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**SUBSTITUTE HOUSE BILL 2421**

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**State of Washington                      62nd Legislature                      2012 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Orwall, Rodne, Ladenburg, Upthegrove, Tharinger, Maxwell, Kelley, Kenney, Kagi, Moscoso, and Jinkins; by request of Washington State Department of Commerce)

READ FIRST TIME 01/31/12.

1            AN ACT Relating to modifying the foreclosure fairness act; amending  
2 RCW 61.24.031, 61.24.160, 61.24.163, 61.24.169, 61.24.174, 61.24.030,  
3 61.24.040, and 61.24.172; adding a new section to chapter 61.24 RCW;  
4 and declaring an emergency.

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

6            **Sec. 1.** RCW 61.24.031 and 2011 c 58 s 5 are each amended to read  
7 as follows:

8            (1)(a) A trustee, beneficiary, or authorized agent may not issue a  
9 notice of default under RCW 61.24.030(8) until: (i) Thirty days after  
10 ~~((initial contact with the borrower was initiated as required under (b)~~  
11 ~~of this subsection or thirty days after))~~ satisfying the due diligence  
12 requirements as described in subsection (5) of this section and the  
13 borrower has not responded; or (ii) if the borrower responds to the  
14 initial contact, ninety days after the initial contact with the  
15 borrower was initiated.

16            (b) A beneficiary or authorized agent shall make initial contact  
17 with the borrower by letter to provide the borrower with information  
18 required under (c) of this subsection and by telephone as required  
19 under subsection (5) of this section. The letter required under this

1 subsection must be mailed in accordance with subsection (5)(a) of this  
2 section and must include the information described in (c) of this  
3 subsection and subsection (5)(e)(i) through (iv) of this section.

4 (c) The letter required under this subsection, developed by the  
5 department pursuant to RCW 61.24.033, at a minimum shall include:

6 (i) A paragraph printed in no less than twelve-point font and  
7 bolded that reads:

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

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

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

20 If you filed bankruptcy or have been discharged in bankruptcy, this  
21 communication is not intended as an attempt to collect a debt from you  
22 personally, but is notice of enforcement of the deed of trust lien  
23 against the property. If you wish to avoid foreclosure and keep your  
24 property, this notice sets forth your rights and options."

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

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

35 (iv) A paragraph explaining how the borrower may respond to the  
36 letter and stating that after responding the borrower will have an  
37 opportunity to meet with his or her beneficiary in an attempt to

1 resolve and try to work out an alternative to the foreclosure and that,  
2 after ninety days from the date of the letter, a notice of default may  
3 be issued, which starts the foreclosure process.

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

10 (e) If a meeting is requested by the borrower or the borrower's  
11 housing counselor or attorney, the beneficiary or authorized agent  
12 shall schedule the meeting to occur before the notice of default is  
13 issued. An assessment of the borrower's financial ability to modify or  
14 restructure the loan obligation and a discussion of options must occur  
15 during the meeting scheduled for that purpose.

16 (f) The meeting scheduled to assess the borrower's financial  
17 ability to modify or restructure the loan obligation and discuss  
18 options to avoid foreclosure (~~(must be in person, unless the~~  
19 ~~requirement to meet in person is waived in writing by the borrower or~~  
20 ~~the borrower's representative. A person who is authorized to modify~~  
21 ~~the loan obligation or reach an alternative resolution to foreclosure~~  
22 ~~on behalf of the beneficiary may participate by telephone or video~~  
23 ~~conference, so long as a representative of the beneficiary is at the~~  
24 ~~meeting in person)) may be held telephonically, unless the borrower or  
25 borrower's representative requests in writing that a meeting be held in  
26 person. The written request for an in-person meeting must be made  
27 within thirty days of the initial contact with the borrower. If the  
28 meeting is requested to be held in person, the meeting must be held in  
29 the county where the borrower resides. A person who is authorized to  
30 agree to a resolution, including modifying or restructuring the loan  
31 obligation or other alternative resolution to foreclosure on behalf of  
32 the beneficiary, must be present either in person or on the telephone  
33 or video conference during the meeting.~~

34 (2) A notice of default issued under RCW 61.24.030(8) must include  
35 a declaration, as provided in subsection (9) of this section, from the  
36 beneficiary or authorized agent that it has contacted the borrower as  
37 provided in subsection (1) of this section, it has tried with due  
38 diligence to contact the borrower under subsection (5) of this section,

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

8 (3) If, after the initial contact under subsection (1) of this  
9 section, a borrower has designated a housing counseling agency, housing  
10 counselor, or attorney to discuss with the beneficiary or authorized  
11 agent, on the borrower's behalf, options for the borrower to avoid  
12 foreclosure, the borrower shall inform the beneficiary or authorized  
13 agent and provide the contact information to the beneficiary or  
14 authorized agent. The beneficiary or authorized agent shall contact  
15 the designated representative for the borrower to meet.

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

25 (5) A notice of default may be issued under RCW 61.24.030(8) if a  
26 beneficiary or authorized agent has initiated contact with the borrower  
27 as required under subsection (1)(b) of this section and the failure to  
28 meet with the borrower occurred despite the due diligence of the  
29 beneficiary or authorized agent. Due diligence requires the following:

30 (a) A beneficiary or authorized agent shall first attempt to  
31 contact a borrower by sending a first-class letter to the address in  
32 the beneficiary's records for sending account statements to the  
33 borrower and to the address of the property encumbered by the deed of  
34 trust. The letter must be the letter described in subsection (1)(c) of  
35 this section.

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 (iv) The telephonic contact under this subsection (5)(b) does not  
15 constitute the meeting under subsection (1)(f) of this section.

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

28 (d) The beneficiary or authorized agent shall provide a means for  
29 the borrower to contact the beneficiary or authorized agent in a timely  
30 manner, including a toll-free telephone number or charge-free  
31 equivalent that will provide access to a live representative during  
32 business hours for the purpose of initiating and scheduling the meeting  
33 under subsection (1)(f) of this section.

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

37 (i) Options that may be available to borrowers who are unable to

1 afford their mortgage payments and who wish to avoid foreclosure, and  
2 instructions to borrowers advising them on steps to take to explore  
3 those options;

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

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

10 (iv) The toll-free telephone number or charge-free equivalent made  
11 available by the department to find a department-approved housing  
12 counseling agency.

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

15 ~~(a)) the borrower has surrendered the property as evidenced by~~  
16 ~~either a letter confirming the surrender or delivery of the keys to the~~  
17 ~~property to the trustee, beneficiary, or authorized agent(~~~~or~~

18 ~~(b) The borrower has filed for bankruptcy, and the bankruptcy stay~~  
19 ~~remains in place, or the borrower has filed for bankruptcy and the~~  
20 ~~bankruptcy court has granted relief from the bankruptcy stay allowing~~  
21 ~~enforcement of the deed of trust)).~~

22 (7)(a) This section applies only to deeds of trust that are  
23 recorded against owner-occupied residential real property. This  
24 section does not apply to deeds of trust: (i) Securing a commercial  
25 loan; (ii) securing obligations of a grantor who is not the borrower or  
26 a guarantor; or (iii) securing a purchaser's obligations under a  
27 seller-financed sale.

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

30 (8) As used in this section:

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

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

37 (9) The form of declaration to be provided by the beneficiary or

1 authorized agent as required under subsection (2) of this section must  
2 be in substantially the following form:

3 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

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

20 (3) [ ] The beneficiary or beneficiary's authorized agent has  
21 exercised due diligence to contact the borrower as required in RCW  
22 61.24.031(5).

23 (4) [ ] The borrower has surrendered the secured property as  
24 evidenced by either a letter confirming the surrender or by delivery of  
25 the keys to the secured property to the beneficiary, the beneficiary's  
26 authorized agent or to the trustee.

27 ~~((5) [ ] Under RCW 61.24.031, the beneficiary or the beneficiary's  
28 authorized agent has verified information that, on or before the date  
29 of this declaration, the borrower(s) has filed for bankruptcy, and the  
30 bankruptcy stay remains in place, or the borrower has filed for  
31 bankruptcy and the bankruptcy court has granted relief from the  
32 bankruptcy stay allowing the enforcement of the deed of trust.))"~~

33 **Sec. 2.** RCW 61.24.160 and 2011 c 58 s 6 are each amended to read  
34 as follows:

35 (1)(a) A housing counselor who is contacted by a borrower under RCW  
36 61.24.031 has a duty to act in good faith to attempt to reach a

1 resolution with the beneficiary on behalf of the borrower within the  
2 ninety days provided from the date the beneficiary initiates contact  
3 with the borrower and the date the notice of default is issued. A  
4 resolution may include, but is not limited to, modification of the  
5 loan, an agreement to conduct a short sale, a deed in lieu of  
6 foreclosure transaction, or some other workout plan.

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

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

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

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

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

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

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

21 (3) A housing counselor or attorney assisting a borrower may refer  
22 the borrower to ((a)) mediation ((program)), pursuant to RCW 61.24.163,  
23 if((+)

24 ~~((a))) the housing counselor or attorney determines that mediation~~  
25 ~~is appropriate based on the individual circumstances((+and~~

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

27 ~~((4))) and the borrower has received a notice of default. The~~  
28 ~~referral to mediation may be made any time after a notice of default~~  
29 ~~has been issued but no later than twenty days after the date a notice~~  
30 ~~of sale has been recorded.~~

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

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



1 (6) Housing counselors shall provide information to the department  
2 to assist the department in its annual report to the legislature as  
3 required under RCW 61.24.163(~~((15))~~) (18). The information provided to  
4 the department by the housing counselors should include outcomes of  
5 foreclosures and be similar to the information requested in the  
6 national foreclosure mortgage counseling client level foreclosure  
7 outcomes report form.

8 **Sec. 3.** RCW 61.24.163 and 2011 2nd sp.s. c 4 s 1 are each amended  
9 to read as follows:

10 (1) The foreclosure mediation program established in this section  
11 applies only to borrowers who have been referred to mediation by a  
12 housing counselor or attorney. The referral to mediation may be made  
13 any time after a notice of default has been issued but no later than  
14 twenty days after the date a notice of sale has been recorded. The  
15 mediation program under this section is not governed by chapter 7.07  
16 RCW and does not preclude mediation required by a court or other  
17 provision of law.

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

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

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

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

30 (4) Within (~~(forty-five))~~) twenty-three days of the department's  
31 notice that the parties have been referred to mediation, the borrower  
32 shall transmit the documents required for mediation to the mediator and  
33 the beneficiary. The required documents include an initial Making Home  
34 Affordable Application (HAMP) package or such other equivalent  
35 homeowner financial information worksheet as required by the  
36 department. In the event the department is required to create a

1 worksheet, the worksheet must include, at a minimum, the following  
2 information:

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

4 (b) Debts and obligations;

5 (c) Assets;

6 (d) Expenses;

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

8 (f) Hardship information;

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

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

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

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

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

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

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

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

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

37 (h) An explanation regarding any denial for a loan modification,

1 forbearance, or other alternative to foreclosure in sufficient detail  
2 for a reasonable person to understand why the decision was made;

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

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

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

20 ~~((+5))~~ (7)(a) The mediator may schedule phone conferences,  
21 consultations with the parties individually, and other communications  
22 to ensure that the parties have all the necessary information and  
23 documents to engage in a productive mediation.

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

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

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

35 ~~((iii) ((A complete list of documents and information required by~~  
36 ~~this section that the parties must provide to the mediator and the~~  
37 ~~deadlines for providing the documents and information; and~~

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

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

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

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

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

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

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

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

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

7 ~~((+8))~~ (10) A violation of the duty to mediate in good faith as  
8 required under this section may include:

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

10 (b) Failure of the borrower or the beneficiary to provide the  
11 ~~((following documentation to the borrower and mediator at least ten~~  
12 ~~days before the mediation or pursuant to the mediator's instructions;~~

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

15 ~~(ii) Copies of the note and deed of trust;~~

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

20 ~~(iv) The best estimate of any arrearage and an itemized statement~~  
21 ~~of the arrearages;~~

22 ~~(v) An itemized list of the best estimate of fees and charges~~  
23 ~~outstanding;~~

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

27 ~~(vii) All borrower-related and mortgage-related input data used in~~  
28 ~~any net present value analysis;~~

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

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

34 ~~(x) The portion or excerpt of the pooling and servicing agreement~~  
35 ~~that prohibits the beneficiary from implementing a modification, if the~~  
36 ~~beneficiary claims it cannot implement a modification due solely to~~  
37 ~~limitations in a pooling and servicing agreement, and documentation or~~

1 a statement detailing the efforts of the beneficiary to obtain a waiver  
2 of the pooling and servicing agreement provisions;

3 ~~(c) Failure of the borrower to provide documentation to the~~  
4 ~~beneficiary and mediator, at least ten days before the mediation or~~  
5 ~~pursuant to the mediator's instruction, showing the borrower's current~~  
6 ~~and future income, debts and obligations, and tax returns for the past~~  
7 ~~two years;~~

8 ~~(d) Failure of either party to pay the respective portion of the~~  
9 ~~mediation fee in advance of the mediation as required under this~~  
10 ~~section;~~

11 ~~(e))~~ documentation required before mediation or pursuant to the  
12 mediator's instructions;

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

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

24 ~~((+9))~~ (11) If the mediator reasonably believes a borrower will  
25 not attend a mediation session based on the borrower's conduct, such as  
26 the lack of response to the mediator's communications, the mediator may  
27 cancel a scheduled mediation session and send a written cancellation to  
28 the department and the trustee and send copies to the parties. The  
29 beneficiary may proceed with the foreclosure after receipt of the  
30 mediator's written confirmation of cancellation.

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

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

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

37 (c) Whether a resolution was reached by the parties, including

1 whether the default was cured by reinstatement, modification, or  
2 restructuring of the debt, or some other alternative to foreclosure was  
3 agreed upon by the parties;

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

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

10 ~~((+10))~~ (13) If the parties are unable to reach ~~((any agreement~~  
11 ~~and the mediator certifies that the parties acted in good faith, the~~  
12 ~~beneficiary may proceed with the foreclosure.~~

13 ~~(+11))~~ an agreement, the beneficiary may proceed with the  
14 foreclosure after receipt of the mediator's written certification.

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

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

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

31 ~~((+12))~~ (15) The mediator's certification that the borrower failed  
32 to act in good faith in mediation authorizes the beneficiary to proceed  
33 with the foreclosure.

34 ~~((+13))~~ (16)(a) If a borrower has been referred to mediation  
35 before a notice of trustee sale has been recorded, a trustee may not  
36 record the notice of sale until the trustee receives the mediator's  
37 certification stating that the mediation has been completed. ~~((+b))~~ If  
38 the trustee does not receive the mediator's certification, the trustee

1 may record the notice of sale after ten days from the date the  
2 certification to the trustee was due. If ~~((the))~~, after a notice of  
3 sale is recorded under this subsection ~~((+13)(b) and))~~ (16)(a), the  
4 mediator subsequently issues a certification ~~((alleging))~~ finding that  
5 the beneficiary violated the duty of good faith, ~~((the trustee may not~~  
6 ~~proceed with the sale.~~

7 ~~(+14))~~ the certification constitutes a basis for the borrower to  
8 enjoin the foreclosure.

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

13 (17) 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 preparing, scheduling, and conducting a  
17 mediation session lasting between one hour and three hours. For a  
18 mediation session exceeding three hours, the foreclosure mediator may  
19 charge a reasonable fee, as authorized by the department. The mediator  
20 must provide an estimated fee before the mediation, and payment of the  
21 mediator's fee must be divided equally between the beneficiary and the  
22 borrower. The beneficiary and the borrower must tender the loan  
23 mediator's fee ~~((seven))~~ within thirty calendar days ~~((before the~~  
24 ~~commencement of the))~~ from receipt of the department's letter referring  
25 the parties to mediation or pursuant to the mediator's instructions.

26 ~~((+15))~~ (18) Beginning December 1, 2012, and every year  
27 thereafter, the department shall report annually to the legislature on:

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

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



1 interest rate reductions, and, to the extent practical, the number of  
2 borrowers who report a default within a year of restructuring or  
3 modification;

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

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

8 **Sec. 4.** RCW 61.24.169 and 2011 2nd sp.s. c 4 s 2 are each amended  
9 to read as follows:

10 (1) For the purposes of RCW 61.24.163, the department must maintain  
11 a list of approved foreclosure mediators. The department may approve  
12 the following persons to serve as foreclosure mediators under this  
13 section if the person has completed ten mediations and either a forty-  
14 hour mediation course and sixty hours of mediating or has two hundred  
15 hours experience mediating:

16 (a) Attorneys who are active members of the Washington state bar  
17 association;

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

21 (c) Employees or volunteers of dispute resolution centers under  
22 chapter 7.75 RCW; (~~and~~))

23 (d) Retired judges of Washington courts; and

24 (e) Other experienced mediators.

25 (2) The department may establish a required training program for  
26 foreclosure mediators and may require mediators to acquire training  
27 before being approved. The mediators must be familiar with relevant  
28 aspects of the law, have knowledge of community-based resources and  
29 mortgage assistance programs, and refer borrowers to these programs  
30 where appropriate.

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

33 (4)(a) A mediator under this section (~~who is an employee or~~  
34 ~~volunteer of a dispute resolution center under chapter 7.75 RCW)) is~~  
35 immune from suit in any civil action based on any proceedings or other  
36 official acts performed in his or her capacity as a foreclosure  
37 mediator, except in cases of willful or wanton misconduct.

1 (b) A mediator is not subject to discovery or compulsory process to  
2 testify in any litigation pertaining to a foreclosure action between  
3 the parties. However, the mediator's certification and all information  
4 and material presented as part of the mediation process may be deemed  
5 admissible evidence, subject to court rules, in any litigation  
6 pertaining to a foreclosure action between the parties.

7 **Sec. 5.** RCW 61.24.174 and 2011 1st sp.s. c 24 s 1 are each amended  
8 to read as follows:

9 (1) Except as provided in subsection (~~((4))~~) (5) of this section,  
10 beginning October 1, 2011, and every quarter thereafter, every  
11 beneficiary issuing notices of default, or directing that a trustee or  
12 authorized agent issue the notice of default, on owner-occupied  
13 residential real property under this chapter must:

14 (a) Report to the department the number of owner-occupied  
15 residential real properties for which the beneficiary has issued a  
16 notice of default during the previous quarter; (~~and~~)

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

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

23 (2) For each owner-occupied residential real property for which a  
24 notice of default has been issued, the beneficiary issuing the notice  
25 of default, or directing that a trustee or authorized agent issue the  
26 notice of default, shall remit two hundred fifty dollars to the  
27 department to be deposited, as provided under RCW 61.24.172, into the  
28 foreclosure fairness account. The two hundred fifty dollar payment is  
29 required per property and not per notice of default. The beneficiary  
30 shall remit the total amount required in a lump sum each quarter.

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

33 (4) No later than thirty days after April 14, 2011, the  
34 beneficiaries required to report and remit to the department under this  
35 section shall determine the number of owner-occupied residential real  
36 properties for which notices of default were issued during the three  
37 months prior to April 14, 2011. The beneficiary shall remit to the

1 department a one-time sum of two hundred fifty dollars multiplied by  
2 the number of properties. In addition, by July 31, 2011, the  
3 beneficiaries required to report and remit to the department under this  
4 section shall remit to the department another one-time sum of two  
5 hundred fifty dollars multiplied by the number of owner-occupied  
6 residential real properties for which notices of default were issued  
7 from April 14, 2011, through June 30, 2011. The department shall  
8 deposit the funds into the foreclosure fairness account as provided  
9 under RCW 61.24.172.

10 ~~((+4))~~ (5) This section does not apply to any beneficiary or loan  
11 servicer that is a federally insured depository institution, as defined  
12 in 12 U.S.C. Sec. 461(b)(1)(A), and that certifies under penalty of  
13 perjury that it has issued, or has directed a trustee or authorized  
14 agent to issue, fewer than two hundred fifty notices of default in the  
15 preceding year.

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

18 **Sec. 6.** RCW 61.24.030 and 2011 c 58 s 4 are each amended to read  
19 as follows:

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

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

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

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

32 (4) That no action commenced by the beneficiary of the deed of  
33 trust is now pending to seek satisfaction of an obligation secured by  
34 the deed of trust in any court by reason of the grantor's default on  
35 the obligation secured: PROVIDED, That (a) the seeking of the  
36 appointment of a receiver shall not constitute an action for purposes  
37 of this chapter; and (b) if a receiver is appointed, the grantor shall

1 be entitled to any rents or profits derived from property subject to a  
2 homestead as defined in RCW 6.13.010. If the deed of trust was granted  
3 to secure a commercial loan, this subsection shall not apply to actions  
4 brought to enforce any other lien or security interest granted to  
5 secure the obligation secured by the deed of trust being foreclosed;

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

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

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

21 (b) Unless the trustee has violated his or her duty under RCW  
22 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
23 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~Can you pay and stop the foreclosure process?~~

2 ~~Do you dispute the failure to pay?~~

3 ~~Can you sell your property to preserve your equity?~~

4 ~~Are you able to refinance this loan or obligation with a new loan~~  
5 ~~or obligation from another lender with payments, terms, and fees that~~  
6 ~~are more affordable?~~

7 ~~Do you qualify for any government or private homeowner assistance~~  
8 ~~programs?~~

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

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

19 ~~You may feel you need help understanding what to do. There are a~~  
20 ~~number of professional resources available, including home loan~~  
21 ~~counselors and attorneys, who may assist you. Many legal services are~~  
22 ~~lower cost or even free, depending on your ability to pay. If you~~  
23 ~~desire legal help in understanding your options or handling this~~  
24 ~~default, you may obtain a referral (at no charge) by contacting the~~  
25 ~~county bar association in the county where your home is located. These~~  
26 ~~legal referral services also provide information about lower cost or~~  
27 ~~free legal services for those who qualify. You may contact the~~  
28 ~~Department of Financial Institutions or the statewide civil legal aid~~  
29 ~~hotline for possible assistance or referrals" ) )~~

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

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

34 **CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW**  
35 **to assess your situation and refer you to mediation if you might**  
36 **benefit. Mediation **MUST** be requested between the time you receive the**

1 Notice of Default and no later than twenty days after the Notice of  
2 Trustee Sale is recorded.

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

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

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

10 **SEEKING ASSISTANCE**

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

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

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

18 The United States Department of Housing and Urban Development

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

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

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

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

26 (1) In the event the property secured by the deed of trust is  
27 residential real property, the name and address of the owner of any  
28 promissory notes or other obligations secured by the deed of trust and  
29 the name, address, and telephone number of a party acting as a servicer  
30 of the obligations secured by the deed of trust; and

31 (9) That, for owner-occupied residential real property, before the  
32 notice of the trustee's sale is recorded, transmitted, or served, the  
33 beneficiary has complied with RCW 61.24.031 and, if applicable, RCW  
34 61.24.163.

35 **Sec. 7.** RCW 61.24.040 and 2009 c 292 s 9 are each amended to read  
36 as follows:

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

3 (1) At least ninety days before the sale, or if a letter under RCW  
4 61.24.031 is required, at least one hundred twenty days before the  
5 sale, the trustee shall:

6 (a) Record a notice in the form described in (f) of this subsection  
7 in the office of the auditor in each county in which the deed of trust  
8 is recorded;

9 (b) To the extent the trustee elects to foreclose its lien or  
10 interest, or the beneficiary elects to preserve its right to seek a  
11 deficiency judgment against a borrower or grantor under RCW  
12 61.24.100(3)(a), and if their addresses are stated in a recorded  
13 instrument evidencing their interest, lien, or claim of lien, or an  
14 amendment thereto, or are otherwise known to the trustee, cause a copy  
15 of the notice of sale described in (f) of this subsection to be  
16 transmitted by both first-class and either certified or registered  
17 mail, return receipt requested, to the following persons or their legal  
18 representatives, if any, at such address:

19 (i) The borrower and grantor;

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

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

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

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



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

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

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

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

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

26 NOTICE OF TRUSTEE'S SALE

27 I.

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

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

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

12 II.

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

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

20 III.

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

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

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

25 IV.

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

31 V.

32 The above-described real property will be sold to satisfy the expense  
33 of sale and the obligation secured by the Deed of Trust as provided by  
34 statute. The sale will be made without warranty, express or implied,

1 regarding title, possession, or encumbrances on the . . . . day of  
2 . . . . ., . . . . The default(s) referred to in paragraph III must be  
3 cured by the . . . . day of . . . . ., . . . . (11 days before the sale  
4 date), to cause a discontinuance of the sale. The sale will be  
5 discontinued and terminated if at any time on or before the . . . . day  
6 of . . . . ., . . . ., (11 days before the sale date), the default(s)  
7 as set forth in paragraph III is/are cured and the Trustee's fees and  
8 costs are paid. The sale may be terminated any time after the . . . .  
9 day of . . . . ., . . . . (11 days before the sale date), and before  
10 the sale by the Borrower, Grantor, any Guarantor, or the holder of any  
11 recorded junior lien or encumbrance paying the entire principal and  
12 interest secured by the Deed of Trust, plus costs, fees, and advances,  
13 if any, made pursuant to the terms of the obligation and/or Deed of  
14 Trust, and curing all other defaults.

15 VI.

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

18 .....  
19 .....  
20 .....

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

28 VII.

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

32 VIII.

33 The effect of the sale will be to deprive the Grantor and all those who

1 hold by, through or under the Grantor of all their interest in the  
2 above-described property.

3 IX.

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

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

10

11 .....

12 ..... , Trustee

13 ..... }  
14 ..... } Address  
15 ..... }  
16 ..... } Phone

17 [Acknowledgment]

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

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

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

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

29 **SEEKING ASSISTANCE**

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

1 The statewide foreclosure hotline for assistance and referral to  
2 housing counselors recommended by the Housing Finance Commission  
3 Telephone: . . . . . Web site: . . . . .

4 The United States Department of Housing and Urban Development  
5 Telephone: . . . . . Web site: . . . . .

6 The statewide civil legal aid hotline for assistance and referrals to  
7 other housing counselors and attorneys  
8 Telephone: . . . . . Web site: . . . . ."

9 The beneficiary or trustee shall obtain the toll-free numbers and  
10 web site information from the department for inclusion in the notice.

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

15 NOTICE OF FORECLOSURE

16 Pursuant to the Revised Code of Washington,

17 Chapter 61.24 RCW

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

23 To cure the default(s), you must bring the payments current, cure  
24 any other defaults, and pay accrued late charges and other costs,  
25 advances, and attorneys' fees as set forth below by the . . . . day of  
26 . . . . ., . . . . [11 days before the sale date]. To date, these  
27 arrears and costs are as follows:

28		Estimated amount
29	Currently due	that will be due

1 to reinstate to reinstate  
 2 on . . . . . on . . . . .  
 3 . . . . . . . . . .  
 4 (11 days before  
 5 the date set  
 6 for sale)

7	Delinquent payments		
8	from . . . . .,		
9	. . . , in the		
10	amount of		
11	\$ . . . /mo.:	\$ . . . .	\$ . . . .
12	Late charges in		
13	the total		
14	amount of:	\$ . . . .	\$ . . . .
15			Estimated
16			Amounts
17	Attorneys' fees:	\$ . . . .	\$ . . . .
18	Trustee's fee:	\$ . . . .	\$ . . . .
19	Trustee's expenses:		
20	(Itemization)		
21	Title report	\$ . . . .	\$ . . . .
22	Recording fees	\$ . . . .	\$ . . . .
23	Service/Posting		
24	of Notices	\$ . . . .	\$ . . . .
25	Postage/Copying		
26	expense	\$ . . . .	\$ . . . .
27	Publication	\$ . . . .	\$ . . . .
28	Telephone		\$ . . . .
29	charges	\$ . . . .	
30	Inspection fees	\$ . . . .	\$ . . . .
31	. . . . .	\$ . . . .	\$ . . . .
32	. . . . .	\$ . . . .	\$ . . . .
33	TOTALS	\$ . . . .	\$ . . . .

34 To pay off the entire obligation secured by your Deed of Trust as  
 35 of the . . . . . day of . . . . . you must pay a total of \$. . . . .

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

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

	Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
13	.....	.....
14		
15		
16		
17		
18	.....	.....
19		
20		

21 You may reinstate your Deed of Trust and the obligation secured  
22 thereby at any time up to and including the . . . day of . . . . .,  
23 . . . [11 days before the sale date], by paying the amount set forth or  
24 estimated above and by curing any other defaults described above. Of  
25 course, as time passes other payments may become due, and any further  
26 payments coming due and any additional late charges must be added to  
27 your reinstating payment. Any new defaults not involving payment of  
28 money that occur after the date of this notice must also be cured in  
29 order to effect reinstatement. In addition, because some of the  
30 charges can only be estimated at this time, and because the amount  
31 necessary to reinstate or to pay off the entire indebtedness may  
32 include presently unknown expenditures required to preserve the  
33 property or to comply with state or local law, it will be necessary for  
34 you to contact the Trustee before the time you tender reinstatement or  
35 the payoff amount so that you may be advised of the exact amount you  
36 will be required to pay. Tender of payment or performance must be made

1 to: . . . . ., whose address is . . . . ., telephone ( )  
2 . . . . . AFTER THE . . . . DAY OF . . . . ., . . ., YOU MAY NOT  
3 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND  
4 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will  
5 respond to any written request for current payoff or reinstatement  
6 amounts within ten days of receipt of your written request. In such a  
7 case, you will only be able to stop the sale by paying, before the  
8 sale, the total principal balance (\$ . . . . .) plus accrued  
9 interest, costs and advances, if any, made pursuant to the terms of the  
10 documents and by curing the other defaults as outlined above.

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

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

27 NAME: .....  
28 ADDRESS: .....  
29 .....  
30 TELEPHONE NUMBER: .....

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



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

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

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

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

36 (7) The purchaser shall forthwith pay the price bid and on payment  
37 the trustee shall execute to the purchaser its deed; the deed shall  
38 recite the facts showing that the sale was conducted in compliance with

1 all of the requirements of this chapter and of the deed of trust, which  
2 recital shall be prima facie evidence of such compliance and conclusive  
3 evidence thereof in favor of bona fide purchasers and encumbrancers for  
4 value, except that these recitals shall not affect the lien or interest  
5 of any person entitled to notice under subsection (1) of this section,  
6 if the trustee fails to give the required notice to such person. In  
7 such case, the lien or interest of such omitted person shall not be  
8 affected by the sale and such omitted person shall be treated as if  
9 such person was the holder of the same lien or interest and was omitted  
10 as a party defendant in a judicial foreclosure proceeding;

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

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

20 X.  
21 NOTICE TO OCCUPANTS OR TENANTS

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

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

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

1 (1) A borrower who has been referred to mediation before the  
2 effective date of this section may continue through the mediation  
3 process and does not lose his or her right to mediation.

4 (2) A borrower who has not been referred to mediation as of the  
5 effective date of this section may only be referred to mediation after  
6 a notice of default has been issued but no later than twenty days from  
7 the date a notice of sale is recorded.

8 (3) A borrower who has not been referred to mediation as of the  
9 effective date of this section and who has had a notice of sale  
10 recorded may only be referred to mediation if the referral is made  
11 before twenty days have passed from the date the notice of sale was  
12 recorded.

13 **Sec. 9.** RCW 61.24.172 and 2011 c 58 s 11 are each amended to read  
14 as follows:

15 The foreclosure fairness account is created in the custody of the  
16 state treasurer. All receipts received under RCW 61.24.174 must be  
17 deposited into the account. Only the director of the department of  
18 commerce or the director's designee may authorize expenditures from the  
19 account. Funding to agencies and organizations under this section must  
20 be provided by the department through an interagency agreement or other  
21 applicable contract instrument. The account is subject to allotment  
22 procedures under chapter 43.88 RCW, but an appropriation is not  
23 required for expenditures. Expenditures from the account must be used  
24 as follows: (1) No less than ((~~eighty~~)) seventy-six percent must be  
25 used for the purposes of providing housing ((~~counselors for~~))  
26 counseling activities to benefit borrowers, except that this amount may  
27 be less than ((~~eighty~~)) seventy-six percent only if necessary to meet  
28 the funding level specified for the office of the attorney general  
29 under subsection (2) of this section and the department under  
30 subsection (4) of this section; (2) up to six percent, or six hundred  
31 fifty-five thousand dollars per biennium, whichever amount is greater,  
32 to the office of the attorney general to be used by the consumer  
33 protection division to enforce this chapter; (3) up to two percent to  
34 the office of civil legal aid to be used for the purpose of contracting  
35 with qualified legal aid programs for legal representation of  
36 homeowners in matters relating to foreclosure. Funds provided under  
37 this subsection (3) must be used to supplement, not supplant, other

1 federal, state, and local funds; (4) up to ((~~nine~~)) thirteen percent,  
2 or ((~~four hundred fifty one~~)) five hundred ninety thousand dollars per  
3 biennium, whichever amount is greater, to the department to be used for  
4 implementation and operation of the foreclosure fairness act; and (5)  
5 up to three percent to the department of financial institutions to  
6 conduct homeowner prepurchase and postpurchase outreach and education  
7 programs as defined in RCW 43.320.150.

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

11 NEW SECTION. **Sec. 10.** Section 9 of this act is necessary for the  
12 immediate preservation of the public peace, health, or safety, or  
13 support of the state government and its existing public institutions,  
14 and takes effect immediately.

--- END ---