
ENGROSSED SENATE BILL 5810

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2009 Regular Session

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

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

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

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

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

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

14 (b) A beneficiary or authorized agent shall contact the borrower in
15 person or by telephone in order to assess the borrower's financial
16 ability to pay the debt secured by the deed of trust and explore
17 options for the borrower to avoid foreclosure. During the initial
18 contact, the beneficiary or authorized agent shall advise the borrower
19 that he or she has the right to request a subsequent meeting and, if

1 requested, the beneficiary or authorized agent shall schedule the
2 meeting to occur within fourteen days. The assessment of the
3 borrower's financial ability to repay the debt and a discussion of
4 options may occur during the initial contact or at the subsequent
5 meeting scheduled for that purpose. At the initial contact, the
6 borrower must be provided the toll-free telephone number made available
7 by the department to find a department-certified housing counseling
8 agency. Any meeting may occur telephonically.

9 (2) A notice of default issued under RCW 61.24.030(7) must include
10 a declaration, as provided in subsection (9) of this section, from the
11 beneficiary or authorized agent that it has contacted the borrower as
12 provided in subsection (1)(b) of this section, it has tried with due
13 diligence to contact the borrower under subsection (5) of this section,
14 or the borrower has surrendered the property to the trustee,
15 beneficiary, or authorized agent. The trustee is entitled to rely on
16 the declaration as conclusive evidence that the requirements of this
17 section have been satisfied, and the trustee is not liable for the
18 beneficiary's or its authorized agent's failure to comply with the
19 requirements of this section.

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

23 (4) Within fourteen days after the initial contact under subsection
24 (1) of this section, if a borrower has designated a department-
25 certified housing counseling agency, attorney, or other advisor to
26 discuss with the beneficiary or authorized agent, on the borrower's
27 behalf, options for the borrower to avoid foreclosure, the borrower
28 shall inform the beneficiary or authorized agent and provide the
29 contact information. The beneficiary or authorized agent shall contact
30 the designated representative for the borrower for the discussion
31 within fourteen days after the representative is designated by the
32 borrower. Any deed of trust modification or workout plan offered at
33 the meeting with the borrower's designated representative by the
34 beneficiary or authorized agent is subject to approval by the borrower.

35 (5) A notice of default may be issued under RCW 61.24.030(7) if a
36 beneficiary or authorized agent has not contacted a borrower as
37 required under subsection (1)(b) of this section and the failure to

1 contact the borrower occurred despite the due diligence of the
2 beneficiary or authorized agent. Due diligence requires the following:

3 (a) A beneficiary or authorized agent shall first attempt to
4 contact a borrower by sending a first-class letter to the address of
5 the property encumbered by the deed of trust that includes the toll-
6 free telephone number made available by the department to find a
7 department-certified housing counseling agency, and the following
8 information:

9 "You may contact the Department of Financial Institutions, the
10 Washington State Bar Association, or the Office of Civil Legal Aid for
11 possible assistance or referrals."

12 (b)(i) After the letter has been sent, the beneficiary or
13 authorized agent shall attempt to contact the borrower by telephone at
14 least three times at different hours and on different days. Telephone
15 calls must be made to the primary telephone number on file with the
16 beneficiary or authorized agent.

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

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

27 (c) If the borrower does not respond within fourteen days after the
28 telephone call requirements of (b) of this subsection have been
29 satisfied, the beneficiary or authorized agent shall send a certified
30 letter, with return receipt requested, to the borrower at the address
31 of the property encumbered by the deed of trust.

32 (d) The beneficiary or authorized agent shall provide a means for
33 the borrower to contact the beneficiary or authorized agent in a timely
34 manner, including a toll-free telephone number or charge-free
35 equivalent that will provide access to a live representative during
36 business hours.

37 (e) The beneficiary or authorized agent shall post a link on the

1 home page of the beneficiary's or authorized agent's internet web site,
2 if any, to the following information:

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

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

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

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

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

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

21 (b) The borrower has contracted with a distressed home consultant
22 as defined in RCW 61.34.020; or

23 (c) The borrower has filed for bankruptcy, and the bankruptcy stay
24 remains in place.

25 (7) This section applies only to deeds of trust made from January
26 1, 2003, to December 31, 2007, inclusive, that are recorded against
27 owner-occupied residential real property. This section does not apply
28 to deeds of trust: (a) Securing a debt incurred primarily for
29 business, investment, or commercial purposes; (b) securing a
30 guarantor's obligations under a guaranty; or (c) securing a purchaser's
31 obligations under a seller-financed sale. For purposes of this
32 subsection, "owner-occupied" means that the residence is the principal
33 residence of the borrower.

34 (8) As used in this section:

35 (a) "Borrower" means a grantor of a deed of trust who executed a
36 promissory note secured by the deed of trust.

37 (b) "Department" means the United States department of housing and
38 urban development.

1 (c) "Residential real property" means a one-to-four, single-family
2 residence, condominium unit, residential cooperative unit, residential
3 unit in any other type of planned unit development, or manufactured
4 home in which title has been eliminated under RCW 65.20.040.

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

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

12 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

24 (2) [] The beneficiary or beneficiary's authorized agent has
25 exercised due diligence to contact the borrower as required in section
26 1(5) of this act and, after waiting fourteen days after the
27 requirements in section 1 of this act were satisfied, the beneficiary
28 or the beneficiary's authorized agent sent to the borrower(s), by
29 certified mail, return receipt requested, the letter required under
30 section 1 of this act.

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

35 (4) [] Under section 1 of this act, the beneficiary or
36 beneficiary's authorized agent has evidence in its file, and reasonably

1 believes, that the borrower has contracted with a distressed home
2 consultant as defined in RCW 61.34.020.

3 (5) [] Under section 1 of this act, the beneficiary or the
4 beneficiary's authorized agent has verified information that, on or
5 before the date of this declaration, the borrower(s) has filed for
6 bankruptcy, and the bankruptcy stay remains in place."

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

9 (1) Upon posting a notice of sale under RCW 61.24.040, a trustee or
10 authorized agent shall also post the following notice, in the manner
11 required for posting the notice of sale on the property to be sold, and
12 a trustee, beneficiary, or authorized agent shall mail at the same time
13 in an envelope addressed to the "Resident of property subject to
14 foreclosure sale" the following notice:

15 "The foreclosure process has begun on this property, which may
16 affect your right to continue to live in this property. Ninety days or
17 more after the date of this notice, this property may be sold at
18 foreclosure. If you are renting this property, the new property owner
19 may either give you a new lease or rental agreement or provide you with
20 a sixty-day eviction notice. You may wish to contact a lawyer or your
21 local legal aid or housing counseling agency to discuss any rights that
22 you may have."

23 (2) This section applies only to deeds of trust secured by
24 residential real property, as defined in section 1 of this act, and if
25 the billing address for the promissory note is different than the
26 property address.

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

29 (1)(a) A tenant or subtenant in possession of a residential real
30 property at the time the property is sold in foreclosure must be given
31 sixty days' written notice before the tenant or subtenant may be
32 removed from the property as prescribed in chapter 59.12 RCW.

33 (b) A tenant may be evicted for waste or nuisance and subject to
34 unlawful detainer under chapter 59.12 RCW.

35 (2) This section does not prohibit the new owner of a property
36 purchased pursuant to a foreclosure sale or trustee's sale from:

1 (a) Negotiating a new purchase, lease, or rental agreement with a
2 tenant or subtenant; or

3 (b) Offering a payment to a tenant or subtenant in exchange for
4 vacating the premises on a date earlier than the expiration of the
5 notice period described in subsection (1) of this section. However,
6 the tenant or subtenant is not required to accept any payment offered.

7 (3) This section does not apply if a party to the promissory note
8 secured by the deed of trust remains on the property as a tenant,
9 subtenant, or occupant.

10 NEW SECTION. **Sec. 4.** Sections 2 and 3 of this act apply only to
11 the foreclosure of a nonowner-occupied residential real property as
12 defined in section 1 of this act.

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

15 (1) The failure of the grantor to bring a civil action to enjoin a
16 foreclosure sale under this chapter may not be deemed a waiver of a
17 claim for damages asserting:

- 18 (a) Common law fraud, misrepresentation, and breach of contract;
- 19 (b) A violation of RCW 19.144.080; or
- 20 (c) Failure of the trustee to materially comply with the provisions
21 of this chapter.

22 (2) The nonwaived claims listed under subsection (1) of this
23 section may be (a) asserted in an unlawful detainer action brought by
24 the lender against the grantor as a holdover tenant or (b)
25 independently brought against a lender or trustee if a third party is
26 the successful bidder at the foreclosure sale.

27 (3) The nonwaived claims listed under subsection (1) of this
28 section are subject to the following limitations:

- 29 (a) The claim must be asserted or brought within two years from the
30 date of the foreclosure sale;
- 31 (b) The claim may not seek any remedy at law or in equity other
32 than direct monetary damages, unless the property is owned by the
33 beneficiary at the time the action is filed;
- 34 (c) The claim may not otherwise affect the validity or finality of
35 the foreclosure sale or a subsequent transfer of the property to a bona
36 fide purchaser;

1 (d) A grantor who files such a claim is prohibited from filing for
2 record a lis pendens without prior permission of a court, as provided
3 for in RCW 4.28.320, or any other document purporting to create a
4 similar effect, related to the real property foreclosed upon;

5 (e) The claim may not otherwise operate to encumber or cloud the
6 title to the property that was subject to the foreclosure sale, except
7 to the extent that a judgment on the claim in favor of the grantor may,
8 consistent with RCW 4.56.190, become a judgment lien on real property
9 then owned by the lender; and

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

16 (4) This section applies only to foreclosures of an owner-occupied
17 one-to-four, single-family residence, condominium unit, residential
18 cooperative unit, residential unit in any other type of planned unit
19 development, or manufactured home in which title has been eliminated
20 under RCW 65.20.040, which is the grantor's principal place of
21 residence.

22 (5) This section does not apply to the foreclosure of a deed of
23 trust used to secure a debt incurred for business, investment, or
24 commercial purposes or to secure a guaranty.

25 **Sec. 6.** RCW 61.24.010 and 2008 c 153 s 1 are each amended to read
26 as follows:

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

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

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

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

36 (d) Any professional corporation incorporated under chapter 18.100
37 RCW, any professional limited liability company formed under chapter

1 25.15 RCW, any general partnership, including limited liability
2 partnerships, formed under chapter 25.04 RCW, all of whose
3 shareholders, members, or partners, respectively, are either licensed
4 attorneys or entities, provided all of the owners of those entities are
5 licensed attorneys, or any domestic corporation wholly owned by any of
6 the entities under this subsection (1)(d); or

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

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

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

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

26 (4) (~~The trustee or successor trustee shall act impartially~~
27 ~~between the borrower, grantor, and beneficiary.~~) The trustee or
28 successor trustee has a duty of good faith to the borrower as defined
29 in section 1 of this act, beneficiary, grantor, or other persons having
30 an interest in the property subject to the deed of trust.

31 **Sec. 7.** RCW 61.24.030 and 2008 c 153 s 2 and 2008 c 108 s 22 are
32 each reenacted and amended to read as follows:

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

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

35 (2) That the deed of trust contains a statement that the real
36 property conveyed is not used principally for agricultural purposes;
37 provided, if the statement is false on the date the deed of trust was

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

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

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

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

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

26 (7) 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) Each county in which the deed of trust is recorded and the
37 document number given to the deed of trust upon recording by each
38 county auditor or recording officer;

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

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

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

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

12 (g) That failure to cure the alleged default within thirty days of
13 the date of mailing of the notice, or if personally served, within
14 thirty days of the date of personal service thereof, may lead to
15 recordation, transmittal, and publication of a notice of sale, and that
16 the property described in (a) of this subsection may be sold at public
17 auction at a date no less than one hundred twenty days in the future;

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

22 (i) That the effect of the sale of the grantor's property by the
23 trustee will be to deprive the grantor of all their interest in the
24 property described in (a) of this subsection;

25 (j) That the borrower, grantor, and any guarantor has recourse to
26 the courts pursuant to RCW 61.24.130 to contest the alleged default on
27 any proper ground; and

28 (k)(i) That before the notice of sale is recorded, transmitted, or
29 served, the trustee: (A) Has proof that the beneficiary is the actual
30 holder of any promissory note or other obligation secured by the deed
31 of trust; or (B) has possession of the original of any promissory note
32 secured by the deed of trust with the proper endorsements so that the
33 entity initiating the foreclosure sale has the authority to enforce the
34 terms of the promissory note. In the event that an original of a
35 promissory note is lost, a copy of any promissory note secured by the
36 deed of trust and a notarized statement, made by the beneficiary under
37 the penalty of perjury, that the original promissory note has been lost
38 may be provided.

1 (ii) Proof that the beneficiary is the actual holder of the
2 promissory note or other obligation secured by the deed of trust must
3 be made by way of an affidavit made by a person with personal knowledge
4 of the physical location of the promissory note or other obligation.

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

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

12 Can you pay and stop the foreclosure process?

13 Do you dispute the failure to pay?

14 Can you sell your property to preserve your equity?

15 Are you able to refinance this loan with a new loan from another
16 lender with payments, terms, and fees that are more affordable?

17 Do you qualify for any government or private homeowner assistance
18 programs?

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

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

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

1 Department of Financial Institutions, the Washington State Bar
2 Association, or the Office of Civil Legal Aid for possible assistance
3 or referrals."

4 **Sec. 8.** RCW 61.24.040 and 2008 c 153 s 3 are each amended to read
5 as follows:

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

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

9 (a) Record a notice in the form described in ((RCW
10 ~~61.24.040(1)~~))(f) of this subsection in the office of the auditor in
11 each county in which the deed of trust is recorded;

12 (b) To the extent the trustee elects to foreclose its lien or
13 interest, or the beneficiary elects to preserve its right to seek a
14 deficiency judgment against a borrower or grantor under RCW
15 61.24.100(3)(a), and if their addresses are stated in a recorded
16 instrument evidencing their interest, lien, or claim of lien, or an
17 amendment thereto, or are otherwise known to the trustee, cause a copy
18 of the notice of sale described in ((RCW~~61.24.040(1)~~))(f) of this
19 subsection to be transmitted by both first-class and either certified
20 or registered mail, return receipt requested, to the following persons
21 or their legal representatives, if any, at such address:

22 (i) The borrower and grantor;

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

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

35 (iv) The last holder of record of any other lien against or
36 interest in the property that is subject to a subordination to the deed

1 of trust being foreclosed that was recorded before the recordation of
2 the notice of sale;

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

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

11 (c) Cause a copy of the notice of sale described in ((RCW
12 ~~61.24.040(1)~~))(f) of this subsection to be transmitted by both first-
13 class and either certified or registered mail, return receipt
14 requested, to the plaintiff or the plaintiff's attorney of record, in
15 any court action to foreclose a lien or other encumbrance on all or any
16 part of the property, provided a court action is pending and a lis
17 pendens in connection therewith is recorded in the office of the
18 auditor of any county in which all or part of the property is located
19 on the date the notice is recorded;

20 (d) Cause a copy of the notice of sale described in ((RCW
21 ~~61.24.040(1)~~))(f) of this subsection to be transmitted by both first-
22 class and either certified or registered mail, return receipt
23 requested, to any person who has recorded a request for notice in
24 accordance with RCW 61.24.045, at the address specified in such
25 person's most recently recorded request for notice;

26 (e) Cause a copy of the notice of sale described in ((RCW
27 ~~61.24.040(1)~~))(f) of this subsection to be posted in a conspicuous
28 place on the property, or in lieu of posting, cause a copy of said
29 notice to be served upon any occupant of the property;

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

31 NOTICE OF TRUSTEE'S SALE

32 I.

33 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
34 day of,, at the hour of o'clock M. at
35 [street
36 address and location if inside a building] in the City of,
37 State of Washington, sell at public auction to the highest and best

1 bidder, payable at the time of sale, the following described real
2 property, situated in the County(ies) of, State of
3 Washington, to-wit:

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

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

15 II.

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

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

23 III.

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

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

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

28 IV.

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

34 V.

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

18 VI.

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

21
22
23

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

31 VII.

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

VIII.

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

IX.

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

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

.....

....., Trustee

..... }
..... } Address
..... }

..... } Phone

[Acknowledgment]

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

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,

Chapter 61.24 RCW

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

1 To cure the default(s), you must bring the payments current, cure
 2 any other defaults, and pay accrued late charges and other costs,
 3 advances, and attorneys' fees as set forth below by the day of
 4, . . . [11 days before the sale date]. To date, these
 5 arrears and costs are as follows:

	Currently due	Estimated amount
	to reinstate	that will be due
	on	to reinstate
	on
		(11 days before
		the date set
		for sale)
14 Delinquent payments		
15 from,		
16 . . ., in the		
17 amount of		
18 \$. . . /mo.:	\$	\$
19 Late charges in		
20 the total		
21 amount of:	\$	\$
22		Estimated
23		Amounts
24 Attorneys' fees:	\$	\$
25 Trustee's fee:	\$	\$
26 Trustee's expenses:		
27 (Itemization)		
28 Title report	\$	\$
29 Recording fees	\$	\$
30 Service/Posting		
31 of Notices	\$	\$

1	Postage/Copying		
2	expense	\$....	\$....
3	Publication	\$....	\$....
4	Telephone		\$....
5	charges	\$....	
6	Inspection fees	\$....	\$....
7	\$....	\$....
8	\$....	\$....
9	TOTALS	\$....	\$....

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

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

24	Default	Description of Action Required to Cure and
25		Documentation Necessary to Show Cure
26
27	
28	
29
30	
31	

32 You may reinstate your Deed of Trust and the obligation secured
33 thereby at any time up to and including the day of ,
34 . . . [11 days before the sale date], by paying the amount set forth or
35 estimated above and by curing any other defaults described above. Of

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

23 You may contest this default by initiating court action in the
24 Superior Court of the county in which the sale is to be held. In such
25 action, you may raise any legitimate defenses you have to this default.
26 A copy of your Deed of Trust and documents evidencing the obligation
27 secured thereby are enclosed. You may wish to consult a lawyer. Legal
28 action on your part may prevent or restrain the sale, but only if you
29 persuade the court of the merits of your defense.

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

37 NAME:

1 ADDRESS:
2
3 TELEPHONE NUMBER:

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

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

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

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

26 (6) The trustee has no obligation to, but may, for any cause the
27 trustee deems advantageous, continue the sale for a period or periods
28 not exceeding a total of one hundred twenty days by (a) a public
29 proclamation at the time and place fixed for sale in the notice of sale
30 and if the continuance is beyond the date of sale, by giving notice of
31 the new time and place of the sale by both first class and either
32 certified or registered mail, return receipt requested, to the persons
33 specified in ((RCW 61.24.040)) subsection (1)(b)(i) and (ii) of this
34 section to be deposited in the mail (i) not less than four days before
35 the new date fixed for the sale if the sale is continued for up to
36 seven days; or (ii) not more than three days after the date of the
37 continuance by oral proclamation if the sale is continued for more than

1 seven days, or, alternatively, (b) by giving notice of the time and
2 place of the postponed sale in the manner and to the persons specified
3 in ((RCW-61.24.040)) subsection (1)(b), (c), (d), and (e) of this
4 section and publishing a copy of such notice once in the newspaper(s)
5 described in ((RCW-61.24.040)) subsection (3) of this section, more
6 than seven days before the date fixed for sale in the notice of sale.
7 No other notice of the postponed sale need be given;

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

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

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

31 X.

32 NOTICE TO OCCUPANTS OR TENANTS

33 The purchaser at the trustee's sale is entitled to possession of the
34 property on the 20th day following the sale, as against the grantor
35 under the deed of trust (the owner) and anyone having an interest
36 junior to the deed of trust, including occupants ((and)) who are not
37 tenants. After the 20th day following the sale the purchaser has the

1 right to evict occupants (~~and~~) who are not tenants by summary
2 proceedings under (~~the unlawful detainer act,~~) chapter 59.12 RCW.
3 For tenant-occupied property, the purchaser shall provide a tenant with
4 written notice in accordance with section 2 of this act;

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

10 **Sec. 9.** RCW 61.24.060 and 1998 c 295 s 8 are each amended to read
11 as follows:

12 The purchaser at the trustee's sale shall be entitled to possession
13 of the property on the twentieth day following the sale, as against the
14 grantor under the deed of trust and anyone having an interest junior to
15 the deed of trust, including occupants (~~and~~) who are not tenants, who
16 were given all of the notices to which they were entitled under this
17 chapter. For tenant-occupied property, the purchaser shall provide a
18 tenant with written notice in accordance with section 2 of this act.
19 The purchaser shall also have a right to the summary proceedings to
20 obtain possession of real property provided in chapter 59.12 RCW.

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

23 An unlawful detainer action, commenced as a result of a trustee's
24 sale under chapter 61.24 RCW, must comply with the requirements of RCW
25 61.24.040 and 61.24.060.

26 NEW SECTION. **Sec. 11.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 12.** Sections 1 through 4, 8, and 9 of this act
31 expire December 31, 2012.

--- END ---