

SSB 5275 - S AMD 115
By Senator Kline

NOT CONSIDERED 05/25/2011

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

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

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

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

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

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

22 (2) Therefore, the legislature intends to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Can you pay and stop the foreclosure process?

19 Do you dispute the failure to pay?

20 Can you sell your property to preserve your equity?

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

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

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

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

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

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

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

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

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

20 (1)(a) A trustee, beneficiary, or authorized agent may not issue a
21 notice of default under RCW 61.24.030(8) until: (i) Thirty days after
22 initial contact with the borrower (~~(is made)~~) was initiated as required
23 under (b) of this subsection or thirty days after satisfying the due
24 diligence requirements as described in subsection (~~(+5)~~) (4) of this
25 section and the borrower has not responded; or (ii) if the borrower
26 responds to the initial contact, ninety days after the initial contact
27 with the borrower was initiated.

28 (b) A beneficiary or authorized agent shall make initial contact
29 with the borrower by letter to provide the borrower with information
30 required under (c) of this subsection and by telephone (~~(in order to~~
31 ~~assess the borrower's financial ability to pay the debt secured by the~~
32 ~~deed of trust and explore options for the borrower to avoid~~
33 ~~foreclosure)~~) as required under subsection (4) of this section. The
34 letter required under this subsection must be mailed in accordance with
35 subsection (~~(+5)~~) (4)(a) of this section and must include the
36 information described in (c) of this subsection and subsection (~~(+5)(a)~~
37 and) (4)(e) (i) through (iv) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~((+5))~~ (4) A notice of default may be issued under RCW
28 61.24.030(8) if a beneficiary or authorized agent has ~~((not contacted
29 a))~~ initiated contact with the borrower as required under subsection
30 (1)(b) of this section and the failure to ~~((contact))~~ meet with the
31 borrower occurred despite the due diligence of the beneficiary or
32 authorized agent. Due diligence requires the following:

33 (a) A beneficiary or authorized agent shall first attempt to
34 contact a borrower by sending a first-class letter to the address in
35 the beneficiary's records for sending account statements to the
36 borrower and to the address of the property encumbered by the deed of
37 trust. The letter must ~~((include the toll-free telephone number made~~

1 available by the department to find a department-certified housing
2 counseling agency, and the following information:

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

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

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

16 (iii) A beneficiary or authorized agent satisfies the telephone
17 contact requirements of this subsection ~~((+5))~~ (4)(b) if the
18 beneficiary or authorized agent determines, after attempting contact
19 under this subsection ~~((+5))~~ (4)(b), that the borrower's primary
20 telephone number and secondary telephone number or numbers on file, if
21 any, have been disconnected or are not good contact numbers for the
22 borrower.

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

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

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

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

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

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

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

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

19 ~~((+6))~~ (5) Subsections (1) and ~~((+5))~~ (4) of this section do not
20 apply if any of the following occurs:

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

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

28 ~~((+7))~~ (6)(a) This section applies only to deeds of trust ~~((made~~
29 ~~from January 1, 2003, to December 31, 2007, inclusive,))~~ that are
30 recorded against owner-occupied residential real property. This
31 section does not apply to deeds of trust: (i) Securing a commercial
32 loan; (ii) securing obligations of a grantor who is not the borrower or
33 a guarantor; or (iii) securing a purchaser's obligations under a
34 seller-financed sale.

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

37 ~~((+8))~~ (7) As used in this section:

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

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

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

10 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

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

27 (3) [] The beneficiary or beneficiary's authorized agent has
28 exercised due diligence to contact the borrower as required in RCW
29 61.24.031 ~~((+5) and, after waiting fourteen days after the requirements~~
30 ~~in RCW 61.24.031 were satisfied, the beneficiary or the beneficiary's~~
31 ~~authorized agent sent to the borrower(s), by certified mail, return~~
32 ~~receipt requested, the letter required under RCW 61.24.031))~~ (4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (b) The results of the mediation program, including the numbers of
31 loans restructured or modified, the change in the borrower's monthly
32 payment for principal and interest, the number of principal write-downs
33 and interest rate reductions, and, to the extent practical, the number
34 of borrowers who default within a year of restructuring or
35 modification;

36 (c) The information received by housing counselors regarding
37 outcomes of foreclosures; and

1 (d) Any recommendations for changes to the statutes regarding the
2 mediation program.

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

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

9 (2) A borrower under a deed of trust on owner-occupied residential
10 real property who has received a notice of default on or before the
11 effective date this section may be referred to mediation under section
12 7 of this act by a housing counselor or attorney.

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

14 (a) Securing a commercial loan;

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

17 (c) Securing a purchaser's obligations under a seller-financed
18 sale.

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

21 The provisions of section 7 of this act do not apply to any
22 federally insured depository institution, as defined in 12 U.S.C. Sec.
23 461(b)(1)(A), that certifies under penalty of perjury that it was not
24 a beneficiary of deeds of trust in more than two hundred fifty trustee
25 sales of owner-occupied residential real property that occurred in this
26 state during the preceding calendar year. A federally insured
27 depository institution certifying that section 7 of this act does not
28 apply must do so annually, beginning no later than thirty days after
29 the effective date of this section, and no later than January 10th of
30 each year thereafter.

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

33 (1) For the purposes of section 7 of this act, the department must
34 maintain a list of approved foreclosure mediators. The department may

1 approve the following persons to serve as foreclosure mediators under
2 this section:

3 (a) Attorneys who are active members of the Washington state bar
4 association;

5 (b) Employees of United States department of housing and urban
6 development-approved housing counseling agencies;

7 (c) Employees or volunteers of dispute resolution centers under
8 chapter 7.75 RCW;

9 (d) Retired judges of Washington courts; and

10 (e) Other statewide organizations that provide mediation services.

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

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

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

21 The foreclosure fairness account is created in the custody of the
22 state treasurer. All receipts received under section 12 of this act
23 must be deposited into the account. Only the director of the
24 department of commerce or the director's designee may authorize
25 expenditures from the account. The account is subject to allotment
26 procedures under chapter 43.88 RCW, but an appropriation is not
27 required for expenditures. Expenditures from the account must be used
28 as follows: (1) No less than eighty percent must be used for the
29 purposes of providing housing counselors for borrowers, except that
30 this amount may be less than eighty percent only if necessary to meet
31 the funding level specified for the office of the attorney general
32 under subsection (2) of this section and the department under
33 subsection (4) of this section; (2) up to six percent, or six hundred
34 fifty-five thousand dollars per biennium, whichever amount is greater,
35 to the office of the attorney general to be used by the consumer
36 protection division to enforce this chapter; (3) up to two percent to
37 the office of civil legal aid to be used for the purpose of contracting

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

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

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

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

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

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

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

34 (3) No later than thirty days after the effective date of this
35 section, the beneficiaries required to report and remit to the
36 department under this section shall determine the number of owner-
37 occupied residential real properties for which notices of default were

1 issued during the three months prior to the effective date of this
2 section. The beneficiary shall remit to the department a one-time sum
3 of two hundred fifty dollars multiplied by the number of properties.
4 The department shall deposit the funds into the foreclosure fairness
5 account as provided under section 11 of this act.

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

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

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

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

20 (2) Anticipated recovery under a modification or workout plan
21 exceeds the anticipated recovery through foreclosure on a net present
22 value basis.

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

25 (1) It is an unfair or deceptive act or practice under the consumer
26 protection act, chapter 19.86 RCW, for any person, acting alone or in
27 concert with others, to offer, or offer to accept or accept from
28 another, any consideration of any type not to bid, or to reduce a bid,
29 at a sale of property conducted pursuant to a power of sale in a deed
30 of trust. The trustee may decline to complete a sale or deliver the
31 trustee's deed and refund the purchase price, if it appears that the
32 bidding has been collusive or defective, or that the sale might have
33 been void. However, it is not an unfair or deceptive act or practice
34 for any person, including a trustee, to state that a property subject
35 to a recorded notice of trustee's sale or subject to a sale conducted
36 pursuant to this chapter is being sold in an "as-is" condition, or for

1 the beneficiary to arrange to provide financing for a particular bidder
2 or to reach any good faith agreement with the borrower, grantor, any
3 guarantor, or any junior lienholder.

4 (2) It is an unfair or deceptive act in trade or commerce and an
5 unfair method of competition in violation of the consumer protection
6 act, chapter 19.86 RCW, for any person or entity to: (a) Violate the
7 duty of good faith under section 7 of this act; (b) fail to comply with
8 the requirements of section 12 of this act; or (c) fail to initiate
9 contact with a borrower and exercise due diligence as required under
10 RCW 61.24.031.

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

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

19 (2) If the sale is a transfer of a controlling interest in an
20 entity with an interest in real property located in this state, the
21 selling price shall be the true and fair value of the real property
22 owned by the entity and located in this state. If the true and fair
23 value of the real property located in this state cannot reasonably be
24 determined, the selling price shall be determined according to
25 subsection (4) of this section.

26 (3) As used in this section, "total consideration paid or
27 contracted to be paid" includes money or anything of value, paid or
28 delivered or contracted to be paid or delivered in return for the sale,
29 and shall include the amount of any lien, mortgage, contract
30 indebtedness, or other incumbrance, either given to secure the purchase
31 price, or any part thereof, or remaining unpaid on such property at the
32 time of sale.

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

36 When a transfer or conveyance is made by deed in lieu of

1 foreclosure to satisfy a deed of trust, total consideration shall not
2 include the amount of any relocation assistance provided to the
3 transferor.

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

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

11 (1)(a) The department must develop model language for the initial
12 contact letter to be used by beneficiaries as required under RCW
13 61.24.031. The model language must explain how the borrower may
14 respond to the letter. The department must develop the model language
15 in both English and Spanish and both versions must be contained in the
16 same letter.

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

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

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

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

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

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

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

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

31 NEW SECTION. Sec. 18. If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

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

SSB 5275 - S AMD
By Senator Kline

NOT CONSIDERED 05/25/2011

5 On page 1, line 2 of the title, after "foreclosures;" strike the
6 remainder of the title and insert "amending RCW 61.24.030, 61.24.031,
7 61.24.135, and 82.45.030; reenacting and amending RCW 61.24.005; adding
8 new sections to chapter 61.24 RCW; creating new sections; repealing
9 2009 c 292 s 13 (uncodified); and declaring an emergency."

EFFECT: Any federally insured depository institution that certifies it was not a beneficiary of deeds of trust in more than two hundred fifty trustee sales of owner-occupied residential real property that occurred in this state during the preceding calendar year is not subject to the mediation or \$250 Notice of Default fee requirements under this bill.

Specifies that the allocation of funds from the Foreclosure Fairness Account will be:

(1) 6 percent, or \$655,000 per biennium, whichever amount is greater to the Attorney General's Office (AGO);

(2) 9 percent, or \$451,000 per biennium, whichever amount is greater to the Department of Commerce; and

(3) Up to 3 percent to the Department of Financial Institutions for homeowner pre- and postpurchase outreach and education programs (vs. \$400,000 in FY 2012 and \$200,000 in FY 2013).

Specifies that the amount dedicated to housing counselors may be less than 80 percent if necessary to meet the funding level specified for the AGO and Commerce.

Makes it a Consumer Protection Act violation if a beneficiary fails to exercise due diligence required under the meet and confer process.

Requires housing counselors to provide certain information to the Department of Commerce.

Clarifies that the Department of Commerce will develop model

language for the initial contact letter and specifically lists which form notices the department must create.

The emergency clause effective date applies to the Department of Commerce for rule making, setting up the account, and providing funding.

Makes other technical corrections.

--- END ---