)(f) of this section,  
25 the trustee shall include with the copy of the notice which is mailed  
26 to the grantor, a statement to the grantor in substantially the  
27 following form:

28 NOTICE OF FORECLOSURE

29 Pursuant to the Revised Code of Washington,

30 Chapter 61.24 RCW

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

6 To cure the default(s), you must bring the payments current, cure  
 7 any other defaults, and pay accrued late charges and other costs,  
 8 advances, and attorneys' fees as set forth below by the . . . . day of  
 9 . . . . ., . . . [11 days before the sale date]. To date, these  
 10 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)

19 Delinquent payments		
20 from . . . . .,		
21 . . ., in the		
22 amount of		
23 \$ . . . /mo.:	\$ . . . .	\$ . . . .
24 Late charges in		
25 the total		
26 amount of:	\$ . . . .	\$ . . . .
27		Estimated
28		Amounts
29 Attorneys' fees:	\$ . . . .	\$ . . . .
30 Trustee's fee:	\$ . . . .	\$ . . . .
31 Trustee's expenses:		
32 (Itemization)		

1	Title report	\$....	\$....
2	Recording fees	\$....	\$....
3	Service/Posting		
4	of Notices	\$....	\$....
5	Postage/Copying		
6	expense	\$....	\$....
7	Publication	\$....	\$....
8	Telephone		\$....
9	charges	\$....	
10	Inspection fees	\$....	\$....
11	.....	\$....	\$....
12	.....	\$....	\$....
13	TOTALS	\$....	\$....

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

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

28	Default	Description of Action Required to Cure and
29		Documentation Necessary to Show Cure
30	.....	.....
31		.....
32		.....
33	.....	.....
34		.....
35		.....

1        You may reinstate your Deed of Trust and the obligation secured  
2 thereby at any time up to and including the . . . day of . . . . . ,  
3 . . . [11 days before the sale date], by paying the amount set forth or  
4 estimated above and by curing any other defaults described above. Of  
5 course, as time passes other payments may become due, and any further  
6 payments coming due and any additional late charges must be added to  
7 your reinstating payment. Any new defaults not involving payment of  
8 money that occur after the date of this notice must also be cured in  
9 order to effect reinstatement. In addition, because some of the  
10 charges can only be estimated at this time, and because the amount  
11 necessary to reinstate or to pay off the entire indebtedness may  
12 include presently unknown expenditures required to preserve the  
13 property or to comply with state or local law, it will be necessary for  
14 you to contact the Trustee before the time you tender reinstatement or  
15 the payoff amount so that you may be advised of the exact amount you  
16 will be required to pay. Tender of payment or performance must be made  
17 to: . . . . . , whose address is . . . . . , telephone ( )  
18 . . . . . AFTER THE . . . . DAY OF . . . . . , . . . , YOU MAY NOT  
19 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND  
20 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will  
21 respond to any written request for current payoff or reinstatement  
22 amounts within ten days of receipt of your written request. In such a  
23 case, you will only be able to stop the sale by paying, before the  
24 sale, the total principal balance (\$ . . . . . ) plus accrued  
25 interest, costs and advances, if any, made pursuant to the terms of the  
26 documents and by curing the other defaults as outlined above.

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

36        The court may grant a restraining order or injunction to restrain  
37 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the  
38 trustee of the time when, place where, and the judge before whom the

1 application for the restraining order or injunction is to be made.  
2 This notice shall include copies of all pleadings and related documents  
3 to be given to the judge. Notice and other process may be served on  
4 the trustee at:

5 NAME: .....  
6 ADDRESS: .....  
7 .....  
8 TELEPHONE NUMBER: .....

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

14 (3) In addition, the trustee shall cause a copy of the notice of  
15 sale described in ((RCW 61.24.040)) subsection (1)(f) of this section  
16 (excluding the acknowledgment) to be published in a legal newspaper in  
17 each county in which the property or any part thereof is situated, once  
18 on or between the thirty-fifth and twenty-eighth day before the date of  
19 sale, and once on or between the fourteenth and seventh day before the  
20 date of sale;

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

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

31 (6) The trustee has no obligation to, but may, for any cause the  
32 trustee deems advantageous, continue the sale for a period or periods  
33 not exceeding a total of one hundred twenty days by (a) a public  
34 proclamation at the time and place fixed for sale in the notice of sale  
35 and if the continuance is beyond the date of sale, by giving notice of  
36 the new time and place of the sale by both first class and either

1 certified or registered mail, return receipt requested, to the persons  
2 specified in ((~~RCW 61.24.040~~)) subsection (1)(b)(i) and (ii) of this  
3 section to be deposited in the mail (i) not less than four days before  
4 the new date fixed for the sale if the sale is continued for up to  
5 seven days; or (ii) not more than three days after the date of the  
6 continuance by oral proclamation if the sale is continued for more than  
7 seven days, or, alternatively, (b) by giving notice of the time and  
8 place of the postponed sale in the manner and to the persons specified  
9 in ((~~RCW 61.24.040~~)) subsection (1)(b), (c), (d), and (e) of this  
10 section and publishing a copy of such notice once in the newspaper(s)  
11 described in ((~~RCW 61.24.040~~)) subsection (3) of this section, more  
12 than seven days before the date fixed for sale in the notice of sale.  
13 No other notice of the postponed sale need be given;

14 (7) The purchaser shall forthwith pay the price bid and on payment  
15 the trustee shall execute to the purchaser its deed; the deed shall  
16 recite the facts showing that the sale was conducted in compliance with  
17 all of the requirements of this chapter and of the deed of trust, which  
18 recital shall be prima facie evidence of such compliance and conclusive  
19 evidence thereof in favor of bona fide purchasers and encumbrancers for  
20 value, except that these recitals shall not affect the lien or interest  
21 of any person entitled to notice under ((~~RCW 61.24.040~~)) subsection (1)  
22 of this section, if the trustee fails to give the required notice to  
23 such person. In such case, the lien or interest of such omitted person  
24 shall not be affected by the sale and such omitted person shall be  
25 treated as if such person was the holder of the same lien or interest  
26 and was omitted as a party defendant in a judicial foreclosure  
27 proceeding;

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

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

37 X.



1 NOTICE TO OCCUPANTS OR TENANTS

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

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

16 **Sec. 10.** RCW 61.24.060 and 1998 c 295 s 8 are each amended to read  
17 as follows:

18 (1) The purchaser at the trustee's sale shall be entitled to  
19 possession of the property on the twentieth day following the sale, as  
20 against the borrower and grantor under the deed of trust and anyone  
21 having an interest junior to the deed of trust, including occupants  
22 (~~and~~) who are not tenants, who were given all of the notices to which  
23 they were entitled under this chapter. The purchaser shall also have  
24 a right to the summary proceedings to obtain possession of real  
25 property provided in chapter 59.12 RCW.

26 (2) If the trustee elected to foreclose the interest of any  
27 occupant or tenant, the purchaser of tenant-occupied property at the  
28 trustee's sale shall provide written notice to the occupants and  
29 tenants at the property purchased in substantially the following form:

30 "NOTICE: The property located at . . . . . was purchased at a  
31 trustee's sale by . . . . . on . . . . . (date).

32 1. If you are the previous owner or an occupant who is not a  
33 tenant of the property that was purchased, pursuant to RCW 61.24.060,  
34 the purchaser at the trustee's sale is entitled to possession of the  
35 property on . . . . . (date), which is the twentieth day following  
36 the sale.  
37

1       2. If you are a tenant or subtenant in possession of the property  
2 that was purchased, pursuant to section 4 of this act, the purchaser at  
3 the trustee's sale may either give you a new rental agreement OR give  
4 you a written notice to vacate the property in sixty days or more  
5 before the end of the monthly rental period."

6       (3) The notice required in subsection (2) of this section must be  
7 given to the property's occupants and tenants by both first-class mail  
8 and either certified or registered mail, return receipt requested.

10       NEW SECTION. Sec. 11. A new section is added to chapter 59.12 RCW  
11 to read as follows:

12       An unlawful detainer action, commenced as a result of a trustee's  
13 sale under chapter 61.24 RCW, must comply with the requirements of RCW  
14 61.24.040 and 61.24.060.

15       NEW SECTION. Sec. 12. If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19       NEW SECTION. Sec. 13. Section 2 of this act expires December 31,  
20 2012.

Passed by the Senate April 20, 2009.

Passed by the House April 9, 2009.

Approved by the Governor April 30, 2009.

Filed in Office of Secretary of State May 1, 2009.