

2SHB 1362 - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

ADOPTED 03/29/2011

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds and declares  
4 that:

5 (a) The rate of home foreclosures continues to rise to  
6 unprecedented levels, both for prime and subprime loans, and a new wave  
7 of foreclosures has occurred due to rising unemployment, job loss, and  
8 higher adjustable loan payments;

9 (b) Prolonged foreclosures contribute to the decline in the state's  
10 housing market, loss of property values, and other loss of revenue to  
11 the state;

12 (c) In recent years, the legislature has enacted procedures to help  
13 encourage and strengthen the communication between homeowners and  
14 lenders and to assist homeowners in navigating through the foreclosure  
15 process; however, Washington's nonjudicial foreclosure process does not  
16 have a mechanism for homeowners to readily access a neutral third party  
17 to assist them in a fair and timely way; and

18 (d) Several jurisdictions across the nation have foreclosure  
19 mediation programs that provide a cost-effective process for the  
20 homeowner and lender, with the assistance of a trained mediator, to  
21 reach a mutually acceptable resolution that avoids foreclosure.

22 (2) Therefore, the legislature intends to:

23 (a) Encourage homeowners to utilize the skills and professional  
24 judgment of housing counselors as early as possible in the foreclosure  
25 process;

26 (b) Create a framework for homeowners and beneficiaries to  
27 communicate with each other to reach a resolution and avoid foreclosure  
28 whenever possible; and

29 (c) Provide a process for foreclosure mediation when a housing  
30 counselor or attorney determines that mediation is appropriate. For

1 mediation to be effective, the parties should attend the mediation (in  
2 person, telephonically, through an agent, or otherwise), provide the  
3 necessary documentation in a timely manner, willingly share  
4 information, actively present, discuss, and explore options to avoid  
5 foreclosure, negotiate willingly and cooperatively, maintain a  
6 professional and cooperative demeanor, cooperate with the mediator, and  
7 keep any agreements made in mediation.

8 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
9 foreclosure fairness act.

10 **Sec. 3.** RCW 61.24.005 and 2009 c 292 s 1 are each reenacted and  
11 amended to read as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Affiliate of beneficiary" means any entity which controls, is  
15 controlled by, or is under common control with a beneficiary.

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

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

25 (4) "Commercial loan" means a loan that is not made primarily for  
26 personal, family, or household purposes.

27 (5) "Department" means the department of commerce or its designee.

28 (6) "Fair value" means the value of the property encumbered by a  
29 deed of trust that is sold pursuant to a trustee's sale. This value  
30 shall be determined by the court or other appropriate adjudicator by  
31 reference to the most probable price, as of the date of the trustee's  
32 sale, which would be paid in cash or other immediately available funds,  
33 after deduction of prior liens and encumbrances with interest to the  
34 date of the trustee's sale, for which the property would sell on such  
35 date after reasonable exposure in the market under conditions requisite

1 to a fair sale, with the buyer and seller each acting prudently,  
2 knowledgeable, and for self-interest, and assuming that neither is  
3 under duress.

4 ~~((+6+))~~ (7) "Grantor" means a person, or its successors, who  
5 executes a deed of trust to encumber the person's interest in property  
6 as security for the performance of all or part of the borrower's  
7 obligations.

8 ~~((+7+))~~ (8) "Guarantor" means any person and its successors who is  
9 not a borrower and who guarantees any of the obligations secured by a  
10 deed of trust in any written agreement other than the deed of trust.

11 ~~((+8+))~~ (9) "Housing counselor" means a housing counselor that has  
12 been approved by the United States department of housing and urban  
13 development or approved by the Washington state housing finance  
14 commission.

15 (10) "Owner-occupied" means property that is the principal  
16 residence of the borrower.

17 ~~((+9+))~~ (11) "Person" means any natural person, or legal or  
18 governmental entity.

19 ~~((+10+))~~ (12) "Record" and "recorded" includes the appropriate  
20 registration proceedings, in the instance of registered land.

21 ~~((+11+))~~ (13) "Residential real property" means property consisting  
22 solely of a single-family residence, a residential condominium unit, or  
23 a residential cooperative unit.

24 ~~((+12+))~~ (14) "Tenant-occupied property" means property consisting  
25 solely of residential real property that is the principal residence of  
26 a tenant subject to chapter 59.18 RCW or other building with four or  
27 fewer residential units that is the principal residence of a tenant  
28 subject to chapter 59.18 RCW.

29 ~~((+13+))~~ (15) "Trustee" means the person designated as the trustee  
30 in the deed of trust or appointed under RCW 61.24.010(2).

31 ~~((+14+))~~ (16) "Trustee's sale" means a nonjudicial sale under a  
32 deed of trust undertaken pursuant to this chapter.

33 **Sec. 4.** RCW 61.24.030 and 2009 c 292 s 8 are each amended to read  
34 as follows:

35 It shall be requisite to a trustee's sale:  
36 (1) That the deed of trust contains a power of sale;

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

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

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

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

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

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

37 (b) Unless the trustee has violated his or her duty under RCW

1 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
2 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Can you pay and stop the foreclosure process?

19 Do you dispute the failure to pay?

20 Can you sell your property to preserve your equity?

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

24 Do you qualify for any government or private homeowner assistance  
25 programs?

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

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

36 You may feel you need help understanding what to do. There are a  
37 number of professional resources available, including home loan  
38 counselors and attorneys, who may assist you. Many legal services are

1 lower-cost or even free, depending on your ability to pay. If you  
2 desire legal help in understanding your options or handling this  
3 default, you may obtain a referral (at no charge) by contacting the  
4 county bar association in the county where your home is located. These  
5 legal referral services also provide information about lower-cost or  
6 free legal services for those who qualify. You may contact the  
7 Department of Financial Institutions or the statewide civil legal aid  
8 hotline for possible assistance or referrals"; and

9 (1) In the event the property secured by the deed of trust is  
10 residential real property, the name and address of the owner of any  
11 promissory notes or other obligations secured by the deed of trust and  
12 the name, address, and telephone number of a party acting as a servicer  
13 of the obligations secured by the deed of trust(~~(-#)~~); and

14 (9) That, for owner-occupied residential real property, before the  
15 notice of the trustee's sale is recorded, transmitted, or served, the  
16 beneficiary has complied with RCW 61.24.031 and, if applicable, section  
17 7 of this act.

18 **Sec. 5.** RCW 61.24.031 and 2009 c 292 s 2 are each amended to read  
19 as follows:

20 (1)(a) A trustee, beneficiary, or authorized agent may not issue a  
21 notice of default under RCW 61.24.030(8) until: (i) Thirty days after  
22 initial contact with the borrower (~~(is made)~~) was initiated as required  
23 under (b) of this subsection or thirty days after satisfying the due  
24 diligence requirements as described in subsection (5) of this section  
25 and the borrower has not responded; or (ii) if the borrower responds to  
26 the initial contact, ninety days after the initial contact with the  
27 borrower was initiated.

28 (b) A beneficiary or authorized agent shall make initial contact  
29 with the borrower by letter to provide the borrower with information  
30 required under (c) of this subsection and by telephone (~~(in order to~~  
31 ~~assess the borrower's financial ability to pay the debt secured by the~~  
32 ~~deed of trust and explore options for the borrower to avoid~~  
33 ~~foreclosure)~~) as required under subsection (5) of this section. The  
34 letter required under this subsection must be mailed in accordance with  
35 subsection (5)(a) of this section and must include the information  
36 described in (c) of this subsection and subsection (5)(~~(a) and~~) (e)  
37 (i) through (iv) of this section.

1           (c) (~~During the initial contact, the beneficiary or authorized~~  
2 ~~agent shall advise the borrower that he or she has the right to request~~  
3 ~~a subsequent meeting and, if requested, the beneficiary or authorized~~  
4 ~~agent shall schedule the meeting to occur within fourteen days of the~~  
5 ~~request. The~~) The letter required under this subsection, developed by  
6 the department pursuant to section 16 of this act, at a minimum shall  
7 include:

8           (i) A paragraph printed in no less than twelve point font and  
9 bolded that reads:

10           "You must respond within thirty days of the date of this letter.  
11 IF YOU DO NOT RESPOND within thirty days, a notice of default may be  
12 issued and you may lose your home in foreclosure.

13           IF YOU DO RESPOND within thirty days of the date of this letter,  
14 you will have an additional sixty days to meet with your lender before  
15 a notice of default may be issued.

16           You should contact a housing counselor or attorney as soon as  
17 possible. Failure to contact a housing counselor or attorney may  
18 result in your losing certain opportunities, such as meeting with your  
19 lender or participating in mediation in front of a neutral third party.  
20 A housing counselor or attorney can help you work with your lender to  
21 avoid foreclosure.";

22           (ii) The toll-free telephone number from the United States  
23 department of housing and urban development to find a department-  
24 approved housing counseling agency, the toll-free numbers for the  
25 statewide foreclosure hotline recommended by the housing finance  
26 commission, and the statewide civil legal aid hotline for assistance  
27 and referrals to other housing counselors and attorneys;

28           (iii) A paragraph stating that a housing counselor may be available  
29 at little or no cost to the borrower and that whether or not the  
30 borrower contacts a housing counselor or attorney, the borrower has the  
31 right to request a meeting with the beneficiary; and

32           (iv) A paragraph explaining how the borrower may respond to the  
33 letter and stating that after responding the borrower will have an  
34 opportunity to meet with his or her beneficiary in an attempt to  
35 resolve and try to work out an alternative to the foreclosure and that,  
36 after ninety days from the date of the letter, a notice of default may  
37 be issued, which starts the foreclosure process.



1 (d) If the beneficiary has exercised due diligence as required  
2 under subsection (5) of this section and the borrower does not respond  
3 by contacting the beneficiary within thirty days of the initial  
4 contact, the notice of default may be issued. "Initial contact" with  
5 the borrower is considered made three days after the date the letter  
6 required in (b) of this subsection is sent.

7 (e) If a meeting is requested by the borrower or the borrower's  
8 housing counselor or attorney, the beneficiary or authorized agent  
9 shall schedule the meeting to occur before the notice of default is  
10 issued. An assessment of the borrower's financial ability to ((repay  
11 the debt)) modify or restructure the loan obligation and a discussion  
12 of options ((may)) must occur during the ((initial contact or at a  
13 subsequent)) meeting scheduled for that purpose. ((At the initial  
14 contact, the borrower must be provided the toll-free telephone number  
15 made available by the department to find a department-certified housing  
16 counseling agency and the toll-free numbers for the department of  
17 financial institutions and the statewide civil legal aid hotline for  
18 possible assistance and referrals.

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

20 (f) The meeting scheduled to assess the borrower's financial  
21 ability to modify or restructure the loan obligation and discuss  
22 options to avoid foreclosure must be in person, unless the requirement  
23 to meet in person is waived in writing by the borrower or the  
24 borrower's representative. A person who is authorized to modify the  
25 loan obligation or reach an alternative resolution to foreclosure on  
26 behalf of the beneficiary may participate by telephone or video  
27 conference, so long as a representative of the beneficiary is at the  
28 meeting in person.

29 (2) A notice of default issued under RCW 61.24.030(8) must include  
30 a declaration, as provided in subsection (9) of this section, from the  
31 beneficiary or authorized agent that it has contacted the borrower as  
32 provided in subsection (1)((~~b~~)) of this section, it has tried with  
33 due diligence to contact the borrower under subsection (5) of this  
34 section, or the borrower has surrendered the property to the trustee,  
35 beneficiary, or authorized agent. Unless the trustee has violated his  
36 or her duty under RCW 61.24.010(4), the trustee is entitled to rely on  
37 the declaration as evidence that the requirements of this section have

1 been satisfied, and the trustee is not liable for the beneficiary's or  
2 its authorized agent's failure to comply with the requirements of this  
3 section.

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

7 ~~(4) Within fourteen days))~~ If, after the initial contact under  
8 subsection (1) of this section, ~~((if))~~ a borrower has designated a  
9 ~~((department certified))~~ housing counseling agency, housing counselor,  
10 or attorney~~((, or other advisor))~~ to discuss with the beneficiary or  
11 authorized agent, on the borrower's behalf, options for the borrower to  
12 avoid foreclosure, the borrower shall inform the beneficiary or  
13 authorized agent and provide the contact information to the beneficiary  
14 or authorized agent. The beneficiary or authorized agent shall contact  
15 the designated representative for the borrower ~~((for the discussion  
16 within fourteen days after the representative is designated by the  
17 borrower))~~ to meet.

18 (4) The beneficiary or authorized agent and the borrower or the  
19 borrower's representative shall attempt to reach a resolution for the  
20 borrower within the ninety days from the time the initial contact is  
21 sent and the notice of default is issued. A resolution may include,  
22 but is not limited to, a loan modification, an agreement to conduct a  
23 short sale, or a deed in lieu of foreclosure transaction, or some other  
24 workout plan. Any ~~((deed of trust))~~ modification or workout plan  
25 offered at the meeting with the borrower's designated representative by  
26 the beneficiary or authorized agent is subject to approval by the  
27 borrower.

28 (5) A notice of default may be issued under RCW 61.24.030(8) if a  
29 beneficiary or authorized agent has ~~((not contacted a))~~ initiated  
30 contact with the borrower as required under subsection (1)(b) of this  
31 section and the failure to ~~((contact))~~ meet with the borrower occurred  
32 despite the due diligence of the beneficiary or authorized agent. Due  
33 diligence requires the following:

34 (a) A beneficiary or authorized agent shall first attempt to  
35 contact a borrower by sending a first-class letter to the address in  
36 the beneficiary's records for sending account statements to the  
37 borrower and to the address of the property encumbered by the deed of

1 trust. The letter must (~~include the toll-free telephone number made~~  
2 ~~available by the department to find a department-certified housing~~  
3 ~~counseling agency, and the following information:~~

4 ~~"You may contact the Department of Financial Institutions, the~~  
5 ~~Washington State Bar Association, or the statewide civil legal aid~~  
6 ~~hotline for possible assistance or referrals.")) be the letter  
7 described in subsection (1)(c) of this section.~~

8 (b)(i) After the letter has been sent, the beneficiary or  
9 authorized agent shall attempt to contact the borrower by telephone at  
10 least three times at different hours and on different days. Telephone  
11 calls must be made to the primary and secondary telephone numbers on  
12 file with the beneficiary or authorized agent.

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

17 (iii) A beneficiary or authorized agent satisfies the telephone  
18 contact requirements of this subsection (5)(b) if the beneficiary or  
19 authorized agent determines, after attempting contact under this  
20 subsection (5)(b), that the borrower's primary telephone number and  
21 secondary telephone number or numbers on file, if any, have been  
22 disconnected or are not good contact numbers for the borrower.

23 (c) If the borrower does not respond within fourteen days after the  
24 telephone call requirements of (b) of this subsection have been  
25 satisfied, the beneficiary or authorized agent shall send a certified  
26 letter, with return receipt requested, to the borrower at the address  
27 in the beneficiary's records for sending account statements to the  
28 borrower and to the address of the property encumbered by the deed of  
29 trust. The letter must include the information described in (e)(i)  
30 through (iv) of this subsection. The letter must also include a  
31 paragraph stating: "Your failure to contact a housing counselor or  
32 attorney may result in your losing certain opportunities, such as  
33 meeting with your lender or participating in mediation in front of a  
34 neutral third party."

35 (d) The beneficiary or authorized agent shall provide a means for  
36 the borrower to contact the beneficiary or authorized agent in a timely  
37 manner, including a toll-free telephone number or charge-free

1 equivalent that will provide access to a live representative during  
2 business hours.

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

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

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

13 (iii) A toll-free telephone number or charge-free equivalent for  
14 borrowers who wish to discuss options for avoiding foreclosure with  
15 their beneficiary or authorized agent; and

16 (iv) The toll-free telephone number or charge-free equivalent made  
17 available by the department to find a department-~~((certified))~~ approved  
18 housing counseling agency.

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

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

24 (b) The borrower has filed for bankruptcy, and the bankruptcy stay  
25 remains in place, or the borrower has filed for bankruptcy and the  
26 bankruptcy court has granted relief from the bankruptcy stay allowing  
27 enforcement of the deed of trust.

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

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

37 (8) As used in this section:

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

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

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

10 **"FORECLOSURE LOSS MITIGATION FORM**

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

12 The undersigned beneficiary or authorized agent for the beneficiary  
13 hereby represents and declares under the penalty of perjury that [check  
14 the applicable box and fill in any blanks so that the trustee can  
15 insert, on the beneficiary's behalf, the applicable declaration in the  
16 notice of default required under chapter 61.24 RCW]:

17 (1) [ ] The beneficiary or beneficiary's authorized agent has  
18 contacted the borrower under, and has complied with, RCW 61.24.031  
19 (contact provision to "assess the borrower's financial ability to pay  
20 the debt secured by the deed of trust and explore options for the  
21 borrower to avoid foreclosure") and the borrower did not request a  
22 meeting.

23 (2) [ ] The beneficiary or beneficiary's authorized agent has  
24 contacted the borrower as required under RCW 61.24.031 and the borrower  
25 or the borrower's designated representative requested a meeting. A  
26 meeting was held in compliance with RCW 61.24.031.

27 (3) [ ] The beneficiary or beneficiary's authorized agent has  
28 exercised due diligence to contact the borrower as required in RCW  
29 61.24.031(5) (~~and, after waiting fourteen days after the requirements~~  
30 ~~in RCW 61.24.031 were satisfied, the beneficiary or the beneficiary's~~  
31 ~~authorized agent sent to the borrower(s), by certified mail, return~~  
32 ~~receipt requested, the letter required under RCW 61.24.031)).~~

33 ((+3)) (4) [ ] The borrower has surrendered the secured property  
34 as evidenced by either a letter confirming the surrender or by delivery  
35 of the keys to the secured property to the beneficiary, the  
36 beneficiary's authorized agent or to the trustee.

1       (~~(4)~~) (5) [ ] Under RCW 61.24.031, the beneficiary or the  
2 beneficiary's authorized agent has verified information that, on or  
3 before the date of this declaration, the borrower(s) has filed for  
4 bankruptcy, and the bankruptcy stay remains in place, or the borrower  
5 has filed for bankruptcy and the bankruptcy court has granted relief  
6 from the bankruptcy stay allowing the enforcement of the deed of  
7 trust."

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

10       (1)(a) A housing counselor who is contacted by a borrower under RCW  
11 61.24.031 has a duty to act in good faith to attempt to reach a  
12 resolution with the beneficiary on behalf of the borrower within the  
13 ninety days provided from the date the beneficiary initiates contact  
14 with the borrower and the date the notice of default is issued. A  
15 resolution may include, but is not limited to, modification of the  
16 loan, an agreement to conduct a short sale, a deed in lieu of  
17 foreclosure transaction, or some other workout plan.

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

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

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

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

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

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

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

32       (3) A housing counselor or attorney assisting a borrower may refer  
33 the borrower to a mediation program, pursuant to section 7 of this act,  
34 if:

35       (a) The housing counselor or attorney determines that mediation is  
36 appropriate based on the individual circumstances; and

37       (b) A notice of sale on the deed of trust has not been recorded.

1 (4) A referral to mediation by a housing counselor or attorney does  
2 not preclude a trustee issuing a notice of default if the requirements  
3 of RCW 61.24.031 have been met.

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

8 (6) Housing counselors shall provide information to the department  
9 to assist the department in its annual report to the legislature as  
10 required under section 7(15) of this act. The information provided to  
11 the department by the housing counselors should include outcomes of  
12 foreclosures and be similar to the information requested in the  
13 national foreclosure mortgage counseling client level foreclosure  
14 outcomes report form.

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

17 (1) The foreclosure mediation program established in this section  
18 applies only to borrowers who have been referred to mediation by a  
19 housing counselor or attorney. The mediation program under this  
20 section is not governed by chapter 7.07 RCW and does not preclude  
21 mediation required by a court or other provision of law.

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

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

26 (a) Send a notice to the beneficiary, the borrower, the housing  
27 counselor or attorney who referred the borrower, and the trustee  
28 stating that the parties have been referred to mediation. The notice  
29 must include the statements and list of documents and information  
30 described in subsection (5)(b)(i) through (iv) of this section; and

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

32 (4)(a) Within forty-five days of receiving the referral from the  
33 department, the mediator shall convene a mediation session in the  
34 county where the borrower resides, unless the parties agree on another  
35 location. The parties may agree in writing to extend the time in which  
36 to schedule the mediation session. If the parties agree to extend the

1 time, the beneficiary shall notify the trustee of the extension and the  
2 date the mediator is expected to issue the mediator's certification.

3 (b) Prior to scheduling a mediation session, the mediator shall  
4 require that both parties sign a waiver stating that neither party may  
5 call the mediator as a live witness in any litigation pertaining to a  
6 foreclosure action between the parties. However, the mediator's  
7 certification may be deemed admissible evidence, subject to court  
8 rules, in any litigation pertaining to a foreclosure action between the  
9 parties.

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

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

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

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

25 (iii) A complete list of documents and information required by this  
26 section that the parties must provide to the mediator and the deadlines  
27 for providing the documents and information; and

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

33 (6) The borrower, the beneficiary or authorized agent, and the  
34 mediator must meet in person for the mediation session. However, a  
35 person with authority to agree to a resolution on behalf of the  
36 beneficiary may be present over the telephone or video conference  
37 during the mediation session.



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

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

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

14 (c) Any affordable loan modification calculation and net present  
15 value calculation when required under any federal mortgage relief  
16 program, including the home affordable modification program (HAMP) as  
17 applicable to government-sponsored enterprise and nongovernment-  
18 sponsored enterprise loans and any HAMP-related modification program  
19 applicable to loans insured by the federal housing administration, the  
20 veterans administration, and the rural housing service. If such a  
21 calculation is not required, then the beneficiary must use the current  
22 calculations, assumptions, and forms that are established by the  
23 federal deposit insurance corporation and published in the federal  
24 deposit insurance corporation loan modification program guide; and

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

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

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

31 (b) Failure of the beneficiary to provide the following  
32 documentation to the borrower and mediator at least ten days before the  
33 mediation or pursuant to the mediator's instructions:

34 (i) An accurate statement containing the balance of the loan as of  
35 the first day of the month in which the mediation occurs;

36 (ii) Copies of the note and deed of trust;

37 (iii) Proof that the entity claiming to be the beneficiary is the

1 owner of any promissory note or obligation secured by the deed of  
2 trust. Sufficient proof may be a copy of the declaration described in  
3 RCW 61.24.030(7)(a);

4 (iv) The best estimate of any arrearage and an itemized statement  
5 of the arrearages;

6 (v) An itemized list of the best estimate of fees and charges  
7 outstanding;

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

11 (vii) All borrower-related and mortgage-related input data used in  
12 any net present value analysis;

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

16 (ix) The most recently available appraisal or other broker price  
17 opinion most recently relied upon by the beneficiary; and

18 (x) The portion or excerpt of the pooling and servicing agreement  
19 that prohibits the beneficiary from implementing a modification, if the  
20 beneficiary claims it cannot implement a modification due solely to  
21 limitations in a pooling and servicing agreement, and documentation or  
22 a statement detailing the efforts of the beneficiary to obtain a waiver  
23 of the pooling and servicing agreement provisions;

24 (c) Failure of the borrower to provide documentation to the  
25 beneficiary and mediator, at least ten days before the mediation or  
26 pursuant to the mediator's instruction, showing the borrower's current  
27 and future income, debts and obligations, and tax returns for the past  
28 two years;

29 (d) Failure of either party to pay the respective portion of the  
30 mediation fee in advance of the mediation as required under this  
31 section;

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

35 (f) A request by a beneficiary that the borrower waive future  
36 claims he or she may have in connection with the deed of trust, as a  
37 condition of agreeing to a modification, except for rescission claims  
38 under the federal truth in lending act. Nothing in this section

1 precludes a beneficiary from requesting that a borrower dismiss with  
2 prejudice any pending claims against the beneficiary, its agents, loan  
3 servicer, or trustee, arising from the underlying deed of trust, as a  
4 condition of modification.

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

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

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

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

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

17 (e) A description of the net present value test used, along with a  
18 copy of the inputs, including the result of the net present value test  
19 expressed in a dollar amount.

20 (10) If the parties are unable to reach any agreement and the  
21 mediator certifies that the parties acted in good faith, the  
22 beneficiary may proceed with the foreclosure.

23 (11)(a) The mediator's certification that the beneficiary failed to  
24 act in good faith in mediation constitutes a defense to the nonjudicial  
25 foreclosure action that was the basis for initiating the mediation. In  
26 any action to enjoin the foreclosure, the beneficiary shall be entitled  
27 to rebut the allegation that it failed to act in good faith.

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

33 (c) If an agreement was not reached and the mediator's  
34 certification shows that the net present value of the modified loan  
35 exceeds the anticipated net recovery at foreclosure, that showing in  
36 the certification shall constitute a basis for the borrower to enjoin  
37 the foreclosure.

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

4 (13)(a) A trustee may not record the notice of sale until the  
5 trustee receives the mediator's certification stating that the  
6 mediation has been completed.

7 (b) If the trustee does not receive the mediator's certification,  
8 the trustee may record the notice of sale after ten days from the date  
9 the certification to the trustee was due. If the notice of sale is  
10 recorded under this subsection (13)(b) and the mediator subsequently  
11 issues a certification alleging the beneficiary violated the duty of  
12 good faith, the trustee may not proceed with the sale.

13 (14) A mediator may charge reasonable fees as authorized by this  
14 subsection and by the department. Unless the fee is waived or the  
15 parties agree otherwise, a foreclosure mediator's fee may not exceed  
16 four hundred dollars for a mediation session lasting between one hour  
17 and three hours. For a mediation session exceeding three hours, the  
18 foreclosure mediator may charge a reasonable fee, as authorized by the  
19 department. The mediator must provide an estimated fee before the  
20 mediation, and payment of the mediator's fee must be divided equally  
21 between the beneficiary and the borrower. The beneficiary and the  
22 borrower must tender the loan mediator's fee seven calendar days before  
23 the commencement of the mediation or pursuant to the mediator's  
24 instructions.

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

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

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

1 borrowers who report a default within a year of restructuring or  
2 modification;

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

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

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 61.24 RCW  
8 to read as follows:

9 (1) Section 7 of this act applies only to deeds of trust that are  
10 recorded against owner-occupied residential real property. The  
11 property must have been owner-occupied as of the date of the initial  
12 contact under RCW 61.24.031 was made.

13 (2) A borrower under a deed of trust on owner-occupied residential  
14 real property who has received a notice of default on or before the  
15 effective date this section may be referred to mediation under section  
16 7 of this act by a housing counselor or attorney.

17 (3) Section 7 of this act does not apply to deeds of trust:

18 (a) Securing a commercial loan;

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

21 (c) Securing a purchaser's obligations under a seller-financed  
22 sale.

23 (4) Section 7 of this act does not apply to association  
24 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

25 NEW SECTION. **Sec. 9.** A new section is added to chapter 61.24 RCW  
26 to read as follows:

27 The provisions of section 7 of this act do not apply to any  
28 federally insured depository institution, as defined in 12 U.S.C. Sec.  
29 461(b)(1)(A), that certifies to the department under penalty of perjury  
30 that it was not a beneficiary of deeds of trust in more than two  
31 hundred fifty trustee sales of owner-occupied residential real property  
32 that occurred in this state during the preceding calendar year. A  
33 federally insured depository institution certifying that section 7 of  
34 this act does not apply must do so annually, beginning no later than  
35 thirty days after the effective date of this section, and no later than  
36 January 31st of each year thereafter.

1        NEW SECTION.   **Sec. 10.**   A new section is added to chapter 61.24 RCW  
2   to read as follows:

3        (1) For the purposes of section 7 of this act, the department must  
4   maintain a list of approved foreclosure mediators.   The department may  
5   approve the following persons to serve as foreclosure mediators under  
6   this section:

7        (a) Attorneys who are active members of the Washington state bar  
8   association;

9        (b) Employees of United States department of housing and urban  
10   development-approved housing counseling agencies or approved by the  
11   Washington state housing finance commission;

12        (c) Employees or volunteers of dispute resolution centers under  
13   chapter 7.75 RCW; and

14        (d) Retired judges of Washington courts.

15        (2) The department may establish a required training program for  
16   foreclosure mediators and may require mediators to acquire training  
17   before being approved.   The mediators must be familiar with relevant  
18   aspects of the law, have knowledge of community-based resources and  
19   mortgage assistance programs, and refer borrowers to these programs  
20   where appropriate.

21        (3) The department may remove any mediator from the approved list  
22   of mediators.

23        NEW SECTION.   **Sec. 11.**   A new section is added to chapter 61.24 RCW  
24   to read as follows:

25        The foreclosure fairness account is created in the custody of the  
26   state treasurer.   All receipts received under section 12 of this act  
27   must be deposited into the account.   Only the director of the  
28   department of commerce or the director's designee may authorize  
29   expenditures from the account.   The account is subject to allotment  
30   procedures under chapter 43.88 RCW, but an appropriation is not  
31   required for expenditures.   Expenditures from the account must be used  
32   as follows:   (1) No less than eighty percent must be used for the  
33   purposes of providing housing counselors for borrowers, except that  
34   this amount may be less than eighty percent only if necessary to meet  
35   the funding level specified for the office of the attorney general  
36   under subsection (2) of this section and the department under  
37   subsection (4) of this section; (2) up to six percent, or six hundred

1 fifty-five thousand dollars per biennium, whichever amount is greater,  
2 to the office of the attorney general to be used by the consumer  
3 protection division to enforce this chapter; (3) up to two percent to  
4 the office of civil legal aid to be used for the purpose of contracting  
5 with qualified legal aid programs for legal representation of  
6 homeowners in matters relating to foreclosure. Funds provided under  
7 this subsection (3) must be used to supplement, not supplant, other  
8 federal, state, and local funds; (4) up to nine percent, or four  
9 hundred fifty-one thousand dollars per biennium, whichever amount is  
10 greater, to the department to be used for implementation and operation  
11 of the foreclosure fairness act; and (5) up to three percent to the  
12 department of financial institutions to conduct homeowner prepurchase  
13 and postpurchase outreach and education programs as defined in RCW  
14 43.320.150.

15 The department shall enter into interagency agreements to contract  
16 with the Washington state housing finance commission and other  
17 appropriate entities to implement the foreclosure fairness act.

18 NEW SECTION. **Sec. 12.** A new section is added to chapter 61.24 RCW  
19 to read as follows:

20 (1) Except as provided in subsection (4) of this section, beginning  
21 October 1, 2011, and every quarter thereafter, every beneficiary  
22 issuing notices of default, or directing that a trustee or authorized  
23 agent issue the notice of default, on owner-occupied residential real  
24 property under this chapter must:

25 (a) Report to the department the number of owner-occupied  
26 residential real properties for which the beneficiary has issued a  
27 notice of default during the previous quarter; and

28 (b) Remit the amount required under subsection (2) of this section.

29 (2) For each owner-occupied residential real property for which a  
30 notice of default has been issued, the beneficiary issuing the notice  
31 of default, or directing that a trustee or authorized agent issue the  
32 notice of default, shall remit two hundred fifty dollars to the  
33 department to be deposited, as provided under section 11 of this act,  
34 into the foreclosure fairness account. The two hundred fifty dollar  
35 payment is required per property and not per notice of default. The  
36 beneficiary shall remit the total amount required in a lump sum each  
37 quarter.

1 (3) No later than thirty days after the effective date of this  
2 section, the beneficiaries required to report and remit to the  
3 department under this section shall determine the number of owner-  
4 occupied residential real properties for which notices of default were  
5 issued during the three months prior to the effective date of this  
6 section. The beneficiary shall remit to the department a one-time sum  
7 of two hundred fifty dollars multiplied by the number of properties.  
8 The department shall deposit the funds into the foreclosure fairness  
9 account as provided under section 11 of this act.

10 (4) This section does not apply to any beneficiary or loan servicer  
11 that is a federally insured depository institution, as defined in 12  
12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of perjury  
13 that it has issued, or has directed a trustee or authorized agent to  
14 issue, fewer than two hundred fifty notices of default in the preceding  
15 year.

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

18 NEW SECTION. **Sec. 13.** A new section is added to chapter 61.24 RCW  
19 to read as follows:

20 Any duty that servicers may have to maximize net present value  
21 under their pooling and servicing agreements is owed to all parties in  
22 a deed of trust pool, not to any particular parties, and a servicer  
23 acts in the best interests of all parties if it agrees to or implements  
24 a modification or workout plan when both of the following apply:

25 (1) The deed of trust is in payment default, or payment default is  
26 reasonably imminent; and

27 (2) Anticipated recovery under a modification or workout plan  
28 exceeds the anticipated recovery through foreclosure on a net present  
29 value basis.

30 **Sec. 14.** RCW 61.24.135 and 2008 c 153 s 6 are each amended to read  
31 as follows:

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



1 of trust. The trustee may decline to complete a sale or deliver the  
2 trustee's deed and refund the purchase price, if it appears that the  
3 bidding has been collusive or defective, or that the sale might have  
4 been void. However, it is not an unfair or deceptive act or practice  
5 for any person, including a trustee, to state that a property subject  
6 to a recorded notice of trustee's sale or subject to a sale conducted  
7 pursuant to this chapter is being sold in an "as-is" condition, or for  
8 the beneficiary to arrange to provide financing for a particular bidder  
9 or to reach any good faith agreement with the borrower, grantor, any  
10 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 section 7 of this act; (b) fail to comply with  
15 the requirements of section 12 of this act; or (c) fail to initiate  
16 contact with a borrower and exercise due diligence as required under  
17 RCW 61.24.031.

18 **Sec. 15.** RCW 82.45.030 and 1993 sp.s. c 25 s 503 are each amended  
19 to read as follows:

20 (1) As used in this chapter, the term "selling price" means the  
21 true and fair value of the property conveyed. If property has been  
22 conveyed in an arm's length transaction between unrelated persons for  
23 a valuable consideration, a rebuttable presumption exists that the  
24 selling price is equal to the total consideration paid or contracted to  
25 be paid to the transferor, or to another for the transferor's benefit.

26 (2) If the sale is a transfer of a controlling interest in an  
27 entity with an interest in real property located in this state, the  
28 selling price shall be the true and fair value of the real property  
29 owned by the entity and located in this state. If the true and fair  
30 value of the real property located in this state cannot reasonably be  
31 determined, the selling price shall be determined according to  
32 subsection (4) of this section.

33 (3) As used in this section, "total consideration paid or  
34 contracted to be paid" includes money or anything of value, paid or  
35 delivered or contracted to be paid or delivered in return for the sale,  
36 and shall include the amount of any lien, mortgage, contract

1 indebtedness, or other incumbrance, either given to secure the purchase  
2 price, or any part thereof, or remaining unpaid on such property at the  
3 time of sale.

4 Total consideration shall not include the amount of any outstanding  
5 lien or incumbrance in favor of the United States, the state, or a  
6 municipal corporation for taxes, special benefits, or improvements.

7 When a transfer or conveyance is made by deed in lieu of  
8 foreclosure to satisfy a deed of trust, total consideration shall not  
9 include the amount of any relocation assistance provided to the  
10 transferor.

11 (4) If the total consideration for the sale cannot be ascertained  
12 or the true and fair value of the property to be valued at the time of  
13 the sale cannot reasonably be determined, the market value assessment  
14 for the property maintained on the county property tax rolls at the  
15 time of the sale shall be used as the selling price.

16 NEW SECTION. Sec. 16. A new section is added to chapter 61.24 RCW  
17 to read as follows:

18 (1)(a) The department must develop model language for the initial  
19 contact letter to be used by beneficiaries as required under RCW  
20 61.24.031. The model language must explain how the borrower may  
21 respond to the letter. The department must develop the model language  
22 in both English and Spanish and both versions must be contained in the  
23 same letter.

24 (b) No later than thirty days after the effective date of this  
25 section, the department must create the following forms:

26 (i) The notice form to be used by housing counselors and attorneys  
27 to refer borrowers to mediation under section 7 of this act;

28 (ii) The notice form stating that the parties have been referred to  
29 mediation along with the required information under section 7(3)(a) of  
30 this act;

31 (iii) The waiver form as required in section 7(4)(b) of this act;

32 (iv) The scheduling form notice in section 7(5)(b) of this act; and

33 (v) The form for the mediator's written certification of mediation.

34 (2) The department may create rules to implement the mediation  
35 program under section 7 of this act and to administer the funds as  
36 required under section 11 of this act.

1        NEW SECTION.    **Sec. 17.**    2009 c 292 s 13 (uncodified) is repealed.

2        NEW SECTION.    **Sec. 18.**    If any provision of this act or its  
3 application to any person or circumstance is held invalid, the  
4 remainder of the act or the application of the provision to other  
5 persons or circumstances is not affected.

6        NEW SECTION.    **Sec. 19.**    Sections 11, 12, and 16 of this act are  
7 necessary for the immediate preservation of the public peace, health,  
8 or safety, or support of the state government and its existing public  
9 institutions, and take effect immediately."

**2SHB 1362** - S COMM AMD

By Committee on Financial Institutions, Housing & Insurance

**ADOPTED 03/29/2011**

10        On page 1, line 2 of the title, after "foreclosures;" strike the  
11 remainder of the title and insert "amending RCW 61.24.030, 61.24.031,  
12 61.24.135, and 82.45.030; reenacting and amending RCW 61.24.005; adding  
13 new sections to chapter 61.24 RCW; creating new sections; repealing  
14 2009 c 292 s 13 (uncodified); and declaring an emergency."

EFFECT:    The department is to include additional information in  
its annual report regarding the mediation program.    Community  
association beneficiaries are not subject to the mediation requirements  
or the \$250 Notice of Default fee under this act.    Financial  
institutions who are not subject to the mediation requirements are to  
report their exemption to the department by January 31st (vs. January  
10th) annually.    Housing counselors are to be approved by HUD or the  
Washington State Housing Finance Commission.    It is clarified as to who  
is eligible to be a foreclosure mediator.    Any loan servicer who is a  
federally insured depository institution that issues less than 250  
notices of default in the preceding year are not subject to the \$250  
Notice of Default fee.    Technical changes are made.

--- END ---