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NO. 867101
SUPREME COURT
OF THE STATE OF WASHINGTON

STEVEN F. SCHROEDER,
a married man dealing with his sole and separate property,

Petitioner,

vs.

PHILLIP J. HABERTHUR, as trustee;
EXCELSIOR MANAGEMENT GROUP, LLC;
EXCELSIOR MORTGAGE EQUITY FUND II, LLC;
JAMES HANEY; and CLS MORTGAGE, INC;

Respondents.

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STATE OF WASHINGTON
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ANSWER TO PETITION FOR REVIEW

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RCW 61.24 passim

I. INTRODUCTION

This court has already ruled, on many occasions and after a comprehensive review, that the Deeds of Trust Act, RCW 61.24 *et seq.* (the “Act”) provides the “only means by which a grantor may preclude a non-judicial foreclosure sale once foreclosure has begun.”¹ Under the Act, a party cannot contest the foreclosure, or the underlying obligations of a commercial deed of trust, unless they have successfully restrained the Trustee from conducting the Trustee’s sale under RCW 61.24.130.²

This statute requires a person seeking to restrain a foreclosure sale to personally “serve” the trustee with at least five days notice of the “time when, place where, and the judge before whom the application for the restraining order or injunction is to be made.”³ In this case, and without any excuse, Schroder waited until three days before the scheduled Trustee’s Sale to seek an ex-parte Temporary Restraining order and therefore failed to meet the five day notice requirement. In a desperate attempt to execute his own failures, Schroeder now wants this court to declare that the five day notice requirement is unconstitutional.

Schroeder claims the Court of Appeal’s **unpublished** opinion

¹ *Plein v. Lackey*, 149 Wn.2d 214, 225-226, 67 P.3d 1061 (2003); *CHD, Inc. v. Boyles*, 138 Wn. App. 131, 137, 157 P.3d 415 (2007).

² *Id.*

³ RCW 61.24.130(2) (“No court may grant a restraining order or injunction to restrain a Trustee’s Sale” unless these requirements are met).

involves an issue of substantial public importance because it limits the court's equitable powers. Although not mentioned by the Petitioner, this Court has repeatedly addressed RCW 61.24.130 and held that it provides the exclusive means to challenge a non-judicial foreclosure or trustee's sale.⁴ In this case, the Court of Appeals relied upon this clearly established precedent.⁵ Moreover, its **unpublished opinion** is not in conflict with any other divisions of the Courts of Appeal. And, as with this Court's prior opinions on the statute, the Court of Appeal's opinion **does not** unlawfully limit the inherent or constitutional equitable powers of the Superior Court.

This Court squarely held in *Plein v. Lackey* that RCW 61.24.130 provides the "only means by which a grantor may preclude a sale once foreclosure has begun."⁶ But Schroeder ignores—and wants this Court to ignore—its own precedent to argue that that RCW 61.24.130 "diminishes" the superior court's constitutional power to issue injunctive relief. But the only way Schroeder can prevail is if this Court overrules over 25 years of precedence and finds RCW 61.24.130, a statute that is over 47 years old, unconstitutional.

⁴ See *Plein v. Lackey*, 149 Wn.2d 214, 67 P.3d 1061 (2003) and *Cox v. Helenius*, 103 Wn.2d 383, 693 P.2d 683 (1985).

⁵ See also *CHD, Inc. v. Boyles*, 138 Wn. App. 131, 157 P.3d 415 (2007); *In re Marriage of Kaseburg*, 126 Wn. App. 546, 108 P.3d 1278 (2005).

⁶ a rule of law that the legislature has endorsed as recently as 2009.

Because Schroeder can not present any compelling reason for this Court to take such drastic actions, this Court should deny the petition for review.

II. ISSUES PRESENTED FOR REVIEW

1. RCW 61.24.130 provides the exclusive means to restrain a trustee's sale. Under this statute, no court may restrain a trustee's sale unless the trustee is served with at least five days notice of the hearing at which the restraining order is sought. Does this statute unconstitutionally limit a court's equitable powers to restrain a trustee's sale?

2. An **unpublished** opinion that follows long-standing Washington precedent and is not in conflict with opinions issued by other divisions of the court of appeals does not warrant further review or impact the public interest. Should this Court grant review of a case that does not substantially impact the public interest?

3. A party that successfully defends its rights under a Deed of Trust containing an attorneys' fee provision is entitled to recover their fees and costs. Schroeder unsuccessfully sued Excelsior to challenge the Deed of Trust. Is Excelsior entitled to its fees and costs on appeal?

III. COUNTERSTATEMENT OF THE CASE

A. Schroeder's First Default.

In June 2007, Schroeder borrowed money from Excelsior

Management Group, LLC.⁷ To secure the loan, Schroeder conveyed a Deed of Trust on his property.⁸ This was a commercial loan and did not involve owner-occupied residential property.

When Schroeder defaulted on this loan, Excelsior initiated a non-judicial foreclosure of the property. But just before the foreclosure sale, Schroeder filed a lawsuit to try and stop the Trustee's Sale.⁹ Schroeder alleged that the property was being used principally for agricultural purposes, which was an allegation that was contrary to his warranty in the Deed of Trust.¹⁰

Although Excelsior disputed Schroeder's claim, it voluntarily stopped its non-judicial foreclosure and initiated a judicial foreclosure to avoid any unnecessary delay.¹¹ Shortly afterwards, Schroeder wanted to stop the foreclosures and settle with Excelsior. He therefore signed a new loan and deed of trust to once again make clear that the property was not used principally for agricultural purposes and that **he would not** use it principally for agricultural purposes.¹²

In return, Excelsior agreed to stop the foreclosure and provide

⁷ CP 8.

⁸ CP 9.

⁹ CP 168-69.

¹⁰ RCW 61.24.030 prohibits non-judicial foreclosure of agricultural properties.

¹¹ CP 346-48. *Excelsior Mortgage Equity Fund II, LLC v. Steven Schroeder*, Stevens County Superior Court Case No. 2009-2-00048-2.

¹² CP 305.

Schroeder a second chance by issuing a new loan and an extension of the term for repayment.¹³ However, Excelsior insisted that Schroeder stipulate in court that the property was not being used for agricultural purposes so that Excelsior could conduct a non-judicial foreclosure if Schroeder defaulted again.¹⁴ Schroeder agreed and dismissed his lawsuit with prejudice and expressly waived any right to declare that the property was used principally for agricultural purposes.¹⁵

Schroeder signed a new Promissory Note on March 31, 2009, promising to repay Excelsior \$425,700, and convey a new Deed of Trust where he warranted that the property was not being used for agricultural purposes, and promised that it would not be used for such purposes in the future.¹⁶ In addition, the parties executed a Stipulated Motion and Order of Dismissal with Prejudice on April 7, 2009 (“Stipulated Order of Dismissal”).¹⁷

In the Stipulated Order of Dismissal, Schroeder agreed, consistent with the new loan documents, that the property was not being used for

¹³ CP 346-48.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ CP 304-05; CP 183-205.

¹⁷ CP 346-48.

agricultural purposes.¹⁸ Schroeder also agreed in the Stipulated Order of Dismissal that he would not claim that the property was being used for agricultural purposes.¹⁹

B. Schroeder's Second Default.

Schroeder once again defaulted on the new loan, forcing Excelsior to proceed with a non-judicial foreclosure.²⁰ On November 6, 2009, Excelsior served Schroeder with a Notice of Foreclosure and Notice of Trustee's Sale.²¹ The Notices set the Trustee's Sale for February 19, 2010, which gave Schroeder more than 100 days notice.²² And pursuant to RCW 61.24.040, Excelsior provided Schroeder with the statutory notices alerting him of the right, and need, to initiate a court action if he contested the sale.²³ This notice included the following from RCW 61.24.040: "If you do not reinstate the secured obligation and your

¹⁸ CP 346-48. The Stipulated Order of Dismissal was presented to and signed by Judge Allen Nielson on April 7, 2010. The Stipulated Order of Dismissal contains eight simple paragraphs and provided that Schroeder:

- 1) Has knowingly waived any and all right he may have to judicial foreclosure of the subject property on the grounds it is used for agricultural purposes;
- 2) Shall not be allowed to again allege that the subject property is used for agricultural purposes;
- 3) Any future deed of trust executed by Schroeder to [Excelsior], an associated company or assigns, need not be judicially foreclosed but may be foreclosed non-judicially in accordance with RCW 61.24; and,
- 4) The matter was dismissed with prejudice.

¹⁹ *Id.*

²⁰ CP 305.

²¹ CP 207-220.

²² *Id.*

²³ *Id.*

Commercial 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 to satisfy the obligations secured by your Commercial Deed of Trust....”²⁴

In addition, the Notice of Trustee’s Sale provided the following warning, in accordance with RCW 61.24.040:

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.²⁵

C. **Schroeder Obtains TRO Without Providing Sufficient Notice To The Trustee.**

Instead of curing the defaults, or taking earlier legal action under RCW 61.24.130 to stop the sale, Schroeder waited until February 8, 2010 (eleven days before the sale) to file the current lawsuit.²⁶ And despite his warranties and Stipulation to the contrary, Schroeder again claimed that Excelsior had to conduct a judicial foreclosure because the property was being used for agricultural purposes.²⁷ Schroeder simultaneously filed a Motion to Restrain the Trustee’s Sale, which he noted for February 15,

²⁴ CP 211; 219.

²⁵ CP 219.

²⁶ CP 1-7. *Steven Schroeder v. Phillip Haberthur*, Stevens County Superior Court Case No. 2010-2-00054-1.

²⁷ *Id.*

2010.²⁸

When the Trustee received the Complaint and the Motion to Restrain the Sale, he contacted Schroeder's attorney to advise him that Schroeder had already tried this maneuver.²⁹ The Trustee further pointed out the previous Stipulated Order of Dismissal and that Schroeder had expressly warranted in the new loan that the property was not used for agricultural purposes.³⁰ The Trustee stated he would contest Schroeder's Motion and proceed with the Trustee's Sale.³¹

Schroeder's attorney responded by striking the hearing and withdrawing his motion.³² But then Schroeder amended his Complaint on February 15, 2010 to claim that the loan was made in violation of the Consumer Protection Act.³³ Schroeder also filed a new Motion for a Preliminary Injunction, which he e-mailed to the Trustee at 10:18 p.m. on February 16, 2010.³⁴ Schroeder went before the trial judge ex-parte on February 16, 2010 and obtained a TRO at 2:00 p.m.³⁵ The TRO also

²⁸ CP 175-76.

²⁹ CP 89.

³⁰ *Id.*

³¹ *Id.*

³² CP 245; CP 87.

³³ CP 8-17.

³⁴ CP 146-47; CP 244-46.

³⁵ CP 43-44.

required a \$5,000 bond, which was never posted.³⁶

Upon learning of its issuance, the Trustee immediately filed a Motion to Dissolve the TRO so that he could proceed with the Trustee's Sale.³⁷ After conducting a hearing, Judge Allen Nielson dissolved the TRO on the morning of February 19, 2010 and directed the Trustee to proceed with the Trustee's Sale in accordance with the Notice of Trustee's Sale.³⁸ Schroeder neither posted a bond nor attempted to appeal Judge Nielson's Order.

D. The Court Grants Excelsior's Motion for Summary Judgment.

After the February 19, 2010 foreclosure sale was complete, Excelsior moved for summary judgment to dismiss Schroeder's lawsuit under RCW 61.24.130's waiver rule.³⁹ Judge Nielson ruled that because Schroeder had failed to properly use the pre-sale remedies under RCW 61.24.130 to stop the sale, all of Schroeder's claims were waived.⁴⁰ Judge Neilson also awarded Excelsior its attorneys' fees under the Deed of Trust.⁴¹ Schroeder appealed the trial court's ruling.⁴²

³⁶ CP 245.

³⁷ CP 236-40.

³⁸ CP 45-51.

³⁹ CP 221-22.

⁴⁰ CP 117-123.

⁴¹ CP 140-41.

E. Court of Appeals Affirms the Trial Court's Rulings.

The Court of Appeals, in an **unpublished** opinion, affirmed the trial court's ruling and summary dismissal of Schroeder's Complaint. The Court of Appeals followed this Court's prior rulings and held that RCW 61.24.130 was the "only way to restrain a trustee's sale once the grantor has received notice of sale and foreclosure."⁴³ The Court of Appeals noted that Schroeder conceded that all proper trustee sale notices were given and that there was no excuse for not having given earlier notice of the Motion to Stay the Sale.⁴⁴ The Court of Appeals correctly held that RCW 61.24.130 is the exclusive means to restrain a trustee's sale.

IV. ARGUMENT

A. The Court of Appeals' Decision Does Not Warrant Further Review.

Schroeder claims review is appropriate because the Court of Appeals' Decision presents issues of substantial public importance. Unfortunately, Schroeder ignores this Court's twenty-six years of precedent and now demands that the Court grant review because RCW

⁴² CP 132-37.

⁴³ Opinion, p.7; citing *Plein v. Lackey*, 149 Wn.214, 226, 67 P.3d 1061 (2003); *Cox v. Helenius*, 103 Wn.2d 383, 388, 693 P.2d 683 (1985); *CHD, Inc. v. Boyles*, 138 Wn. App. 131, 137, 157 P.3d 415 (2007); *In re Marriage of Kaseburg*, 126 Wn. App. 546, 558, 108 P.3d 1278 (2005).

⁴⁴ Opinion, p.8.

61.24.130 limits a court's inherent equitable powers. Schroeder is plain and simply wrong, and his failure to discuss precedent cuts against his request for further review.

B. The Court of Appeals' Decision Followed Longstanding Washington Law and Should Not Be Disturbed.

1. Washington's Deeds of Trust Act.

Although amended in 1998, 2008, and again in 2009, Washington's Deeds of Trust Act ("Act") was first enacted in 1965 to provide an alternative to the outmoded foreclosure process. As our Supreme Court noted, the Act should be construed to further three basic objectives.⁴⁵ First, the non-judicial foreclosure process should remain efficient and inexpensive.⁴⁶ Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.⁴⁷ And third, the process should promote the stability of land titles.⁴⁸

2. The Deeds of Trust Act provides the Exclusive Means for Conducting a Non-Judicial Foreclosure.

The Act describes the steps that must be followed to properly

⁴⁵ *Plein v. Lackey*, 149 Wn.2d 214, 225, 647 P.3d 1061 (2003) and *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985).

⁴⁶ *Plein*, 149 Wn.2d at 225.

⁴⁷ *Id.*

⁴⁸ *Id.*

foreclose a commercial debt secured by a deed of trust. The notices of foreclosure and Trustee's Sale must strictly comply with RCW 61.24.040.⁴⁹ If these steps are satisfied then the foreclosure extinguishes the debt and transfers title to the property for the benefit of the lender.⁵⁰

3. RCW 61.24.130 provides the only means to challenge a non-judicial foreclosure.

Our Supreme Court did an exhaustive and comprehensive review of RCW 61.24.130 in *Plein* and concluded that it provides the “only means” for someone to seek judicial relief, equitable or otherwise, from non-judicial foreclosure.⁵¹ It ruled that if a person fails to successfully employ the presale remedies provided under RCW 61.24.130, they waive the right to contest the Trustee's Sale, or even the underlying debt.⁵²

As the *Plein* Court further noted, RCW 61.24.040(2) also requires that the Notice of Trustee's Sale and Notice of Foreclosure include a statement of the borrower's right to contest the default, including the

⁴⁹ And “since the statutes allowing for nonjudicial foreclosure dispense with many protections commonly enjoyed by borrowers, ‘lenders must strictly comply with the statutes, and courts must strictly construe the statutes in the borrower's favor.’” *Amresco Independence Funding, Inc. v. SPS Props., LLC*, 129 Wn. App. 532, 537, 119 P.3d 884 (2005).

⁵⁰ RCW 61.24.130. *In re Marriage of Kaseburg*, 126 Wn. App. 546, 558, 108 P.3d 1278 (2005).

⁵¹ *Plein*, 149 Wn.2d at 226 (“This statutory procedure is ‘the only means by which a grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure.’”) (internal citations omitted).

⁵² In *Plein*, the court held that “by failing to obtain a preliminary injunction or other restraining order restraining the Trustee's Sale, as contemplated by RCW 61.24.130” the plaintiff “waives any objections to the foreclosure proceedings.” 149 Wn.2d at 229.

requirement that the borrower give the trustee at least five (5) days notice of the hearing.

In this case, the Trustee complied with these notice requirements. Schroder knew what he needed to do to halt the foreclosure proceedings, including when he needed to give notice. Despite having more than 100 days to take action, Schroeder chose not to exercise any of the available remedies provided under the statute. Indeed, Schroeder attempted to justify his neglect or failure to act within the statutory deadlines. Why did he wait so long to act?

4. Schroeder failed to comply with the Act's notice or bonding requirements.

RCW 61.24.130 clearly describes the four things that must be done to stop a Trustee's Sale.

First, the Trustee must be given at least five (5) days notice of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. Second, the court may "only consider" the motion upon proof that the trustee has been personally served. Third, the complaining party must establish "any proper legal or equitable ground" to justify restraining the sale. And fourth, the court must "condition" the granting of the restraining order upon the "applicant" paying the clerk those sums described in RCW 61.24.130(1)(a-b).

Schroeder failed to satisfy at least three of these four requirements.

He gave the Trustee less than a half-day's notice of his intent to obtain a TRO. And this was by e-mail – he made no effort to serve the Trustee as required by law. Also, instead of posting the sums required under RCW 61.24.130(1)(a-b), Schroeder only offered to post a \$5,000 bond. And then, as it turns out, he did not even post this amount.

C. **The Court of Appeals' Decision Does Not Present Issues of Substantial Public Importance.**

While the case is certainly important to the parties, it does not present any issues of substantial public importance, especially when you consider that the opinion is **unpublished**. But Schroeder, realizing he messed up, he makes a last ditch effort to argue that the statute is unconstitutional because it required him to give at least five days notice of his motion to seek an order to restrain the sale. The problem is that Schroeder ignores the fact that this Court has issued the same holding as the Court of Appeals did in this case. However, even assuming this was not the case, Schroeder's premise is fatally flawed.

1. Superior Courts' equitable powers.

A trial court, sitting in equity, may fashion broad remedies to do substantial justice to the parties.⁵³ This broad equitable power is well established in Washington law.⁵⁴ The granting or withholding of an injunction is addressed to the sound discretion of the trial court, which is

⁵³ *Paris v. Allbaugh*, 41 Wn. App. 717, 719, 704 P.2d 660 (1985).

⁵⁴ *See Pardee v. Jolly*, 163 Wn.2d 558, 568, 182 P.3d 967 (2008) (equitable power to grant specific performance); *Vaughn v. Chang*, 119 Wn.2d 273, 830 P.2d 668 (1992) (equitable power to vacate judgment); *Arnold v. Melani*, 75 Wn.2d 143, 437 P.2d 908 (1968) (equitable power to deny mandatory injunction).

to be exercised in accordance with the circumstances of each case.⁵⁵ An injunction is an extraordinary remedy that should only be granted if there is no adequate remedy at law.⁵⁶ In this case, the statute provided Schroeder an adequate remedy at law. He just failed to properly use it.

2. Restrictions on Court's Equitable Powers

This Court has resisted legislative attempts to restrict its constitutional authority.⁵⁷ For example, the Court in *Blanchard v. Golden Age Brewing Company* stated that “the courts are not required to recognize a legislative restriction which has the effect of depriving them of a constitutional grant or of one of their inherent powers.”⁵⁸

But these cases cannot be read in isolation, and the conclusion that Schroeder draws—any statute that somehow touches upon or concerns the court's ability to grant injunctive relief is unconstitutional, does not follow from the cases or Washington's history. *Blanchard* is factually and legally distinguishable. *Blanchard* does not lay down the blanket rule against all legislative restrictions that Schroeder suggests. Instead, that court held that a statute that totally divests courts of jurisdiction to issue “any restraining order or temporary or permanent injunction” in a case

⁵⁵ *Alderwood Assocs. v. Wash. Envtl. Council*, 96 Wn.2d 230, 233, 635 P.2d 108 (1981).

⁵⁶ *See Kucera v. DOT*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (“[I]njunctive relief will not be granted where there is a plain, complete, speedy and adequate remedy at law.”).

⁵⁷ *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415, 63 P.2d 397 (1936) (rejecting legislative attempt to abolish or abrogate the power of the superior court to issue injunctions).

⁵⁸ *Id.* at 415.

involving a labor dispute went too far.⁵⁹

Indeed, the very Constitutional provision that Schroeder relies upon, art. 4, § 6, addresses original jurisdiction over claims and provides that the superior court has jurisdiction in cases involving equity. RCW 61.24.130 does not, on its face or in application, limit jurisdiction. It instead, provides the statutory framework for restraining a sale. Much like the Court's own rules, the statute simply requires that procedural steps be followed in order to restrain a trustee's sale. Indeed, even the statutes on injunctions clearly set forth in RCW 7.40 *et seq.* contain the same type of steps.⁶⁰ For example, RCW 7.40.050 contains a similar notice provision before an injunction may issue.

Also, as the Court in *In re Marriage of Major* noted, the term "subject matter jurisdiction" is often confused with a court's "authority" to rule in a particular manner.⁶¹ This is the exact same mistake Schroeder makes in his arguments because the statute at issue does not limit the superior court's subject matter jurisdiction. The court has never ruled that the legislature cannot set rules related to the judicial process. Instead, the court will not permit the legislature to limit their equitable powers.

RCW 61.24.130(2) states that a party cannot apply for equitable relief to stop a Trustee's Sale unless they gives five days notice to the trustee of the time when, place where, and the judge before whom the

⁵⁹ *Blanchard*, 188 Wash. at 416.

⁶⁰ Many of these statutes date back to 1877.

⁶¹ 71 Wn. App. 531, 534, 859 P.2d 1262 (1993).

application for the restraining order is to be made. Is this particular statute different than RCW 7.40.050 which states that “no injunction shall be granted until it shall appear to the court or judge granting it, that some one or more of the opposite party concerned, has reasonable notice...” except in cases of emergencies? The rationale for the statutory limitation in RCW 7.40.050 is due process—similar to RCW 61.24.130. This is particularly instructive because Schroeder argued to the Court of Appeals that it could ignore RCW 61.24.130 and issue injunctive relief **under RCW 7.40.**⁶²

There are many other examples where the Legislature has guided the process for superior courts. Receivership statutes (RCW 7.60.025) are but one example.⁶³ Filing fees, set by RCW 36.18.020 are another example. Does the Legislature violate a court’s equitable powers when it passes a statute requiring a filing fee be paid before a case may be filed? Of course not.

Schroeder’s arguments do not find any support in Washington law and must be rejected. Schroeder’s Hail Mary attempt to find an issue for review also falls short. Ignoring precedence and failing to present any reason for overruling this court’s clearly established precedence does not create an issue of substantial public importance. Moreover, the undeniable fact that Schroeder failed to present **any reason why he failed to timely**

⁶² Brief of Appellant, p.23.

⁶³ RCW 7.60.025(1) “A receiver may be appointed by the superior court of this state in the following instances....”

restrain the sale using the plain and simple remedies provided in RCW 61.24.130 is simply inexcusable and does not justify relief.

D. Excelsior is Entitled to its Fees and Costs on Appeal.

Under RCW 4.84.330, a court must award the prevailing party their attorney's fees where the parties have an agreement with an attorney's fee provision. The Promissory Note and Deed of Trust contains an attorney fees provisions.⁶⁴ Excelsior is therefore entitled to its fees for having to Answer Schroeder's Petition for Review.

V. CONCLUSION

Because the Court of Appeals' **unpublished** opinion was correct, does not conflict with any other division, and does not present any

⁶⁴ Section 23 of the Deed of Trust provides, in pertinent part, as follows: "**ATTORNEY FEES:** In the event suit or action is instituted to enforce or interpret any of the terms of this Trust Deed,...the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs.... Whether or not any court action is involved, all reasonable expenses,... incurred by Beneficiary that are necessary or advisable at any time in Beneficiary's opinion for the protection of its interest and enforcements of its rights shall become a part of the Indebtedness payable on demand...."

significant issues of law requiring this Court's review, this Court should deny Schroeder's request for further review.

Dated: December 7, 2011

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 
Phillip J. Haberthur, WSBA #38038
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2011, I caused to be served the foregoing **ANSWER TO PETITION FOR REVIEW** on the following party at the following address:

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