

CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE HOUSE BILL 1362**

Chapter 58, Laws of 2011

62nd Legislature  
2011 Regular Session

FORECLOSURES--HOMEOWNER ASSISTANCE AND PROTECTION

EFFECTIVE DATE: 07/22/11 - Except sections 11, 12, and 16, which become effective 04/14/11.

Passed by the House April 1, 2011  
Yeas 78 Nays 15

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 29, 2011  
Yeas 36 Nays 11

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved April 14, 2011, 10:08 a.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1362** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

April 14, 2011

**Secretary of State  
State of Washington**

---

SECOND SUBSTITUTE HOUSE BILL 1362

---

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington                      62nd Legislature                      2011 Regular Session

By House Ways & Means (originally sponsored by Representatives Orwall, Hope, Rolfes, Moeller, Lias, Probst, Green, Darneille, Frockt, Kirby, Miloscia, Roberts, Hunt, Dickerson, Upthegrove, Fitzgibbon, Kagi, Eddy, Hasegawa, Pettigrew, Ormsby, Sells, Kenney, Cody, Hudgins, Lytton, Moscoso, Ryu, Appleton, Reykdal, Van De Wege, Carlyle, Dunshee, Santos, McCoy, Tharinger, Haigh, Goodman, Jinkins, Jacks, Takko, Sullivan, Blake, Seaquist, Billig, Stanford, Ladenburg, Finn, and Pedersen)

READ FIRST TIME 02/25/11.

1            AN ACT Relating to protecting and assisting homeowners from  
2 unnecessary foreclosures; amending RCW 61.24.030, 61.24.031, 61.24.135,  
3 and 82.45.030; reenacting and amending RCW 61.24.005; adding new  
4 sections to chapter 61.24 RCW; creating new sections; repealing 2009 c  
5 292 s 13 (uncodified); and declaring an emergency.

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

7            NEW SECTION.    **Sec. 1.** (1) The legislature finds and declares that:  
8            (a) The rate of home foreclosures continues to rise to  
9 unprecedented levels, both for prime and subprime loans, and a new wave  
10 of foreclosures has occurred due to rising unemployment, job loss, and  
11 higher adjustable loan payments;  
12            (b) Prolonged foreclosures contribute to the decline in the state's  
13 housing market, loss of property values, and other loss of revenue to  
14 the state;  
15            (c) In recent years, the legislature has enacted procedures to help  
16 encourage and strengthen the communication between homeowners and  
17 lenders and to assist homeowners in navigating through the foreclosure  
18 process; however, Washington's nonjudicial foreclosure process does not

1 have a mechanism for homeowners to readily access a neutral third party  
2 to assist them in a fair and timely way; and

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

7 (2) Therefore, the legislature intends to:

8 (a) Encourage homeowners to utilize the skills and professional  
9 judgment of housing counselors as early as possible in the foreclosure  
10 process;

11 (b) Create a framework for homeowners and beneficiaries to  
12 communicate with each other to reach a resolution and avoid foreclosure  
13 whenever possible; and

14 (c) Provide a process for foreclosure mediation when a housing  
15 counselor or attorney determines that mediation is appropriate. For  
16 mediation to be effective, the parties should attend the mediation (in  
17 person, telephonically, through an agent, or otherwise), provide the  
18 necessary documentation in a timely manner, willingly share  
19 information, actively present, discuss, and explore options to avoid  
20 foreclosure, negotiate willingly and cooperatively, maintain a  
21 professional and cooperative demeanor, cooperate with the mediator, and  
22 keep any agreements made in mediation.

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

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

27 The definitions in this section apply throughout this chapter  
28 unless the context clearly requires otherwise.

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

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

34 (3) "Borrower" means a person or a general partner in a  
35 partnership, including a joint venture, that is liable for all or part  
36 of the obligations secured by the deed of trust under the instrument or

1 other document that is the principal evidence of such obligations, or  
2 the person's successors if they are liable for those obligations under  
3 a written agreement with the beneficiary.

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

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

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

18 ((+6+)) (7) "Grantor" means a person, or its successors, who  
19 executes a deed of trust to encumber the person's interest in property  
20 as security for the performance of all or part of the borrower's  
21 obligations.

22 ((+7+)) (8) "Guarantor" means any person and its successors who is  
23 not a borrower and who guarantees any of the obligations secured by a  
24 deed of trust in any written agreement other than the deed of trust.

25 ((+8+)) (9) "Housing counselor" means a housing counselor that has  
26 been approved by the United States department of housing and urban  
27 development or approved by the Washington state housing finance  
28 commission.

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

31 ((+9+)) (11) "Person" means any natural person, or legal or  
32 governmental entity.

33 ((+10+)) (12) "Record" and "recorded" includes the appropriate  
34 registration proceedings, in the instance of registered land.

35 ((+11+)) (13) "Residential real property" means property consisting  
36 solely of a single-family residence, a residential condominium unit, or  
37 a residential cooperative unit.

1        (~~(12)~~) (14) "Tenant-occupied property" means property consisting  
2 solely of residential real property that is the principal residence of  
3 a tenant subject to chapter 59.18 RCW or other building with four or  
4 fewer residential units that is the principal residence of a tenant  
5 subject to chapter 59.18 RCW.

6        (~~(13)~~) (15) "Trustee" means the person designated as the trustee  
7 in the deed of trust or appointed under RCW 61.24.010(2).

8        (~~(14)~~) (16) "Trustee's sale" means a nonjudicial sale under a  
9 deed of trust undertaken pursuant to this chapter.

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

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

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

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

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

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

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

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

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

14 (b) Unless the trustee has violated his or her duty under RCW  
15 61.24.010(4), the trustee is entitled to rely on the beneficiary's  
16 declaration as evidence of proof required under this subsection.

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

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

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

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

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

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

37 (e) An itemized account of all other specific charges, costs, or

1 fees that the borrower, grantor, or any guarantor is or may be obliged  
2 to pay to reinstate the deed of trust before the recording of the  
3 notice of sale;

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

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

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

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

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

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

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

32 Can you pay and stop the foreclosure process?

33 Do you dispute the failure to pay?

34 Can you sell your property to preserve your equity?

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

1 Do you qualify for any government or private homeowner assistance  
2 programs?

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

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

13 You may feel you need help understanding what to do. There are a  
14 number of professional resources available, including home loan  
15 counselors and attorneys, who may assist you. Many legal services are  
16 lower-cost or even free, depending on your ability to pay. If you  
17 desire legal help in understanding your options or handling this  
18 default, you may obtain a referral (at no charge) by contacting the  
19 county bar association in the county where your home is located. These  
20 legal referral services also provide information about lower-cost or  
21 free legal services for those who qualify. You may contact the  
22 Department of Financial Institutions or the statewide civil legal aid  
23 hotline for possible assistance or referrals"; and

24 (1) In the event the property secured by the deed of trust is  
25 residential real property, the name and address of the owner of any  
26 promissory notes or other obligations secured by the deed of trust and  
27 the name, address, and telephone number of a party acting as a servicer  
28 of the obligations secured by the deed of trust(~~(-)~~); and

29 (9) That, for owner-occupied residential real property, before the  
30 notice of the trustee's sale is recorded, transmitted, or served, the  
31 beneficiary has complied with RCW 61.24.031 and, if applicable, section  
32 7 of this act.

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

35 (1)(a) A trustee, beneficiary, or authorized agent may not issue a  
36 notice of default under RCW 61.24.030(8) until: (i) Thirty days after  
37 initial contact with the borrower (~~(is made)~~) was initiated as required



1 under (b) of this subsection or thirty days after satisfying the due  
2 diligence requirements as described in subsection (5) of this section  
3 and the borrower has not responded; or (ii) if the borrower responds to  
4 the initial contact, ninety days after the initial contact with the  
5 borrower was initiated.

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

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

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

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

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

31 You should contact a housing counselor or attorney as soon as  
32 possible. Failure to contact a housing counselor or attorney may  
33 result in your losing certain opportunities, such as meeting with your  
34 lender or participating in mediation in front of a neutral third party.  
35 A housing counselor or attorney can help you work with your lender to  
36 avoid foreclosure.";

37 (ii) The toll-free telephone number from the United States  
38 department of housing and urban development to find a department-

1 approved housing counseling agency, the toll-free numbers for the  
2 statewide foreclosure hotline recommended by the housing finance  
3 commission, and the statewide civil legal aid hotline for assistance  
4 and referrals to other housing counselors and attorneys;

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

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

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

21 (e) If a meeting is requested by the borrower or the borrower's  
22 housing counselor or attorney, the beneficiary or authorized agent  
23 shall schedule the meeting to occur before the notice of default is  
24 issued. An assessment of the borrower's financial ability to ((repay  
25 the debt)) modify or restructure the loan obligation and a discussion  
26 of options ((may)) must occur during the ((initial contact or at a  
27 subsequent)) meeting scheduled for that purpose. ((At the initial  
28 contact, the borrower must be provided the toll-free telephone number  
29 made available by the department to find a department-certified housing  
30 counseling agency and the toll-free numbers for the department of  
31 financial institutions and the statewide civil legal aid hotline for  
32 possible assistance and referrals.

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

34 (f) The meeting scheduled to assess the borrower's financial  
35 ability to modify or restructure the loan obligation and discuss  
36 options to avoid foreclosure must be in person, unless the requirement  
37 to meet in person is waived in writing by the borrower or the  
38 borrower's representative. A person who is authorized to modify the

1 loan obligation or reach an alternative resolution to foreclosure on  
2 behalf of the beneficiary may participate by telephone or video  
3 conference, so long as a representative of the beneficiary is at the  
4 meeting in person.

5 (2) A notice of default issued under RCW 61.24.030(8) must include  
6 a declaration, as provided in subsection (9) of this section, from the  
7 beneficiary or authorized agent that it has contacted the borrower as  
8 provided in subsection (1)(~~(b)~~) of this section, it has tried with  
9 due diligence to contact the borrower under subsection (5) of this  
10 section, or the borrower has surrendered the property to the trustee,  
11 beneficiary, or authorized agent. Unless the trustee has violated his  
12 or her duty under RCW 61.24.010(4), the trustee is entitled to rely on  
13 the declaration as evidence that the requirements of this section have  
14 been satisfied, and the trustee is not liable for the beneficiary's or  
15 its authorized agent's failure to comply with the requirements of this  
16 section.

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

20 ~~(4) Within fourteen days))~~ If, after the initial contact under  
21 subsection (1) of this section, ~~((if))~~ a borrower has designated a  
22 ~~((department certified))~~ housing counseling agency, housing counselor,  
23 or attorney~~((, or other adviser))~~ to discuss with the beneficiary or  
24 authorized agent, on the borrower's behalf, options for the borrower to  
25 avoid foreclosure, the borrower shall inform the beneficiary or  
26 authorized agent and provide the contact information to the beneficiary  
27 or authorized agent. The beneficiary or authorized agent shall contact  
28 the designated representative for the borrower ~~((for the discussion~~  
29 ~~within fourteen days after the representative is designated by the~~  
30 ~~borrower))~~ to meet.

31 (4) The beneficiary or authorized agent and the borrower or the  
32 borrower's representative shall attempt to reach a resolution for the  
33 borrower within the ninety days from the time the initial contact is  
34 sent and the notice of default is issued. A resolution may include,  
35 but is not limited to, a loan modification, an agreement to conduct a  
36 short sale, or a deed in lieu of foreclosure transaction, or some other  
37 workout plan. Any ~~((deed of trust))~~ modification or workout plan

1 offered at the meeting with the borrower's designated representative by  
2 the beneficiary or authorized agent is subject to approval by the  
3 borrower.

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

10 (a) A beneficiary or authorized agent shall first attempt to  
11 contact a borrower by sending a first-class letter to the address in  
12 the beneficiary's records for sending account statements to the  
13 borrower and to the address of the property encumbered by the deed of  
14 trust. The letter must ~~((include the toll-free telephone number made~~  
15 ~~available by the department to find a department-certified housing~~  
16 ~~counseling agency, and the following information:~~

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

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

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

30 (iii) A beneficiary or authorized agent satisfies the telephone  
31 contact requirements of this subsection (5)(b) if the beneficiary or  
32 authorized agent determines, after attempting contact under this  
33 subsection (5)(b), that the borrower's primary telephone number and  
34 secondary telephone number or numbers on file, if any, have been  
35 disconnected or are not good contact numbers for the borrower.

36 (c) If the borrower does not respond within fourteen days after the  
37 telephone call requirements of (b) of this subsection have been  
38 satisfied, the beneficiary or authorized agent shall send a certified

1 letter, with return receipt requested, to the borrower at the address  
2 in the beneficiary's records for sending account statements to the  
3 borrower and to the address of the property encumbered by the deed of  
4 trust. The letter must include the information described in (e)(i)  
5 through (iv) of this subsection. The letter must also include a  
6 paragraph stating: "Your failure to contact a housing counselor or  
7 attorney may result in your losing certain opportunities, such as  
8 meeting with your lender or participating in mediation in front of a  
9 neutral third party."

10 (d) The beneficiary or authorized agent shall provide a means for  
11 the borrower to contact the beneficiary or authorized agent in a timely  
12 manner, including a toll-free telephone number or charge-free  
13 equivalent that will provide access to a live representative during  
14 business hours.

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

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

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

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

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

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

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

36 (b) The borrower has filed for bankruptcy, and the bankruptcy stay  
37 remains in place, or the borrower has filed for bankruptcy and the

1 bankruptcy court has granted relief from the bankruptcy stay allowing  
2 enforcement of the deed of trust.

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

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

12 (8) As used in this section:

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

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

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

22 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

35 (2) [ ] The beneficiary or beneficiary's authorized agent has  
36 contacted the borrower as required under RCW 61.24.031 and the borrower

1 or the borrower's designated representative requested a meeting. A  
2 meeting was held in compliance with RCW 61.24.031.

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

9 ((+3)) (4) [ ] The borrower has surrendered the secured property  
10 as evidenced by either a letter confirming the surrender or by delivery  
11 of the keys to the secured property to the beneficiary, the  
12 beneficiary's authorized agent or to the trustee.

13 ((+4)) (5) [ ] Under RCW 61.24.031, the beneficiary or the  
14 beneficiary's authorized agent has verified information that, on or  
15 before the date of this declaration, the borrower(s) has filed for  
16 bankruptcy, and the bankruptcy stay remains in place, or the borrower  
17 has filed for bankruptcy and the bankruptcy court has granted relief  
18 from the bankruptcy stay allowing the enforcement of the deed of  
19 trust."

20 NEW SECTION. Sec. 6. A new section is added to chapter 61.24 RCW  
21 to read as follows:

22 (1)(a) A housing counselor who is contacted by a borrower under RCW  
23 61.24.031 has a duty to act in good faith to attempt to reach a  
24 resolution with the beneficiary on behalf of the borrower within the  
25 ninety days provided from the date the beneficiary initiates contact  
26 with the borrower and the date the notice of default is issued. A  
27 resolution may include, but is not limited to, modification of the  
28 loan, an agreement to conduct a short sale, a deed in lieu of  
29 foreclosure transaction, or some other workout plan.

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

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

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

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

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

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

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

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

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

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

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

16 (5) Housing counselors providing assistance to borrowers under RCW  
17 61.24.031 are not liable for civil damages resulting from any acts or  
18 omissions in providing assistance, unless the acts or omissions  
19 constitute gross negligence or willful or wanton misconduct.

20 (6) Housing counselors shall provide information to the department  
21 to assist the department in its annual report to the legislature as  
22 required under section 7(15) of this act. The information provided to  
23 the department by the housing counselors should include outcomes of  
24 foreclosures and be similar to the information requested in the  
25 national foreclosure mortgage counseling client level foreclosure  
26 outcomes report form.

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

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

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

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



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

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

7 (4)(a) Within forty-five days of receiving the referral from the  
8 department, the mediator shall convene a mediation session in the  
9 county where the borrower resides, unless the parties agree on another  
10 location. The parties may agree in writing to extend the time in which  
11 to schedule the mediation session. If the parties agree to extend the  
12 time, the beneficiary shall notify the trustee of the extension and the  
13 date the mediator is expected to issue the mediator's certification.

14 (b) Prior to scheduling a mediation session, the mediator shall  
15 require that both parties sign a waiver stating that neither party may  
16 call the mediator as a live witness in any litigation pertaining to a  
17 foreclosure action between the parties. However, the mediator's  
18 certification may be deemed admissible evidence, subject to court  
19 rules, in any litigation pertaining to a foreclosure action between the  
20 parties.

21 (5)(a) The mediator may schedule phone conferences, consultations  
22 with the parties individually, and other communications to ensure that  
23 the parties have all the necessary information to engage in a  
24 productive mediation.

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

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

31 (ii) A statement that a person with authority to agree to a  
32 resolution, including a proposed settlement, loan modification, or  
33 dismissal or continuation of the foreclosure proceeding, must be  
34 present either in person or on the telephone or video conference during  
35 the mediation session;

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

1 (iv) A statement that the parties have a duty to mediate in good  
2 faith and that failure to mediate in good faith may impair the  
3 beneficiary's ability to foreclose on the property or the borrower's  
4 ability to modify the loan or take advantage of other alternatives to  
5 foreclosure.

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

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

17 (a) The borrower's current and future economic circumstances,  
18 including the borrower's current and future income, debts, and  
19 obligations for the previous sixty days or greater time period as  
20 determined by the mediator;

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

24 (c) Any affordable loan modification calculation and net present  
25 value calculation when required under any federal mortgage relief  
26 program, including the home affordable modification program (HAMP) as  
27 applicable to government-sponsored enterprise and nongovernment-  
28 sponsored enterprise loans and any HAMP-related modification program  
29 applicable to loans insured by the federal housing administration, the  
30 veterans administration, and the rural housing service. If such a  
31 calculation is not required, then the beneficiary must use the current  
32 calculations, assumptions, and forms that are established by the  
33 federal deposit insurance corporation and published in the federal  
34 deposit insurance corporation loan modification program guide; and

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

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

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

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

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

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

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

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

16 (v) An itemized list of the best estimate of fees and charges  
17 outstanding;

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

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

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

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

28 (x) The portion or excerpt of the pooling and servicing agreement  
29 that prohibits the beneficiary from implementing a modification, if the  
30 beneficiary claims it cannot implement a modification due solely to  
31 limitations in a pooling and servicing agreement, and documentation or  
32 a statement detailing the efforts of the beneficiary to obtain a waiver  
33 of the pooling and servicing agreement provisions;

34 (c) Failure of the borrower to provide documentation to the  
35 beneficiary and mediator, at least ten days before the mediation or  
36 pursuant to the mediator's instruction, showing the borrower's current  
37 and future income, debts and obligations, and tax returns for the past  
38 two years;

1 (d) Failure of either party to pay the respective portion of the  
2 mediation fee in advance of the mediation as required under this  
3 section;

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

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

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

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

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

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

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

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

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

33 (11)(a) The mediator's certification that the beneficiary failed to  
34 act in good faith in mediation constitutes a defense to the nonjudicial  
35 foreclosure action that was the basis for initiating the mediation. In  
36 any action to enjoin the foreclosure, the beneficiary shall be entitled  
37 to rebut the allegation that it failed to act in good faith.

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

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

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

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

17 (b) If the trustee does not receive the mediator's certification,  
18 the trustee may record the notice of sale after ten days from the date  
19 the certification to the trustee was due. If the notice of sale is  
20 recorded under this subsection (13)(b) and the mediator subsequently  
21 issues a certification alleging the beneficiary violated the duty of  
22 good faith, the trustee may not proceed with the sale.

23 (14) A mediator may charge reasonable fees as authorized by this  
24 subsection and by the department. Unless the fee is waived or the  
25 parties agree otherwise, a foreclosure mediator's fee may not exceed  
26 four hundred dollars for a mediation session lasting between one hour  
27 and three hours. For a mediation session exceeding three hours, the  
28 foreclosure mediator may charge a reasonable fee, as authorized by the  
29 department. The mediator must provide an estimated fee before the  
30 mediation, and payment of the mediator's fee must be divided equally  
31 between the beneficiary and the borrower. The beneficiary and the  
32 borrower must tender the loan mediator's fee seven calendar days before  
33 the commencement of the mediation or pursuant to the mediator's  
34 instructions.

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

37 (a) The performance of the program, including the numbers of

1 borrowers who are referred to mediation by a housing counselor or  
2 attorney;

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

13 (c) The information received by housing counselors regarding  
14 outcomes of foreclosures; and

15 (d) Any recommendations for changes to the statutes regarding the  
16 mediation program.

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

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

23 (2) A borrower under a deed of trust on owner-occupied residential  
24 real property who has received a notice of default on or before the  
25 effective date this section may be referred to mediation under section  
26 7 of this act by a housing counselor or attorney.

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

- 28 (a) Securing a commercial loan;
- 29 (b) Securing obligations of a grantor who is not the borrower or a  
30 guarantor; or

31 (c) Securing a purchaser's obligations under a seller-financed  
32 sale.

33 (4) Section 7 of this act does not apply to association  
34 beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.

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

1       The provisions of section 7 of this act do not apply to any  
2 federally insured depository institution, as defined in 12 U.S.C. Sec.  
3 461(b)(1)(A), that certifies to the department under penalty of perjury  
4 that it was not a beneficiary of deeds of trust in more than two  
5 hundred fifty trustee sales of owner-occupied residential real property  
6 that occurred in this state during the preceding calendar year. A  
7 federally insured depository institution certifying that section 7 of  
8 this act does not apply must do so annually, beginning no later than  
9 thirty days after the effective date of this section, and no later than  
10 January 31st of each year thereafter.

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

13       (1) For the purposes of section 7 of this act, the department must  
14 maintain a list of approved foreclosure mediators. The department may  
15 approve the following persons to serve as foreclosure mediators under  
16 this section:

17       (a) Attorneys who are active members of the Washington state bar  
18 association;

19       (b) Employees of United States department of housing and urban  
20 development-approved housing counseling agencies or approved by the  
21 Washington state housing finance commission;

22       (c) Employees or volunteers of dispute resolution centers under  
23 chapter 7.75 RCW; and

24       (d) Retired judges of Washington courts.

25       (2) The department may establish a required training program for  
26 foreclosure mediators and may require mediators to acquire training  
27 before being approved. The mediators must be familiar with relevant  
28 aspects of the law, have knowledge of community-based resources and  
29 mortgage assistance programs, and refer borrowers to these programs  
30 where appropriate.

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

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

35       The foreclosure fairness account is created in the custody of the  
36 state treasurer. All receipts received under section 12 of this act

1 must be deposited into the account. Only the director of the  
2 department of commerce or the director's designee may authorize  
3 expenditures from the account. The account is subject to allotment  
4 procedures under chapter 43.88 RCW, but an appropriation is not  
5 required for expenditures. Expenditures from the account must be used  
6 as follows: (1) No less than eighty percent must be used for the  
7 purposes of providing housing counselors for borrowers, except that  
8 this amount may be less than eighty percent only if necessary to meet  
9 the funding level specified for the office of the attorney general  
10 under subsection (2) of this section and the department under  
11 subsection (4) of this section; (2) up to six percent, or six hundred  
12 fifty-five thousand dollars per biennium, whichever amount is greater,  
13 to the office of the attorney general to be used by the consumer  
14 protection division to enforce this chapter; (3) up to two percent to  
15 the office of civil legal aid to be used for the purpose of contracting  
16 with qualified legal aid programs for legal representation of  
17 homeowners in matters relating to foreclosure. Funds provided under  
18 this subsection (3) must be used to supplement, not supplant, other  
19 federal, state, and local funds; (4) up to nine percent, or four  
20 hundred fifty-one thousand dollars per biennium, whichever amount is  
21 greater, to the department to be used for implementation and operation  
22 of the foreclosure fairness act; and (5) up to three percent to the  
23 department of financial institutions to conduct homeowner prepurchase  
24 and postpurchase outreach and education programs as defined in RCW  
25 43.320.150.

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

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

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

36 (a) Report to the department the number of owner-occupied



1 residential real properties for which the beneficiary has issued a  
2 notice of default during the previous quarter; and

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

4 (2) For each owner-occupied residential real property for which a  
5 notice of default has been issued, the beneficiary issuing the notice  
6 of default, or directing that a trustee or authorized agent issue the  
7 notice of default, shall remit two hundred fifty dollars to the  
8 department to be deposited, as provided under section 11 of this act,  
9 into the foreclosure fairness account. The two hundred fifty dollar  
10 payment is required per property and not per notice of default. The  
11 beneficiary shall remit the total amount required in a lump sum each  
12 quarter.

13 (3) No later than thirty days after the effective date of this  
14 section, the beneficiaries required to report and remit to the  
15 department under this section shall determine the number of owner-  
16 occupied residential real properties for which notices of default were  
17 issued during the three months prior to the effective date of this  
18 section. The beneficiary shall remit to the department a one-time sum  
19 of two hundred fifty dollars multiplied by the number of properties.  
20 The department shall deposit the funds into the foreclosure fairness  
21 account as provided under section 11 of this act.

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

28 (5) This section does not apply to association beneficiaries  
29 subject to chapter 64.32, 64.34, or 64.38 RCW.

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

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

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

3 (2) Anticipated recovery under a modification or workout plan  
4 exceeds the anticipated recovery through foreclosure on a net present  
5 value basis.

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

8 (1) It is an unfair or deceptive act or practice under the consumer  
9 protection act, chapter 19.86 RCW, for any person, acting alone or in  
10 concert with others, to offer, or offer to accept or accept from  
11 another, any consideration of any type not to bid, or to reduce a bid,  
12 at a sale of property conducted pursuant to a power of sale in a deed  
13 of trust. The trustee may decline to complete a sale or deliver the  
14 trustee's deed and refund the purchase price, if it appears that the  
15 bidding has been collusive or defective, or that the sale might have  
16 been void. However, it is not an unfair or deceptive act or practice  
17 for any person, including a trustee, to state that a property subject  
18 to a recorded notice of trustee's sale or subject to a sale conducted  
19 pursuant to this chapter is being sold in an "as-is" condition, or for  
20 the beneficiary to arrange to provide financing for a particular bidder  
21 or to reach any good faith agreement with the borrower, grantor, any  
22 guarantor, or any junior lienholder.

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

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

32 (1) As used in this chapter, the term "selling price" means the  
33 true and fair value of the property conveyed. If property has been  
34 conveyed in an arm's length transaction between unrelated persons for  
35 a valuable consideration, a rebuttable presumption exists that the

1 selling price is equal to the total consideration paid or contracted to  
2 be paid to the transferor, or to another for the transferor's benefit.

3 (2) If the sale is a transfer of a controlling interest in an  
4 entity with an interest in real property located in this state, the  
5 selling price shall be the true and fair value of the real property  
6 owned by the entity and located in this state. If the true and fair  
7 value of the real property located in this state cannot reasonably be  
8 determined, the selling price shall be determined according to  
9 subsection (4) of this section.

10 (3) As used in this section, "total consideration paid or  
11 contracted to be paid" includes money or anything of value, paid or  
12 delivered or contracted to be paid or delivered in return for the sale,  
13 and shall include the amount of any lien, mortgage, contract  
14 indebtedness, or other incumbrance, either given to secure the purchase  
15 price, or any part thereof, or remaining unpaid on such property at the  
16 time of sale.

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

20 When a transfer or conveyance is made by deed in lieu of  
21 foreclosure to satisfy a deed of trust, total consideration shall not  
22 include the amount of any relocation assistance provided to the  
23 transferor.

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

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

31 (1)(a) The department must develop model language for the initial  
32 contact letter to be used by beneficiaries as required under RCW  
33 61.24.031. The model language must explain how the borrower may  
34 respond to the letter. The department must develop the model language  
35 in both English and Spanish and both versions must be contained in the  
36 same letter.

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 18.** 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. 19.** Sections 11, 12, and 16 of this act are  
20 necessary for the immediate preservation of the public peace, health,  
21 or safety, or support of the state government and its existing public  
22 institutions, and take effect immediately.

Passed by the House April 1, 2011.

Passed by the Senate March 29, 2011.

Approved by the Governor April 14, 2011.

Filed in Office of Secretary of State April 14, 2011.