

FILED

JUL 29 2016

WASHINGTON STATE  
SUPREME COURT

NO. 934266

SUPREME COURT  
OF THE STATE OF WASHINGTON

SHASTA APARTMENTS, LLC, CHARLES R. JOHNSON, II AND  
ELIZABETH A. JOHNSON,

*Petitioners,*

v.

UMPQUA BANK,

*Respondent.*

FILED  
COURT OF APPEALS  
DIVISION II  
2016 JUL 21 PM 3:43  
STATE OF WASHINGTON  
BY AS  
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF  
PIERCE COUNTY, STATE OF WASHINGTON  
Superior Court No. 12-2-07243-0

and

COURT OF APPEALS, DIVISION II No. 47224-4-II.

PETITION FOR REVIEW

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## **I. IDENTITY OF PETITIONER**

Petitioners are Shasta Apartments, LLC (“Shasta”) and Charles Johnson, II and Elizabeth A. Johnson, and their marital community, (collectively, the “Johnsons”). Shasta and the Johnsons were the defendants in the trial court and the appellants before Division II of the Court of Appeals.

## **II. CITATION TO COURT OF APPEALS DECISION**

Shasta and the Johnsons seek review of Division II’s decision No. 47224-4-II, filed on June 21, 2016. The reporter citation is not available at the time of this filing; it is available by electronic database at Umpqua Bank v. Shasta Apartments, LLC, 47224-4-II, 2016 WL 3457726 (Wash. Ct. App. Div. II June 21, 2016). A copy of Division II’s decision is attached hereto in the Appendix.

## **III. ISSUES PRESENTED FOR REVIEW**

Whether Division II incorrectly affirmed the trial court’s order granting Umpqua’s Motion for Summary Judgment against Shasta and Default Judgment against the Johnsons, awarding a post-sale deficiency judgment in favor of Umpqua against Shasta and the Johnsons, denying Shasta and the Johnsons’ Motion for Summary Judgment, and entering Final Judgment on an alleged post-sale deficiency in favor of Umpqua against Shasta and the Johnsons where:

- 1) Umpqua elected to sell Shasta's real estate at a general receiver's sale free and clear of Shasta's right to redemption; and
- 2) Umpqua elected to sell Shasta's real property at a general receiver's sale pursuant to Washington's Receivership Act and such Act does not provide any right to a post-sale deficiency.

#### **IV. STATEMENT OF THE CASE**

##### ***A. Background Facts***

On June 15, 2007, Shasta executed a promissory note with Evergreen Bank ("Evergreen") in the principal amount of \$581,226.45. (CP 271). The promissory note was secured by a deed of trust (the "Deed of Trust") encumbering real estate on the same date owned by Shasta. (CP 384). The property was located at 1545 South Fawcett Avenue, Tacoma, Washington (the "Property"). (CP 384). Shasta executed a second promissory note (the "Note") dated August 6, 2009 in favor of Evergreen with a principal balance of \$1,055,271.51. (CP 380-383). On January 25, 2010, Umpqua acquired the Note and related security documents from Evergreen. (CP 273). Charles R. Johnson, II executed a commercial guaranty on August 6, 2009 in favor of Evergreen and a second commercial guaranty on January 28, 2011 in favor of Umpqua (collectively, the "Guaranties"). (CP 394-397, 399-402) Subsequently, Shasta defaulted under the Note and on March 19, 2012, Umpqua filed a

petition (the “Petition”) with the Pierce County Superior Court seeking the appointment of a general receiver to ultimately sell the Property and/or judicially foreclose the Property. (CP 1). The trial court entered an order, in the exact form proposed by Umpqua, appointing a general receiver (the “Receiver”) on April 6, 2012. (CP 98). In that order, the trial court entered conclusions of law, including the following:

2. The terms of the Deed of Trust entitle Umpqua Bank to the appointment of a general receiver for the Property upon Shasta Apartments’ default under the Replacement Note and Loan Documents.

3. Under RCW 7.60.025, this Court has the authority to specifically enforce those provisions of the Deed of Trust which entitle Umpqua Bank to the appointment of a general receiver.

(CP 1002). The trial court’s order also provides as follows: “The Receiver’s sale of any collateral property shall be effected free and clear of liens and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property.” (CP 101).

On July 26, 2013, the Receiver filed a motion to approve its sale of the Property free and clear of liens and of all rights of Shasta to redemption. (CP 238). On August 9, 2013, the trial court entered an order again, in the form proposed by Umpqua, approving the sale of the Property free and clear of liens and of all rights of Shasta to redemption.

(CP 238). The order also characterized the sale as an execution pursuant to RCW 82.45.010(3)(i) and therefore exempt from excise taxes. (CP 238). By pursuing foreclosure through the receivership and characterizing the foreclosure as an execution sale, Umpqua received the following benefits: (1) sale of the Property free of the cloud of Shasta's right to redeem and (2) exemption from excise tax. (CP 236, 238). Notably, the order appointing the receiver and the order approving the sale make no mention of the right to pursue a deficiency. (CP 101, 238).

***B. Procedural History***

On November 14, 2014, Shasta and the Johnsons filed a Motion for Summary Judgment. (CP 368). Umpqua also filed a Motion for Summary Judgment and for Entry of Default Judgment on the same date. (CP 337). The trial court heard oral argument on December 12, 2014 on both motions. (RP December 12, 2014 at pgs. 3-13). The trial court denied Shasta and the Johnsons' motion and granted Umpqua's motion. (RP December 12, 2014 at pgs. 1, 13; CP 511, 499). Shasta and the Johnsons subsequently timely filed this appeal.

In its summary judgment briefing, Umpqua argued that the Johnsons were precluded from making any arguments relative to liability due to the entry of default against them. (CP 466-467). However, it is apparent from the verbatim transcript that the trial court properly reached



the merits of the Johnsons' argument despite the entry of a default order, because a default judgment had not been entered and the validity of such a judgment was at issue. (RP December 12, 2014 at pgs. 3-13).

## V. ARGUMENT

A petition for review by the Washington Supreme Court will be accepted "if the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). This case fulfills such criterion.

A. The Supreme Court Should Grant Review per RAP 13.4(b)(4) Because This Case Involves Multiple Issues of Substantial and Vital Public Interest in Washington's Foreclosure System.

Division II's decision in this case involves issues of substantial public interest in that such decision eviscerates this state's well-established and balanced foreclosure system under RCW 61.12 and 61.24, violates debtors' sacred post-sale rights to redemption, and dangerously expands creditors' post-sale rights to seek a deficiency against both commercial and non-commercial borrowers and guarantors.

1. Division II's Decision in This Case Undermines Washington's Well-Established Foreclosure System under RCW 61.12 and 61.24 and Is Ripe for Abuse Against Commercial and Non-Commercial Borrowers and Guarantors.

A traditional foreclosure sale may be carried out in Washington under two separate acts -- RCW 61.12 (judicial foreclosure) and 61.24

(non-judicial foreclosure). These different foreclosure methods come with compromises. A party that judicially forecloses real estate (RCW 61.12) is entitled to seek a deficiency, but the real estate is subject to the right to redemption provided in RCW 6.23. Nonjudicial foreclosure (RCW 61.24) is quicker and less expensive and does not provide a right to redemption, but this efficiency comes at a price (i.e., the loss of the right to seek a deficiency, except in limited circumstances prescribed by RCW 61.24.100).

Since 2004, a creditor seeking to sell real estate in which it has a security interest may also avail itself of the Washington Receivership Act (RCW 7.60). Under RCW 7.60.260 a receiver may seek to sell and the court may permit the sale of real property to satisfy, in whole or in part, any allowed claim secured by the property out of the proceeds of its sale. This is the path Umpqua chose to follow in this case in an attempt to take advantage of seeking a deficiency judgment while also still entitling it to sell the Property free of redemption rights. Such a remedy is not permitted under Washington's well-established foreclosure system. The remedies Umpqua combined in this action -- removing any right to redemption under the Receivership Act while retaining the right to a deficiency judgment -- are simply not available under Washington law.

In electing to have the Property sold through a general receivership, Umpqua deprived Shasta (and the Johnsons by assignment) of an essential protection available under the law following a judicial foreclosure of Shasta's Deed of Trust, specifically the right of redemption. "The right of the obligor-mortgagor to free his land from the mortgage by discharging the obligation is a most sacred right; this is obvious." 18 Washington Practice, Real Estate § 17.6. The existence of the right of redemption is a condition precedent to a deficiency judgment. 27 Washington Practice, Creditors' Remedies-Debtors' Relief § 3.6. As provided in Washington Practice, "[i]n a sense, the ability to obtain a deficiency judgment is 'paid for' by the requirement of a redemption period." Id.

Here, in electing to have a general receiver appointed and to not pursue a judicial foreclosure under RCW 61.12, Umpqua both avoided the costly and lengthy redemption period and deprived Shasta and the Johnsons of their statutory right of redemption following a judicial foreclosure sale. The Receivership Act does nothing to alter the long-standing law of Washington providing that where a foreclosure is not accompanied by redemption rights, the resulting trade-off is to extinguish the right to a deficiency judgment. There is no compelling reason to alter the long-standing balance of rights struck between creditor and debtor

established by the Legislature. The result Umpqua obtained here is simply not permitted under Washington law or supported by policy. Umpqua secured the benefit of a sale without the risk of redemption by Shasta and the Johnsons, a right which can only be extinguished in specific ways, under limited circumstances, i.e. pursuant to RCW 61.24. Under Washington law, the elimination of the right of the debtor to redemption is paid by the creditor forfeiting its potential right to pursue a deficiency.

Moreover, Washington Courts have acknowledged this trade off of obligations and benefits relative to executing on collateral repeatedly.

In Thompson v. Smith, 58 Wn. App. 361 (1990), the court found:

Here, by accepting the deed in lieu of foreclosure from Israel and then privately selling the property, Thompson essentially carried out a nonjudicial foreclosure without having to follow the statutory procedures of RCW Ch. 61.24. Had he foreclosed nonjudicially pursuant to the statute, he would have been barred from seeking a deficiency judgment on the underlying obligation. Given the policies underlying RCW Ch. 61.24, we can find no authority for permitting Thompson to obtain through self-help that which he could not accomplish pursuant to RCW Ch. 61.24. Under the specific circumstances of this case, Smith is entitled to the protection of RCW 61.24.100.

58 Wash. App. at 366. Although Thompson does not deal with a receivership, the analysis underpinning the court's reasoning implicates the same trade-off between the benefits and obligations relative to various methods of foreclosure as presented in this case. Like the litigant in Thompson, Umpqua sought remedies not available after a sale of property

pursuant to the Receivership Act, namely preservation of a right to a deficiency judgment. In Thompson, the Court held that parties may not craft “self-help” remedies to avoid the protections afforded debtors under RCW 61.24. If permitted to stand, Division II’s decision here sets a dangerous precedent permitting broad self-help remedies that undermine the protections of both RCW 61.24 and 61.12.

In addition, to permit a creditor like Umpqua to pursue a deficiency where it elected to have a receiver sell the Property instead of a trustee under RCW 61.24 would render Washington’s Deed of Trust Act superfluous by allowing deficiencies against borrowers and guarantors alike without requiring the statutorily-mandated procedures and protections afforded under Washington’s Deed of Trust Act. The very purpose of Washington’s Deed of Trust Act (i.e., to avoid court action and streamline an efficient and inexpensive nonjudicial process to realize on real estate security interests) would be undermined by allowing lenders to disregard numerous obligations imposed upon trustees and protections afforded to guarantors in the sale of collateral secured by a deed of trust.

Specifically, Washington’s Deed of Trust Act provides the following obligations and protections: (1) it describes and defines “fair value” of property encumbered by a deed of trust (RCW 61.24.005(6)); (2) it requires strict adherence to statutory notice requirements (RCW

61.24.040; *see also* Rucker v. Novastart Mortgage, Inc., 177 Wn. App. 1 (2013)); (3) it imposes a duty of good faith owed to guarantors (RCW 61.24.005(3)); (4) it provides recourse to contest any alleged default (RCW 61.24.030(8)(j); RCW 61.24.130); (5) it provides for the right to stop the sale by paying amounts due and owing (RCW 61.24.040(1)(e)); (6) it requires that notice be provided to guarantors (RCW 61.24.042); (7) it provides for the right to a fair value hearing (RCW 61.24.042; RCW 61.24.100(5)); (8) it provides for the right to restrain the sale (RCW 61.24.130); and (9) it provides for the right to pursue a deficiency judgment against a guarantor (RCW 61.24.042; RCW 61.24.100(3)(c)). None of these obligations and protections are provided in the Receivership Act.

Division II's decision invites creditors to create their own foreclosure process and utilize the remedies benefitting them without the balance of preserving borrowers' rights to redeem the foreclosed real estate and the other protections borrowers would be afforded under RCW 61.24. Each foreclosure process provides the creditor and debtor with certain rights and obligations. A creditor such as Umpqua cannot be permitted to avoid the statutory methods and the restrictions that accompany those methods by cobbling together the most favorable aspects of various methods of foreclosure. *See* Thompson, 58 Wn. App. 361; Bain

v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 285 P.3d 34 (2012); Schroeder v. Excelsior Mgmt. Grp., LLC, 177 Wn.2d 94, 297 P.3d 677 (2013).

The most shocking aspect of Division II's decision in this case is its rejection of long-standing policy in Washington State forbidding lenders from creating self-help remedies. In the past, a beneficiary under a deed of trust was limited in its remedies and had one of two routes available to it to realize on its collateral – either an RCW 61.12 judicial foreclosure or an RCW 61.24 non-judicial foreclosure with the statutory compromises outlined herein with respect to the right of the creditor to seek a deficiency versus the right of the debtor to seek redemption. The trial court below and Division II on appeal have endorsed crafting a patched together remedy not previously permitted under Washington law, i.e. the ability to commence a general receivership under RCW 7.60, have real estate sold without the right of redemption, and *still* preserve the right to seek a deficiency.

There is nothing in the Division II decision that restricts creditors from skirting Washington's traditional foreclosure system and using the precedent of such decision to foreclose on real estate under RCW 7.60, eliminate the right to redemption, and preserve the right to seek a deficiency against any debtor, whether the debt is commercial in nature or undertaken for personal, family, or household purposes. The basis to have

a receiver appointed under RCW 7.60.025 is extremely broad. Such statute provides, in relevant part, as follows:

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired;  
or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably



necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060 . . . .

RCW 7.60.025(1)(a) and (b).

In the foreclosure context, a creditor should in all instances be able to satisfy the necessary criteria for the appointment of a receiver under RCW 7.60.025(1)(a) and/or (b) by establishing that the creditor has a probable interest in the property that is the subject of an action and in the possession of the debtor and/or that the revenue-producing potential of the property is in danger of being lost or materially injured or impaired. Given the unrestrained nature of Division II's decision and its potential to radically alter the foreclosure system in Washington both as to commercial and non-commercial borrowers and guarantors, this Court should grant review.

2. Division II's Decision in This Case Also Undermines Washington's Well-Established Foreclosure System In That It Created a Right to a Deficiency under the Receivership Act Despite that Such Act Does Not Expressly Provide for a Deficiency.

A secured creditor makes an election of remedies when its debtor defaults. A secured creditor may (1) non-judicially foreclose (RCW

61.24); (2) judicially foreclose (RCW 61.12); (3) sue on the promissory note and/or any guaranties and seek a money judgment (RCW 61.24.100(2)(a)); or (4) seek the appointment of a general receiver to sell the property (RCW 7.60). Foreclosure and deficiency rights are exclusively provided by statute in Washington, whether the collateral is real or personal property. *See* RCW 61.24, 61.12, 7.60, and 62A.9A. The right to a deficiency judgment in Washington is purely statutory. *See Washington Mut. Sav. Bank v. United States*, 115 Wn.2d 52, 57, 793 P.2d 969 (1990) *clarified on denial of reconsideration*, 800 P.2d 1124 (Wash. 1990); *see also Bank of Hemet v. United States*, 643 F.2d 661, 667 (9<sup>th</sup> Cir. 1981) and *Bradley Engineering and Machinery Co. v. Muzzey*, 54 Wn. 227, 229, 103 P. 37 (1909) (“[T]he general rule is that a court of equity has no power to enter a deficiency judgment in an action to foreclose a mortgage unless authorized so to do by statute or rule of court.”); *see also* RCW 61.12.070-080. Once a particular foreclosure process is chosen by a secured creditor, such creditor activates the entire statutory process chosen and the policies embodied therein, and not just parts of the process that the creditor finds useful. As a foreclosure process, the Receivership Act (RCW 7.60) does not provide a right to a deficiency judgment.

This trade off also reflects the policy considerations outlined herein that the existing statutory remedies represent the careful legislative balancing of rights and obligations. The Division II opinion upsets this balance and gives creditors rights not provided for by the existing statutory scheme – namely, the preservation of a deficiency following the sale of real property free of the right of redemption.

Moreover, counsel for Shasta and the Johnsons have diligently sought to locate any precedent in Washington that stands for the proposition in any context that there is any right to seek a deficiency that arises independent of a statute. Counsel has not located any such precedent. In addition, counsel for Shasta and the Johnsons have diligently sought to locate any precedent in Washington that stands for the proposition in any context that there is any right of a creditor to foreclose on or otherwise compel the sale of any property (real or personal) pursuant to one statutory act and then pursue deficiency rights under another statutory act. Again, counsel has not located any such precedent. These facts underscore the extraordinary nature of Division II's decision in this case.

Here, the creditor, Umpqua, sought and obtained the appointment of a general receiver to sell the Property. In choosing such foreclosure route, the creditor made the deliberate choice to be bound by the

limitations imposed on it by the Receivership Act. Thus, in electing to sell the Property through the receivership rather than foreclosing on the Property pursuant to RCW 61.12 and seeking a statutory right to deficiency or foreclosing on the Property pursuant to RCW 61.24 and seeking a statutory exception to pursue a deficiency against the Johnsons under RCW 61.24.100, the creditor elected a remedy that does not preserve the right to a deficiency judgment. There is simply no authority in Washington permitting the preservation of a deficiency unless authorized by statute and no such statute exists under the Receivership Act. Consequently, the creditor had no right to pursue a deficiency against Shasta and/or the Johnsons after the receivership sale. Again, to permit this dangerous precedent to stand will radically alter Washington's well-established foreclosure system and permit creditors to craft remedies the Legislature never intended.

In radically altering Washington's foreclosure system, Division II misapplied one rule of statutory interpretation and erroneously interpreted the purpose of the Receivership Act.

First, in its decision, Division II cites to Birgen v. Dep't of Labor & Indus., 186 Wn. App. 851, 347 P.3d 503, *review denied*, 184 Wn.2d 1012 (2015), which case provides that "if a statute is silent on an issue, [the court] generally decline[s] to read into the statute what is not there."

186 Wn. App. at 859; Umpqua Bank v. Shasta Apartments, LLC, 2016 WL 3457726 at p. 4. However, Division II violated this rule of statutory interpretation as it read into the Receivership Act a creditor's right to seek a deficiency, which is a right that is not in such Act.

Next, Division II found the Legislature's stated purpose for the Receivership Act to be compelling. Umpqua Bank, 2016 WL 3457726 at p. 5. The purpose of the Receivership Act is: "to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors **and other persons having an interest therein.**" Substitute S.B. 6189, at 1-2, 88<sup>th</sup> Leg., Reg. Sess. (Wash. 2004) (emphasis added). From this statement of purpose, Division II concluded that "absent law or persuasive policy to the contrary, we do not read a provision into the statute that inhibits a secured creditor from obtaining satisfaction of the debt in a deficiency judgment. Such a reading would be contrary to the legislature's intent of providing a 'more comprehensive, streamlined, and cost-effective' procedure for the 'benefit of creditors.'" Umpqua Bank, 2016 WL 3457726 at p. 5. What is striking is that Division II completely ignored the highlighted phrase above: "and other persons having an interest therein." Two other relevant persons in this case that had an interest in the subject property were Shasta, as the

grantor under the Deed of Trust, and Charles Johnson, as the guarantor. Inexplicably, Division II completely ignored the competing interests of Shasta and the Johnsons in permitting Umpqua to pursue a deficiency for which there is no statutory basis. The Supreme Court should grant review, therefore, to rebalance the interests of creditors and debtors under the Receivership Act.

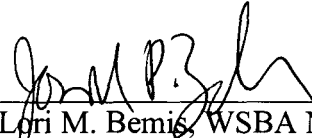
## VI. CONCLUSION

Petitioners respectfully requests that the Supreme Court grant review of this case. This matter is ripe for review under the standard set forth in RAP 13.4(b)(4) because Division II's decision radically alters Washington's long-established foreclosure system and its careful balancing of creditor rights and debtor protections.

Dated: July 21, 2016

McGAVICK GRAVES, P.S.

By:

  
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## VII. APPENDICES

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RCW 61.24.100  
RCW 61.24.130

# **APPENDIX A**



June 21, 2016

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

UMPQUA BANK,

Respondent,

v.

SHASTA APARTMENTS, LLC; CHARLES  
R. JOHNSON, II, and ELIZABETH A.  
JOHNSON, husband and wife,

Appellants.

No. 47224-4-II

PUBLISHED OPINION

SUTTON, J. — We are asked to decide whether the plain language of the receivership statute precludes a secured creditor from obtaining a post-sale deficiency judgment against a grantor whose property secured the loan and against a guarantor on the loan after a court-approved receiver’s sale of the secured property. The superior court granted summary judgment and entered a deficiency judgment in favor of Umpqua Bank, a secured creditor, against Shasta Apartments LLC, the grantor whose property secured the loan held by Umpqua, and against Charles Johnson,<sup>1</sup> the guarantor on the loan. The superior court also denied summary judgment to Shasta and Johnson. Shasta and Johnson argue that, as a matter of law, Umpqua was not entitled to a deficiency judgment against them because (1) chapter 7.60 RCW does not provide for recovery of a deficiency judgment and (2) a receiver’s sale of property “free and clear of all liens and rights of

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<sup>1</sup> We refer to Charles R. Johnson, II and Elizabeth A. Johnson, husband and wife, as “Charles Johnson” or “Johnson” for ease of reference; we mean no disrespect.

redemption” is equivalent to a nonjudicial foreclosure sale under chapter 61.24 RCW (Deed of Trust Act or DTA), which precludes a deficiency judgment.

We hold that (1) the plain meaning of chapter 7.60 RCW does not preclude a secured creditor from pursuing a deficiency judgment against a grantor and guarantor after a court-approved receiver’s sale of the grantor’s property and (2) Umpqua was entitled to pursue a deficiency judgment against Shasta and Johnson. Thus, the superior court’s summary judgment order granting Umpqua a deficiency judgment against Shasta and Johnson was proper. We also hold that, as the prevailing party, Umpqua is entitled to reasonable attorney fees on appeal. Accordingly, we affirm.

## FACTS

### I. BACKGROUND FACTS

On June 15, 2007, Shasta, the grantor, made and delivered a promissory note to Evergreen Bank (Evergreen). To secure the note, Shasta executed and delivered a deed of trust on Shasta’s property (Shasta DOT) to Evergreen, which Evergreen recorded.

The Shasta DOT contains the following relevant provisions:

**GRANTOR’S WAIVERS.** Grantor waives all rights or defenses arising by reason of any “one action” or “anti-deficiency” law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender’s commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

....

#### **RIGHTS AND REMEDIES ON DEFAULT**

....

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding or pending foreclosure or sale, and

to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. . . . Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount.

....

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to receive such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal.

CP at 56, 60. As additional security for the note, Shasta executed an assignment of rents in favor of Evergreen.<sup>2</sup>

From December 2007 to August 2009, Shasta modified the loan three times, executing promissory notes each time. In addition to security issued in the original and first two loan modifications, Shasta secured the August 2009 note by a commercial guaranty signed by Charles Johnson, a business loan agreement between Shasta and Evergreen, a second commercial guaranty from Callaway Apartments, LLC (Callaway), and a deed of trust made and delivered by Johnson to Evergreen.<sup>3</sup>

The Washington Department of Financial Institutions closed Evergreen in January 2010 and the bank went into receivership. Umpqua Bank (Umpqua) acquired certain assets of Evergreen, including the Shasta loan.<sup>4</sup>

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<sup>2</sup> The assignment of rents also gave the secured creditor the right to appoint a receiver. The language of the provision is the same of that as the Shasta DOT.

<sup>3</sup> Charles Johnson is the registered agent for both Shasta and Callaway, and signed all of the documents executing the promissory notes, deeds of trust, business loan agreements, and commercial guarantees.

<sup>4</sup> Shasta does not dispute that Umpqua is the owner and holder of the promissory note, replacement notes, and security instruments issued by Shasta, Callaway, and Johnson.

After Umpqua's acquisition of the Shasta loan, Shasta modified the loan again in 2010 and 2011. For the last loan modification, in January 2011, Umpqua and Shasta executed a change in terms agreement, modifying the amount due under a new replacement note, and executed a business loan agreement and commercial security agreement as additional collateral. The commercial security agreement provided Umpqua the right to appointment of a receiver under chapter 7.60 RCW.<sup>5</sup>

After August 18, 2011, Shasta failed to make any further payments on its loan, and Umpqua issued a notice of default in November. The principal loan balance at the time Shasta stopped making payments was \$1,044,365.27, including accrued interest.

## II. PROCEDURAL HISTORY

In March 2012, Umpqua petitioned the superior court to appoint a general receiver under chapter 7.60 RCW and for judicial foreclosure under the DTA on the Shasta DOT.<sup>6</sup> Umpqua's petition included in its request for relief that Umpqua "have judgment for any deficiency." Clerk's Papers (CP) at 10.

In April 2012, the superior court appointed a general receiver for Shasta and gave the receiver authority to sell Shasta's property "free and clear of liens and of all rights of redemption." CP at 101. The superior court ordered that Umpqua apply all proceeds to the "reduction of the

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<sup>5</sup> Callaway and Johnson also executed additional commercial security agreements and financing statements in security of the modification. Johnson executed a second security agreement in January 2011 in favor of Umpqua.

<sup>6</sup> Shasta and Johnson incorrectly state that the petition sought to "sell the property *and/or* judicially foreclose the property." Br. of Appellants at 4.

loan” but it also stated that Umpqua’s acceptance of proceeds “shall not constitute a waiver or cure of the defaults under the Deed of Trust nor a defense to any sale, or judicial or nonjudicial foreclosure of the Deed of Trust.” CP at 103-04. Shasta did not object to the receiver’s appointment or other terms in the court’s order.<sup>7</sup>

On May 25, 2012, the court entered a default order against the Johnsons and the other guarantor, Callaway, based on their failure to appear and Shasta’s default on the loan that they had guaranteed. Between March 19 and May 25, neither Shasta, Johnson, nor Callaway objected or responded to any of Umpqua’s pleadings or the receiver’s motions, notices of compensation, or reports.

On July 26, 2013, the receiver moved to have the superior court approve (1) the sale of Shasta’s real property “free and clear of liens,” (2) the payment to the real estate broker, and (3) the “assumption and assignment of leases.” CP at 198. The motion was supported by the receiver’s declaration, in which he stated that the sale of the real property was “in the best interest of the receivership estate.” CP at 212. The receiver also moved for an exemption from the real estate excise tax under RCW 82.45.010(3)(i) because “this is a court-ordered sale in an action with a pending claim for judicial foreclosure.” CP at 212.

The superior court granted the receiver’s motions and approved the sale of the property to a third party for \$550,000 on August 9, 2013. The superior court’s order stated that the sale of the property “shall be free and clear of any and all liens . . . and of all rights of redemption.” CP at

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<sup>7</sup> Neither Johnson nor Callaway, the guarantors, ever objected to the superior court’s orders and neither entered a notice of appearance in response to Umpqua’s petition or the superior court’s order appointing the receiver and order of sale.

237. Further, the superior court's order stated "that the sale of the [p]roperty shall be considered an order of sale by the [c]ourt to execute upon a judgment for the purposes of RCW 82.45.010(3)(i)," exempting the sale from real estate excise taxes. CP at 238. Neither Shasta, Johnson, nor Callaway raised any issues or challenges to the sale, nor did they file any pleadings between Umpqua's March 2012 petition and the August 2013 sale, and Shasta never responded to Umpqua's March 2012 petition, despite proper service of process.

On June 13, 2014, Umpqua moved for an order of default against Shasta and default judgment against Shasta, Johnson, and Callaway. At the time of Umpqua's motion for default and default judgment, and after the sale of Shasta's real property, a deficiency of \$877,161.03 existed, which included the remaining loan principal, accrued interest, appraisal and title costs, utilities, insurance, receivership expenses, repairs and maintenance, taxes, and state fees. The deficiency amount did not include Umpqua's attorney fees and litigation costs.

On June 24, 2014, Shasta and Johnson filed their first notice of appearance. On July 7, Shasta filed its answer and affirmative defenses to Umpqua's March 2012 petition.<sup>8</sup>

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<sup>8</sup> Shasta does not allege that service of process of Umpqua's initial pleadings, or any of the other pleadings in the case, were improper or that it lacked notice of the proceedings.

In November 2014, Umpqua moved for summary judgment under CR 55(b)<sup>9</sup> and CR 56(c), arguing that there were no genuine issues of material fact because a prior order of default had been entered against Shasta and Johnson and that it was entitled to a deficiency judgment against Shasta and Johnson. Shasta and Johnson also moved for summary judgment, arguing that Umpqua was not entitled to a deficiency judgment as a matter of law.

The superior court granted Umpqua's motion, denied Shasta and Johnson's motion, awarded Umpqua attorney fees and costs, and entered a deficiency judgment against Shasta and Johnson in the amount of \$932,997.22. Shasta and Johnson appeal.

## ANALYSIS

### I. STATUTORY INTERPRETATION

Shasta and Johnson argue that a secured creditor's right to a deficiency judgment is statutory and that chapter 7.60 RCW's (Receivership Statute), silence on the issue of a deficiency

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<sup>9</sup> When proof of service is on file with the court, under CR 55(b) the court may enter default judgment against a party under two circumstances:

(1) *When Amount Certain.* When the claim against a party, whose default has been entered under section (a), is for a sum certain or for a sum which can by computation be made certain, the court upon motion and affidavit of the amount due shall enter judgment for that amount and costs against the party in default, if the party is not an infant or incompetent person.

...

(2) *When Amount Uncertain.* If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.

judgment precludes Umpqua from obtaining a deficiency judgment after the court ordered and approved receiver's sale of Shasta's property that secured the loan. We disagree.

Statutory interpretation is a question of law that we review de novo. *Beal Bank, SSB v. Sarich*, 161 Wn.2d 544, 547, 167 P.3d 555 (2007). The goal of statutory interpretation is to determine and give effect to the legislature's intent. *Birgen v. Dep't of Labor & Indus.*, 186 Wn. App. 851, 857, 347 P.3d 503, *review denied*, 184 Wn.2d 1012 (2015). To determine legislative intent, we first look to the plain language of the statute and consider the meaning of the provision at issue, the context of the statute, and related statutes. *Birgen*, 186 Wn. App. at 857. If a statute is unambiguous, we apply the statute's plain meaning without considering other sources of legislative intent. *Birgen*, 186 Wn. App. at 857-58.

If a statute is silent on an issue, we generally decline to read into the statute what is not there. *Birgen*, 186 Wn. App. at 859. We do not ““add words where the legislature has chosen not to include them,”” and we construe statutes assuming that the legislature meant exactly what it said. *Birgen*, 186 Wn. App. at 858 (quoting *Rest. Dev., Inc. v. Canawill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003)). Further, we ““resist the temptation to rewrite an unambiguous statute to suit our notions of what is good public policy, recognizing the principle that the drafting of a statute is a legislative, not a judicial, function.”” *Birgen* 186 Wn. App. at 862 (internal quotations omitted) (quoting *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001)).

#### A. PLAIN LANGUAGE

The issue is whether the plain language of the Receivership Statute precludes a secured creditor from obtaining a deficiency judgment against a grantor and guarantor after a court-ordered and approved receiver's sale of the grantor's property securing the loan. It does not.



Under the Receivership Statute, the court appoints a general receiver to take possession and control of “all or substantially all” of a person’s or business’s property with authority to liquidate that property and wind up affairs. RCW 7.60.015. The court may appoint a general receiver

[o]n application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection . . . whether or not the application for appointment of a receiver is *combined with, or is ancillary to*, an action seeking a money judgment or other relief.

RCW 7.60.025(1)(a) (emphasis added).

Further, the court may appoint a receiver upon the commencement of a “judicial action” or nonjudicial foreclosure proceeding

when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver’s appointment is determined to be probable and either:

- (i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or
- (ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property.

RCW 7.60.025(1)(b).

The plain language of the Receivership Statute does not expressly permit or preclude a secured creditor of a commercial loan from pursuing a deficiency judgment against the grantor and/or guarantor after a court-approved receiver sale of the grantor’s property securing the loan.

B. STATUTORY PURPOSE

In interpreting the plain language of the Receivership Statute, we are guided by the legislature's stated purpose in enacting the statute. When the statute at issue or a related statute includes an applicable statement of purpose, we must read the statute in a manner consistent with its stated purpose. *Birgen*, 186 Wn. App. at 862. The legislature enacted the Receivership Statute

to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein.

SUBSTITUTE S.B. 6189, at 1-2, 88th Leg., Reg. Sess. (Wash. 2004).

The legislature intended the Receivership Statute to “benefit creditors” having interests in property administered by the courts. Thus, absent law or persuasive policy to the contrary, we do not read a provision into the statute that inhibits a secured creditor from obtaining satisfaction of the debt in a deficiency judgment. Such a reading would be contrary to the legislature's intent of providing a “more comprehensive, streamlined, and cost-effective” procedure for the “benefit of creditors.” *See* SUBSTITUTE S.B. 6189, 88th Leg., Reg. Sess. (Wash. 2004).

Accepting Shasta's and Johnson's argument requires that we read language into the Receivership Statute that is not there. If the legislature had wanted to preclude a deficiency judgment after a receiver's sale under the Receivership Statute, it would have included that language in the statute. Thus, we hold that the plain language of the Receivership Statute does not preclude a secured creditor from pursuing a post-sale deficiency judgment against a grantor whose property secured the loan or against a guarantor on the loan.

## II. SUMMARY JUDGMENT

Shasta and Johnson argue that the superior court erred when it granted Umpqua's motion for summary judgment and denied their motion for summary judgment because the receiver's sale of Shasta's real property "free and clear of liens and all rights of redemption" was, in effect, a nonjudicial foreclosure under the Deed of Trust Act, and that statute precluded Umpqua from pursuing a deficiency judgment. We disagree. Under a plain reading of the Deed of Trust Act and Receivership Statute, Umpqua was entitled to a deficiency judgment and summary judgment was proper as a matter of law.

We review a superior court's summary judgment order de novo, performing the same inquiry as the superior court. *Beal Bank*, 161 Wn.2d at 547. Summary judgment is proper when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.<sup>10</sup> CR 56(c).

The beneficiary of a trust deed elects from three remedies upon a borrower's default, "(1) where the trust deed secures a note, sue on the note; (2) foreclose under existing mortgage foreclosure proceedings; or (3) foreclose pursuant to [the DTA]." *Thompson v. Smith*, 58 Wn. App. 361, 366, 793 P.2d 449 (1990) (quoting Gose, *The Trust Deed Act in Washington*, 41 Wash. L. Rev. 94 (1966)).

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<sup>10</sup> Shasta does not challenge the appointment of the receiver, the sale of the property, or the amount of the deficiency.

The DTA generally bars deficiency judgments,

Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

RCW 61.24.100(1). In a nonjudicial foreclosure initiated under the DTA, the borrower relinquishes the right to redemption, allowing the property to be sold at a trustee's sale more quickly than in a judicial foreclosure. *Wash. Fed. v. Gentry*, 179 Wn. App. 470, 476-77, 319 P.3d 823 (2014), *aff'd*, 182 Wn.2d 335 (2015). This more efficient process precludes secured creditors from obtaining deficiency judgments when they foreclose nonjudicially. *Gentry*, 179 Wn. App. at 477.

But even with the provisions of the DTA, secured creditors retain the right to judicial foreclosures, preserving the right to obtain a deficiency judgment.<sup>11</sup> *Gentry*, 179 Wn. App. at 477. A deficiency judgment arises if the amount of a judgment in a judicial foreclosure exceeds the value of the security sold at the foreclosure sale. *Boeing Emp. Credit Union v. Burns*, 167 Wn. App. 265, 282, 272 P.3d 908 (2012). Unless it elects to foreclose on the deed of trust pursuant to RCW 61.24.040, a creditor is not precluded from obtaining a deficiency judgment. *Helbling Bros. v. Turner*, 14 Wn. App. 494, 497-98, 542 P.2d 1257 (1975).

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<sup>11</sup> RCW 61.12.070 directs that the court “shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor,” unless explicitly waived by the secured creditor.

The Receivership Statute distinguishes a “judicial action” from a nonjudicial foreclosure proceeding under the DTA.<sup>12</sup> RCW 7.60.025(1)(b)(ii). The Receivership Statute may be used in conjunction with a judicial action or nonjudicial foreclosure action; thus, a receivership is secondary to the main cause of action and not itself an independent remedy. *See* RCW 7.60.025(1)(b); *see also* *Grays Harbor Commercial Co. v. Fifer*, 97 Wash. 380, 382, 166 P. 770 (1917).

Further, Washington case law has long established that an appointed receiver is an officer of the court subject to the court’s control. *See* *Ginsberg v. Katz*, 27 Wn. App. 593, 597, 619 P.2d 995 (1980) (“[T]he receiver is an officer of the court.”); *see also* *State ex rel. Ewing v. Morris*, 120 Wash. 146, 153, 207 P. 18 (1922) (“[A] receiver is an officer of the court, and he is required to account to the court for all receipts and disbursements of the funds received by him.”). As an officer of the court, a receiver’s sale is a judicial sale.<sup>13</sup> *Walton v. Severson*, 100 Wn.2d 446, 451-52, 670 P.2d 639 (1983) (“A judicial sale is one made as a result of judicial proceedings by a receiver appointed by the court.”) (quoting 2 R. Clark, *Receivers*, § 482, at 784-85 (3d ed. 1959).

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<sup>12</sup> RCW 7.60.025 provides, in relevant part,

[A] judicial action is commenced as provided in [CR 3(a)] a nonjudicial proceeding is commenced under chapter 61.24 RCW [the Deed of Trust Act, DTA] upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060.

RCW 7.60.025(1)(b)(ii).

<sup>13</sup> We also note that obtaining a receiver’s sale under chapter 7.60 RCW is a more cumbersome process to sell a property than either a judicial foreclosure under chapter 61.12 RCW or a non-judicial foreclosure under chapter 61.24 RCW.

Umpqua initiated a “judicial action” under CR 3(a) when it filed its petition for the appointment of a general receiver and judicial foreclosure, and its motion to show cause on March 19, 2012, and delivered service of process to Shasta on March 23 and 24. There is nothing in the record to indicate that Umpqua initiated any nonjudicial foreclosure proceedings under the DTA on the Shasta DOT. The superior court, under the authority provided in RCW 7.60.015 and .025, appointed the receiver, authorized the receiver to liquidate the property, and approved the subsequent sale. Further, the superior court categorized the sale as a judicial sale.

Thus, because Umpqua did not sell or attempt to foreclose on the property nonjudicially through a trustee’s sale, because a receiver’s sale is not a foreclosure sale but a judicial sale, and because the Receivership Statute does not preclude deficiency judgments after a receiver’s sale of property, Umpqua was entitled to pursue a deficiency judgment on the remaining amount of the note.<sup>14</sup> Therefore, Umpqua was entitled to summary judgment as a matter of law. Accordingly, we hold that the superior court’s grant of summary judgment in favor of Umpqua was proper.

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<sup>14</sup> Johnson did not secure the commercial loan guaranty with a deed of trust or own the foreclosed property; therefore, he was liable for a deficiency judgment on the note regardless of whether Shasta was liable for a deficiency judgment or not. RCW 61.24.100.

### ATTORNEY FEES AND COSTS

Both Shasta and Umpqua ask us to award them attorney fees and costs on appeal under RAP 18.1. As the prevailing party, Umpqua is entitled to reasonable attorney fees and costs on appeal.

“Fees may be awarded as part of the cost of litigation when there is a contract, statute, or recognized ground in equity for awarding such fees.” *Thompson v. Lennox*, 151 Wn. App. 479, 491, 212 P.3d 597 (2009). “A contractual provision for an award of attorney’s fees at trial supports an award of attorney’s fees on appeal under RAP 18.1.” *Thompson*, 151 Wn App. at 491 (quoting *W. Coast Stationary Eng’rs Welfare Fund v. City of Kennewick*, 39 Wn. App. 466, 477, 694 P.2d 1101 (1985)). Here, the parties agreed that,

[i]f [Umpqua] institutes any suit or action to enforce any of the terms of this Assignment, [Umpqua] shall be entitled to receive such sum as the court may adjudge reasonable as attorneys’ fees at trial and upon any appeal.

CP at 52, 60. Thus, we hold that Umpqua is entitled to reasonable attorney fees and costs on appeal.

### CONCLUSION


We hold that (1) chapter 7.60 RCW does not preclude a secured creditor from pursuing a deficiency judgment against a grantor and guarantor after a court-ordered and approved receiver’s sale of the grantor’s property and (2) Umpqua was entitled to pursue a deficiency judgment against


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Shasta and Johnson. Therefore, the superior court's summary judgment order granting Umpqua a deficiency judgment against Shasta and Johnson and denying Shasta's summary judgment motion was proper. We also hold that, as the prevailing party, Umpqua, is entitled to reasonable attorney fees and costs on appeal. We affirm.

  
SUTTON, J.

We concur:

  
BINGER, C.J.

  
MAXA, J.



# **APPENDIX B**

**RCW 7.60.025****Appointment of receiver.**

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or

when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to \*RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also must be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

[ 2011 c 214 § 27; 2011 c 34 § 1; 2010 c 212 § 4; 2006 c 52 § 1; 2004 c 165 § 4.]

#### NOTES:

**Reviser's note:** \*(1) RCW 30.44.100, 30.44.270, and 30.56.030 were recodified as RCW 30A.44.100, 30A.44.270, and 30A.56.030, respectively, pursuant to 2014 c 37 § 4, effective January 5, 2015.

(2) This section was amended by 2011 c 34 § 1 and by 2011 c 214 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Purpose—Limitation of chapter—Effective date—2011 c 214:** See notes following RCW 80.04.010.

**Application—Effective date—2010 c 212:** See notes following RCW 24.03.266.

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.

**RCW 7.60.260****Receiver's disposition of property—Sales free and clear.**

(1) The receiver, with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business. Except in the case of a leasehold estate with a remaining term of less than two years or a vendor's interest in a real estate contract, estate property consisting of real property may not be sold by a custodial receiver other than in the ordinary course of business.

(2) The court may order that a general receiver's sale of estate property either (a) under subsection (1) of this section, or (b) consisting of real property which the debtor intended to sell in its ordinary course of business be effected free and clear of liens and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

(i) The property is real property used principally in the production of crops, livestock, or aquaculture, or the property is a homestead under RCW 6.13.010(1), and the owner of the property has not consented to the sale following the appointment of the receiver; or

(ii) The owner of the property or a creditor with an interest in the property serves and files a timely opposition to the receiver's sale, and the court determines that the amount likely to be realized by the objecting person from the receiver's sale is less than the person would realize within a reasonable time in the absence of the receiver's sale.

Upon any sale free and clear of liens authorized by this section, all security interests and other liens encumbering the property conveyed transfer and attach to the proceeds of the sale, net of reasonable expenses incurred in the disposition of the property, in the same order, priority, and validity as the liens had with respect to the property immediately before the conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole or in part, any allowed claim secured by the property out of the proceeds of its sale if the interest of any other creditor having a lien against the proceeds of the sale would not thereby be impaired.

(3) At a public sale of property under subsection (1) of this section, a creditor with an allowed claim secured by a lien against the property to be sold may bid at the sale of the property. A secured creditor who purchases the property from a receiver may offset against the purchase price its allowed secured claim against the property, provided that the secured creditor tenders cash sufficient to satisfy in full all secured claims payable out of the proceeds of sale having priority over the secured creditor's secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the court may order the holder of the claim to provide the receiver with adequate security to assure full payment of the purchase price in the event the lien, the claim, or any part thereof is determined to be invalid or unenforceable.

(4) If estate property includes an interest as a co-owner of property, the receiver shall have the rights and powers of a co-owner afforded by applicable state or federal law, including but not limited to any rights of partition.

(5) The reversal or modification on appeal of an authorization to sell or lease estate property under this section does not affect the validity of a sale or lease under that authorization to an entity that purchased or leased the property in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and sale or lease were stayed pending the appeal.

[ 2011 c 34 § 9; 2004 c 165 § 28.]

**NOTES:**

**Purpose—Captions not law—2004 c 165:** See notes following RCW 7.60.005.



**RCW 61.12.070****Decree to direct deficiency—Waiver in complaint.**

When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: PROVIDED, HOWEVER, That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.23.020, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged.

[ 1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

**RCW 61.12.080**

**Deficiency judgment—How enforced.**

Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner.

[Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

**NOTES:**

*Enforcement of judgments: Title 6 RCW.*

**RCW 61.24.005****Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit. For the purposes of the application of RCW 61.24.163, owner-occupied residential real property includes residential real property of up to four units.

(14) "Senior beneficiary" means the beneficiary of a deed of trust that has priority over any other deeds of trust encumbering the same residential real property.

(15) "Tenant-occupied property" means property consisting solely of residential real property that is the principal residence of a tenant subject to chapter 59.18 RCW or other

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

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

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

[ 2014 c 164 § 1. Prior: 2011 c 364 § 3; 2011 c 58 § 3; prior: 2009 c 292 § 1; 1998 c 295 § 1.]

#### NOTES:

**Findings—Intent—2011 c 58:** "(1) The legislature finds and declares that:

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

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

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

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

(2) Therefore, the legislature intends to:

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

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

(c) Provide a process for foreclosure mediation when a housing counselor or attorney determines that mediation is appropriate. For mediation to be effective, the parties should attend the mediation (in person, telephonically, through an agent, or otherwise), provide the necessary documentation in a timely manner, willingly share information, actively present, discuss, and explore options to avoid foreclosure, negotiate willingly and cooperatively, maintain a professional and cooperative demeanor, cooperate with the mediator, and keep any agreements made in mediation." [ 2011 c 58 § 1.]

**Short title—2011 c 58:** "This act may be known and cited as the foreclosure fairness act." [ 2011 c 58 § 2.]

**RCW 61.24.030****Requisites to trustee's sale.**

It shall be requisite to a trustee's sale:

- (1) That the deed of trust contains a power of sale;
- (2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;
- (3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;
- (4) That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: PROVIDED, That (a) the seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010. If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed;
- (5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated;
- (6) That prior to the date of the notice of trustee's sale and continuing thereafter through the date of the trustee's sale, the trustee must maintain a street address in this state where personal service of process may be made, and the trustee must maintain a physical presence and have telephone service at such address;
- (7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.
  - (b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.
  - (c) This subsection (7) does not apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW;
- (8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:
  - (a) A description of the property which is then subject to the deed of trust;

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

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

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

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

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

(g) A statement that failure to cure the alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal, and publication of a notice of sale, and that the property described in (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future, or no less than one hundred fifty days in the future if the borrower received a letter under RCW 61.24.031;

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

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

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

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

**"THIS NOTICE IS ONE STEP IN A PROCESS THAT COULD RESULT IN YOUR  
LOSING YOUR HOME.**

You may be eligible for mediation in front of a neutral third party to help save your home.

**CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you might benefit. Mediation **MUST** be requested between the time you receive the Notice of Default and no later than twenty days after the Notice of Trustee Sale is recorded.

**DO NOT DELAY.** If you do nothing, a notice of sale may be issued as soon as 30 days from the date of this notice of default. The notice of sale will provide a minimum of 120 days' notice of the date of the actual foreclosure sale.

**BE CAREFUL** of people who claim they can help you. There are many individuals and businesses that prey upon borrowers in distress.

**REFER TO THE CONTACTS BELOW** for sources of assistance.

**SEEKING ASSISTANCE**

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

Telephone: . . . . . Web site: . . . . .

The United States Department of Housing and Urban Development

Telephone: . . . . . Web site: . . . . .

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

Telephone: . . . . . Web site: . . . . ."

The beneficiary or trustee shall obtain the toll-free numbers and web site information from the department for inclusion in the notice; and

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust; and

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, RCW 61.24.163.

[ 2012 c 185 § 9; 2011 c 58 § 4; 2009 c 292 § 8. Prior: 2008 c 153 § 2; 2008 c 108 § 22; 1998 c 295 § 4; 1990 c 111 § 1; 1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

**NOTES:**

**Findings—Intent—Short title—2011 c 58:** See notes following RCW 61.24.005.

**Findings—2008 c 108:** See RCW 19.144.005.

**Application—1985 c 193:** See note following RCW 61.24.020.

**RCW 61.24.040****Foreclosure and sale—Notice of sale.**

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

(1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required, at least one hundred twenty days before the sale, the trustee shall:

(a) Record a notice in the form described in (f) of this subsection in the office of the auditor in each county in which the deed of trust is recorded;

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

(i) The borrower and grantor;

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

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

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

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

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

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

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



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

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

NOTICE OF TRUSTEE'S SALE

I.

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

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

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

II.

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

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

III.

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

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

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

IV.

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

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the . . . . day of . . . . ., . . . . The default(s) referred to in paragraph III must be cured by the . . . . day of . . . . ., . . . . (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the . . . . day of . . . . ., . . . ., (11

days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the . . . . day of . . . . ., . . . . (11 days before the sale date), and before the sale by the Borrower, Grantor, any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

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

. . . .  
. . . .  
. . . .

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

VII.

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

VIII.

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

IX.

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

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

. . . .  
. . . . , Trustee  
. . . . }  
. . . . } Address  
. . . . }  
. . . . } Phone

[Acknowledgment]

(g) If the borrower received a letter under RCW 61.24.031, the notice specified in subsection (1)(f) of this section shall also include the following additional language:

**"THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.**

You have only 20 DAYS from the recording date on this notice to pursue mediation.

**DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

**SEEKING ASSISTANCE**

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission

Telephone: . . . . . Web site: . . . . .

The United States Department of Housing and Urban Development

Telephone: . . . . . Web site: . . . . .

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys

Telephone: . . . . . Web site: . . . . ."

The beneficiary or trustee shall obtain the toll-free numbers and web site information from the department for inclusion in the notice;

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

**NOTICE OF FORECLOSURE**

Pursuant to the Revised Code of Washington,  
Chapter 61.24 RCW

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

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

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

for sale)

Delinquent payments from . . . . ., . . . , in the amount of \$ . . . . /mo.:	\$ . . . .	\$ . . . .
Late charges in the total amount of:	\$ . . . .	\$ . . . .
		<b>Estimated Amounts</b>
Attorneys' fees:	\$ . . . .	\$ . . . .
Trustee's fee:	\$ . . . .	\$ . . . .
Trustee's expenses: (Itemization)		
Title report	\$ . . . .	\$ . . . .
Recording fees	\$ . . . .	\$ . . . .
Service/Posting of Notices	\$ . . . .	\$ . . . .
Postage/Copying expense	\$ . . . .	\$ . . . .
Publication	\$ . . . .	\$ . . . .
Telephone charges	\$ . . . .	\$ . . . .
Inspection fees	\$ . . . .	\$ . . . .
. . . . .	\$ . . . .	\$ . . . .
. . . . .	\$ . . . .	\$ . . . .
<b>TOTALS</b>	<b>\$ . . . .</b>	<b>\$ . . . .</b>

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

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

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
. . . . .	. . . . .
. . . . .	. . . . .
. . . . .	. . . . .

....  
....  
....  
....

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

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

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

NAME: . . . .  
ADDRESS: . . . .  
. . . .  
TELEPHONE . . . .  
NUMBER:

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

(3) In addition, the trustee shall cause a copy of the notice of sale described in subsection (1)(f) of this section (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the

thirty-fifth and twenty-eighth day before the date of sale, and once on or between the fourteenth and seventh day before the date of sale;

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

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

(6) The trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in subsection (1)(b)(i) and (ii) of this section to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in subsection (1)(b), (c), (d), and (e) of this section and publishing a copy of such notice once in the newspaper(s) described in subsection (3) of this section, more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

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

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

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

#### X. NOTICE TO OCCUPANTS OR TENANTS

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

[ 2012 c 185 § 10; 2009 c 292 § 9; 2008 c 153 § 3; 1998 c 295 § 5; 1989 c 361 § 1; 1987 c 352 § 3; 1985 c 193 § 4; 1981 c 161 § 3; 1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

**NOTES:**

**Application—1985 c 193:** See note following RCW 61.24.020.

**RCW 61.24.042****Notice to guarantor—Contents—Failure to provide.**

The beneficiary may give the notices of default, trustee's sale, and foreclosure referred to in RCW \* 61.24.030(7) and 61.24.040 to any one or more of the guarantors of a commercial loan at the time they are given to the grantor. In addition to the information contained in the notices provided to the grantor, these notices shall state that (1) the guarantor may be liable for a deficiency judgment to the extent the sale price obtained at the trustee's sale is less than the debt secured by the deed of trust; (2) the guarantor has the same rights to reinstate the debt, cure the default, or repay the debt as is given to the grantor in order to avoid the trustee's sale; (3) the guarantor will have no right to redeem the property after the trustee's sale; (4) subject to such longer periods as are provided in the Washington deed of trust act, chapter 61.24 RCW, any action brought to enforce a guaranty must be commenced within one year after the trustee's sale, or the last trustee's sale under any deed of trust granted to secure the same debt; and (5) in any action for a deficiency, the guarantor will have the right to establish the fair value of the property as of the date of the trustee's sale, less prior liens and encumbrances, and to limit its liability for a deficiency to the difference between the debt and the greater of such fair value or the sale price paid at the trustee's sale, plus interest and costs. The failure of the beneficiary to provide any guarantor the notice referred to in this section does not invalidate either the notices given to the borrower or the grantor, or the trustee's sale.

[ 1998 c 295 § 6.]

**NOTES:**

\*Reviser's note: RCW 61.24.030 was amended by 2009 c 292 § 8, changing subsection (7) to subsection (8).



**RCW 61.24.100****Deficiency judgments—Foreclosure—Trustee's sale—Application of chapter.**

(1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are

provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998.

[ 1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.]

**RCW 61.24.130****Restraint of sale by trustee—Conditions—Notice.**

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

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

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

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

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

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

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

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

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

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

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

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

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

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

[ 2008 c 153 § 5; 1998 c 295 § 14; 1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]

**DECLARATION OF SERVICE**

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, per an electronic service agreement of counsel, I caused to be served via E-Mail and further via ABC Legal Messengers for delivery by July 22, 2016, a copy of the foregoing Petition for Review to:

Barbara L. Bollero  
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2016 JUL 21 PM 3:43  
STATE OF WASHINGTON  
BY AK  
DEPUTY

Signed at Tacoma, Washington this 21<sup>st</sup> day of July 2016.

McGAVICK GRAVES, P.S.

By: Anita K. Acosta  
Anita K. Acosta, Legal Assistant