

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5810

Chapter 292, Laws of 2009

61st Legislature
2009 Regular Session

DEEDS OF TRUST--FORECLOSURES

EFFECTIVE DATE: 07/26/09

Passed by the Senate April 20, 2009
YEAS 46 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 9, 2009
YEAS 98 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 30, 2009, 10:48 a.m.

CHRISTINE GREGOIRE

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 **ENGROSSED SENATE BILL 5810** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 1, 2009

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5810

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

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

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

1 AN ACT Relating to foreclosures on deeds of trust; amending RCW
2 61.24.005, 61.24.010, 61.24.040, and 61.24.060; reenacting and amending
3 RCW 61.24.030; adding new sections to chapter 61.24 RCW; adding a new
4 section to chapter 59.12 RCW; creating a new section; and providing an
5 expiration date.

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

7 **Sec. 1.** RCW 61.24.005 and 1998 c 295 s 1 are each amended to read
8 as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Grantor" means a person, or its successors, who executes a
12 deed of trust to encumber the person's interest in property as security
13 for the performance of all or part of the borrower's obligations.

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

17 (3) "Affiliate of beneficiary" means any entity which controls, is
18 controlled by, or is under common control with a beneficiary.

1 (4) "Trustee" means the person designated as the trustee in the
2 deed of trust or appointed under RCW 61.24.010(2).

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

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

12 (7) "Commercial loan" means a loan that is not made primarily for
13 personal, family, or household purposes.

14 (8) "Trustee's sale" means a nonjudicial sale under a deed of trust
15 undertaken pursuant to this chapter.

16 (9) "Fair value" means the value of the property encumbered by a
17 deed of trust that is sold pursuant to a trustee's sale. This value
18 shall be determined by the court or other appropriate adjudicator by
19 reference to the most probable price, as of the date of the trustee's
20 sale, which would be paid in cash or other immediately available funds,
21 after deduction of prior liens and encumbrances with interest to the
22 date of the trustee's sale, for which the property would sell on such
23 date after reasonable exposure in the market under conditions requisite
24 to a fair sale, with the buyer and seller each acting prudently,
25 knowledgeably, and for self-interest, and assuming that neither is
26 under duress.

27 (10) "Record" and "recorded" includes the appropriate registration
28 proceedings, in the instance of registered land.

29 (11) "Person" means any natural person, or legal or governmental
30 entity.

31 (12) "Owner-occupied" means property that is the principal
32 residence of the borrower.

33 (13) "Residential real property" means property consisting solely
34 of a single-family residence, a residential condominium unit, or a
35 residential cooperative unit.

36 (14) "Tenant-occupied property" means property consisting solely of
37 residential real property that is the principal residence of a tenant

1 subject to chapter 59.18 RCW or other building with four or fewer
2 residential units that is the principal residence of a tenant subject
3 to chapter 59.18 RCW.

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

6 (1)(a) A trustee, beneficiary, or authorized agent may not issue a
7 notice of default under RCW 61.24.030(8) until thirty days after
8 initial contact with the borrower is made as required under (b) of this
9 subsection or thirty days after satisfying the due diligence
10 requirements as described in subsection (5) of this section.

11 (b) A beneficiary or authorized agent shall contact the borrower by
12 letter and by telephone in order to assess the borrower's financial
13 ability to pay the debt secured by the deed of trust and explore
14 options for the borrower to avoid foreclosure. The letter required
15 under this subsection must be mailed in accordance with subsection
16 (5)(a) of this section and must include the information described in
17 subsection (5)(a) and (e)(i) through (iv) of this section.

18 (c) During the initial contact, the beneficiary or authorized agent
19 shall advise the borrower that he or she has the right to request a
20 subsequent meeting and, if requested, the beneficiary or authorized
21 agent shall schedule the meeting to occur within fourteen days of the
22 request. The assessment of the borrower's financial ability to repay
23 the debt and a discussion of options may occur during the initial
24 contact or at a subsequent meeting scheduled for that purpose. At the
25 initial contact, the borrower must be provided the toll-free telephone
26 number made available by the department to find a department-certified
27 housing counseling agency and the toll-free numbers for the department
28 of financial institutions and the statewide civil legal aid hotline for
29 possible assistance and referrals.

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

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

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

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

9 (4) Within fourteen days after the initial contact under subsection
10 (1) of this section, if a borrower has designated a department-
11 certified housing counseling agency, attorney, or other advisor to
12 discuss with the beneficiary or authorized agent, on the borrower's
13 behalf, options for the borrower to avoid foreclosure, the borrower
14 shall inform the beneficiary or authorized agent and provide the
15 contact information. The beneficiary or authorized agent shall contact
16 the designated representative for the borrower for the discussion
17 within fourteen days after the representative is designated by the
18 borrower. Any deed of trust modification or workout plan offered at
19 the meeting with the borrower's designated representative by the
20 beneficiary or authorized agent is subject to approval by the borrower.

21 (5) A notice of default may be issued under RCW 61.24.030(8) if a
22 beneficiary or authorized agent has not contacted a borrower as
23 required under subsection (1)(b) of this section and the failure to
24 contact the borrower occurred despite the due diligence of the
25 beneficiary or authorized agent. Due diligence requires the following:

26 (a) A beneficiary or authorized agent shall first attempt to
27 contact a borrower by sending a first-class letter to the address in
28 the beneficiary's records for sending account statements to the
29 borrower and to the address of the property encumbered by the deed of
30 trust. The letter must include the toll-free telephone number made
31 available by the department to find a department-certified housing
32 counseling agency, and the following information:

33 "You may contact the Department of Financial Institutions, the
34 Washington State Bar Association, or the statewide civil legal aid
35 hotline for possible assistance or referrals."

36 (b)(i) After the letter has been sent, the beneficiary or
37 authorized agent shall attempt to contact the borrower by telephone at

1 least three times at different hours and on different days. Telephone
2 calls must be made to the primary and secondary telephone numbers on
3 file with the beneficiary or authorized agent.

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

8 (iii) A beneficiary or authorized agent satisfies the telephone
9 contact requirements of this subsection (5)(b) if the beneficiary or
10 authorized agent determines, after attempting contact under this
11 subsection (5)(b), that the borrower's primary telephone number and
12 secondary telephone number or numbers on file, if any, have been
13 disconnected or are not good contact numbers for the borrower.

14 (c) If the borrower does not respond within fourteen days after the
15 telephone call requirements of (b) of this subsection have been
16 satisfied, the beneficiary or authorized agent shall send a certified
17 letter, with return receipt requested, to the borrower at the address
18 in the beneficiary's records for sending account statements to the
19 borrower and to the address of the property encumbered by the deed of
20 trust. The letter must include the information described in (e)(i)
21 through (iv) of this subsection.

22 (d) The beneficiary or authorized agent shall provide a means for
23 the borrower to contact the beneficiary or authorized agent in a timely
24 manner, including a toll-free telephone number or charge-free
25 equivalent that will provide access to a live representative during
26 business hours.

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

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

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

37 (iii) A toll-free telephone number or charge-free equivalent for

1 borrowers who wish to discuss options for avoiding foreclosure with
2 their beneficiary or authorized agent; and

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

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

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

11 (b) The borrower has filed for bankruptcy, and the bankruptcy stay
12 remains in place, or the borrower has filed for bankruptcy and the
13 bankruptcy court has granted relief from the bankruptcy stay allowing
14 enforcement of the deed of trust.

15 (7)(a) This section applies only to deeds of trust made from
16 January 1, 2003, to December 31, 2007, inclusive, that are recorded
17 against owner-occupied residential real property. This section does
18 not apply to deeds of trust: (i) Securing a commercial loan; (ii)
19 securing obligations of a grantor who is not the borrower or a
20 guarantor; or (iii) securing a purchaser's obligations under a seller-
21 financed sale.

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

24 (8) As used in this section:

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

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

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

34 **"FORECLOSURE LOSS MITIGATION FORM**

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

36 The undersigned beneficiary or authorized agent for the beneficiary
37 hereby represents and declares under the penalty of perjury that [check

1 the applicable box and fill in any blanks so that the trustee can
2 insert, on the beneficiary's behalf, the applicable declaration in the
3 notice of default required under chapter 61.24 RCW]:

4 (1) [] The beneficiary or beneficiary's authorized agent has
5 contacted the borrower under, and has complied with, section 2 of this
6 act (contact provision to "assess the borrower's financial ability to
7 pay the debt secured by the deed of trust and explore options for the
8 borrower to avoid foreclosure").

9 (2) [] The beneficiary or beneficiary's authorized agent has
10 exercised due diligence to contact the borrower as required in section
11 2(5) of this act and, after waiting fourteen days after the
12 requirements in section 2 of this act were satisfied, the beneficiary
13 or the beneficiary's authorized agent sent to the borrower(s), by
14 certified mail, return receipt requested, the letter required under
15 section 2 of this act.

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

20 (4) [] Under section 2 of this act, the beneficiary or the
21 beneficiary's authorized agent has verified information that, on or
22 before the date of this declaration, the borrower(s) has filed for
23 bankruptcy, and the bankruptcy stay remains in place, or the borrower
24 has filed for bankruptcy and the bankruptcy court has granted relief
25 from the bankruptcy stay allowing the enforcement of the deed of
26 trust."

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

29 If the trustee elects to foreclose the interest of any occupant of
30 tenant-occupied property, upon posting a notice of trustee's sale under
31 RCW 61.24.040, the trustee or its authorized agent shall post in the
32 manner required under RCW 61.24.040(1)(e) and shall mail at the same
33 time in an envelope addressed to the "Resident of property subject to
34 foreclosure sale" the following notice:

35 "The foreclosure process has begun on this property, which may
36 affect your right to continue to live in this property. Ninety days or
37 more after the date of this notice, this property may be sold at

1 foreclosure. If you are renting this property, the new property owner
2 may either give you a new rental agreement or provide you with a sixty-
3 day notice to vacate the property. You may wish to contact a lawyer or
4 your local legal aid or housing counseling agency to discuss any rights
5 that you may have."

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

8 (1) A tenant or subtenant in possession of a residential real
9 property at the time the property is sold in foreclosure must be given
10 sixty days' written notice to vacate before the tenant or subtenant may
11 be removed from the property as prescribed in chapter 59.12 RCW.
12 Notwithstanding the notice requirement in this subsection, a tenant may
13 be evicted for waste or nuisance in an unlawful detainer action under
14 chapter 59.12 RCW.

15 (2) This section does not prohibit the new owner of a property
16 purchased pursuant to a trustee's sale from negotiating a new purchase
17 or rental agreement with a tenant or subtenant.

18 (3) This section does not apply if the borrower or grantor remains
19 on the property as a tenant, subtenant, or occupant.

20 NEW SECTION. **Sec. 5.** Sections 3 and 4 of this act apply only to
21 the foreclosure of tenant-occupied property.

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

24 (1) The failure of the borrower or grantor to bring a civil action
25 to enjoin a foreclosure sale under this chapter may not be deemed a
26 waiver of a claim for damages asserting:

- 27 (a) Common law fraud or misrepresentation;
- 28 (b) A violation of Title 19 RCW; or
- 29 (c) Failure of the trustee to materially comply with the provisions
30 of this chapter.

31 (2) The nonwaived claims listed under subsection (1) of this
32 section are subject to the following limitations:

- 33 (a) The claim must be asserted or brought within two years from the
34 date of the foreclosure sale or within the applicable statute of
35 limitations for such claim, whichever expires earlier;

1 (b) The claim may not seek any remedy at law or in equity other
2 than monetary damages;

3 (c) The claim may not affect in any way the validity or finality of
4 the foreclosure sale or a subsequent transfer of the property;

5 (d) A borrower or grantor who files such a claim is prohibited from
6 recording a lis pendens or any other document purporting to create a
7 similar effect, related to the real property foreclosed upon;

8 (e) The claim may not operate in any way to encumber or cloud the
9 title to the property that was subject to the foreclosure sale, except
10 to the extent that a judgment on the claim in favor of the borrower or
11 grantor may, consistent with RCW 4.56.190, become a judgment lien on
12 real property then owned by the judgment debtor; and

13 (f) The relief that may be granted for judgment upon the claim is
14 limited to actual damages. However, if the borrower or grantor brings
15 in the same civil action a claim for violation of chapter 19.86 RCW,
16 arising out of the same alleged facts, relief under chapter 19.86 RCW
17 is limited to actual damages, treble damages as provided for in RCW
18 19.86.090, and the costs of suit, including a reasonable attorney's
19 fee.

20 (4) This section applies only to foreclosures of owner-occupied
21 residential real property.

22 (5) This section does not apply to the foreclosure of a deed of
23 trust used to secure a commercial loan.

24 **Sec. 7.** RCW 61.24.010 and 2008 c 153 s 1 are each amended to read
25 as follows:

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

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

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

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

35 (d) Any professional corporation incorporated under chapter 18.100
36 RCW, any professional limited liability company formed under chapter
37 25.15 RCW, any general partnership, including limited liability

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

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

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

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

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

25 (4) (~~The trustee or successor trustee shall act impartially~~
26 ~~between the borrower, grantor, and beneficiary.~~) The trustee or
27 successor trustee has a duty of good faith to the borrower,
28 beneficiary, and grantor.

29 **Sec. 8.** RCW 61.24.030 and 2008 c 153 s 2 and 2008 c 108 s 22 are
30 each reenacted and amended to read as follows:

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

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

33 (2) That the deed of trust contains a statement that the real
34 property conveyed is not used principally for agricultural purposes;
35 provided, if the statement is false on the date the deed of trust was
36 granted or amended to include that statement, and false on the date of

1 the trustee's sale, then the deed of trust must be foreclosed
2 judicially. Real property is used for agricultural purposes if it is
3 used in an operation that produces crops, livestock, or aquatic goods;

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

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

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

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

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

33 (b) Unless the trustee has violated his or her duty under RCW
34 61.24.010(4), the trustee is entitled to rely on the beneficiary's
35 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

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

23 (f) A statement showing the total of (d) and (e) of this
24 subsection, designated clearly and conspicuously as the amount
25 necessary to reinstate the note and deed of trust before the recording
26 of the notice of sale;

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

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

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

4 (j) A statement that the borrower, grantor, and any guarantor has
5 recourse to the courts pursuant to RCW 61.24.130 to contest the alleged
6 default on any proper ground; (~~and~~)

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

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

14 Can you pay and stop the foreclosure process?

15 Do you dispute the failure to pay?

16 Can you sell your property to preserve your equity?

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

20 Do you qualify for any government or private homeowner assistance
21 programs?

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

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

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

1 legal referral services also provide information about lower-cost or
2 free legal services for those who qualify. You may contact the
3 Department of Financial Institutions or the statewide civil legal aid
4 hotline for possible assistance or referrals; and

5 (1) In the event the property secured by the deed of trust is
6 residential real property, the name and address of the owner of any
7 promissory notes or other obligations secured by the deed of trust and
8 the name, address, and telephone number of a party acting as a servicer
9 of the obligations secured by the deed of trust."

10 **Sec. 9.** RCW 61.24.040 and 2008 c 153 s 3 are each amended to read
11 as follows:

12 A deed of trust foreclosed under this chapter shall be foreclosed
13 as follows:

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

15 (a) Record a notice in the form described in ((RCW
16 ~~61.24.040(1)~~))(f) of this subsection in the office of the auditor in
17 each county in which the deed of trust is recorded;

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

28 (i) The borrower and grantor;

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

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

1 memorandum or other notice thereof, was recorded after the recordation
2 of the deed of trust being foreclosed and before the recordation of the
3 notice of sale;

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

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

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

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

25 (d) Cause a copy of the notice of sale described in ((RCW
26 ~~61.24.040(1)~~))(f) of this subsection to be transmitted by both first-
27 class and either certified or registered mail, return receipt
28 requested, to any person who has recorded a request for notice in
29 accordance with RCW 61.24.045, at the address specified in such
30 person's most recently recorded request for notice;

31 (e) Cause a copy of the notice of sale described in ((RCW
32 ~~61.24.040(1)~~))(f) of this subsection to be posted in a conspicuous
33 place on the property, or in lieu of posting, cause a copy of said
34 notice to be served upon any occupant of the property;

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

36 NOTICE OF TRUSTEE'S SALE

37 I.

1 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
2 day of,, at the hour of o'clock M. at
3 [street
4 address and location if inside a building] in the City of,
5 State of Washington, sell at public auction to the highest and best
6 bidder, payable at the time of sale, the following described real
7 property, situated in the County(ies) of, State of
8 Washington, to-wit:

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

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

20 II.

21 No action commenced by the Beneficiary of the Deed of Trust is now
22 pending to seek satisfaction of the obligation in any Court by reason
23 of the Borrower's or Grantor's default on the obligation secured by the
24 Deed of Trust.

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

28 III.

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

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

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

33 IV.

34 The sum owing on the obligation secured by the Deed of Trust is:
35 Principal \$, together with interest as provided in the note

1 or other instrument secured from the day of,,
2 and such other costs and fees as are due under the note or other
3 instrument secured, and as are provided by statute.

4 V.

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

22 VI.

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

25
26
27

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

35 VII.

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

4 VIII.

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

8 IX.

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

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

15
16
17 , Trustee
18 }
19 } Address
20 }
21 } Phone

22 [Acknowledgment]

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

28 NOTICE OF FORECLOSURE

29 Pursuant to the Revised Code of Washington,

30 Chapter 61.24 RCW

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

6 To cure the default(s), you must bring the payments current, cure
 7 any other defaults, and pay accrued late charges and other costs,
 8 advances, and attorneys' fees as set forth below by the day of
 9, . . . [11 days before the sale date]. To date, these
 10 arrears and costs are as follows:

	Currently due	Estimated amount
	to reinstate	that will be due
	on	to reinstate
	on
	
		(11 days before
		the date set
		for sale)

19 Delinquent payments		
20 from,		
21 . . ., in the		
22 amount of		
23 \$. . . /mo.:	\$	\$
24 Late charges in		
25 the total		
26 amount of:	\$	\$
27		Estimated
28		Amounts
29 Attorneys' fees:	\$	\$
30 Trustee's fee:	\$	\$
31 Trustee's expenses:		
32 (Itemization)		

1	Title report	\$....	\$....
2	Recording fees	\$....	\$....
3	Service/Posting		
4	of Notices	\$....	\$....
5	Postage/Copying		
6	expense	\$....	\$....
7	Publication	\$....	\$....
8	Telephone		\$....
9	charges	\$....	
10	Inspection fees	\$....	\$....
11	\$....	\$....
12	\$....	\$....
13	TOTALS	\$....	\$....

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

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

28	Default	Description of Action Required to Cure and
29		Documentation Necessary to Show Cure
30
31	
32	
33
34	
35	

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

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

36 The court may grant a restraining order or injunction to restrain
37 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the
38 trustee of the time when, place where, and the judge before whom the

1 application for the restraining order or injunction is to be made.
2 This notice shall include copies of all pleadings and related documents
3 to be given to the judge. Notice and other process may be served on
4 the trustee at:

5 NAME:
6 ADDRESS:
7
8 TELEPHONE NUMBER:

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

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

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

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

31 (6) The trustee has no obligation to, but may, for any cause the
32 trustee deems advantageous, continue the sale for a period or periods
33 not exceeding a total of one hundred twenty days by (a) a public
34 proclamation at the time and place fixed for sale in the notice of sale
35 and if the continuance is beyond the date of sale, by giving notice of
36 the new time and place of the sale by both first class and either

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

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

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

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

37 X.

NOTICE TO OCCUPANTS OR TENANTS

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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~~) who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants (~~and~~) who are not tenants by summary proceedings under (~~the unlawful detainer act,~~) chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060;

(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. 10. RCW 61.24.060 and 1998 c 295 s 8 are each amended to read as follows:

(1) The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants (~~and~~) who are not tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

(2) If the trustee elected to foreclose the interest of any occupant or tenant, the purchaser of tenant-occupied property at the trustee's sale shall provide written notice to the occupants and tenants at the property purchased in substantially the following form:

"NOTICE: The property located at was purchased at a trustee's sale by on (date).

1. If you are the previous owner or an occupant who is not a tenant of the property that was purchased, pursuant to RCW 61.24.060, the purchaser at the trustee's sale is entitled to possession of the property on (date), which is the twentieth day following the sale.

1 2. If you are a tenant or subtenant in possession of the property
2 that was purchased, pursuant to section 4 of this act, the purchaser at
3 the trustee's sale may either give you a new rental agreement OR give
4 you a written notice to vacate the property in sixty days or more
5 before the end of the monthly rental period."

6 (3) The notice required in subsection (2) of this section must be
7 given to the property's occupants and tenants by both first-class mail
8 and either certified or registered mail, return receipt requested.

10 NEW SECTION. Sec. 11. A new section is added to chapter 59.12 RCW
11 to read as follows:

12 An unlawful detainer action, commenced as a result of a trustee's
13 sale under chapter 61.24 RCW, must comply with the requirements of RCW
14 61.24.040 and 61.24.060.

15 NEW SECTION. Sec. 12. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

19 NEW SECTION. Sec. 13. Section 2 of this act expires December 31,
20 2012.

Passed by the Senate April 20, 2009.

Passed by the House April 9, 2009.

Approved by the Governor April 30, 2009.

Filed in Office of Secretary of State May 1, 2009.