
HOUSE BILL 1349

State of Washington

68th Legislature

2023 Regular Session

By Representatives Orwall, Leavitt, Ramel, Kloba, Reed, Lekanoff, Pollet, and Fosse

Read first time 01/16/23. Referred to Committee on Housing.

1 AN ACT Relating to foreclosure protections; amending RCW
2 61.24.008, 61.24.030, 61.24.040, 61.24.160, 61.24.163, 61.24.165,
3 61.24.166, and 61.24.190; adding a new section to chapter 61.24 RCW;
4 providing a contingent expiration date; and declaring an emergency.

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

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

8 (1) A borrower who has been referred to mediation before June 7,
9 2012, may continue through the mediation process and does not lose
10 his or her right to mediation.

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

20 (3) A borrower who has not been referred to mediation as of June
21 7, 2012, and who has had a notice of sale recorded may only be

1 referred to mediation if the referral is made (~~before twenty days~~
2 ~~have passed from the date the notice of sale was recorded~~) at least
3 90 days prior to the date of sale listed in the notice of trustee's
4 sale. If an amended notice of trustee's sale is recorded, the
5 borrower may be referred to mediation no later than 25 days prior to
6 the date of sale listed in the amended notice of trustee's sale.

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

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

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

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

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

22 (4) That no action commenced by the beneficiary of the deed of
23 trust is now pending to seek satisfaction of an obligation secured by
24 the deed of trust in any court by reason of the grantor's default on
25 the obligation secured: PROVIDED, That (a) the seeking of the
26 appointment of a receiver, or the filing of a civil case to obtain
27 court approval to access, secure, maintain, and preserve property
28 from waste or nuisance, shall not constitute an action for purposes
29 of this chapter; and (b) if a receiver is appointed, the grantor
30 shall be entitled to any rents or profits derived from property
31 subject to a homestead as defined in RCW 6.13.010. If the deed of
32 trust was granted to secure a commercial loan, this subsection shall
33 not apply to actions brought to enforce any other lien or security
34 interest granted to secure the obligation secured by the deed of
35 trust being foreclosed;

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

38 (6) That prior to the date of the notice of trustee's sale and
39 continuing thereafter through the date of the trustee's sale, the

1 trustee must maintain a street address in this state where personal
2 service of process may be made, and the trustee must maintain a
3 physical presence and have telephone service at such address;

4 (7) (a) That, for residential real property of up to four units,
5 before the notice of trustee's sale is recorded, transmitted, or
6 served, the trustee shall have proof that the beneficiary is the
7 holder of any promissory note or other obligation secured by the deed
8 of trust. A declaration by the beneficiary made under the penalty of
9 perjury stating that the beneficiary is the holder of any promissory
10 note or other obligation secured by the deed of trust shall be
11 sufficient proof as required under this subsection.

12 (b) Unless the trustee has violated his or her duty under RCW
13 61.24.010(4), the trustee is entitled to rely on the beneficiary's
14 declaration as evidence of proof required under this subsection.

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

17 (8) That at least (~~thirty~~) 30 days before notice of sale shall
18 be recorded, transmitted or served, written notice of default and,
19 for residential real property of up to four units, the beneficiary
20 declaration specified in subsection (7)(a) of this section shall be
21 transmitted by the beneficiary or trustee to the borrower and grantor
22 at their last known addresses by both first-class and either
23 registered or certified mail, return receipt requested, and the
24 beneficiary or trustee shall cause to be posted in a conspicuous
25 place on the premises, a copy of the notice, or personally served on
26 the borrower and grantor. This notice shall contain the following
27 information:

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

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

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

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

38 (e) An itemized account of all other specific charges, costs, or
39 fees that the borrower, grantor, or any guarantor is or may be

1 obliged to pay to reinstate the deed of trust before the recording of
2 the notice of sale;

3 (f) A statement showing the total of (d) and (e) of this
4 subsection, designated clearly and conspicuously as the amount
5 necessary to reinstate the note and deed of trust before the
6 recording of the notice of sale;

7 (g) A statement that failure to cure the alleged default within
8 (~~(thirty)~~) 30 days of the date of mailing of the notice, or if
9 personally served, within (~~(thirty)~~) 30 days of the date of personal
10 service thereof, may lead to recordation, transmittal, and
11 publication of a notice of sale, and that the property described in
12 (a) of this subsection may be sold at public auction at a date no
13 less than (~~(one hundred twenty)~~) 120 days in the future, or no less
14 than (~~(one hundred fifty)~~) 150 days in the future if the borrower
15 received a letter under RCW 61.24.031;

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

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

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

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

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
33 to 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
37 Notice of Default and no later than (~~(twenty days after the Notice of~~
38 ~~Trustee Sale is recorded)~~) **90 calendar days BEFORE the date of sale**
39 **listed in the Notice of Trustee Sale. If an amended Notice of Trustee**

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

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

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

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

11 **SEEKING ASSISTANCE**

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

16 The statewide foreclosure hotline for assistance and referral to
17 housing counselors recommended by the Housing Finance Commission
18 Telephone: Website:

19 The United States Department of Housing and Urban Development
20 Telephone: Website:

21 The statewide civil legal aid hotline for assistance and referrals to
22 other housing counselors and attorneys
23 Telephone: Website:"

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

26 (1) In the event the property secured by the deed of trust is
27 residential real property of up to four units, the name and address
28 of the holder of any promissory note or other obligation secured by
29 the deed of trust and the name, address, and telephone number of a
30 party acting as a servicer of the obligations secured by the deed of
31 trust;

32 (m) For notices issued after June 30, 2018, on the top of the
33 first page of the notice:

- 34 (i) The current beneficiary of the deed of trust;
- 35 (ii) The current mortgage servicer for the deed of trust; and
- 36 (iii) The current trustee for the deed of trust;

37 (9) That, for residential real property of up to four units,
38 before the notice of the trustee's sale is recorded, transmitted, or

1 served, the beneficiary has complied with RCW 61.24.031 and, if
2 applicable, RCW 61.24.163;

3 (10) That, in the case where the borrower or grantor is known to
4 the mortgage servicer or trustee to be deceased, the notice required
5 under subsection (8) of this section must be sent to any spouse,
6 child, or parent of the borrower or grantor known to the trustee or
7 mortgage servicer, and to any owner of record of the property, at any
8 address provided to the trustee or mortgage servicer, and to the
9 property addressed to the heirs and devisees of the borrower.

10 (a) If the name or address of any spouse, child, or parent of
11 such deceased borrower or grantor cannot be ascertained with use of
12 reasonable diligence, the trustee must execute and record with the
13 notice of sale a declaration attesting to the same.

14 (b) Reasonable diligence for the purposes of this subsection (10)
15 means the trustee shall search in the county where the property is
16 located, the public records and information for any obituary, will,
17 death certificate, or case in probate within the county for the
18 borrower and grantor;

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

26 (a) Acknowledges the notice in writing and requests reasonable
27 documentation of the death of the borrower or grantor from the
28 claimant including, but not limited to, a death certificate or other
29 written evidence of the death of the borrower or grantor. The
30 claimant must be allowed (~~(thirty)~~) 30 days from the date of this
31 request to present this documentation. If the trustee or mortgage
32 servicer has already obtained sufficient proof of the borrower's
33 death, it may proceed by acknowledging the claimant's notice in
34 writing and issuing a request under (b) of this subsection.

35 (b) If the mortgage servicer or trustee obtains or receives
36 written documentation of the death of the borrower or grantor from
37 the claimant, or otherwise independently confirms the death of the
38 borrower or grantor, then the servicer or trustee must request in
39 writing documentation from the claimant demonstrating the ownership
40 interest of the claimant in the real property. A claimant has

1 ((~~sixty~~)) 60 days from the date of the request to present this
2 documentation.

3 (c) If the mortgage servicer or trustee receives written
4 documentation demonstrating the ownership interest of the claimant
5 prior to the expiration of the ((~~sixty~~)) 60 days provided in (b) of
6 this subsection, then the servicer or trustee must, within ((~~twenty~~))
7 20 days of receipt of proof of ownership interest, provide the
8 claimant with, at a minimum, the loan balance, interest rate and
9 interest reset dates and amounts, balloon payments if any, prepayment
10 penalties if any, the basis for the default, the monthly payment
11 amount, reinstatement amounts or conditions, payoff amounts, and
12 information on how and where payments should be made. The mortgage
13 servicers shall also provide the claimant application materials and
14 information, or a description of the process, necessary to request a
15 loan assumption and modification.

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

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

27 (f) The existence of a successor in interest under this section
28 does not impose an affirmative duty on a mortgage servicer or alter
29 any obligation the mortgage servicer has to provide a loan
30 modification to the successor in interest. If a successor in interest
31 assumes the loan, he or she may be required to otherwise qualify for
32 available foreclosure prevention alternatives offered by the mortgage
33 servicer.

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

37 (12) Nothing in this section shall prejudice the right of the
38 mortgage servicer or beneficiary from discontinuing any foreclosure
39 action initiated under the deed of trust act in favor of other

1 allowed methods for pursuit of foreclosure of the security interest
2 or deed of trust security interest.

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

5 A deed of trust foreclosed under this chapter shall be foreclosed
6 as follows:

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

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

13 (b) To the extent the trustee elects to foreclose its lien or
14 interest, or the beneficiary elects to preserve its right to seek a
15 deficiency judgment against a borrower or grantor under RCW
16 61.24.100(3)(a), and if their addresses are stated in a recorded
17 instrument evidencing their interest, lien, or claim of lien, or an
18 amendment thereto, or are otherwise known to the trustee, cause a
19 copy of the notice of sale described in subsection (2) of this
20 section to be transmitted by both first-class and either certified or
21 registered mail, return receipt requested, to the following persons
22 or their legal representatives, if any, at such address:

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

24 (B) In the case where the borrower or grantor is deceased, to any
25 successors in interest. If no successor in interest has been
26 established, then to any spouse, child, or parent of the borrower or
27 grantor, at the addresses discovered by the trustee pursuant to RCW
28 61.24.030(10);

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

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

1 recordation of the deed of trust being foreclosed and before the
2 recordation of the notice of sale;

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

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

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

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

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

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

34 (2)(a) If foreclosing on a commercial loan under RCW
35 61.24.005(4), the title of the document must be "Notice of Trustee's
36 Sale of Commercial Loan(s)";

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

- 1 (i) The document number or numbers given to the deed of trust
- 2 upon recording;
- 3 (ii) The parcel number(s);
- 4 (iii) The grantor;
- 5 (iv) The current beneficiary of the deed of trust;
- 6 (v) The current trustee of the deed of trust; and
- 7 (vi) The current loan mortgage servicer of the deed of trust;
- 8 (c) Nothing in this section:

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

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

16 (iii) Prevents the trustee from disclosing the beneficiary's
 17 identity to the borrower and to county and municipal officials
 18 seeking to abate nuisance and abandoned property in foreclosure
 19 pursuant to chapter 35.21 RCW.

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

21 NOTICE OF TRUSTEE'S SALE

22 Grantor:

23 Current beneficiary of the deed of trust:

24 Current trustee of the deed of trust:

25 Current mortgage servicer of the deed of trust:

26 Reference number of the deed of trust:

27 Parcel number(s):

28 I.

29 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on
 30 the day of, . . ., at the hour of
 31 o'clock M. at
 32 [street
 33 address and location if inside a building] in the City
 34 of, State of Washington, sell at public auction to the
 35 highest and best bidder, payable at the time of sale, the following
 36 described real property, situated in the County(ies) of,
 37 State of 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
5 dated,, recorded,, under
6 Auditor's File No., records of County,
7 Washington, from, as Grantor, to,
8 as Trustee, to secure an obligation in favor of, as
9 Beneficiary, the beneficial interest in which was assigned
10 by, under an Assignment recorded under Auditor's
11 File No. [Include recording information for all counties if
12 the Deed of Trust is recorded in more than one county.]

13 II.

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

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

21 III.

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

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

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

27 IV.

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

33 V.

34 The above-described real property will be sold to satisfy the expense
35 of sale and the obligation secured by the Deed of Trust as provided

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

17 VI.

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

- 20
- 21
- 22

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

30 VII.

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

34 VIII.

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

4 IX.

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

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

11

12 , Trustee

13 }
14 }
15 }

16 Address

17
18

19 } Phone
20

21 [Acknowledgment]

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

25 **"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR**
26 **HOME.**

27 You have only (~~20 DAYS from the recording date on this notice to~~
28 ~~pursue mediation~~) **until 90 calendar days BEFORE the date of sale**
29 **listed in this Notice of Trustee Sale to be referred to mediation. If**
30 **this is an amended Notice of Trustee Sale providing a 45-day notice**
31 **of the sale, mediation must be requested no later than 25 calendar**
32 **days BEFORE the date of sale listed in this amended Notice of Trustee**
33 **Sale.**

34 **DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN**
35 **WASHINGTON NOW** to assess your situation and refer you to mediation if

1 you are eligible and it may help you save your home. See below for
2 safe sources of help.

3 **SEEKING ASSISTANCE**

4 Housing counselors and legal assistance may be available at little or
5 no cost to you. If you would like assistance in determining your
6 rights and opportunities to keep your house, you may contact the
7 following:

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

10 Telephone: Website:

11 The United States Department of Housing and Urban Development

12 Telephone: Website:

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

15 Telephone: Website:"

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

18 (4) In addition to providing the borrower and grantor the notice
19 of sale described in subsection (2) of this section, the trustee
20 shall include with the copy of the notice which is mailed to the
21 grantor, a statement to the grantor in substantially the following
22 form:

23 NOTICE OF FORECLOSURE

24 Pursuant to the Revised Code of Washington,
25 Chapter 61.24 RCW

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

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

| | | |
|----|---------------|------------------|
| 36 | | Estimated amount |
| 37 | Currently due | that will be due |
| 38 | to reinstate | to reinstate |

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

| | | | |
|----|---------------------|------------|------------|
| 6 | Delinquent payments | | |
| 7 | from, | | |
| 8 | . . . , in the | | |
| 9 | amount of | | |
| 10 | \$. . . /mo.: | \$ | \$ |
| 11 | Late charges in | | |
| 12 | the total | | |
| 13 | amount of: | \$ | \$ |
| 14 | | | Estimated |
| 15 | | | Amounts |
| 16 | Attorneys' fees: | \$ | \$ |
| 17 | Trustee's fee: | \$ | \$ |
| 18 | Trustee's expenses: | | |
| 19 | (Itemization) | | |
| 20 | Title report | \$ | \$ |
| 21 | Recording fees | \$ | \$ |
| 22 | Service/Posting | | |
| 23 | of Notices | \$ | \$ |
| 24 | Postage/Copying | | |
| 25 | expense | \$ | \$ |
| 26 | Publication | \$ | \$ |
| 27 | Telephone | | \$ |
| 28 | charges | \$ | |
| 29 | Inspection fees | \$ | \$ |
| 30 | | \$ | \$ |
| 31 | | \$ | \$ |
| 32 | TOTALS | \$ | \$ |

33 To pay off the entire obligation secured by your Deed of Trust as
 34 of the day of you must pay a total of
 35 \$. in principal, \$. in interest, plus other costs and

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

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

| 12 | Default | Description of Action Required to Cure and Documentation Necessary to Show Cure |
|----|---------|--|
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |

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

1 PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER
2 DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written
3 request for current payoff or reinstatement amounts within (~~(ten)~~) 10
4 days of receipt of your written request. In such a case, you will
5 only be able to stop the sale by paying, before the sale, the total
6 principal balance (\$) plus accrued interest, costs and
7 advances, if any, made pursuant to the terms of the documents and by
8 curing the other defaults as outlined above.

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

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

25 NAME:

26 ADDRESS:

27

28 TELEPHONE NUMBER:

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

34 (5) In addition, the trustee shall cause a copy of the notice of
35 sale described in subsection (2)(d) of this section (excluding the
36 acknowledgment) to be published in a legal newspaper in each county
37 in which the property or any part thereof is situated, once on or
38 between the (~~(thirty-fifth)~~) 35th and (~~(twenty-eighth)~~) 28th day

1 before the date of sale, and once on or between the (~~fourteenth~~)
2 14th and seventh day before the date of sale;

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

15 (7) (a) If a servicer or trustee receives notification by someone
16 claiming to be a successor in interest to the borrower or grantor, as
17 under RCW 61.24.030(11), after the recording of the notice of sale,
18 the trustee or servicer must request written documentation within
19 five days demonstrating the ownership interest, provided that, the
20 trustee may, but is not required to, postpone a trustee's sale upon
21 receipt of such notification by someone claiming to be a successor in
22 interest.

23 (b) Upon receipt of documentation establishing a claimant as a
24 successor in interest, the servicer must provide the information in
25 RCW 61.24.030(11)(c). Only if the servicer or trustee receives the
26 documentation confirming someone as successor in interest more than
27 (~~forty-five~~) 45 days before the scheduled sale must the servicer
28 then provide the information in RCW 61.24.030(11)(c) to the claimant
29 not less than (~~twenty~~) 20 days prior to the sale.

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

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

36 (9) The place of sale shall be at any designated public place
37 within the county where the property is located and if the property
38 is in more than one county, the sale may be in any of the counties
39 where the property is located. The sale shall be on Friday, or if
40 Friday is a legal holiday on the following Monday, and during the

1 hours set by statute for the conduct of sales of real estate at
2 execution;

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

22 (11) The purchaser shall forthwith pay the price bid (~~and on~~
23 ~~payment~~). On payment and subject to RCW 61.24.050, the trustee shall
24 execute to the purchaser its deed(~~;~~~~the~~). The deed shall recite the
25 facts showing that the sale was conducted in compliance with all of
26 the requirements of this chapter and of the deed of trust, which
27 recital shall be prima facie evidence of such compliance and
28 conclusive evidence thereof in favor of bona fide purchasers and
29 encumbrancers for value, except that these recitals shall not affect
30 the lien or interest of any person entitled to notice under
31 subsection (1) of this section, if the trustee fails to give the
32 required notice to such person. In such case, the lien or interest of
33 such omitted person shall not be affected by the sale and such
34 omitted person shall be treated as if such person was the holder of
35 the same lien or interest and was omitted as a party defendant in a
36 judicial foreclosure proceeding;

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

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

7 X. NOTICE TO OCCUPANTS OR TENANTS

8 The purchaser at the trustee's sale is entitled to possession of the
9 property on the 20th day following the sale, as against the grantor
10 under the deed of trust (the owner) and anyone having an interest
11 junior to the deed of trust, including occupants who are not tenants.
12 After the 20th day following the sale the purchaser has the right to
13 evict occupants who are not tenants by summary proceedings under
14 chapter 59.12 RCW. For tenant-occupied property, the purchaser shall
15 provide a tenant with written notice in accordance with RCW
16 61.24.060;

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

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

24 (1)(a) A housing counselor who is contacted by a borrower under
25 RCW 61.24.031 has a duty to act in good faith to attempt to reach a
26 resolution with the beneficiary on behalf of the borrower within the
27 (~~ninety~~) 90 days provided from the date the beneficiary initiates
28 contact with the borrower and the date the notice of default is
29 issued. A resolution may include, but is not limited to, modification
30 of the loan, an agreement to conduct a short sale, a deed in lieu of
31 foreclosure transaction, or some other workout plan.

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

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

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

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

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

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

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

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

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

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

31 (6) Housing counselors shall provide information to the
32 department to assist the department in its annual report to the
33 legislature as required under RCW 61.24.163(18). The information
34 provided to the department by the housing counselors should include
35 outcomes of foreclosures and be similar to the information requested
36 in the national foreclosure mortgage counseling client level
37 foreclosure outcomes report form.

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

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

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

20 (3) Within (~~ten~~) 10 days of receiving the notice, the
21 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) of this section and a statement
27 explaining each party's responsibility to pay the mediator's fee; and

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

29 (4) Within (~~twenty-three~~) 23 days of the department's notice
30 that the parties have been referred to mediation, the borrower shall
31 transmit the documents required for mediation to the mediator and the
32 beneficiary. The required documents include an initial homeowner
33 financial information worksheet as required by the department. The
34 worksheet must include, at a minimum, the following information:

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

36 (b) Debts and obligations;

37 (c) Assets;

38 (d) Expenses;

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

40 (f) Hardship information;

1 (g) Other applicable information commonly required by any
2 applicable federal mortgage relief program.

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

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

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

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

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

17 (e) An itemized list of the best estimate of fees and charges
18 outstanding;

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

22 (g) All borrower-related and mortgage-related input data used in
23 any net present values analysis. If no net present values analysis is
24 required by the applicable federal mortgage relief program, then the
25 input data required under the federal deposit insurance corporation
26 and published in the federal deposit insurance corporation loan
27 modification program guide, or if that calculation becomes
28 unavailable, substantially similar input data as determined by the
29 department;

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

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

36 (j) The portion or excerpt of the pooling and servicing agreement
37 or other investor restriction that prohibits the beneficiary from
38 implementing a modification, if the beneficiary claims it cannot
39 implement a modification due to limitations in a pooling and
40 servicing agreement or other investor restriction, and documentation

1 or a statement detailing the efforts of the beneficiary to obtain a
2 waiver of the pooling and servicing agreement or other investor
3 restriction provisions.

4 (6) Within (~~seventy~~) 70 days of receiving the referral from the
5 department, the mediator shall convene a mediation session in the
6 county where the property is located, unless the parties agree on
7 another location. The parties may agree to extend the time in which
8 to schedule the mediation session. If the parties agree to extend the
9 time, the beneficiary shall notify the trustee of the extension and
10 the date the mediator is expected to issue the mediator's
11 certification.

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

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

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

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

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

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

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

1 (9) 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,
4 modification of the loan, restructuring of the debt, or some other
5 workout plan. To assist the parties in addressing issues of
6 foreclosure, the mediator may require the participants to consider
7 the following:

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

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

15 (c) Any affordable loan modification calculation and net present
16 value calculation when required under any federal mortgage relief
17 program and any modification program related to loans insured by the
18 federal housing administration, the veterans administration, and the
19 rural housing service. If such a calculation is not provided or
20 required, then the beneficiary must provide the net present value
21 data inputs established by the federal deposit insurance corporation
22 and published in the federal deposit insurance corporation loan
23 modification program guide or other net present value data inputs as
24 designated by the department. The mediator may run the calculation in
25 order for a productive mediation to occur and to comply with the
26 mediator certification requirement; and

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

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

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

34 (b) Failure of the borrower or the beneficiary to provide the
35 documentation required before mediation or pursuant to the mediator's
36 instructions;

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

1 (d) A request by a beneficiary that the borrower waive future
2 claims he or she may have in connection with the deed of trust, as a
3 condition of agreeing to a modification, except for rescission claims
4 under the federal truth in lending act. Nothing in this section
5 precludes a beneficiary from requesting that a borrower dismiss with
6 prejudice any pending claims against the beneficiary, its agents,
7 loan servicer, or trustee, arising from the underlying deed of trust,
8 as a condition of modification.

9 (11) If the mediator reasonably believes a borrower will not
10 attend a mediation session based on the borrower's conduct, such as
11 the lack of response to the mediator's communications, the mediator
12 may cancel a scheduled mediation session and send a written
13 cancellation to the department and the trustee and send copies to the
14 parties. The beneficiary may proceed with the foreclosure after
15 receipt of the mediator's written confirmation of cancellation.

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

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

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

22 (c) Whether a resolution was reached by the parties, including
23 whether the default was cured by reinstatement, modification, or
24 restructuring of the debt, or some other alternative to foreclosure
25 was agreed upon by the parties;

26 (d) Whether the parties participated in the mediation in good
27 faith; and

28 (e) If a written agreement was not reached, a description of any
29 net present value test used, along with a copy of the inputs,
30 including the result of any net present value test expressed in a
31 dollar amount.

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

35 (14)(a) The mediator's certification that the beneficiary failed
36 to act in good faith in mediation constitutes a defense to the
37 nonjudicial foreclosure action that was the basis for initiating the
38 mediation. In any action to enjoin the foreclosure, the beneficiary
39 is entitled to rebut the allegation that it failed to act in good
40 faith.

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

6 (c) If an affordable loan modification is not offered in the
7 mediation or a written agreement was not reached and the mediator's
8 certification shows that the net present value of the modified loan
9 exceeds the anticipated net recovery at foreclosure, that showing in
10 the certification constitutes a basis for the borrower to enjoin the
11 foreclosure.

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

15 (16)(a) If a borrower has been referred to mediation before a
16 notice of trustee sale has been recorded, a trustee may not record
17 the notice of sale until the trustee receives the mediator's
18 certification stating that the mediation has been completed. If the
19 trustee does not receive the mediator's certification, the trustee
20 may record the notice of sale after (~~ten~~) 10 days from the date the
21 certification to the trustee was due. If, after a notice of sale is
22 recorded under this subsection (16)(a), the mediator subsequently
23 issues a certification finding that the beneficiary violated the duty
24 of good faith, the certification constitutes a basis for the borrower
25 to enjoin the foreclosure.

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

30 (17) A mediator may charge reasonable fees as authorized by this
31 subsection or as authorized by the department. Unless the fee is
32 waived, the parties agree otherwise, or the department otherwise
33 authorizes, a foreclosure mediator's fee may not exceed (~~four~~
34 ~~hundred dollars~~) \$400 for preparing, scheduling, and conducting a
35 mediation session lasting between one hour and three hours. For a
36 mediation session exceeding three hours, the foreclosure mediator may
37 charge a reasonable fee, as authorized by the department. The
38 mediator must provide an estimated fee before the mediation, and
39 payment of the mediator's fee must be divided equally between the
40 beneficiary and the borrower. The beneficiary and the borrower must

1 tender the loan mediator's fee within (~~thirty~~) 30 calendar days
2 from receipt of the department's letter referring the parties to
3 mediation or pursuant to the mediator's instructions.

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

6 (a) The performance of the program, including the numbers of
7 borrowers who are referred to mediation by a housing counselor or
8 attorney;

9 (b) The results of the mediation program, including the number of
10 mediations requested by housing counselors and attorneys, the number
11 of certifications of good faith issued, the number of borrowers and
12 beneficiaries who failed to mediate in good faith, and the reasons
13 for the failure to mediate in good faith, if known, the numbers of
14 loans restructured or modified, the change in the borrower's monthly
15 payment for principal and interest and the number of principal write-
16 downs and interest rate reductions, and, to the extent practical, the
17 number of borrowers who report a default within a year of
18 restructuring or modification;

19 (c) The information received by housing counselors regarding
20 outcomes of foreclosures; and

21 (d) Any recommendations for changes to the statutes regarding the
22 mediation program.

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

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

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

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

30 (a) Securing a commercial loan;

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

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

35 (d) Where the grantor is a partnership, corporation, or limited
36 liability company, or where the property is vested in a partnership,
37 corporation, or limited liability company at the time the notice of
38 default is issued.

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

3 (4) For purposes of referral and mediation under RCW 61.24.163, a
4 person may be referred to mediation if the borrower is deceased and
5 the person is a successor in interest of the deceased borrower (~~who~~
6 ~~occupies the property as his or her primary residence~~). The
7 referring counselor or attorney must determine a person's eligibility
8 under this section and indicate the grounds for eligibility on the
9 referral to mediation submitted to the department. For the purposes
10 of mediation under RCW 61.24.163, the person must be treated as a
11 "borrower." This subsection does not impose an affirmative duty on
12 the beneficiary to accept an assumption of the loan.

13 (5) For purposes of referral and mediation under RCW 61.24.163, a
14 person may be referred to mediation if the person has been awarded
15 title to the property in a proceeding for dissolution or legal
16 separation. The referring counselor or attorney must determine the
17 person's eligibility under this section and indicate the grounds for
18 eligibility on the referral to mediation submitted to the department.
19 For the purposes of mediation under RCW 61.24.163, the person must be
20 treated as a "borrower." This subsection does not impose an
21 affirmative duty on the beneficiary to accept an assumption of the
22 loan.

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

25 (1) Beginning on January 1, ((2023)) 2024, the provisions of RCW
26 61.24.163 do not apply to any federally insured depository
27 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
28 certifies to the department under penalty of perjury that it was not
29 a beneficiary of deeds of trust in more than ((two hundred fifty))
30 250 trustee sales of residential real property of up to four units
31 that occurred in this state during the preceding calendar year. A
32 federally insured depository institution certifying that RCW
33 61.24.163 does not apply must do so annually, beginning no later than
34 January 31, ((2023)) 2024, and no later than January 31st of each
35 year thereafter.

36 (2) During the 2023 calendar year, the provisions of RCW
37 61.24.163 do not apply to any federally insured depository
38 institution, as defined in 12 U.S.C. Sec. 461(b)(1)(A), that
39 certifies to the department under penalty of perjury that it was not

1 a beneficiary of deeds of trust in more than 250 trustee sales of
2 owner-occupied residential real property that occurred in this state
3 during 2019. A federally insured depository institution certifying
4 that RCW 61.24.163 does not apply pursuant to this subsection must do
5 so no later than 30 days after the effective date of this section.

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

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

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

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

19 (b) Remit the amount required under subsection (2) of this
20 section; and

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

25 (2) For each residential real property for which a notice of
26 default has been issued, the beneficiary issuing the notice of
27 default, or causing the notice of default to be issued on the
28 beneficiary's behalf, shall remit \$250 to the department to be
29 deposited, as provided under RCW 61.24.172, into the foreclosure
30 fairness account. The \$250 payment is required per property and not
31 per notice of default. The beneficiary shall remit the total amount
32 required in a lump sum each quarter.

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

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

38 (5) The department, including its officials and employees, may
39 not be held civilly liable for damages arising from any release of

1 information or the failure to release information related to the
2 reporting required under this section, so long as the release was
3 without gross negligence.

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

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

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

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

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

21 (1) (a) The trustee shall continue a foreclosure sale for at least
22 30 days upon receipt of a written notice from the homeowner
23 assistance fund program administered by the Washington state housing
24 finance commission that an application has been submitted to the
25 homeowner assistance fund program on behalf of the applicant.

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

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

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

36 (b) A sale may proceed if the homeowner assistance fund program
37 issues a written confirmation that an application has been denied or
38 that no funds from the program will be paid in response to the

1 application, and that any appeal process available to the applicant
2 has been exhausted and is no longer pending.

3 (3) The trustee has no duty to delay a sale if the applicant has
4 already received a continuance based on prior application to the
5 homeowner assistance fund program, unless the applicant demonstrates
6 to the trustee that a new application is pending based upon a
7 substantial change in circumstances supporting a new application and
8 that it has not been submitted solely for the purpose of delaying the
9 sale.

10 (4) (a) The trustee must comply with the process set forth in RCW
11 61.24.040(1) for giving notice of the continued sale.

12 (b) A continuance of a sale pursuant to this section may not be
13 included in calculating the maximum sale continuance period of 120
14 days established in RCW 61.24.040(10).

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

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

18 (b) Has submitted an application to the homeowner assistance fund
19 program or on whose behalf an application to the program has been
20 submitted.

21 NEW SECTION. **Sec. 10.** (1) Section 9 of this act expires upon
22 the expiration and permanent closure of the homeowner assistance fund
23 program.

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

29 NEW SECTION. **Sec. 11.** Sections 7 through 10 of this act are
30 necessary for the immediate preservation of the public peace, health,
31 or safety, or support of the state government and its existing public
32 institutions, and take effect immediately.

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