

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5378

60th Legislature
2008 Regular Session

Passed by the Senate March 11, 2008
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 6, 2008
YEAS 93 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5378** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5378

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Weinstein, Kline and Rockefeller)

READ FIRST TIME 02/13/07.

1 AN ACT Relating to deeds of trust; and amending RCW 61.24.010,
2 61.24.030, 61.24.040, 61.24.045, 61.24.130, and 61.24.135.

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

4 **Sec. 1.** RCW 61.24.010 and 1998 c 295 s 2 are each amended to read
5 as follows:

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

7 (a) Any domestic corporation incorporated under Title 23B, 30, 31,
8 32, or 33 RCW of which at least one officer is a Washington resident;
9 or

10 (b) Any title insurance company authorized to insure title to real
11 property under the laws of this state, or its agents; or

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

14 (d) Any professional corporation incorporated under chapter 18.100
15 RCW, any professional limited liability company formed under chapter
16 25.15 RCW, any general partnership, including limited liability
17 partnerships, formed under chapter 25.04 RCW, all of whose
18 shareholders, members, or partners, respectively, are either licensed

1 attorneys or entities, provided all of the owners of those entities are
2 licensed attorneys, or any domestic corporation wholly owned by any of
3 the entities under this subsection (1)(d); or

4 (e) Any agency or instrumentality of the United States government;
5 or

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

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

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

23 (4) The trustee or successor trustee shall act impartially between
24 the borrower, grantor, and beneficiary.

25 **Sec. 2.** RCW 61.24.030 and 1998 c 295 s 4 are each amended to read
26 as follows:

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

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

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

36 (3) That a default has occurred in the obligation secured or a

1 covenant of the grantor, which by the terms of the deed of trust makes
2 operative the power to sell;

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

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

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

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

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

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

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

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

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

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

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

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

18 (i) That the effect of the sale of the grantor's property by the
19 trustee will be to deprive the grantor of all their interest in the
20 property described in (a) of this subsection; and

21 (j) That the borrower, grantor, and any guarantor has recourse to
22 the courts pursuant to RCW 61.24.130 to contest the alleged default on
23 any proper ground.

24 **Sec. 3.** RCW 61.24.040 and 1998 c 295 s 5 are each amended to read
25 as follows:

26 A deed of trust foreclosed under this chapter shall be foreclosed
27 as follows:

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

29 (a) Record a notice in the form described in RCW 61.24.040(1)(f) in
30 the office of the auditor in each county in which the deed of trust is
31 recorded;

32 (b) To the extent the trustee elects to foreclose its lien or
33 interest, or the beneficiary elects to preserve its right to seek a
34 deficiency judgment against a borrower or grantor under RCW
35 61.24.100(3)(a), and if their addresses are stated in a recorded
36 instrument evidencing their interest, lien, or claim of lien, or an
37 amendment thereto, or are otherwise known to the trustee, cause a copy

1 of the notice of sale described in RCW 61.24.040(1)(f) to be
2 transmitted by both first class and either certified or registered
3 mail, return receipt requested, to the following persons or their legal
4 representatives, if any, at such address:

5 (i) The borrower and grantor;

6 (ii) The beneficiary of any deed of trust or mortgagee of any
7 mortgage, or any person who has a lien or claim of lien against the
8 property, that was recorded subsequent to the recordation of the deed
9 of trust being foreclosed and before the recordation of the notice of
10 sale;

11 (iii) The vendee in any real estate contract, the lessee in any
12 lease, or the holder of any conveyances of any interest or estate in
13 any portion or all of the property described in such notice, if that
14 contract, lease, or conveyance of such interest or estate, or a
15 memorandum or other notice thereof, was recorded after the recordation
16 of the deed of trust being foreclosed and before the recordation of the
17 notice of sale;

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

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

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

30 (c) Cause a copy of the notice of sale described in RCW
31 61.24.040(1)(f) to be transmitted by both first class and either
32 certified or registered mail, return receipt requested, to the
33 plaintiff or the plaintiff's attorney of record, in any court action to
34 foreclose a lien or other encumbrance on all or any part of the
35 property, provided a court action is pending and a lis pendens in
36 connection therewith is recorded in the office of the auditor of any
37 county in which all or part of the property is located on the date the
38 notice is recorded;

1 (d) Cause a copy of the notice of sale described in RCW
2 61.24.040(1)(f) to be transmitted by both first class and either
3 certified or registered mail, return receipt requested, to any person
4 who has recorded a request for notice in accordance with RCW 61.24.045,
5 at the address specified in such person's most recently recorded
6 request for notice;

7 (e) Cause a copy of the notice of sale described in RCW
8 61.24.040(1)(f) to be posted in a conspicuous place on the property, or
9 in lieu of posting, cause a copy of said notice to be served upon any
10 occupant of the property;

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

12 NOTICE OF TRUSTEE'S SALE

13 I.

14 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
15 day of, . . ., at the hour of o'clock M. at
16 [street
17 address and location if inside a building] in the City of,
18 State of Washington, sell at public auction to the highest and best
19 bidder, payable at the time of sale, the following described real
20 property, situated in the County(ies) of, State of
21 Washington, to-wit:

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

25 which is subject to that certain Deed of Trust dated,
26 . . ., recorded, . . ., under Auditor's File No.,
27 records of County, Washington, from, as
28 Grantor, to, as Trustee, to secure an obligation in
29 favor of, as Beneficiary, the beneficial interest in
30 which was assigned by, under an Assignment recorded
31 under Auditor's File No. [Include recording information for
32 all counties if the Deed of Trust is recorded in more than one county.]

33 II.

34 No action commenced by the Beneficiary of the Deed of Trust is now
35 pending to seek satisfaction of the obligation in any Court by reason

1 of the Borrower's or Grantor's default on the obligation secured by the
2 Deed of Trust.

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

6 III.

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

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

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

11 IV.

12 The sum owing on the obligation secured by the Deed of Trust is:
13 Principal \$, together with interest as provided in the note
14 or other instrument secured from the day of,,
15 and such other costs and fees as are due under the note or other
16 instrument secured, and as are provided by statute.

17 V.

18 The above-described real property will be sold to satisfy the expense
19 of sale and the obligation secured by the Deed of Trust as provided by
20 statute. The sale will be made without warranty, express or implied,
21 regarding title, possession, or encumbrances on the day of
22, The default(s) referred to in paragraph III must be
23 cured by the day of, (11 days before the sale
24 date), to cause a discontinuance of the sale. The sale will be
25 discontinued and terminated if at any time on or before the day
26 of,, (11 days before the sale date), the default(s)
27 as set forth in paragraph III is/are cured and the Trustee's fees and
28 costs are paid. The sale may be terminated any time after the
29 day of, (11 days before the sale date), and before
30 the sale by the Borrower, Grantor, any Guarantor, or the holder of any
31 recorded junior lien or encumbrance paying the entire principal and
32 interest secured by the Deed of Trust, plus costs, fees, and advances,
33 if any, made pursuant to the terms of the obligation and/or Deed of
34 Trust, and curing all other defaults.

35 VI.

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

3
4
5

6 by both first class and certified mail on the day of
7, . . ., proof of which is in the possession of the Trustee;
8 and the Borrower and Grantor were personally served on the day
9 of, . . ., with said written notice of default or the
10 written notice of default was posted in a conspicuous place on the real
11 property described in paragraph I above, and the Trustee has possession
12 of proof of such service or posting.

13 VII.

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

17 VIII.

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

21 IX.

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

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

28
29 , Trustee
30 }
31 } Address
32

1 } Phone

2 [Acknowledgment]

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

7 NOTICE OF FORECLOSURE

8 Pursuant to the Revised Code of Washington,
9 Chapter 61.24 RCW

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

15 To cure the default(s), you must bring the payments current, cure
16 any other defaults, and pay accrued late charges and other costs,
17 advances, and attorneys' fees as set forth below by the day of
18, . . . [11 days before the sale date]. To date, these
19 arrears and costs are as follows:

20		Estimated amount
21	Currently due	that will be due
22	to reinstate	to reinstate
23	on.....	on.....
24
25		(11 days before
26		the date set
27		for sale)

28	Delinquent payments		
29	from.....,		
30	..., in the		
31	amount of		
32	\$.../mo.:	\$....	\$....
33	Late charges in		
34	the total		

1	amount of:	\$....	\$....
2			Estimated
3			Amounts
4	Attorneys' fees:	\$....	\$....
5	Trustee's fee:	\$....	\$....
6	Trustee's expenses:		
7	(Itemization)		
8	Title report	\$....	\$....
9	Recording fees	\$....	\$....
10	Service/Posting		
11	of Notices	\$....	\$....
12	Postage/Copying		
13	expense	\$....	\$....
14	Publication	\$....	\$....
15	Telephone		\$....
16	charges	\$....	
17	Inspection fees	\$....	\$....
18	\$....	\$....
19	\$....	\$....
20	TOTALS	\$....	\$....

21 To pay off the entire obligation secured by your Deed of Trust as
22 of the day of you must pay a total of \$.
23 in principal, \$. in interest, plus other costs and advances
24 estimated to date in the amount of \$. From and after the
25 date of this notice you must submit a written request to the Trustee to
26 obtain the total amount to pay off the entire obligation secured by
27 your Deed of Trust as of the payoff date.

28 As to the defaults which do not involve payment of money to the
29 Beneficiary of your Deed of Trust, you must cure each such default.
30 Listed below are the defaults which do not involve payment of money to
31 the Beneficiary of your Deed of Trust. Opposite each such listed
32 default is a brief description of the action necessary to cure the
33 default and a description of the documentation necessary to show that
34 the default has been cured.

35 Default Description of Action Required to Cure and

Documentation Necessary to Show Cure

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

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation

1 secured thereby are enclosed. You may wish to consult a lawyer. Legal
2 action on your part may prevent or restrain the sale, but only if you
3 persuade the court of the merits of your defense.

4 The court may grant a restraining order or injunction to restrain
5 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the
6 trustee of the time when, place where, and the judge before whom the
7 application for the restraining order or injunction is to be made.
8 This notice shall include copies of all pleadings and related documents
9 to be given to the judge. Notice and other process may be served on
10 the trustee at:

11 NAME:
12 ADDRESS:
13
14 TELEPHONE NUMBER:

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

20 (3) In addition, the trustee shall cause a copy of the notice of
21 sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to
22 be published in a legal newspaper in each county in which the property
23 or any part thereof is situated, once on or between the thirty-fifth
24 and twenty-eighth day before the date of sale, and once on or between
25 the fourteenth and seventh day before the date of sale;

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

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

36 (6) The trustee has no obligation to, but may, for any cause the
37 trustee deems advantageous, continue the sale for a period or periods

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

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

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

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

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.

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

Sec. 4. RCW 61.24.045 and 1985 c 193 s 1 are each amended to read as follows:

Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set forth the name, mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is hereby made that a copy of any notice of sale described in RCW 61.24.040(1)(f) under that certain Deed of Trust dated, ((19)) 20., recorded on, ((19)) 20., under auditor's file No., records of County,

1 Washington, from, as Grantor, to, as
2 Trustee, to secure an obligation in favor of, as
3 Beneficiary, and affecting the following described real property:

4 (Legal Description)

5 be sent by both first class and either registered or certified mail,
6 return receipt requested, to at

7 Dated this day of, ((19)) 20. . .

8

9 Signature

10 (Acknowledgment)

11 A request for notice under this section shall not affect title to, or
12 be deemed notice to any person that any person has any right, title,
13 interest in, lien or charge upon, the property described in the request
14 for notice.

15 **Sec. 5.** RCW 61.24.130 and 1998 c 295 s 14 are each amended to read
16 as follows:

17 (1) Nothing contained in this chapter shall prejudice the right of
18 the borrower, grantor, any guarantor, or any person who has an interest
19 in, lien, or claim of lien against the property or some part thereof,
20 to restrain, on any proper legal or equitable ground, a trustee's sale.
21 The court shall require as a condition of granting the restraining
22 order or injunction that the applicant pay to the clerk of the court
23 the sums that would be due on the obligation secured by the deed of
24 trust if the deed of trust was not being foreclosed:

25 (a) In the case of default in making the periodic payment of
26 principal, interest, and reserves, such sums shall be the periodic
27 payment of principal, interest, and reserves paid to the clerk of the
28 court every thirty days.

29 (b) In the case of default in making payment of an obligation then
30 fully payable by its terms, such sums shall be the amount of interest
31 accruing monthly on said obligation at the nondefault rate, paid to the
32 clerk of the court every thirty days.

33 In the case of default in performance of any nonmonetary obligation
34 secured by the deed of trust, the court shall impose such conditions as
35 it deems just.

1 In addition, the court may condition granting the restraining order
2 or injunction upon the giving of security by the applicant, in such
3 form and amount as the court deems proper, for the payment of such
4 costs and damages, including attorneys' fees, as may be later found by
5 the court to have been incurred or suffered by any party by reason of
6 the restraining order or injunction. The court may consider, upon
7 proper showing, the grantor's equity in the property in determining the
8 amount of said security.

9 (2) No court may grant a restraining order or injunction to
10 restrain a trustee's sale unless the person seeking the restraint gives
11 five days notice to the trustee of the time when, place where, and the
12 judge before whom the application for the restraining order or
13 injunction is to be made. This notice shall include copies of all
14 pleadings and related documents to be given to the judge. No judge may
15 act upon such application unless it is accompanied by proof, evidenced
16 by return of a sheriff, the sheriff's deputy, or by any person eighteen
17 years of age or over who is competent to be a witness, that the notice
18 has been served on the trustee.

19 (3) If the restraining order or injunction is dissolved after the
20 date of the trustee's sale set forth in the notice as provided in RCW
21 61.24.040(1)(f), the court granting such restraining order or
22 injunction, or before whom the order or injunction is returnable,
23 shall, at the request of the trustee, set a new sale date which shall
24 be not less than forty-five days from the date of the order dissolving
25 the restraining order. The trustee shall:

26 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
27 (f) at least thirty days before the new sale date; and

28 (b) Cause a copy of the notice of trustee's sale as provided in RCW
29 61.24.040(1)(f) to be published in a legal newspaper in each county in
30 which the property or any part thereof is situated once between the
31 thirty-fifth and twenty-eighth day before the sale and once between the
32 fourteenth and seventh day before the sale.

33 (4) If a trustee's sale has been stayed as a result of the filing
34 of a petition in federal bankruptcy court and an order is entered in
35 federal bankruptcy court granting relief from the stay or closing or
36 dismissing the case, or discharging the debtor with the effect of
37 removing the stay, the trustee may set a new sale date which shall not

1 be less than forty-five days after the date of the bankruptcy court's
2 order. The trustee shall:

3 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
4 (f) at least thirty days before the new sale date; and

5 (b) Cause a copy of the notice of trustee's sale as provided in RCW
6 61.24.040(1)(f) to be published in a legal newspaper in each county in
7 which the property or any part thereof is situated, once between the
8 thirty-fifth and twenty-eighth day before the sale and once between the
9 fourteenth and seventh day before the sale.

10 (5) Subsections (3) and (4) of this section are permissive only and
11 do not prohibit the trustee from proceeding with a trustee's sale
12 following termination of any injunction or stay on any date to which
13 such sale has been properly continued in accordance with RCW
14 61.24.040(6).

15 (6) The issuance of a restraining order or injunction shall not
16 prohibit the trustee from continuing the sale as provided in RCW
17 61.24.040(6).

18 **Sec. 6.** RCW 61.24.135 and 1998 c 295 s 15 are each amended to read
19 as follows:

20 It is an unfair or deceptive act or practice under the consumer
21 protection act, chapter 19.86 RCW, for any person, acting alone or in
22 concert with others, to offer, or offer to accept or accept from
23 another, any consideration of any type not to bid, or to reduce a bid,
24 at a sale of property conducted pursuant to a power of sale in a deed
25 of trust. The trustee may decline to complete a sale or deliver the
26 trustee's deed and refund the purchase price, if it appears that the
27 bidding has been collusive or defective, or that the sale might have
28 been void. However, it is not an unfair or deceptive act or practice
29 for any person, including a trustee, to state that a property subject
30 to a recorded notice of trustee's sale or subject to a sale conducted
31 pursuant to this chapter is being sold in an "as-is" condition, or for
32 the beneficiary to arrange to provide financing for a particular bidder
33 or to reach any good faith agreement with the borrower, grantor, any
34 guarantor, or any junior lienholder.

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