

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON
Case No.: 69352-2
(King County Superior Court No.: 12-2-01729-8)

DANIEL J. WATSON and KETWARIN ONNUM, Plaintiffs,
v.
NORTHWEST TRUSTEE SERVICES, INC., et al, Defendants.

NORTHWEST TRUSTEE SERVICES, INC., Petitioner,
v.
DANIEL J. WATSON and KETWARIN ONNUM, Respondents.

APPENDIX TO MOTION FOR DISCRETIONARY REVIEW

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APPENDIX

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Case # 12-2-01729-8
Sub # 49

FILED
KING COUNTY, WASHINGTON

AUG 27 2012

SUPERIOR COURT CLERK
EILEEN L. MCLEOD
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

WATSON

Plaintiff,

vs.

NORTHWEST TRUSTEE SERVICES

Defendant.

No. 12-2-01729-8 SEA

MEMORANDUM RULING

I. Facts

In April of 2003, Plaintiffs executed a promissory note for \$280,000 payable to ABN AMRO Mortgage, Inc. After mergers and business transactions, CitiMortgage came to own the Note, and appointed NWTs as a Successor Trustee.

The Plaintiffs fell behind in their payments, and on February 5, 2011, a Notice of Default and Loss Mitigation Declaration were sent to Plaintiffs. The plaintiffs were not notified prior to the issuance of the Notice of Default that they could obtain a foreclosure mediation referral from a HUD Counselor or attorney. The plaintiffs assert and the court must accept as true, for the purposes of this summary judgment motion, that had they received a notice containing this information that they would have obtained a foreclosure mediation referral from a HUD counselor or an attorney to stop the sale. And, indeed, the plaintiffs make some efforts to contact

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1 the lender by hiring in the fall of 2011 a California entity entitled the "National Help Legal
2 Center" to negotiate with the lender. It appears, however, that this entity is neither a HUD
3 approved counselor or attorney nor contrary to its representations to the plaintiffs that it was
4 stopping the sale that it never even made contact with the lender or trustee.

5 On March 22, 2011, a Notice of Trustee's Sale was recorded, setting a sale date of June 24,
6 2011.

7 However, on June 20, 2011, the Plaintiffs filed for bankruptcy, postponing the sale. This sale
8 was eventually cancelled because of the bankruptcy proceedings.

9 After bankruptcy proceedings had been completed, NWTS recorded, posted and mailed to the
10 plaintiffs an Amended Notice of Trustee's Sale on or about November 8, 2011. The notice set a
11 sale date of December 23, 2011.

12 Defendants did not contact the Plaintiffs prior to recording the Amended Notice of Trustee's
13 Sale. No new Notice of Default was sent to Plaintiffs.

14 The property was sold to a third party at the trustee's sale resulting in issuance of a Trustee's
15 deed and surplus funds being deposited into the court registry. Plaintiffs filed this Complaint for
16 Wrongful Foreclosure and Quiet Title on January 11, 2012 and were permitted by the Court to
17 amend their complaint on April 26, 2012. Plaintiffs allege that NWTS and CitiMortgage violated
18 the Foreclosure Fairness Act by failing to provide plaintiff with the pre-foreclosure notices
19 required by the FFA and by failing to exercise due diligence as required by the FFA before
20 recording the Amended Notice of Trustee's Sale. Defendants argue in this motion for summary
21 judgment that the FFA does not apply as the FFA did not go into effect until July 22, 2011.
22 Plaintiffs argue that the statute should be retroactively applied.

1 After hearing oral argument, the Court dismissed claims against CitiMortgage with prejudice
2 and invited additional briefing with respect to the claims against NWTIS. The court has now
3 considered this briefing.

4 II. Analysis

5 On July 22, 2011 the operative statute, the Washington Deed of Trust Act, RCW 61.24 was
6 amended by the Foreclosure Fairness Act. (FFA). The FFA states that a trustee, or beneficiary
7 may not issue a notice of default (and thus may not proceed with a trustee's sale) unless the
8 beneficiary or authorized agent attempts contact with the borrower by letter to provide the
9 borrower with specific information including the right to a meeting with the beneficiary before the
10 notice of default is issued. The FFA requires specific information (sometimes called a Pre-
11 Foreclosure Options letter), be provided to a borrower prior to issuance of the Notice of Default
12 and before a Trustee's sale can be scheduled or held. This letter must inform the borrower that
13 they have a right to meet with their lender before a notice of default may be issued and gives them
14 up to an additional 90 days to request and participate in such a meeting. The letter also must
15 inform the borrower of their right to meet with a HUD approved housing counselor or attorney
16 who can assist them with mediation, to meet with the lender, and/ or work with their lender to
17 seek a resolution such as a loan modification or some other work out plan. The letter must
18 provide toll-free numbers for the borrower to find HUD approved housing counselors as well as
19 civil legal aid resources. A resolution may include, but is not limited to, a loan modification, an
20 agreement to conduct a short sale, or a deed in lieu of foreclosure transaction, or some other
21 workout plan. RCW 61.24.030-.031. The FFA states that it "shall be requisite to a trustee's sale"
22 that at least 30 days before the notice of trustee's sale is recorded, transmitted or served, that a

1 written notice of default be transmitted to the borrower containing specific information outlined
2 in the statute.

3 Defendants assert that the FFA does not apply to this matter because the FFA did not take
4 effect until July 22, 2011—before the Amended Notice of Trustee’s Sale had been generated or
5 the Trustee’s Sale had occurred, but after the Notice of Default had been issued.

6 Defendants also assert that even if the FFA is applicable to this matter that plaintiffs were not
7 entitled to notice of pre-foreclosure options because the property was not an owner-occupied
8 residential property. However, Plaintiffs have produced some evidence to support their claim that
9 the property was their principal residence and therefore this particular issue cannot be determined
10 on summary judgment. For the purposes of the remainder of this ruling, the Court assumes that
11 the property was owner-occupied within the meaning of RCW 61.24.

12 Although the operative Notice of Trustee’s Sale (designating December 23, 2011 as the date
13 of sale) is styled as an “Amended” Notice, it meets all of the prerequisites of a notice setting a new
14 sale date pursuant to a subsequent notice of trustee’s sale under 61.24.130(4). Under the special
15 provisions concerning a bankruptcy, the trustee is not normally required to re-start the process
16 from the beginning but may issue a new Notice of Trustee’s Sale with a new sale date provided
17 the applicable deadlines are followed and the appropriate notice and recording made. The
18 *applicable deadlines and processes for notice and recording were followed in this case.* However,
19 the plaintiffs argue that this Notice of Sale and subsequent Trustee’s Sale was defective because
20 the Pre-Foreclosure Options letter requirement established by the FFA was not provided to the
21 Plaintiffs prior to issuance of the Notice of Default. Defendants argue that no such requirement
22 was in effect when the Notice of Default was issued and that the statute should not be construed
23 to be retroactive.

1 The Legislature must indicate that a statute is intended to operate retroactively; otherwise,
2 statutes are presumed to act prospectively. *State v. McClendon*, 131 Wn.2d 853, 861, 935 P.2d 1334
3 (1997). This presumption can be overcome in three ways:

- 4 1. The Legislature explicitly provides for retroactivity;
- 5 2. The amendment is "curative;" or
- 6 3. The statute is "remedial."

6 *Densley v. Dept. of Retirement Systems*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007).

7 A. Remedial Statutes

8 Although the Legislature did not explicitly state that The Foreclosure Fairness Act (FFA),
9 would be applied retroactively, and the FFA is not a curative statute¹, it does act as a remedial
10 statute. To be deemed remedial, a statute must relate to "practice, procedure, or remedies" and
11 must not "affect a substantive or vested right." *Miebach v. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d
12 1074 (1984). Here, the statute relates to the procedure for initiating a foreclosure sale.

13 A remedial statute will be applied retroactively if this application will "further its remedial
14 purpose." *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981). In the discussion of the
15 bill, the Legislature explained that high foreclosure rates are a serious problem in the state, and
16 that the legislation was intended to help provide ways to avoid foreclosure. S.S.H.B. 1362, Chapter
17 58, Laws of 2011. The amendment was enacted in order to help lower the rate of foreclosures².

18 One of the ways to do this is to provide more notice and options for the homeowner before

19 ¹ "An amendment is curative only if it clarifies or technically corrects an ambiguous
20 statute." *McGee Guest Home, Inc. v. Dept. of Social and Health Services of State of Wash.*, 142 Wn.2d 316,
325, 12 P.3d 144 (2000) (quoting *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461, 832, P.2d 1303
(1992)).

21 ² This is similar to the situation in *Macumber v. Shafer*, which dealt with the Homestead
22 statutes. The Court explained that the amendment in that case "was enacted in response to the
constant rise in the cost of living," as it provided for an increase in the amount of the homestead
exemption. The Court found that this was a remedial statute. *Macumber v. Shafer*, 96 Wn.2d 568,
570, 637 P.2d 645 (1981).

1 commencing foreclosure proceedings. Further, the Legislature stated that it intended to encourage
2 homeowners to utilize the skills and professional judgment of housing counselors as early as
3 possible in the foreclosure process. This instant case appears to be a textbook example of the
4 harms the Legislature was intending to cure. Plaintiffs were not referred prior to the start of the
5 foreclosure process to legitimate housing counselors or attorneys that might have assisted them in
6 either stopping the foreclosure or negotiating an alternative to a Trustee's Sale. Too late in the
7 process, Plaintiffs attempted to find assistance and instead ended up hiring an entity that lulled
8 them into a false sense of complacency and may have even defrauded them.³

9 *B. Transaction as One Continuous Action*

10 The Defendants contend that no new notice of default was needed, as they provided the
11 required notice before Plaintiffs filed for bankruptcy. They argue that by recording another Notice
12 of Trustee's Sale, they were still taking action under the same transaction, which was simply stalled
13 by the bankruptcy proceedings.

14 After the discharge of bankruptcy proceedings which has stayed a trustee sale, a new sale date
15 may be set. RCW 61.24.130(4). The trustee may simply continue a sale for not more than 120
16 days or may set a new sale date not less than 45 days from the date of the bankruptcy court order.
17 The parties appear to agree that the Notice of Sale was in conformity with the latter procedure, as
18 the 120 day period had expired. Unlike a continuance of sale under the first option, the trustee
19 must record, post, publish and serve the new notice of Trustee's Sale. The trustee complied with
20 these procedures. However, RCW 61.24.130(4) is predicated upon compliance with all of the

21 ³ Although the FFA had not yet been enacted before issuance of the Notice of Default
22 was issued, it appears the trustee was either prescient or was well informed as to the likely
23 requirements of the FFA. The form of the Notice of Default itself is identical or nearly identical
24 to the FFA requirements. It includes a suggestion that the plaintiff obtain professional resources
although it does not appear to provide contact information for such resources. The 2012
Legislature amended the statute (after the foreclosure proceedings were completed in this case) by
directing that such specific contact information be provided to borrowers. *See*, 2012 C 185 Sec. 9.

1 statutory prerequisites at the time of issuance of the Notice of Sale. The Notice of Sale was issued
2 after the FFA went into effect. While under *Meyers Way*, 80 Wn. App. 655, the trustee is not
3 required to re-initiate the foreclosure or issue a new Notice of Default merely because of new
4 facts that have arisen i.e. additional defaults or cures, this does not obviate the trustee's obligation
5 to comply with the law then in effect in issuing a new Notice of Sale.

6 If the Defendants had created a vested right before the amendment went into effect, the
7 provisions could not be applied retroactively. In order for a right to be vested, it must be more
8 than an expectation that the laws will continue as they are at the present time. *Miebach*, 102
9 Wn.2d at 181 (quoting *Gillis v. King Cy.*, 42 Wn.2d 373, 377, 255 P.2d 546 (1953)). Instead, the
10 right must be "a title, legal or equitable, to the present or future enjoyment of property..." Id.

11 In this case, the Defendants had recorded notice of the trustee sale, but had not yet sold the
12 property. This means that the Plaintiffs still had the opportunity to cure the default to avoid losing
13 possession of the property. RCW 61.24.040(2). Therefore, the Defendants had not created a
14 vested right to title.

15 The agency charged with implementation of the FFA and the development of rules
16 concerning the mediation program appears to consider the protections of the FFA to be
17 retroactive. See Department of Commerce, Foreclosure Fairness Act,
18 <http://www.commerce.wa.gov/site/1367.default.aspx> (Exhibit 4 to MSJ materials). ("the FFA
19 recognizes the eligibility of the homebuyer for mediation if: 1) the homeowner has received...a
20 Notice of Default and a Notice of Sale ..has not been recorded 2) The homeowner received a
21 NOD on or before July 22, 2011. These homeowners are eligible until 12:00 pm the day before
22 the foreclosure sale.") Without being advised of the right to mediation such as through a pre-
foreclosure options letter, , this right would be meaningless or would lead to unequal application

1 of the protections of the statute with only those borrowers “in the know” being afforded its
2 remedies. When a statute is ambiguous, “the construction placed upon a statute by an
3 administrative agency charged with its administration and enforcement, while not absolutely
4 controlling upon the courts, should be given great weight in determining legislative intent.” *Hama*
5 *Hama Co. v. Shoreline Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975). The special expertise of
6 administrative agencies is the “primary foundation and rationale” for this deference. *Id.* An
7 administrative agency may “fill in the gaps” but may not purport to amend a statute. *Id.* See, also,
8 18 Wa. Prac. Real Estate Sec. 20.1A (2d Ed.) (The FFA applies to “any property where on the
9 effective date of the act the notice of foreclosure had been sent but the property has not been
10 sold.”)

11 In the current case, it is nowhere specified whether the Foreclosure Fairness Act should be
12 applied retroactively. Therefore, the Department of Commerce’s position that mediation is
13 available to those who received notice prior to the amendment would be “filling in a gap” in the
14 statute and is entitled to deference.

15 Because the Deed of Trust Act dispenses with many protections enjoyed by borrowers under
16 judicial foreclosures, courts must strictly construe the statute in the borrower’s favor. *Albice v*
17 *Premier Mortgage*, 174 Wn.2d 560, 276 P.3d 1277 (2012).

18 *C. Alternatively – The FFA Need Not Be Applied Retroactively*

19 In the alternative, it is not necessary to find that the FFA applies retroactively. Instead, the
20 laws that were in effect at the time of the new Notice of Sale are simply being applied.

21 At the time the new Notice of Sale was issued, the FFA required that: “before the notice
22 of the trustee’s sale is recorded, transmitted, or served, the beneficiary has complied with RCW
23 61.24.031 and, if applicable, section 7 of this act.” Furthermore, the FFA requires that a sale must

1 be "conducted in compliance with all of the requirements" of RCW 61.24. RCW 61.24.040(7). At
2 the time of the new Notice of Sale, the FFA was in effect, and therefore, the trustee was required
3 to conduct the sale in compliance with all of its requirements. A statute operates prospectively
4 when "the precipitating event for operation of the statute occurs after enactment, even when the
5 precipitating event originated in a situation existing prior to enactment." Matter of Estate of
6 Burns, 131 Wn.2d 104, 110-11, 928 P.2d 1094 (1997). Here, the "precipitating event" was the
7 failure to provide information regarding Pre-Foreclosure Options before recording the second
8 notice of sale. Although steps toward foreclosure had been taken prior to the implementation of
9 the FFA, the "precipitating event" occurred after the amendment had become effective.

10 D. *Consumer Protection Act Claim*

11 The FFA states that: "It is an unfair or deceptive act in trade or commerce and an unfair
12 method of competition in violation of the consumer protection act, chapter 19.86 RCW,
13 for any person or entity to: (a) Violate the duty of good faith under section 7 of this act;
14 (b) fail to comply with the requirements of section 12 of this act; or (c) fail to initiate
15 contact with a borrower and exercise due diligence as required under RCW 61.24.031."

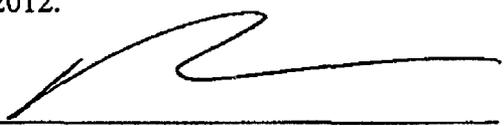
16 Neither Sec. 7 nor 12 of the FFA are applicable. Although the lender did not send the
17 pre-foreclosure options letter as required by RCW 61.24.031, creation of a new cause of
18 action (a per se violation of the Consumer Protection Act) affects a substantive right and
19 therefore the FFA is not retroactive with respect to the Consumer Protection Act claim.

20 Johnston v Beneficial, 85 Wn. 2d 637 (1975). Thus while the Trustee's sale did not
21 comply with the remedial portions of the FFA, it was not a per se violation of the
22 Consumer Protection Act.

1 **III. Conclusion**

2 The FFA is a remedial statute (with the exception of the Consumer Protection Act provisions)
3 and, therefore, is applied retroactively. Although the Defendant sent out the Notice of Default
4 prior to the passage of the FFA, its requirements may still be enforced against them. RCW
5 61.24.127 (enacted in 2009) allows a borrower to seek monetary damages for an improper non-
6 judicial sale. Failure to give the pre-options foreclosure letter is not a per se violation of the
7 Consumer Protection Act. For these reasons, the court grants the defendants' motion for
8 summary judgment as to the Consumer Protection Act claim and denies defendant's motion as to
9 the damages claim for failure to comply with the FFA.

10 ENTERED this 27 day of Aug, 2012.

11 
12 _____
13 KIMBERLEY D. PROCHNAU, JUDGE

14 I certify that I have mailed/e-mailed
15 a copy of this order to all parties.

16 Date: 8/27/2012

17 Signature: (C. R. S. D. G. B. W.)
Baeleff

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

DANIEL J. WATSON,
Plaintiff,

No. 12-2-01729-8 SEA

v.

NORTHWEST TRUSTEE SERVICES, INC.;
ABN AMRO MORTGAGE INC.;
CITIMORTGAGE INC.; APPLE EQUITIES,
LLC, NATIONAL LEGAL HELP CENTER,
INC., and JOHN DOES 1-10,

**AMENDED DECLARATION OF JEFF
STENMAN IN SUPPORT OF
AMENDED MOTION FOR SUMMARY
JUDGMENT**

Defendants.

I, Jeff Stenman of Northwest Trustee Services, Inc., hereby declare:

1. I am employed by Northwest Trustee Services, Inc. ("NWTS") as Senior Foreclosure Manager. I make the following declaration based upon my own personal knowledge and if called to testify in this action I could and would competently testify thereto.

2. I have personal knowledge of the procedures governing the creation and maintenance of business records of NWTS and I am familiar with the record keeping procedures of NWTS as to those records that pertain to the foreclosure that is the subject of this present proceeding.

3. I have reviewed the records that pertain to the Watson foreclosure and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of NWTS on behalf of NWTS, which records were made at or

1 about the time of the events recorded, and are maintained in the ordinary course of NWTS's
2 business at or near the time of the acts, conditions or events to which they relate. Any such
3 document was prepared in the ordinary course of business of NWTS by a person who had
4 personal knowledge of the event being recorded and had or has a business duty to record
5 accurately such event.
6

7 4. On or about April 14, 2003, for valuable consideration, Daniel J. Watson ("Plaintiff")
8 and Ketwarin Onnum executed a promissory note ("Note") in the amount of \$280,000.00
9 payable to ABN AMRO Mortgage, Inc. ("AMRO"). A true and correct copy of the Note is
10 attached hereto as Exhibit 1.

11 5. On or about April 17, 2003, in order to secure repayment of the Note, Plaintiff and
12 Ketwarin Onnum executed a deed of trust ("Deed of Trust") encumbering real property located
13 at 2821 West 10th Avenue, Seattle, WA 98118 (the "Property"). The Deed of Trust was recorded
14 on April 18, 2003 in the Official Records of King County, Washington as Instrument No.
15 20030418001614. A true and correct copy of the Deed of Trust is attached hereto as Exhibit 2.

16 6. On or about October 11, 2007, CitiMortgage, Inc., as successor by merger to AMRO,
17 appointed NWTS as successor trustee under the Deed of Trust. The Appointment of Successor
18 Trustee was recorded on October 12, 2007 in the Official Records of King County, Washington
19 as Instrument No. 20071012001733.
20

21 7. Plaintiffs fell into default under the terms of the Note and Deed of Trust by failing to
22 perform monthly payment obligations beginning with the October 1, 2010 installment. On
23 February 5, 2011, a Notice of Default and Loss Mitigation Declaration were mailed by first class
24 and certified mail, return receipt requested, to Plaintiffs at their last known addresses. A true and
25 correct copy of the Notice of Default is attached as Exhibit 3.
26

1 8. On March 22, 2011, NWTS recorded a Notice of Trustee's Sale in the Official Records
2 of King County, Washington as Instrument No. 20110322000728. The Notice of Trustee's Sale
3 designated June 24, 2011 as date of the nonjudicial foreclosure. On or about March 23, 2011,
4 NWTS mailed by certified and first class mail a Notice of Trustee's Sale. On or about March 23,
5 2011, NWTS posted the Notice of Trustee Sale on the Property.
6

7 9. On June 20, 2011, Plaintiffs filed a Chapter 7 petition in the United States Bankruptcy
8 Court for the Western District of Washington. A true and correct copy of the Docket for
9 Bankruptcy Case No. 11-17282-TWD is attached as Exhibit 4. As a result of the bankruptcy
10 filing, NWTS postponed the trustee's sale multiple times with a final postponement date of
11 September 30, 2011. The postponed trustee's sale was ultimately cancelled due to the ongoing
12 bankruptcy proceeding.
13

14 10. On November 8, 2011, NWTS recorded an Amended Notice of Trustee's Sale in the
15 Official Records of King County, Washington as Instrument No. 20111108001313. The
16 Amended Notice of Trustee's Sale designated December 23, 2011 as date of the nonjudicial
17 foreclosure.
18

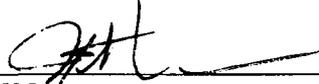
19 11. On or about November 8, 2011, NWTS mailed by certified and first class mail an
20 Amended Notice of Trustee's Sale. On or about November 9, 2011, NWTS posted the Notice of
21 Trustee Sale on the Property.
22

23 12. On December 23, 2011, NWTS conducted a non-judicial foreclosure sale of the
24 Property. Apple Equities, LLC was the high bidder at the sale, resulting in the issuance of a
25 Trustee's Deed to Apple Equities, LLC dated December 29, 2011.
26

13. Apple Equities, LLC purchased the property in excess of the amount owed the
foreclosing beneficiary. On February 15, 2012, pursuant to RCW § 61.24.080, NWTS deposited

1 the surplus sale proceeds with the King County Superior Court Clerk in the amount of
2 \$73,183.72. The surplus funds matter is filed under King County Superior Court Cause No. 12-2-
3 05796-6 SEA.

4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct. DATED this 26 day of April, 2012 in Bellevue, Washington.
6

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8 
9 Jeff Stenman
10 Senior Foreclosure Manager
11 Northwest Trustee Services, Inc.
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NOTE

APRIL 14, 2003
(Date)

SEATTLE,
(City)

2921 10TH AVENUE WEST, SEATTLE, WA 98148
(Property Address)

This is certified to be a true and correct copy of the original
By Washington Title Company
Washington Title Company

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$280,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is AMB AMRO MORTGAGE GROUP, INC., A DELAWARE CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on JUNE 1, 2003.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on MAY 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4242 N. HARLEM AVE.
NORRIDGE, IL 60706
ATTN: CASHERING

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$1,611.84.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

Initials: DKW AKO

EXHIBIT 1

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED



DANIEL J. WATSON (Seal)



KETHARIE OSUN (Seal)

[Sign Original Only]

NOTE

APRIL 14, 2003
[Date]

SEATTLE,
[City]

WASHINGTON

2821 10TH AVENUE WEST, SEATTLE, WA 98119
[Property Address]

This is certified to be a true
copy
of the original
By [Signature]
Washington Title Company

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$280,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is ABB AMRO MORTGAGE GROUP, INC., A DELAWARE CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.625%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on JUNE 1, 2003.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on MAY 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4242 N. HARLEM AVE.
MORRIDGE, IL 60706

ATTN: CASHIERING

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$1,611.84.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceed permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

Initials: [Signature]

[REDACTED]

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

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8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED



DANIEL J. HANSON (Seal)



KETHARIN CHHUN (Seal)

[Sign Original Only]



20030418001614

WASHINGTON III, 07
2003 APR 14 11:01
64/18/2003 14:03
KING COUNTY, WA

When recorded mail to:
ABN AMRO MORTGAGE GROUP, INC.
P.O. BOX 5064
TROY, MICHIGAN 48084
ATTN:FINAL/TRAILING DOCUMENTS

Assessor's Parcel or Account Number 253330021002
Abbreviated Legal Description Ptn Lts 5-8, BIK 2, Ferry's Addn, Seattle, Vol 1/175
Full legal description located on page 11 [include lot, block and plat or section, township and range]

WAT [Space Above This Line For Recording Data] 1129
DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated APRIL 14, 2003, together with all Riders to this document.
- (B) "Borrower" is DANIEL J WATSON, HUSBAND AND WIFE AND KETWARIN ONNUM, .

Borrower is the trustor under this Security Instrument
(C) "Lender" is ABN AMRO MORTGAGE GROUP, INC.

Lender is a CORPORATION,
laws of DELAWARE.
2600 W. BIG BEAVER RD., TROY, MICHIGAN 48084.

organized and existing under the
Lender's address is

Lender is the beneficiary under this Security Instrument
(D) "Trustee" is .

(E) "Note" means the promissory note signed by Borrower and dated APRIL 14, 2003.
The Note states that Borrower owes Lender ***TWO HUNDRED EIGHTY THOUSAND AND NO/100
Dollars (U.S. \$280,000.00) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than MAY 1, 2033.

EXHIBIT 2

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property"

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]

- Adjustable Rate Rider
- Balloon Rider
- 1-4 Family Rider
- Condominium Rider
- Planned Unit Development Rider
- Biweekly Payment Rider
- Second Home Rider
- Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers

(L) "Escrow Items" means those items that are described in Section 3

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument

TRANSFER OF RIGHTS IN THE PROPERTY
This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

[Type of Recording Jurisdiction] of KING

[Name of Recording Jurisdiction]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of 2821 10TH AVENUE WEST, SEATTLE,

Washington 98119 [Zip Code]

("Property Address")

[Street] [City]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under the Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can

require under RESPA Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender

4. Charges, Liens Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan

5. Property Insurance Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires What Lender requires pursuant to the preceding sentences can change during the term of the Loan The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense Lender is under no obligation to purchase any particular type or amount of coverage Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee Lender shall have the right to hold the policies and renewal certificates If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices, if Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender Lender may make proof of loss if not made promptly by Borrower Unless Lender and Borrower otherwise agree

DW Initials: *RC*

in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 90 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repair and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums

secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument, (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees in regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify

Initials:

[REDACTED]

Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by the Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law, Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa, and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate, or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred, (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity, or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective

action if Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law, and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential use and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows.

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notice to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument, and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

23. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. **Substitute Trustee.** In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance

of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law

25. Use of Property The Property is not used principally for agricultural purposes

26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

[Signature] (Seal)
DANIEL J WATSON

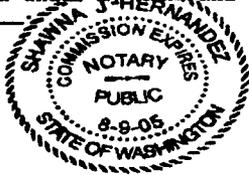
[Signature] (Seal)
KETWARIN ONNUM

State of WASHINGTON

County of King SS:

On this day personally appeared before me DANIEL J WATSON AND KETWARIN ONNUM to me known to be the individual they described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as them free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17 day of April 2005



[Signature]
Notary Public in and for the State of Washington, residing at Seattle

My Appointment Expires on 8/9/05

Commitment No. N285133-2

SCHEDULE A CONTINUED

- 4 The land referred to in this Commitment is described as follows.

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County, lying northwesterly of Queen Anne Boulevard,

SITUATE in the City of Seattle, County of King, State of Washington

END OF SCHEDULE A

Notice of Default

To:

Daniel J. Watson
2821 West 10th Avenue
Seattle, WA 98119

Ketwarin Onnum
2821 West 10th Avenue
Seattle, WA 98119

Regarding the real property "Property" located at:

Property Address:
2821 West 10th Avenue
Seattle, WA 98119

If you are the owner of this property and you occupy it as your residence, you should take care to protect your interest in your home. This notice of default (your failure to pay or otherwise perform) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:

Can you pay and stop the foreclosure process?

Do you dispute the failure to pay?

Can you sell your property to preserve your equity?

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

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

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

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

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

A) Property description:

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying Northwesterly of Queen Anne Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington.

B) Deed of Trust information: King County Auditor's File No.: 20030418001614; Recording Date: 04/18/03

EXHIBIT

3

C) Declaration of payment default: The beneficiary declares you in default for failing to make payments as required by your note and deed of trust.

D) Itemized account of the arrears:

Delinquent monthly payments beginning with the 10/01/10 installment.	\$10,115.25
Late charges:	\$322.36
Lender's Fees and Costs	\$142.59
Trustee's fees	\$405.00
Costs	
Title report (estimate)	\$995.36
Recording	\$0.00
Certified mail	\$14.00
Posting	\$70.00
Sale Costs	\$0.00
Total arrears and costs due today	\$12,064.56

E) Itemized account of all other specific charges, costs or fees that grantor or borrower is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale.

Additional monthly payment	\$2,023.05
Additional late charge	\$80.59

F) Amount required to cure payment defaults before notice of sale recorded: \$14,168.20

In addition, grantor or borrower must timely cure all other defaults before the note and deed of trust are deemed reinstated.

Payments and late charges continue to accrue and additional advances may be made. The sums stated above are estimates only. Before attempting to reinstate the loan, call us at 425-586-1900 to learn the exact amounts of monetary defaults and actions required to cure possible other defaults.

G) Effect of failure to cure: Failure to cure all alleged defaults within 30 days of mailing/personal service of this notice may lead to recordation, transmittal and publication of a notice of sale and the Property may be sold at public auction no less than 120 days from the date of this notice.

H) Effect of recording, transmitting and publication of the notice of sale: The effect of the recordation, transmittal and publication of the notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the Property for sale.

I) Effect of sale of the Property: The Trustee's sale of the Property will deprive the borrower, grantor and any successor in interest of all their interest in the Property.

J) Recourse to courts: The borrower, grantor, any guarantor or any successor in interest has recourse to the courts pursuant to RCW 61.24.130 to contest the default(s) on any proper ground.

K) Contact Information for Beneficiary (Note Owner) and Loan Servicer.

The beneficiary of the deed of trust is **CitiMortgage, Inc.**, whose address and telephone number are:

1000 Technology Drive MS 314
O'Fallon, MO 63368-2240
[REDACTED]

The loan servicer for this loan is CitiMortgage, Inc., whose address and telephone number are:

1000 Technology Drive, MS314
Ofallon, MO 63368-2240
[REDACTED]

L) Notice pursuant to the Federal Fair Debt Collection Practices Act: If you are the consumer who originally contracted the debt or if you assumed the debt, then you are notified that:

1. As of the date of this notice you owe \$254,006.53. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check. For further information, write to the address provided in Section 5 below or call us at 425-586-1900.
2. The creditor to whom the debt is owed CitiMortgage, Inc./CitiMortgage, Inc..
3. Unless within 30 days after receipt of this notice you dispute the debt or any portion of it, we will assume the debt to be valid.
4. If you notify us within 30 days after receipt of this notice that you dispute the debt or any part of it, we will request that the creditor obtain verification of the debt and mail it to you.
5. If you request within 30 days after receipt of this notice, we will request that the creditor provide you with the name and address of the original creditor, if different from the current creditor.
6. Written requests should be addressed to Northwest Trustee Services, Inc., Post Office Box 997, Bellevue, WA 98009-0997.

Dated: February 5, 2011

CitiMortgage, Inc.
By Northwest Trustee Services, Inc., its duly authorized agent

This is an attempt to collect a debt and any information obtained will be used for that purpose.

NORTHWEST TRUSTEE SERVICES, INC.
P.O. Box 997
BELLEVUE, WA 98009-0997

File No: 7301.26933
Borrower: Watson, Daniel J. and Onnum, Ketwarin
Client: CitiMortgage, Inc.

CLAIRE SWAZEY
[REDACTED]
[REDACTED]

CLOSED, MEANSNO

**U.S. Bankruptcy Court
Western District of Washington (Seattle)
Bankruptcy Petition #: 11-17287-TWD**

Assigned to: Timothy W Dore
Chapter 7
Voluntary
No asset

Date filed: 06/20/2011
Date terminated: 10/31/2011
Debtor discharged: 09/22/2011
Joint debtor discharged: 09/22/2011

Debtor disposition: Standard Discharge
Joint debtor disposition: Standard Discharge

Debtor
Daniel J Watson
2821 10th Ave. W
Seattle, WA 98119
KING-WA
SSN / ITIN: xxx-xx-6150

represented by Jonathan P. McQuade
Impact Law Group PLLC
719 2nd Ave Ste 700
Seattle, WA 98104
206-734-3056
Email: jmathan@impactlawgroup.com

Joint Debtor
Ketwarin Wathom
2821 10th Ave. W
Seattle, WA 98119
KING-WA
SSN / ITIN: xxx-xx-0907
aka Ketwarin Watson
aka Ketwarin Onnum

represented by Jonathan P. McQuade
(See above for address)

Trustee
Nancy L James
15008 63rd Dr SE
Snohomish, WA 98296
425-485-5541

US Trustee
United States Trustee
700 Stewart St Ste 5103
Seattle, WA 98101
(206) 553-2000

Filing Date	#	Docket Text
06/20/2011	1	Chapter 7 Voluntary Petition . Schedule B due 07/5/2011. Schedule C due 07/5/2011. Schedule G due 07/5/2011. Schedule H due 07/5/2011. Schedule I due 07/5/2011. Schedule J due 07/5/2011. Statement of Financial Affairs due 07/5/2011. Schedules and Statements must be filed on Revised Forms. Due 07/5/2011. Statement of Current Monthly Income and Means Test Form 22A Due: 07/5/2011. Summary of schedules due 07/5/2011. Incomplete Filings due by 07/5/2011. Filed by Jonathan P McQuade on behalf of Daniel J. Watson, Ketwarin Wathom (McQuade, Jonathan) Modified on 6/21/2011 to correct joint debtor name (USBC Staff - Grimm, Janice). (Entered: 06/20/2011 at 11:17:17)
06/20/2011	2	Certificate of Credit Counseling for Debtor . Filed by Jonathan P McQuade on behalf of Daniel J Watson. (McQuade, Jonathan) (Entered: 06/20/2011 at 11:20:20)
06/20/2011	3	Certificate of Credit Counseling for Joint Debtor . Filed by Jonathan P McQuade on behalf of Kctwarin Wathom. (McQuade, Jonathan) Modified on 6/21/2011 to correct joint debtor name (USBC Staff - Grimm, Janice). (Entered: 06/20/2011 at 11:20:53)
06/20/2011	4	Social Security Number(s) of Debtor(s) Submitted. PDF only viewable by court. Filed by Jonathan P McQuade on behalf of Daniel J. Watson, Ketwarin Wathom . (McQuade, Jonathan) Modified on 6/21/2011 to correct joint debtor name (USBC Staff - Grimm, Janice). (Entered: 06/20/2011 at 11:21:39)
06/20/2011		Creditor matrix uploaded/added 26 creditor(s). (admin) (Entered: 06/20/2011 at 11:31:02)
06/21/2011	5	Meeting of Creditors & Notice of Appointment of Interim Trustee. with 341(a) meeting to be held on 07/21/2011 at 03:30 PM at US Courthouse, Room 4107 (341 Meetings). Objections to Discharge due by 09/19/2011. (admin.) (Entered: 06/21/2011 at 00:12:06)

4

EXHIBIT

7301.26933

12/22/2011 10:10:30 AM

06/21/2011	<u>6</u>	B,C,G,I,J, Stmt of Financial Affairs, Stmt of Current Monthly Income. (JPG) (Entered: 06/21/2011 at 13:32:51)
06/21/2011	<u>7</u>	Notice of Deficiency for Minimum Filing Requirements. Missing: Filing Fee, Installment or Waiver Application. Inadequate Filing due: 6/28/2011. (JPG) (Entered: 06/21/2011 at 13:34:50)
06/21/2011	<u>8</u>	341 Meeting of Creditors Notice Sent to BNC for Mailing . (JPG) (Entered: 06/21/2011 at 13:41:25)
06/23/2011	<u>9</u>	BNC Certificate of Mailing - Meeting of Creditors (Related document(s) <u>8</u> 341 Meeting of Creditors Sent to BNC for Mailing). Notice Date 06/23/2011. (Admin.) (Entered: 06/23/2011 at 21:30:38)
06/23/2011	<u>10</u>	BNC Certificate of Notice (Related document(s) <u>7</u> Notice of Deficiency of Filing Requirements). Notice Date 06/23/2011. (Admin.) (Entered: 06/23/2011 at 21:30:38)
06/23/2011	<u>11</u>	BNC Certificate of Notice (Related document(s) <u>6</u> Notice of Deadline for Schedules, Statements and Lists). Notice Date 06/23/2011. (Admin.) (Entered: 06/23/2011 at 21:30:38)
06/28/2011		Fee Due \$ 299.00 Fee Due \$ 299.00 (Related document(s) <u>1</u> Chapter 7 Voluntary Petition). (CMH) (Entered: 06/28/2011 at 09:07:26)
06/28/2011		Receipt of filing fee for Chapter 7 Voluntary Petition (2:11-bk-17287) [misc,1028] (299.00). Receipt number 13456235. Fee amount \$ 299.00. (U.S. Treasury) (Entered: 06/28/2011 at 09:13:17)
06/28/2011	<u>12</u>	Adequate Filing . (NSM) (Entered: 06/28/2011 at 15:09:21)
07/05/2011	<u>13</u>	Debtor's Balance of Schedules . Filed by Jonathan P McQuade on behalf of Ketwarin Wathom, Daniel J Watson. (Related document(s) <u>1</u> Chapter 7 Voluntary Petition). (McQuade, Jonathan) (Entered: 07/05/2011 at 12:42:30)
07/27/2011		Trustee's Meeting of Creditors Continued on 08/11/11 at 11:30 AM. Debtor absent. Joint debtor absent. (James, Nancy) (Entered: 07/27/2011 at 09:42:20)
08/30/2011		Chapter 7 Trustee's Report of No Distribution: I, Nancy L James, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 2 months. Assets Abandoned (without deducting any secured claims): \$ 0.00, Assets Exempt: Not Available, Claims Scheduled: \$ 0.00, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \$ 0.00. (Related document(s) <u>5</u> Meeting of Creditors Chapter 7 Individual No Asset AutoAssign). Filed by Nancy L James on behalf of Nancy L James. (James, Nancy) (Entered: 08/30/2011 at 14:30:29)
09/04/2011	<u>14</u>	Notice of Requirement to File Financial Management Course Certificate (admin) (Entered: 09/04/2011 at 02:44:20)
09/08/2011	<u>15</u>	BNC Certificate of Notice (Related document(s) <u>14</u> Notice to File Cert Fin Mgmt Course). Notice Date 09/08/2011. (Admin.) (Entered: 09/08/2011 at 21:33:39)
09/16/2011	<u>16</u>	Financial Management Course Certificate Filed for Debtor .. Filed by Jonathan P McQuade on behalf of Daniel J Watson. (McQuade, Jonathan) (Entered: 09/16/2011 at 13:22:51)
09/16/2011	<u>17</u>	Financial Management Course Certificate Filed for Joint Debtor .. Filed by Jonathan P McQuade on behalf of Ketwarin Wathom. (McQuade, Jonathan) (Entered: 09/16/2011 at 13:23:29)
09/22/2011	<u>18</u>	DISCHARGE of Debtor. Both Debtors (Related document(s) <u>5</u> Meeting of Creditors Chapter 7 Individual No Asset AutoAssign). (SLA) (Entered: 09/22/2011 at 15:48:56)
09/24/2011	<u>19</u>	BNC Certificate of Mailing - Order of Discharge (Related document(s) <u>18</u> Order Re Discharge of Debtor). Notice Date 09/24/2011. (Admin.) (Entered: 09/24/2011 at 21:30:35)
10/31/2011		CLOSED. It appearing to the Court that the Trustee in the above-entitled case has filed a Report of No Distribution and that the said Trustee has performed all other duties required of the Trustee in the administration of said case; now, therefore, IT IS ORDERED that said report be and it hereby is approved and the case is closed; and the Trustee is discharged from and relieved of his/her trust. Mark L. Hatcher, Clerk . (SLA) (Entered: 10/31/2011 at 11:47:54)

7301.26933

12/22/2011 10:10:30 AM

12/22/2011 10:10:30

PACER Login:	rc5177	Client Code:	
Description:	Docket Report	Search Criteria:	11-17287-TWD Fil or Ent. filed From 1/1/1990 To: 1/1/2050 Doc From: 0 Doc To: 99999999 Term: included Links : included Format: html
Billable Pages:	2	Cost:	0.16

A-3

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,

No. 12-2-01729-8SEA

Plaintiffs,

AMENDED COMPLAINT FOR:

vs.

WRONGFUL FORECLOSURE,
NEGLIGENCE, BREACH OF
FIDUCIARY DUTY, AND VIOLATION
OF CONSUMER PROTECTION ACT

NORTHWEST TRUSTEE SERVICES,
INC., CITIMORTGAGE, INC.,
NATIONAL LEGAL HELP CENTER,
INC., and JOHN DOE 1-10,

Defendants.

DANIEL J. WATSON, Plaintiff, alleges and complains against Defendants,
Northwest Trustee Services, Inc., CitiMortgage Inc., National Legal Help Center, Inc.,
and John Doe 1-10 separately and together as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the parties and subject matter of this
lawsuit.

1.2 Jurisdiction and venue are proper in King County, Washington because
this action involves contracts negotiated and executed in King County, Washington
and the sale of real property located in King County, Washington.

AMENDED COMPLAINT FOR WRONGFUL
FORECLOSURE - I

SKYLINE LAW GROUP PLLC
2135 - 112th Avenue NE
Bellevue, WA 98004
Telephone: 425-455-4307
Facsimile: 425-401-1833

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II. PARTIES

2.1 Plaintiffs, Daniel J. Watson and Ketwarin Onnum.

DANIEL J. WATSON and KETWARIN ONNUM, (hereinafter "Plaintiffs") are Washington State residents and reside in King County, Washington. Plaintiffs acquired fee title to real property commonly known as 2821 10th Ave W., Seattle, Washington, 98119 pursuant to a Statutory Warranty Deed recorded on April 18th, 2003 under King County Recorder's No. 20030418001613, a copy of which is attached, marked **Exhibit 1**, and incorporated herein by reference as if fully set forth here. The legal description of the real property (hereinafter the "Property") is:

That portion of Lots, 5,6,7, and 8 Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying northwesterly of Queen Anne Boulevard;
SITUATE in the city of Seattle, County of King, State of Washington.
Tax Parcel No. 2533300210-02

2.2 Defendant, Northwest Trustee Services Inc.

Defendant Northwest Trustee Services (hereafter "NTS") is a Washington corporation with a home office in Bellevue, Washington and conducts business in King County, Washinton. NTS is the successor trustee of a deed of trust recorded on April 18, 2003 under King County Recorder's No. 20030418001614 (hereinafter "DoT"), a copy of which is attached hereto, marked **Exhibit 2**, and incorporated by reference as if fully setforth here. NTS is subject to the jurisdiction and venue of this court by its recording of various documents against Plaintiffs' Property and its other activities as alleged in this complaint.

1 **2.3 Defendant, CitiMortgage Inc.**

2 Defendant CitiMortgage Inc. s/b/m to ABN Ambro Mortgage Group, INC.
3 (hereinafter "CitiMortgage") is a New York Corporation that conducts business in
4 Washington State. CitiMortgage as a successor by merger to ABN Ambro Mortgage
5 Group, INC. had a legal and equitable interest in Plaintiffs' Property at all times
6 relevant to this action up until the nonjudicial Trustee's sale of the Property to a third
7 party on December 23, 2011. CitiMortgage is the party whom Defendant NTS was
8 acting on behalf of when it initiated and held the Trustee's sale of Plaintiffs' Property
9 and its other acts and omissions alleged in this complaint.

10
11 **2.4 Defendant National Legal Help Center, Inc.**

12 Defendant National Legal Help Center, Inc. (hereinafter "NLHC"), is a California
13 corporation, entity number C3349760, that conducts business in the State of
14 Washington. NLHC performed loan related services for Plaintiffs that involved
15 Plaintiffs' Property situated in King County Washington.

16
17 **III. STATEMENT OF FACTS**

18
19 **3.1** Plaintiffs at all times material to this action were the fee title holders and
20 owners of record of the subject Property until December 23, 2011 when the Property
21 was sold by NTS on behalf of CitiMortgage at a nonjudicial Trustee's sale (hereinafter
22 "the sale") to a third party.

23 **3.2** Defendant NLHC was working on Plaintiffs' behalf to modify their
24 CitiMortgage loan secured by the Property.
25
26

1 **3.3** Plaintiffs were in possession of and maintained improvements on the
2 subject property at all times relevant to this matter until they and their tenant were
3 evicted from the Property by the third party buyer following NTS and CitiMortgage's
4 sale of Plaintiffs' Property.
5

6 **3.4** On March 22, 2011, NTS recorded a Notice of Trustee Sale under King
7 County Record No. 20110322000728 (hereinafer NoTS1), a copy of which is attached
8 hereto as **Exhibit 3** and incorporated by reference as if fully set forth here.

9 **3.5** On November 8, 2011, NTS recorded an Amended Notice of Trustee Sale
10 under King County Record No. 20111108001313 (hereinafter "NoTS3")¹, a copy of
11 which is attached hereto as **Exhibit 4** and incorporated by reference as if fully set forth
12 here.
13

14 **3.6** Defendants NTS and CitiMortgage did not initiate contact with Plaintiffs
15 and exercise due diligence as required by the FFA at RCW 61.24.031 prior to
16 recording the NoTS3.

17 **3.7** Defendants NTS and CitiMortgage did not provide Plaintiffs with the pre-
18 foreclosure notices required by Washington's Foreclosure Fairness Act (hereinafter
19 "FFA") at RCW 61.24.030 and RCW 61.24.031 prior to the December 23, 2011 sale
20 of the Property.
21

22 **3.8** Defendant NTS referenced the NoT1 but not the NoT3 in its Trustee's
23 Deed recorded on January 10, 2012, a true and correct copy of which is attached
24

25 ¹ NTS recorded two Amended Notice of Trustee Sale documents against Plaintiffs'
26 Property on the same date, but only the second Amended Notice is referenced here for
brevity.

1 hereto as **Exhibit 5** and incorporated by reference as if fully set forth here (hereinafter
2 "Trustee's Deed"). Defendant NTS also stated in the Trustee's Deed that "[a]ll legal
3 requirements and all provisions of [Plaintiffs'] Deed of Trust have been complied with,
4 as to acts to be performed and notices to be given, as provided in chapter 61.24
5 RCW."
6

7 **3.9.** Defendant NLHC was hired by Plaintiff to perform a Securitization Audit,
8 Forensic Investigation, issue a Demand Letter, and file a Civil Complaint and TRO
9 related to Plaintiffs' CitiMortgage loan and the Property.

10 **3.10** Defendant NLHC represented to Plaintiff in writing that the December
11 23, 2011 Trustee sale listed in the NoTS3 had been postponed. Defendant NLHC
12 failed to take any action to stop the foreclosure or to put Plaintiff on notice of any need
13 to stop the foreclosure.
14

15 **3.11** Defendant NLHC failed to take advantage of Washington's FFA. NLHC
16 failed to inform Plaintiff of his rights pursuant to the FFA. The FFA requires specific
17 notice procedures before a Notice of Trustee Sale can be recorded and before a
18 Trustee's sale in Washington can be held. The FFA authorizes an attorney or certified
19 HUD Counselor to refer a borrower and beneficiary of the borrower's mortgage into
20 mediation overseen by Washington State's Department of Commerce. The purpose of
21 the mediation is to work out a loan modification or to allow a borrower time to sell their
22 property and thereby avoid foreclosure.
23

24 **3.12** Defendant NLHC holds itself out to the public as a legal firm with in-
25 house counsel. Upon information and belief, NLHC does not have a licensed
26

1 Washington attorney on staff nor did they retain an attorney licensed in Washington to
2 assist Plaintiff with his loan modification and litigation issues involving Plaintiffs'
3 Washington State Property.
4

5 **3.13** On December 23, 2011, Plaintiffs' Property was sold by NTS for
6 \$348,000. At the time of the sale, the county tax appraisal for the Property was
7 \$443,000, and Plaintiff owed CitiMortgage \$273,867.28 on his promissory note
8 obligation. At the time of the sale, Plaintiffs were receiving rental proceeds from their
9 tenant.
10

11 **IV. FIRST CAUSE OF ACTION:**
12 **WRONGFUL FORECLOSURE**
13 **(As Against NTS and CitiMortgage)**

14 **4.1** Plaintiff realleges and incorporates ¶¶ 1.1 through 3.13 as if fully and
15 completely set forth here.

16 **4.2** The NoTS1 set the Trustee's sale date for June 24th, 2011. The Trustee
17 sale did not occur until December 23, 2011 or 182 days later. This is substantially
18 more than the maximum 120 day postponement period authorized by the Deed of
19 Trust Act at RCW 61.24.040 and rendered the sale unlawful. *See Albice v. Premier*
20 *Mortgage Services of Washington, Inc.*, 157 Wn.App. 912, 239 P.3d 1148, review
21 granted, 170 Wn.2d 1029, 249 P.3d 623 (2011);

22 "A lawful foreclosure sale must comply with the timing and notice obligations of
23 RCW 61.24.040. The trustee held the sale 161 days after the date set forth in
24 the Notice of Trustee Sale, well beyond the statutorily mandated 120-day limit.
25 Accordingly, the sale was void."
26

1 **4.3** On July 22, 2011, Washington's Foreclosure Fairness Act ("FFA")
2 amended the Deed of Trust Act, Chapter 61.24 RCW. The FFA requires specific
3 notices be issued to a borrower before a Trustee's sale can be scheduled or held.
4 CitiMortgage and NTS failed to issue to Plaintiff the pre-foreclosure notices required
5 by the FFA.
6

7 **4.4** Despite the failure to comply with the FFA preforeclosure notice
8 procedures, CitiMortgage authorized and NTS conducted a Trustee's Sale on
9 December 23, 2011 where at Plaintiffs' Property was sold to a third party.
10 CitiMortgage authorized and NTS falsely stated in their Trustee's Deed that "[a]ll legal
11 requirements and all provisions of [Plaintiffs'] Deed of Trust have been complied with,
12 as to acts to be performed and notices to be given, as provided in chapter 61.24
13 RCW."
14

15 **4.5** At the time Plaintiffs' Property was sold, it was worth more than the
16 amount Plaintiff owed to CitiMortgage, and Plaintiffs were earning rental income from
17 the Property.
18

19 **4.6** Plaintiff suffered irreparable harm as a result of the wrongful foreclosure.
20

21 **V. SECOND CAUSE OF ACTION:
22 NEGLIGENCE AND BREACH OF FIDUCIARY DUTY
23 (As Against Defendant NLHC)**

24 **5.1** Plaintiff realleges and incorporates ¶¶ 1.1 through 4.6 as if fully and
25 completely set forth here.
26

5.2 Defendant NLHC failed to take advantage of Washington's Foreclosure
Fairness Act or to inform Plaintiff of his right to take advantage of this Act. Defendant

1 and/or held themselves out as being able to perform residential loan modification
2 services for Plaintiff.

3 **6.4** The residential mortgage loan modification services provided by NLHC
4 and John Doe 1-10 includes negotiating, attempting to negotiate, arranging,
5 attempting to arrange, or otherwise offering to perform a residential mortgage loan
6 modification.

7
8 **6.5** NLHC is responsible for the actions of John Doe 1-10 that worked for the
9 benefit of or under the supervision of NLHC.

10 **6.6** NLHC and John Doe 1-10 accepted compensation from Plaintiff in
11 violation of Washington's Mortgage Broker Practices Act.

12 **6.7** NHLC and John Doe 1-10 directly or indirectly employed a scheme,
13 device, or artifice to defraud or mislead Plaintiff.

14 **6.8** NHLC and John Doe 1-10 engaged in an unfair and deceptive practice.

15 **6.9** NHLC and John Doe 1-10 breached their duty of good faith, honesty,
16 equity and duty to preserve the integrity of the mortgage broker business.

17 **6.10** The act or omissions of NHLC and John Doe 1-10 caused Plaintiff to
18 suffer irreparable harm.

19
20
21 **VII. FOURTH CAUSE OF ACTION:**
22 **VIOLATION OF WASHINGTON'S CONSUMER PROTECTION ACT,**
23 **CHAPTER 19.18 RCW**
24 **(As Against all Defendants)**

25 **7.1** Plaintiff realleges and incorporates ¶¶ 1.1 through 6.10 as if fully and
26 completely set forth here.

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8.6 For such other and further relief as proven at trial and/or as the Court may deem just and equitable.

DATED this 21st day of March, 2012.

SKYLINE LAW GROUP PLLC

Michele K. McNeill, WSBA #32052
Attorney for Plaintiff

EXHIBIT 1

EXHIBIT 1



20030418001613

WASHINGTON TTI, LD
PAGE 001 OF 003
04/18/2003 14:33
KING COUNTY, WA

After recording return to:
DANIEL J WATSON & KETWARIN ONN
2821 10TH AVE W
SEATTLE WA 98119

E1952490

04/18/2003 13:52
KING COUNTY, WA
TAX
SALE \$28,833.88

PAGE 001 OF 001

Filed for Record at the Request of
Washington Title Company N285133

WAT 285133 2

LPB-10 3/21

STATUTORY WARRANTY DEED

THE GRANTOR JOYCE GEARHART, a married person, PHYLLIS PRIDE,
married person and DORIS NOEL, unmarried person

each as their separate estate, for and in consideration of Ten Dollars and Other Good and
Valuable Consideration in hand paid, conveys and warrants to DANIEL J. WATSON and
KETWARIN ONNUM, husband & wife the following described real estate, situate in the
County of KING, State of Washington

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according
to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying
northwesterly of Queen Anna Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington

Tax Account No. 253330021002

Dated this
By *Joyce Gearhart*
JOYCE GEARHART

By *Phyllis Pride*
PHYLLIS PRIDE

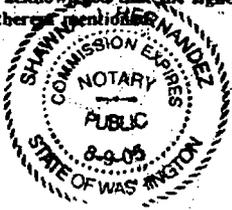
By *Doris Noel, Joyce Gearhart*
DORIS NOEL
as her attorney in fact
STATE OF WASHINGTON }
COUNTY OF KING }

By *Joyce Gearhart as*
her attorney in fact.

On this day personally appeared before me Joyce Gearhart to me known to be the individual(s)
described in and who executed the within and foregoing instrument, and acknowledged that she signed the
same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 16 day of April, 2003

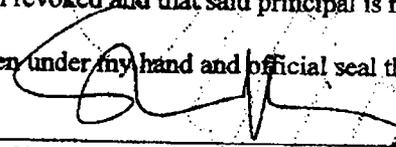
Shawna J Hernandez
Shawna J Hernandez
Notary Public in and for the State of Washington
residing at Seattle My commission expires: 08/09/05



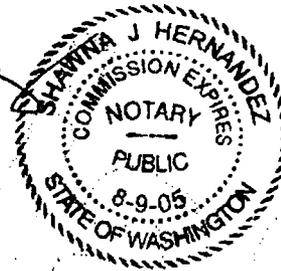
STATE OF WASHINGTON
COUNTY OF KING

On this 16 day of April 2003 before me personally appeared -
JOICE M BEARHART to me know to be the individual who
executed the foregoing as Attorney in Fact for PHYLLIS M PRIOR
and acknowledged that she signed the same as his free and voluntary act and deed as
Attorney in Fact for said principal for the uses and purposes therein mentioned, and on
oath stated that the Power of Attorney authorizing the execution of this instrument has not
been revoked and that said principal is now living and not insane.

Given under my hand and official seal the day and year last above written.


Julie Shropshire SHAWNA J HERNANDEZ
Notary Public in and for the State of Washington

Residing at: Seattle
My Commission expires: August 9, 2005



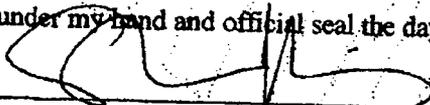
Attorney in Fact

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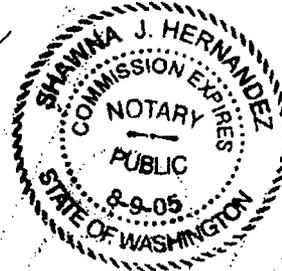
STATE OF WASHINGTON
COUNTY OF KING

On this 16 day of April 2007 before me personally appeared -
Joyce M Gearhart to me know to be the individual who
executed the foregoing as Attorney in Fact for Doris A Noel
and acknowledged that she signed the same as his free and voluntary act and deed as
Attorney in Fact for said principal for the uses and purposes therein mentioned, and on
oath stated that the Power of Attorney authorizing the execution of this instrument has not
been revoked and that said principal is now living and not insane.

Given under my hand and official seal the day and year last above written.


~~Julia Shronshire~~ SHAWNA J. HERNANDEZ
Notary Public in and for the State of Washington

Residing at: Seattle
My Commission expires: August 9, 2005



Attorney in Fact

Document

EXHIBIT 2



WASHINGTON, FEB 07
PAGE 001 OF 011
04/16/2003 14:03
KING COUNTY, WA

When recorded mail to:
AMN AMRO MORTGAGE GROUP, INC.
P.O. BOX 5064
TROY, MICHIGAN 48064
REC#: FINAL/TRAILING DOCUMENTS

Assessor's Parcel or Account Number 253330021002
Abbreviated Legal Description
Ptn Lts S-E, Blk 2, Ferry's Addn, Seattle, Vol 1/175
Full legal description located on page 11 (includes lot, block and plat or section, township and range)

LOAN #: 635950290
WAT 285133 [Space Above This Line For Recording Date] 11129
DEED OF TRUST

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 16, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.
(A) "Security Instrument" means this document which is dated APRIL 16, 2003, together with all Riders to this document.
(B) "Borrower" is DANIEL J HANSON, HUSBAND AND WIFE AND KEITHARIN ORNUM.

Borrower is the trustor under this Security Instrument
(C) "Lender" is AMN AMRO MORTGAGE GROUP, INC.

*on this in
particular*

Lender is a CORPORATION,
laws of DELAWARE,
2600 W. 320 SERVER RD., TROY, MICHIGAN 48064.

organized and existing under the
Lender's address is

Lender is the beneficiary under this Security Instrument
(D) "Trustee" is .

(E) "Note" means the promissory note signed by Borrower and dated APRIL 16, 2003.
The Note states that Borrower owes Lender TWO HUNDRED EIGHTY THOUSAND AND 00/100
Dollars (US \$280,000.00) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than July 1, 2033.

WASHINGTON-Single Family-First Lien/Fredco Max Uniform INSTRUMENT Form 3048 1/01
© 1999-2002 Online Documents, Inc. Page 1 of 10 WAUCED 0211

LOAN #: 638950290

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loans" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under the Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]

- Adjustable Rate Rider
- Condominium Rider
- Second Home Rider
- Balloon Rider
- Planned Unit Development Rider
- Other(s) [specify]
- 1-4 Family Rider
- Biweekly Payment Rider

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in the Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under the Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY

(Type of Recording Jurisdiction) of KING

(Name of Recording Jurisdiction)

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of 2821 10TH AVENUE WEST, SEATTLE,

Washington 98119 ("Property Address")

(Street) (City)

(Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Initials: DW ka

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attach priority over this Security Instrument as a lien or encumbrance on the Property, (b) household payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 6. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can

LOAN #: 635950290

requirements under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges, Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower, (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while these proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. The insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracing services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree

in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extraordinary circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property if it has reasonable cause. Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

DW Initials: *ko*

LOAN #: 639950290

secured by the Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by the Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstale as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument, (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under the Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify

Initials:
Form 3048 1/01

Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein, unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law, Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, the right to reinstate shall not apply in the case of acceleration under Section 16.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective

action if Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law, and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spill, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS Borrower and Lender further covenant and agree as follows.

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by the Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of this evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notice to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument, and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance

of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law

LOAN #: 635950290

25. Use of Property The Property is not used principally for agricultural purposes
26. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of the Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

[Signature]
DANIEL J WILSON (Seal)

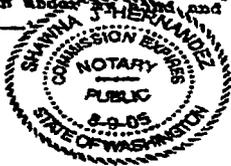
[Signature]
KETHARIN OENUM (Seal)

State of WASHINGTON

County of King SS:

On this day personally appeared before me DANIEL J WILSON AND KETHARIN OENUM to me known to be the individual party described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as free free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 17 day of April



[Signature]
Notary Public in and for the State of Washington, residing at Seattle

My Appointment Expires on 8/9/05

Commitment No. N285133-2

SCHEDULE A CONTINUED

4 The land referred to in this Commitment is described as follows.

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County, lying northwesterly of Queen Anne Boulevard,

SITUATE in the City of Seattle, County of King, State of Washington

END OF SCHEDULE A

EXHIBIT 3

**Electronically Recorded
20110322000728**

NORTHWEST TITLE
Page 001 of 004
03/22/2011 12:32
King County, WA

NTS

65 00

After Recording, Return to:
Claire Swazey
Northwest Trustee Services, INC.
P.O. Box 997
Bellevue, WA 98009-0997

File No.: 7301,26933
Grantors: Northwest Trustee Services, Inc.
CitiMortgage, Inc.
Grantee: Daniel J. Watson and Ketwarin Onnum, husband and wife
Ref to DOT Auditor File No.: 20030418001614
Tax Parcel ID No.: 253330021002
Abbreviated Legal: Ptn Lts 5-8, Blk 2, Ferry's Addn, Seattle, Vol 1/175

Notice of Trustee's Sale

Pursuant to the Revised Code of Washington 61.24, et seq.

I.

On **June 24, 2011**, at 10:00 a.m. The northwest corner of the ground level parking area located under the Pacific Corporate Center building, 13555 SE 36th Street in the City of Bellevue, State of Washington, the undersigned Trustee (subject to any conditions imposed by the Trustee) will sell at public auction to the highest and best bidder, payable at time of sale, the following described real property "Property", situated in the County(ies) of King, State of Washington:

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the Cit of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County: lying Northwesterly of Queen Anne Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington.

Commonly known as: 2821 West 10th Avenue.
Seattle, WA 98119

which is subject to that certain Deed of Trust dated 04/14/03, recorded on 04/18/03, under Auditor's File No. 20030418001614, records of King County, Washington, from Daniel J Watson, husband and wife and Ketwarin Onnum, as Grantor, to , as Trustee, to secure an obligation "Obligation" in favor of CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc., as Beneficiary.

*The Tax Parcel ID number and Abbreviated Legal Description are provided solely to comply with the recording statutes and are not intended to supplement, amend or supersede the Property's full legal description provided herein.

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 Grantor's or Borrower's default on the Obligation.

III.

The Beneficiary alleges default of the Deed of Trust for failure to pay the following amounts now in arrears and/or other defaults:

		Amount due to reinstate by 03/17/2011
Monthly Payments		\$12,138.30
Late Charges		\$483.54
Lender's Fees & Costs		\$142.59
Total Arrearage	\$12,764.43	
Trustee's Expenses (Itemization)		
Trustee's Fee		\$607.50
Title Report		\$995.36
Statutory Mailings		\$9.56
Recording Costs		\$0.00
Postings		\$70.00
Sale Costs		\$0.00
Total Costs	\$1,682.42	
Total Amount Due:		\$14,446.85

Other known defaults as follows:

IV.

The sum owing on the Obligation is: Principal Balance of \$247,260.99, together with interest as provided in the note or other instrument evidencing the Obligation from 09/01/10, and such other costs and fees as are due under the Obligation, and as are provided by statute.

V.

The Property will be sold to satisfy the expense of sale and the Obligation as provided by statute. The sale will be made without representation or warranty, express or implied regarding title, possession, encumbrances or condition of the Property on June 24, 2011. The default(s) referred to in paragraph III, together with any subsequent payments, late charges, advances costs and fees thereafter due, must be cured by 06/13/11 (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the close of the Trustee's business on 06/13/11 (11 days before the sale date), the default(s) as set forth in paragraph III, together with any subsequent payments, late charges, advances, costs and fees thereafter due, is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after 06/13/11 (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 balance of 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.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME AND ADDRESS

Daniel J. Watson
2821 West 10th Avenue
Seattle, WA 98119

Kerwarin Onnum
2821 West 10th Avenue
Seattle, WA 98119

by both first class and either certified mail, return receipt requested on 02/05/11, proof of which is in the possession of the Trustee; and on 02/07/11 Grantor and Borrower were personally served with said written notice of default or the written notice of default was posted on 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 foreclosure costs and trustee's 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 right, title and interest in the 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.

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.

The trustee's rules of auction may be accessed at www.northwesttrustee.com and are incorporated by this reference. You may also access sale status at www.northwesttrustee.com and www.USA-Foreclosure.com.

EFFECTIVE: 03/17/2011

Northwest Trustee Services, Inc., Trustee

By *Claire M Swazey*
Authorized Signature
P.O. BOX 997
Bellevue, WA 98009-0997
Contact: Claire Swazey
(425) 586-1900

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Claire M. Swazey is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Assistant Vice President of Northwest Trustee Services, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/17/11

KRISTA N. MAYNE
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
06-03-14

Krista N Mayne
NOTARY PUBLIC in and for the State of
Washington, residing at Woodinville WA
My commission expires 6/3/2014

NORTHWEST TRUSTEE SERVICES, INC., SUCCESSOR BY MERGER TO NORTHWEST TRUSTEE SERVICES PLLC FKA NORTHWEST TRUSTEE SERVICES, LLC, P.O. BOX 997, BELLEVUE, WA 98009-0997 PHONE (425) 586-1900 FAX (425) 586-1997

File No: 7301.26933
Client: CitiMortgage, Inc.
Borrower: Watson, Daniel J. and Onnum, Ketwarin

SERVING WA, OR, ID, CA, NV, AZ, MT HI

This is an attempt to collect a debt and any information obtained will be used for that purpose.

EXHIBIT 4

Electronically Recorded
20111108001313

NORTHWEST TITLE NTS
Page 001 of 004
11/08/2011 01:15
King County, WA

65.00

After Recording, Return to:
Claire Swazey
Northwest Trustee Services, Inc.
P.O. Box 997
Bellevue, WA 98009-0997

File No.: 7301.26933
Grantors: Northwest Trustee Services, Inc.
CitiMortgage, Inc.
Grantee: Daniel J. Watson and Ketwarin Onnum, husband and wife
Ref to DOT Auditor File No.: 20030418001614
Original NTS Auditor File No. 20110322000728
Tax Parcel ID No.: 253330021002
Abbreviated Legal: Ptn Lts 5-8, Blk 2, Ferry's Addn, Seattle, Vol. 1/175

Amended Notice of Trustee's Sale
Pursuant to the Revised Code of Washington 61.24, et seq.

I.

On December 23, 2011, at 10:00 a.m. The northwest corner of the ground level parking area located under the Pacific Corporate Center building, 13555 SE 36th Street in the City of Bellevue, State of Washington, the Trustee (subject to any conditions imposed by the Trustee) will sell at public auction to the highest and best bidder, payable at time of sale, the following described real property "Property", situated in the County(ies) of King, State of Washington:

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the Cit of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying Northwesterly of Queen Anne Boulevard;

SITUATE in the City of Seattle, County of King, State of Washington.

Commonly known as: 2821 West 10th Avenue
Seattle, WA 98119

which is subject to that certain Deed of Trust dated 04/14/03 and recorded on 04/18/03, under Auditor's File No. 20030418001614, records of King County, Washington, from Daniel J. Watson, husband and wife and Ketwarin Onnum, as Grantor, to , as Trustee, to secure an obligation "Obligation" in favor of CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc., as

Beneficiary, the beneficial interest in which was assigned by to , under an Assignment/Successive Assignments recorded under Auditor's File No. .

*The Tax Parcel ID number and Abbreviated Legal Description are provided solely to comply with the recording statutes and are not intended to supplement, amend or supersede the Property's full legal description provided herein.

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 Grantor's or Borrower's default on the Obligation.

III.

The Beneficiary alleges default of the Deed of Trust for failure to pay the following amounts now in arrears and/or other defaults:

		Amount due to reinstate by 11/08/2011
Monthly Payments		\$28,679.95
Late Charges		\$1,047.67
Lender's Fees & Costs		\$2,704.64
Total Arrearage	\$32,432.26	
Trustee's Expenses (Itemization)		
Trustee's Fee		\$607.50
Title Report		\$0.00
Statutory Mailings		\$0.00
Recording Costs		\$65.00
Postings		\$670.16
Sale Costs		\$832.85
Total Costs	\$2,175.51	
Total Amount Due:		\$34,607.77

Other known defaults are as follows:

IV.

The sum owing on the Obligation is: Principal Balance of \$247,260.99, together with interest as provided in the note or other instrument evidencing the Obligation from 09/01/10, and such other costs and fees as are due under the Obligation, and as are provided by statute.

V.

The Property will be sold to satisfy the expense of sale and the Obligation as provided by statute. The sale will be made without representation or warranty, express or implied regarding title, possession, encumbrances or condition of the Property on **December 23, 2011**. The default(s) referred to in paragraph III, together with any subsequent payments, late charges, advances costs and fees thereafter

due, must be cured by 12/12/11 (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the close of the Trustee's business on 12/12/11 (11 days before the sale date), the default(s) as set forth in paragraph III, together with any subsequent payments, late charges, advances, costs and fees thereafter due, is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after 12/12/11 (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 balance of 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.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME AND ADDRESS

Daniel J. Watson
2821 West 10th Avenue
Seattle, WA 98119

Ketwarin Onnum
2821 West 10th Avenue
Seattle, WA 98119

by both first class and either certified mail, return receipt requested on 02/05/11, proof of which is in the possession of the Trustee; and on 02/07/11 Grantor and Borrower were personally served with said written notice of default or the written notice of default was posted on 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 foreclosure costs and trustee's 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 right, title and interest in the 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.

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

EXHIBIT 5

EXHIBIT 5

After Recording Return To:
to Apple Equities, LLC
11410 NE 124th St #433
Kirkland, WA 98034



20120110001118

WFG NATIONAL TTD 53.00
PAGE-001 OF 002
01/18/2012 14:50
KING COUNTY, WA

E2525908

01/18/2012 14:50
KING COUNTY, WA
TAX \$10.00
SALE \$0.00

PAGE-001 OF 001

File No.: 7301.26933/Watson, Daniel J. and Onnum, Ketwarin

Trustee's Deed

Courtesy Recording ONLY
No liability for validity and/or accuracy
assumed by WFG National Title Co.

The GRANTOR, Northwest Trustee Services, Inc., as present Trustee under that Deed of Trust (defined below), in consideration of the premises and payment recited below, hereby grants and conveys, without representation or warranty, expressed or implied, to Apple Equities, LLC, as GRANTEE, all real property (the Property), situated in the County of King, State of Washington, described as follows:

Tax Parcel No.: 253330021002

The land referred to in this Commitment is described as follows:

That portion of Lots 5, 6, 7 and 8, Block 2, Ferry's Addition to the City of Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 175, in King County; lying Northwesterly of Queen Anne Boulevard; SITUATE in the City of Seattle, County of King, State of Washington.

RECITALS:

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon the Grantee by that certain Deed of Trust between Daniel J Watson, husband and wife and Ketwarin Onnum, as Grantor, to as Trustee, and CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc., Beneficiary, dated 04/14/03, recorded 04/18/03, under Auditor's/Recorder's No. 20030418001614, records of King County, Washington.
2. The Deed of Trust was executed to secure, together with other undertakings, the payment of one or more promissory note(s) ("Note") in the sum of \$280,000.00 with interest thereon, according to the terms thereof, in favor of CitiMortgage, Inc., s/b/m. to ABN AMRO Mortgage Group, Inc. and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.
3. The Deed of Trust provided that the Property is not used principally for agricultural or farming purposes and the Grantor has no actual knowledge that the Property is used principally for agricultural or farming purposes.
4. Default having occurred in the obligations secured and/or covenants of the Deed of Trust grantor, as set forth in Notice of Trustee's Sale described below, which by the terms of the Deed of Trust make operative the power to sell, the thirty-day advance Notice of Default was transmitted to the Deed of Trust grantor, or his successor in interest, and a copy of said Notice was posted or served in accordance with law.
5. CitiMortgage, Inc., being then the holder of the indebtedness secured by the Deed of Trust, delivered to said Grantor a written request directing Grantor to sell the Property in accordance with law and the terms of the Deed of Trust.
6. The defaults specified in the "Notice of Default" not having been cured, the Grantor, in compliance with the terms of the Deed of Trust, executed and on 03/22/11, recorded in the office of the

Auditor of King County, Washington, a " Notice of Trustee's Sale" of the Property under Auditor's File No. 20110322000728.

7. The Grantor, in the "Notice of Trustee's Sale", fixed the place of sale as The northwest corner of the ground level parking area located under the Pacific Corporate Center building, 13555 SE 36th Street, City of Bellevue, State of Washington a public place, at 10:00 o'clock a.m., and in accordance with the law caused copies of the statutory "Notice of Trustee's Sale" to be transmitted by mail to all persons entitled thereto and either posted or served prior to 90 days before the sale; further, the Grantor caused a copy of said "Notice of Trustee's Sale" 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 date of sale, and once between the fourteenth and the seventh day before the date of sale; and further, included with the Notice, which was transmitted to or served upon the Deed of Trust grantor or his successor in interest, a "Notice of Foreclosure" in substantially the statutory form; to which copies of the Note and Deed of Trust were attached.

8. During foreclosure, no action by the Beneficiary, its successors or assigns was pending on an obligation secured by the Deed of Trust.

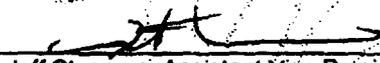
9. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in chapter 61.24 RCW.

10. The defaults specified in the "Notice of Trustee's Sale" not having been cured ten days prior to the date of Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on December 23, 2011, the date of sale, which was not less than 190 days from the date of default in the obligation secured, the Grantor then and there sold the Property at public auction to said Grantee, the highest bidder therefore, for the sum of \$348,000.00 cash.

This conveyance is made without representations or warranties of any kind, expressed or implied. By recording this Trustee's Deed, Grantee understands, acknowledges and agrees that the Property was purchased in the context of a foreclosure, that the trustee made no representations to Grantee concerning the Property and that the trustee owed no duty to make disclosures to Grantee concerning the Property; Grantee relying solely upon his/her/their/its own due diligence investigation before electing to bid for the Property.

DATED: December 29, 2011

NORTHWEST TRUSTEE SERVICES, INC.

BY: 
Jeff Stenman, Assistant Vice President

State of Washington)
County of King)

I Julie Bouffleur, Notary certify that I know or have satisfactory evidence that Jeff Stenman is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged (he/she) as the Assistant Vice President of Northwest Trustee Services, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: December 29, 2011

JULIE BOUFFLEUR
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
02-23-13

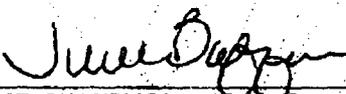

NOTARY PUBLIC in and for the State of
Washington, residing at King Co.
My commission expires: 2/23/2013

EXHIBIT B

EXHIBIT B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DANIEL J. WATSON.

No. 12-2-01729-8SEA

Plaintiff.

vs.

ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND COMPLAINT

Northwest Trustee Services, Inc.; ABN
Amro Mortgage Inc.; CitiMortgage Inc.;
Fairplay Foreclosures Washington, LLC.;
Apple Equities LLC;

[Proposed]

Defendant.

This matter having been taken under consideration by the Court regarding Plaintiff's motion to amend his complaint, and the Court deeming itself fully apprised of the matter and having reviewed the files and records herein, and the written or oral arguments of counsel, now therefore, IT IS HEREBY ORDERED that Plaintiff's motion is GRANTED and he has leave to amend his complaint and may file his Amended Complaint as proposed.

DATED this ____ day of April, 2012.

The Honorable Kimberley Prochnau

Presented By:
SKYLINE LAW GROUP PLLC


Michele K. McNeill, WSBA #32052
Attorney for Plaintiff

ORDER GRANTING PLAINTIFF'S MOTION TO
AMEND COMPLAINT

SKYLINE LAW GROUP PLLC
2135 - 112th Avenue NE
Bellevue, WA 98004
Telephone: 425-455-4307
Facsimile: 425-401-1833

A-4

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Honorable Kimberley Prochnau
April 3, 2012
w/out Oral

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DANIEL J. WATSON,

Plaintiff,

No. 12-2-01729-8 SEA

vs.

MOTION TO AMEND COMPLAINT

Northwest Trustec Services, Inc.; ABN
Amro Mortgage Inc.; CitiMortgage Inc.;
Fairplay Foreclosures Washington, LLC,

Defendant

COMES NOW Plaintiff, Daniel J. Watson, by and through his attorney of record,
Michele K. McNeill of Skyline Law Group, PLLC, to request the following:

I. RELIEF SOUGHT

Plaintiff moves the Court for leave to amend his Complaint filed in this matter to add
additional party defendants, remove a defendant, and amend facts.

II. FACTS

1. Plaintiff, while acting *Pro Se*, filed his original Complaint in this matter on January
11, 2012. *See files herein.*

2. Defendant Northwest Trustee Services filed its Answer on January 24, 2012. *See
Id.*

1 3. A Notice of Appearance was filed by undersigned Plaintiff's counsel on January 25,
2 2012. *See Id. and Declaration of Michele K. McNeill, ¶2.*

3 4. Plaintiff discovered on January 30, 2012 that the actual purchaser of Plaintiff's real
4 property, which is the primary subject of this matter (the "Property"), was not Fairplay. See
5 Declaration of Michele K. McNeill, ¶4.

6 5. Defendant Fairplay filed its Answer on February 1, 2012. *See Id.*

7 6. Defendant Fairplay was mistakenly named as a defendant in the original complaint
8 due to the content of its notices to Plaintiff to vacate the Property. The notice to vacate signed by
9 Fairplay was written in such a manner to not put a reasonable person on notice they were signing
10 on behalf of another entity. See Declaration of Michele K. McNeill, ¶4.

11 7. Plaintiff filed a motion to amend his complaint on February 7, 2012. The motion
12 was stricken by Plaintiff prior to the hearing and was not served upon the parties. To-date an
13 Amended Complaint has not been filed with the Court. *See files herein and Declaration of*
14 *Michele K. McNeill, ¶4.*

15 8. Defendant Fairplay was voluntarily dismissed by Plaintiff on February 21, 2012.
16 *See files herein.*

17 9. On March 9, 2012, Defendants Northwest Trustee Services, CitiMortgage, and
18 ABN AMRO Mortgage filed a joint Motion for Summary Judgment. The motion makes
19 numerous references to an amended complaint that has not been approved by or this Court, or
20 served on any party. *See files herein.*

21 10. Plaintiff has also identified his prior law firm that was helping him with his
22 mortgage, but not the attorney who may not be licensed to practice law. Plaintiff needs to add
23

1 his former law firm as a necessary party, and would like to reserve the right to add his former
2 attorney once her identity becomes known by naming John Does 1-10 on the amended
3 complaint. Upon information and belief, Plaintiff's prior law firm and attorney are not licensed
4 to practice law in the State of Washington. *See Declaration of Michele K. McNeill, ¶5.*
5

6 III. ISSUE

7 Should Plaintiff be granted leave of court to amend his complaint in the above captioned
8 matter to remove a named party and add additional party defendants and facts based on newly
9 discovered information?

10 IV. EVIDENCE RELIED UPON

11 The files and records herein and Declaration of Michele K. McNeill, filed in support of
12 this motion.
13

14 V. AUTHORITY

15 CR 15(a) provides in relevant part that "[A] party may amend the party's pleading . . . by
16 leave of court or by written consent of the adverse party; and leave shall be freely given when
17 justice so requires."

18 In this case, Plaintiff initiated his lawsuit *Pro Se* and named all known parties involved in
19 the unlawful sale of his property. Following the initial pleadings, Plaintiff retained legal counsel
20 and was served with a Complaint for Unlawful Detainer initiated by a non-party to Plaintiff's
21 lawsuit. Plaintiff's counsel was able to identify specific party defendants that were not named in
22 the initial lawsuit and to gather evidence in support of naming additional party defendants.
23 Plaintiff's counsel was also able to identify a party defendant to dismiss from the lawsuit.
24
25
26

1 Plaintiff respectfully requests leave to amend his Complaint to add additional party
2 defendants, remove a defendant, and to add an additional cause of action based on his legal
3 counsel's review of the evidence. *See Proposed Amended Complaint*, attached hereto as Exhibit
4 A.
5

6 **VI. FORM OF ORDER**

7 A proposed order for the relief sought is attached hereto as Exhibit B.
8

9 DATED this 21st day of March, 2012.
10

11 SKYLINE LAW GROUP PLLC

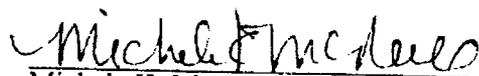
12 
13 Michele K. McNeill, WSBA #32052
14 Attorney for Plaintiff
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EXHIBIT A

EXHIBIT A

A-5

The Honorable Judge Kimberley Prochnau
Hearing Date: June 22, 2012
Hearing Time: 10am
Moving Parties: Defendants NWTS and
CitiMortgage

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,
Plaintiff,

No. 12-2-01729-8 SEA

v.

**AMENDED JOINT MOTION FOR
SUMMARY JUDGMENT BASED
UPON AMENDED COMPLAINT**

NORTHWEST TRUSTEE SERVICES, INC.;
CITIMORTGAGE INC.; NATIONAL LEGAL
HELP CENTER, INC., and JOHN DOES 1-10,
Defendants.

I. RELIEF REQUESTED

COMES NOW Defendants Northwest Trustee Services, Inc. ("NWTS") and CitiMortgage, Inc. ("CitiMortgage") by and through their attorneys of record, Routh Crabtree Olsen, P.S., and Jordan Ramis, P.C., and moves the Court for an order granting summary judgment against Plaintiffs Daniel J. Watson and Ketwarin Onnum ("Plaintiffs") pursuant to Civil Rule 56. Plaintiffs fail to raise any genuine issues as to any material fact, and Defendants NWTS and CitiMortgage are entitled to summary judgment as a matter of law. As the Amended Complaint contains new allegations, NWTS and CitiMortgage respectfully submit this Amended Motion for Summary Judgment to address the additional allegations.

///

1 Decl. ¶ 6. *See also* Amended Complaint, Ex. 4.

2 **Notice of Default.** Plaintiffs fell into default under the terms of the Note and Deed of
3 Trust by failing to perform monthly payment obligations beginning with the October 1, 2010
4 installment. Stenman Decl. ¶ 7. On February 5, 2011, a Notice of Default and Loss Mitigation
5 Declaration were mailed by first class and certified mail, return receipt requested, to Plaintiffs at
6 their last known addresses. Stenman Decl. ¶ 7. A true and correct copy of the Notice of Default
7 is attached as Exhibit 4 to the Stenman Decl. and is hereby incorporated by reference.
8

9 **Notice of Trustee's Sale.** On March 22, 2011, NWTS recorded a Notice of Trustee's Sale
10 in the Official Records of King County, Washington as Instrument No. 20110322000728. (*See*
11 Amended Complaint, Ex. 6) The Notice of Trustee's Sale designated June 24, 2011 as date of the
12 nonjudicial foreclosure. *Id.*
13

14 **The Watson Bankruptcy.** On June 20, 2011, Plaintiffs filed a Chapter 7 petition in the
15 United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy
16 Court"). A true and correct copy of the Docket for Bankruptcy Case No. 11-17287-TWD is
17 attached to the Stenman Decl. as Exhibit 5 and is hereby incorporated by reference. *See also*
18 Stenman Decl. ¶ 9.
19

20 As a result of the bankruptcy filing, NWTS postponed the trustee's sale multiple times
21 with a final postponement date of September 30, 2011. *Id.* ¶ 9. The postponed trustee's sale was
22 ultimately cancelled due to the ongoing bankruptcy proceeding. *Id.* On October 31, 2011, the
23 Bankruptcy Court terminated Plaintiffs' Chapter 7 bankruptcy by standard discharge. *See*
24 Stenman Decl., Ex. 5, Pg. 1.

25 **Amended Notice of Trustee's Sale.** On November 8, 2011, NWTS recorded an Amended
26 Notice of Trustee's Sale in the Official Records of King County, Washington as Instrument No.

1 20111108001313. (See Amended Complaint, Ex. 3) See also Stenman Decl. ¶ 10.

2 The Amended Notice of Trustee's Sale designated December 23, 2011 as date of the
3 nonjudicial foreclosure. See *id.* On or about November 8, 2011, NWTS mailed by certified and
4 first class mail the Amended Notice of Trustee's Sale to the Plaintiffs. Stenman Decl. ¶ 11. On or
5 about November 9, 2011, NWTS posted the Notice of Trustee Sale on the Property. *Id.*

6
7 **Non-judicial Foreclosure.** On December 23, 2011, NWTS conducted a non-judicial
8 foreclosure sale of the Property. Stenman Decl. ¶ 12. Apple Equities, LLC was the high bidder at
9 the sale, resulting in the issuance of a Trustee's Deed to Apple Equities, LLC dated December
10 29, 2011. *Id.*

11 On February 15, 2012, pursuant to RCW § 61.24.080, NWTS deposited the surplus funds
12 resulting from the trustee's sale with the King County Superior Court Clerk in the amount of
13 \$73,183.72. Stenman Decl. ¶ 13. The surplus funds matter is filed under King County Superior
14 Court Cause No. 12-2-05796-6 SEA. *Id.*

15
16 **Procedural Posture.** On January 11, 2012, Plaintiffs filed their Complaint for Wrongful
17 Foreclosure and Quiet Title in the current proceeding. See Dkt. No. 1. On March 6, 2012,
18 Defendants CitiMortgage and NWTS filed their Motion for Summary Judgment. Dkt. # 22. On
19 March 22, 2012, Plaintiffs filed a motion to amend the Complaint which was granted by the
20 Court on April 26, 2012. See Dkt. No. 27.

21 III. STATEMENT OF THE ISSUES

22
23 A. If a trustee's sale has been stayed as a result of a bankruptcy filing, the trustee may set a
24 new sale date not less than 45-days after the date of the order discharging the debtor. On
25 October 23, 2011, Plaintiffs' bankruptcy was terminated by standard discharge. NWTS
26 recorded an Amended Notice of Trustee's Sale on November 8, 2011, designating
December 23, 2011 as the new sale date. As the trustee's sale occurred 53-days after the
bankruptcy discharge, is there any genuine issue of material fact as to the timeliness of
the foreclosure sale?

1 B. On July 22, 2011, the Foreclosure Fairness Act went into effect, amending the
2 Washington Deed of Trust Act (“DTA”). On February 5, 2011, a Notice of Default was
3 issued to the Plaintiffs. Is there any genuine issue of material fact as to whether the
4 Notice of Default was subject to the notice of pre-foreclosure options letter requirement
5 established by the Foreclosure Fairness Act amendments?

6 C. The DTA and interpretive case law require a borrower to enjoin a trustee’s sale to
7 preserve any claims arising out of the sale. However, the DTA sets forth an exception for
8 a Consumer Protection Act (“CPA”) claim regardless of whether injunctive relief was
9 maintained so long as the property was owner-occupied residential real property.
10 Plaintiffs admit in the Amended Complaint that the property was being used as a rental
11 property at the time of the sale. Can Plaintiffs maintain the CPA claim given that they
12 failed to enjoin the sale and the foreclosed property was rented out to a tenant?

13 D. Plaintiffs’ Consumer Protection Act (“CPA”) claim is predicated on an unfair or
14 deceptive act in relation to the non-judicial foreclosure of the Property. Should the Court
15 grant NWTS and CitiMortgage summary judgment as to CPA claim where Plaintiffs have
16 failed to demonstrate any violations of the DTA?

17 IV. EVIDENCE RELIEF UPON

18 This motion is based upon:

- 19 1. Pleadings and documents filed with the court;
- 20 2. Exhibits attached hereto;
- 21 3. The Declaration of Jeff Stenman;
- 22 4. The Declaration of Francesca Kay Wurm; and
- 23 5. This motion and memorandum of law in support thereof.

24 V. LEGAL ARGUMENT

25 Pursuant to CR 56(c), summary judgment is appropriate when “there is no genuine issue
26 as to any material fact and ... the moving party is entitled to a judgment as a matter of law.”

27 *Ranger Ins. Co. v. Pierce County*, 164 Wash.2d 545, 552, 192 P.3d 886 (2008). Summary
28 judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and
29 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to
30 any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

1 When determining whether an issue of material fact exists, the court must construe all
2 facts and inferences in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wash.2d 195,
3 201, 961 P.2d 333 (1998). A genuine issue of material fact exists where reasonable minds could
4 differ on the facts controlling the outcome of the litigation. *Wilson v. Steinbach*, 98 Wash.2d 434,
5 437, 656 P.2d 1030 (1982).
6

7 A “material fact” for purposes of summary judgment includes a fact essential to support a
8 claim. *McDonald v. Murray*, 83 Wn.2d 17, 19, 515 P.2d 151 (1973). Importantly, the
9 nonmoving party “may not rely on speculation, [or] argumentative assertions that unresolved
10 factual issues remain.” *Ranger Ins. Co. v. Pierce County*, 164 Wash.2d at 552.
11

12 **B. There is no Genuine Issue of Material Fact as to the Defendants’ Compliance
13 with the Deed of Trust Act**

14 In support of the Wrongful Foreclosure claim, the Plaintiffs allege multiple deficiencies
15 with the trustee’s sale. Analyzing the pleadings and documents of which the court may take
16 judicial notice reveal that there are no genuine issues of material fact as to whether the non-
17 judicial foreclosure was conducted in compliance with the Washington Deed of Trust Act.

18 **1. The Trustee’s Sale was Timely as a Matter of Law**

19 Plaintiffs allege that since the trustee’s sale was held 182-days after the originally
20 scheduled sale date, the sale violated the 120-day postponement deadline set forth in RCW §
21 61.24.040. (Amended Complaint, ¶ 4.2). Summary Judgment is appropriate as Plaintiffs fail to
22 recognize the statutory procedures that apply when a trustee’s sale is stayed due to a borrower
23 filing for protection under the federal bankruptcy code.
24

25 Washington’s Deed of Trust Act allows a trustee to continue a non-judicial foreclosure
26 sale for not more than a total of 120 days. *See* RCW § 61.24.040(6). However, the Deed of Trust
Act provides additional guidelines if a borrower or grantor files for protection under the federal

1 bankruptcy code. *See* RCW § 61.24.130(4). If a trustee's sale has been stayed due to a
2 bankruptcy petition filing, a trustee may proceed with a trustee's sale following termination of
3 any injunction or stay on any date to which such sale has been properly continued within the
4 120-day limitation. *See id.* § 61.24.130(5).

5
6 Alternatively, the trustee may set a new sale date by recording a notice of trustee's sale so
7 long as the sale date is at least 45-days after the date of the bankruptcy court's order granting
8 relief from stay, discharging the debtor, or dismissing the case. *See* RCW § 61.24.130(4).

9 In this case, Plaintiffs fail to parse the distinction between continuing a sale and setting a
10 new sale date pursuant to a subsequent notice of trustee's sale. If a trustee decides to continue a
11 sale, a notice of postponement must be provided in accordance with RCW § 61.24.040(6).
12 However, if a trustee decides to issue a new notice of trustee's sale and set a new sale date, it
13 must among other things, record the statutory notice and comply with the posting and publication
14 requirements. *Id.* § RCW § 61.24.040(1)–(5).

15
16 Here, on October 31, 2011, the Bankruptcy Court terminated Plaintiffs' Chapter 7
17 bankruptcy by standard discharge. *See* Stenman Decl., Ex. 5, Pg. 1. Notably, the discharge
18 occurred more than 120-days after June 24, 2011, the sale date set forth by the original Notice of
19 Trustee's Sale. On November 8, 2011, NWTS recorded an Amended Notice of Trustee's Sale,
20 designating December 23, 2011 as the new sale date. (Amended Complaint, ¶ 3.5).

21
22 As the original Notice of Trustee's Sale was rendered untimely due to the bankruptcy
23 filing, NWTS recorded an Amended Notice of Trustee's Sale in accordance with the statutory
24 procedure set forth in RCW § 61.24.130(4). Plaintiffs fail to raise any genuine issue of material
25 fact as to whether the new sale date set by the Amended Notice of Trustee's Sale complied with
26 the 45-day statutory limitation, and thus the trustee's sale was timely as a matter of law.

1 **2. The Pre-Foreclosure Options Letter Requirement Established by the**
2 **Foreclosure Fairness Act is not Applicable to the Present Proceeding**

3 Plaintiffs allege that NWTs and CitiMortgage violated the Foreclosure Fairness Act
4 (“FFA”) by (1) failing to provide Plaintiff with the pre-foreclosure notices required by the FFA,
5 and (2) by failing to exercise due diligence as required by the FFA prior to recording the
6 Amended Notice of Trustee’s Sale. (Amended Complaint, ¶¶ 3.6–3.7, 4.3). However, the
7 undisputed facts as well as the terms of the Deed of Trust Act as amended by the FFA reveal that
8 the FFA requirement cited by the Plaintiffs is inapplicable.

9 The Foreclosure Fairness Act amended the Deed of Trust Act effective July 22, 2011,
10 incorporating additional statutory safeguards in order to protect and assist homeowners from
11 unnecessary foreclosures. SSHB 1362, Chapter 58, Laws of 2011. Pursuant to the FFA
12 amendments, a trustee, beneficiary, or authorized agent cannot issue a notice of default prior to
13 satisfying the initial contact requirements. *See* RCW § 61.24.031(1)(a).

14 The initial contact requirement directs a beneficiary or authorized agent to make “initial
15 contact” with the borrower by letter to provide the borrower with certain information, including
16 the right to request a meeting to discuss options to avoid foreclosure. *See id.* §
17 61.24.031(1)(b)–(f). This letter has been referred to as the “Notice of Pre-Foreclosure Options”
18 letter by the Washington Department of Commerce.¹

19 Notably, the initial contact requirement only applies to deeds of trust that are recorded
20 against “owner-occupied residential real property.” RCW § 61.24.031(7)(a). In turn, owner-
21 occupied residential real property is defined by statute as property that is the principal residence
22
23
24
25

26 ¹ Department of Commerce, Memorandum re: Notice of Pre-Foreclosure Options, June 1, 2011.
<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9831&Mid=846&wversion=Staging>

1 of the borrower that consists solely of a single-family residence, a residential condominium unit,
2 or a residential cooperative unit. *Id.* § 61.24.005(10), (13).

3 In this case, the Notice of Default was issued to Plaintiffs on February 5, 2011. Stenman
4 Decl. ¶ 7. As the FFA amendments went into effect July 22, 2011, the initial contact letter or
5 notice of pre-foreclosure options letter requirement was not a prerequisite to the issuance of the
6 Notice of Default. Accordingly, the Plaintiffs' claim that CitiMortgage and NWTS failed to
7 comply with the FFA pre-foreclosure notice requirement lacks merit as a matter of law.

8 Additionally, even assuming *arguendo* that the FFA amendments did apply to the Notice
9 of Default, the FFA initial contact requirement does not apply as the Property is not "owner-
10 occupied residential real property". Plaintiffs expressly admit that the property was generating
11 rental income. (Amended Complaint, ¶¶ 3.13, 4.5).

12
13
14 **C. Plaintiffs are Precluded by the Waiver Doctrine from Maintaining a Post-Sale
CPA Claim**

15 Pursuant to the waiver doctrine, Plaintiffs are precluded from maintaining a post-sale
16 CPA claim given that they failed to restrain the trustee's sale and the Property was not owner-
17 occupied at the time it was foreclosed.

18 In interpreting the DTA, the Washington Supreme Court has stated that the statutory
19 procedure set forth in RCW § 61.24.130 to restrain a trustee's sale is "the only means by which a
20 grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and
21 foreclosure." *Plein v. Lackey*, 149 Wash.2d 214, 225-26, 67 P.3d 1061 (2003) (emphasis added).

22 Pursuant to the waiver doctrine, Washington courts have held that post-sale challenges to
23 a nonjudicial foreclosure are waived when a party: "(1) received notice of the right to enjoin the
24 sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and
25 (3) failed to bring an action to obtain a court order enjoining the sale." *Steward v. Good*, 51
26

1 Wash.App. 509, 515–17, 754 P.2d 150 (1988); *Koegel v. Prudential Mut. Sav. Bank*, 51
2 Wash.App. 108, 114, 752 P.2d 385 (1988); *Peoples Nat'l Bank of Wash. v. Ostrander*, 6
3 Wash.App. 28, 491 P.2d 1058 (1971).

4 In 2009, the legislature enacted RCW § 61.24.127 to set forth certain statutory exceptions
5 to the waiver rule. Thus, while failure to bring a civil action to enjoin a nonjudicial foreclosure
6 does not necessarily waive a borrower's ability to bring forth a claim post-sale, the Deed of Trust
7 Act is explicit in limiting the nature of such post-sale claims.² These claims cannot seek any non-
8 monetary relief: "The claim may not seek any remedy at law or in equity other than monetary
9 damages." *Id.* § 61.24.127(2)(b) (*emphasis added*).

10
11 Notably, the statutory exceptions to the waiver rule do not apply when to the foreclosure
12 of property that is not owner-occupied residential real property. RCW § 61.24.127(3).
13 "Residential real property" is defined by the DTA as "property consisting solely of a single-
14 family residence, a residential condominium unit, or a residential cooperative unit." RCW §
15 61.24.005(13).

16
17 Here, Plaintiffs expressly admit that the property was generating rental income and was
18 being rented out to a tenant at the time of foreclosure. (Amended Complaint, ¶¶ 3.13, 4.5). There
19 is also no genuine dispute as to whether Plaintiffs failed to restrain the trustee's sale of the
20 Property. It is also clear from the Amended Complaint that Plaintiffs had actual notice of the
21 alleged defenses, if any, to the sale and the right to restrain the sale by virtue of the statutorily
22 provided notices. Additionally, Plaintiffs had constructive notice as the Amended Notice of
23 Trustee's Sale and Notice of Trustee's Sale were both recorded in the public record.
24

25
26 ² The post-sale claims are limited to (1) common law fraud or misrepresentation, (2) consumer protection
act violations, (3) failure of the trustee to materially comply with the Deed of Trust Act, and (4) violation
of RCW § 61.24.026. *See* RCW § 61.24.127(1).

1 Accordingly, NWTS and CitiMortgage are entitled to summary judgment as Plaintiffs are
2 precluded from maintaining a post-sale CPA claim on a foreclosed rental property. Similarly, to
3 the extent Plaintiffs seek injunctive relief against NWTS and CitiMortgage, Plaintiffs' are
4 statutorily precluded from seeking any non-monetary damages.

5
6 **D. NWTS and CitiMortgage are Entitled to Summary Judgment as to Plaintiffs'
CPA claim**

7 Even assuming Plaintiffs' had enjoined the sale and the property was owner-occupied
8 residential real property, summary judgment as to the CPA claim is appropriate as the trustee's
9 sale complied with the Deed of Trust Act as a matter of law.

10 The Consumer Protection Act ("CPA") prohibits "[u]nfair methods of competition and
11 unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020.
12 To state a prima facie claim under the CPA, a plaintiff must "establish five distinct elements: (1)
13 unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact;
14 (4) injury to plaintiff in his or her business or property; and (5) causation." *Hangman Ridge*
15 *Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780 (1986). Failure to satisfy
16 even one of the elements is fatal to a CPA claim. *Sorrel v. Eagle Healthcare*, 110 Wn.App. 290,
17 298, 38 P.3d 1024 (2002).

18 A per se unfair trade practice exists when a statute that has been declared by the
19 Legislature to constitute an unfair or deceptive act in trade or commerce has been violated.
20 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 786, 719 P.2d
21 531 (1986).

22 Pursuant to the Deed of Trust Act, as applicable to the present proceeding, it is a per se
23 unfair act in trade or commerce to fail to initiate contact through the notice of pre-foreclosure
24 options letter. *See* RCW § 61.24.135(2)(c). As set forth above, the Foreclosure Fairness Act
25
26

1 amendments did not apply to the Notice of Default at the time it was issued.³ Accordingly,
2 Plaintiffs must satisfy each of the five elements of a prima facie CPA claim.

3 Here, Plaintiffs cannot satisfy the unfair trade or practice element as they have failed to
4 demonstrate that there is a genuine issue of material fact as to the Defendants NWTs and
5 CitiMortgage's compliance with the Deed of Trust Act.
6

7 Additionally, Plaintiffs cannot establish a causal link between the allegedly unfair or
8 deceptive acts and the injury suffered by Plaintiffs. The Wrongful Foreclosure claim is
9 predicated on an erroneous interpretation of the statutory non-judicial foreclosure procedure⁴ and
10 the assumption that the Foreclosure Fairness Act amendments applied to the issuance of the
11 Notice of Default. In regards to causation, Plaintiffs do not dispute their default under the terms
12 of the Note. Notably, but for Plaintiffs' default on their contractual obligations, the Property
13 would not have been sold pursuant to a trustee's sale.
14

15 As the CPA claim is entirely derivative of the alleged Deed of Trust violations, Plaintiffs'
16 cannot establish all five of the CPA claim elements as a matter of law.

17 VI. CONCLUSION

18 Plaintiffs' Wrongful Foreclosure and Consumer Protection Act claims present no genuine
19 issues of material fact. Based on the foregoing, NWTs and CitiMortgage respectfully request
20 that this Court enter summary judgment in favor of NWTs and CitiMortgage as to all causes of
21 action.
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³ *Supra* Part V.B.2.

⁴ *Supra* Part V.B.1.

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VII. PROPOSED ORDER

A proposed order granting the requested relief accompanies this motion.

DATED this 27 day of April, 2012.

ROUTH CRABTREE OLSEN, P.S.

JORDAN RAMIS, P.C.

By 
Sakae Sakai, WSB # 44082
Attorney for Defendant Northwest
Trustee Services, Inc.

By /s/ Scott S. Anders
Scott S. Anders, WSB # 19732
Attorney for Defendant CitiMortgage, Inc.

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The Honorable Judge Kimberly Prochnau

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,
Plaintiff,

No. 12-2-01729-8 SEA

v.

**SUPPLEMENTAL BRIEF IN FAVOR
OF AMENDED JOINT MOTION FOR
SUMMARY JUDGMENT**

NORTHWEST TRUSTEE SERVICES, INC.;
CITIMORTGAGE INC.; NATIONAL LEGAL
HELP CENTER, INC., and JOHN DOES 1-10,
Defendants.

COMES NOW Defendant Northwest Trustee Services, Inc. ("NWTS"), by and through its counsel of record, Sakae S. Sakai of Routh Crabtree Olsen, P.S., and submits this Supplemental Brief in support of its Amended Joint Motion for Summary Judgment on the remaining issues in this matter.

I. STATEMENT OF RELEVANT FACTS

Notice of Trustee's Sale. On March 22, 2011, NWTS recorded a Notice of Trustee's Sale in the Official Records of King County, Washington as Instrument No. 20110322000728. See Amended Complaint, Ex. 6. ("NOTS-1") The Notice of Trustee's Sale designated June 24, 2011 as date of the nonjudicial foreclosure. *Id.*

The Bankruptcy. On June 20, 2011, Plaintiffs filed a Chapter 7 petition in the United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy Court"). Amended Declaration of Jeff Stenman in Support of Amended Motion for Summary Judgment, ¶

1 9. Dkt # 32. (“Stenman Decl.”).

2 As a result of the bankruptcy filing, NWTS postponed the trustee’s sale multiple times
3 with a final postponement date of September 30, 2011. *Id.* The postponed trustee’s sale was
4 ultimately cancelled due to the ongoing bankruptcy proceeding. *Id.*

5 **Post-Bankruptcy Notice of Trustee’s Sale.** On October 31, 2011, the Bankruptcy Court
6 closed the Plaintiffs’ Bankruptcy proceeding. *See* Stenman Decl., Exhibit 4.

7 On November 8, 2011, NWTS recorded an Amended Notice of Trustee’s Sale in the
8 Official Records of King County, Washington as Instrument No. 20111108001313. Amended
9 Complaint, ¶ 3.5. (“NOTS-2”) The NOTS-2 designated December 23, 2011 as date of the
10 nonjudicial foreclosure. *See id.*

11 On or about November 8, 2011, NWTS mailed by certified and first class mail the
12 NOTS-2 to the Plaintiffs. Stenman Decl. ¶ 11. On or about November 9, 2011, NWTS posted the
13 NOTS-2 on the Property. *Id.*

14 **Non-judicial Foreclosure.** On December 23, 2011, NWTS conducted a non-judicial
15 foreclosure sale of the Property. Stenman Decl. ¶ 12.

16 **Procedural Posture.** On April 27, 2012, Defendants NWTS and CitiMortgage, Inc. filed
17 their Amended Joint Motion for Summary Judgment. Dkt. # 31. On June 29, 2012, an Order was
18 entered granting Summary Judgment as to all causes of action with the exception of whether the
19 trustee’s sale conducted by NWTS violated the 120-day postponement period. *See* Dkt # 45.

20 **II. STATEMENT OF THE ISSUE**

21 Whether the trustee’s sale on December 23, 2011 violated the 120-day continuance rule
22 set forth in RCW § 61.24.040(6).

23 **III. LEGAL ARGUMENT**

24 Washington’s Deed of Trust Act (“DTA”) allows a trustee to continue a non-judicial
25 foreclosure sale for not more than a total of 120 days. *See* RCW § 61.24.040(6). In this case,
26 Plaintiffs allege that the trustee’s sale violated the 120-day rule. However, analyzing the DTA

1 procedures applicable to a trustee's sale, when that sale is stayed due to a bankruptcy, reveals
2 that the trustee's sale was timely.

3 **A. The DTA provides a trustee with two separate options in the situation where a**
4 **trustee's sale has been stayed as a result of a bankruptcy filing.**

5 First, once the bankruptcy court has granted relief from stay, closed or dismissed the
6 case, or has discharged the debtor with the effect of removing the stay, the trustee may set a new
7 sale date not less than 45-days from the date of the bankruptcy court order. RCW § 61.24.130(4).
8 Importantly, the trustee can only set this sale by issuing a new notice of trustee's sale at least 30-
9 days before the new sale date. *Id.* § 61.24.130(4)(a). This requires among other things, recording,
10 posting, publishing, and serving the new notice of trustee's sale. *See id.* § 61.24.040(1)(a)-(f).

11 Alternatively, a trustee can proceed with a trustee's sale following termination of the
12 bankruptcy stay so long as such sale has been properly continued in accordance with the 120-day
13 rule set forth in RCW 61.24.040(6). *Id.* § 61.24.130(5). Unlike the first option, a trustee does not
14 need to record a new notice of trustee's sale. The trustee may proceed so long as the original sale
15 date set forth in the pre-bankruptcy notice of trustee's sale has not been continued by the trustee
16 more than 120-days to accommodate the bankruptcy.

17 In this case, there is no genuine issue of material fact as to whether (1) NWTs recorded
18 the NOTS-1, setting a sale date for June 24, 2011, (2) whether the Plaintiffs filed for bankruptcy
19 on June 20, 2011, staying the June 24, 2011 sale date, and (3) whether the bankruptcy was closed
20 on October 31, 2011. There is also no dispute as to whether NWTs recorded a new notice of
21 trustee's sale, or NOTS-2, on November 8, 2011. *See Amended Complaint*, ¶ 3.5.

22 Given the undisputed facts, it is evident that NWTs followed the statutory procedure set
23 forth in RCW § 61.24.130(4). Once the bankruptcy was closed on October 31, 2011, NWTs
24 recorded the NOTS-2 on November 8, 2011. The new sale date set forth in the NOTS-2 was
25 December 23, 2011, which satisfied the requirement that the new sale be set at least 45-days
26 from the date of the bankruptcy court order closing the bankruptcy. *See id.*

1 Notably, Plaintiffs dispute whether NWTS violated the 120-day continuance rule, and do
2 not allege that NWTS violated RCW § 61.24.130(4). As the NOTS-2 set the new sale date for
3 December 23, 2011, the *same day the trustee's sale occurred*, there is no genuine issue of
4 material fact as to whether the sale violated the 120-day continuance rule given that the sale
5 scheduled for December 23, 2011 was never continued.

6 **B. Recording a New Notice of Trustee's Sale is not a Continuance of a Prior Sale**
7 **Date set by a Previous Notice of Trustee's Sale**

8 Analyzing the difference between continuing a sale and recording a new notice of
9 trustee's sale provides clarity as to this issue. Ultimately, the notice of trustee's sale designates a
10 specific sale date. The continuance process allows a trustee to postpone the sale date set by the
11 notice of trustee's sale.

12 **1. Continuing a Pre-existing Sale versus Setting a New Sale**

13 The DTA sets forth specific procedures a trustee must follow in order to continue a
14 trustee's sale. The effect the continuance, the trustee must give notice of the new time and place
15 of the sale by mail, oral proclamation, or publication. *See* RCW § 61.24.040(6). Importantly, the
16 trustee continues a sale date designated in the notice of trustee's sale. *See id.* § 61.24.040(4).

17 In comparison, the DTA imposes separate requirements when a trustee issues a notice of
18 trustee's sale. Among other things, the trustee must serve a notice to specific parties, record the
19 notice, publish the notice, and also post the notice in a conspicuous place on the foreclosed
20 property. *See* RCW § 61.24.040(1), (3). The trustee must also provide a separate "Notice of
21 Foreclosure" setting forth reinstatement and arrearage figures. *Id.* § 61.24.040(2).

22 Importantly, RCW § 61.24.130(4) sets forth steps a trustee must follow in recording a
23 new notice of trustee's sale, not for continuing an old sale set by a pre-bankruptcy notice of
24 trustee's sale. Summary judgment is appropriate as the NOTS-2 is *not* a continuance of the
25 NOTS-1, but instead, is a new notice of trustee's sale designating a new sale date and time.

26 ///

1 **2. Plaintiffs' Interpretation of the DTA would Render RCW § 61.24.130(3)**
2 **and (4) Meaningless**

3 The DTA expressly provides the trustee with specific procedures to follow in the
4 situation where a borrower files for bankruptcy or restrains the sale. If the bankruptcy or
5 litigation then takes more than 120-days, the DTA directs the trustee to record a new sale date
6 through issuance of a new notice of trustee's sale. *See* RCW § 61.24.130(3) and (4).

7 To apply the Plaintiffs' argument would render RCW § 61.24.130(3) and (4) meaningless
8 as any bankruptcy or litigation that takes more than 120-days would result a violation of the 120-
9 day continuance rule for any subsequent trustee's sale. This would be in direct violation of the
10 principle of statutory interpretation that "Statutes must be interpreted and construed so that all
11 language used is given effect, with no portion rendered meaningless or superfluous." *Davis v.*
12 *Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999).

13 **VII. PROPOSED ORDER**

14 A proposed order granting the requested relief accompanies this motion.

15 DATED this 12 day of July, 2012.

16
17 **ROUTH CRABTREE OLSEN, P.S.**

18
19 
20 By _____
21 Sakae Sakai, WSB # 44082
22 Attorney for Defendant Northwest
23 Trustee Services, Inc.
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE KING COUNTY

DANIEL J. WATSON and KETWARIN
ONNUM, husband and wife,

Plaintiffs,

vs.

NORTHWEST TRUSTEE SERVICES, INC.;
CITIMORTGAGE, INC.; NATIONAL LEGAL
HELP CENTER, LLC.; and JOHN DOE 1-10

Defendants.

NO. 12-2-01729-8 SEA

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS NORTHWEST
TRUSTEE SERVICES AND
CITIMORTGAGE'S JOINT MOTION
FOR SUMMARY JUDGMENT**

I. RELIEF REQUESTED

Plaintiffs, DANIEL J. WATSON and KETWARIN ONNUM, by and through their attorney of record, submit this Supplemental Brief in Support of its Opposition to Defendants' Joint Motion for Summary Judgment on the remaining issues in the matter. Genuine issues of material fact exist which preclude Defendants' Motion for Summary Judgment.

II. STATEMENT OF RELEVANT FACTS

1. On February 5, 2011, a Notice of Default and Loss Mitigation Declaration were mailed to Plaintiffs. *Id.*, ¶ 5, Exh. 4.

COPY

1 2. On March 22, 2011, NWTS recorded a Notice of Trustee Sale under King County
2 Record No. 20110322000728 (hereinafter "NoTS1"). *Id.*, ¶ 6, Exh. 5. The Trustee's sale was
3 scheduled to take place on June 24, 2011. *Id.*

4 3. On June 20, 2011, Plaintiffs filed a Chapter 7 Petition in United States
5 Bankruptcy Court for the Western District of Washington. *Id.*, ¶ 7. This resulted in the
6 postponement of the initial Trustee sale. *Id.*

7 4. On July 22, 2011, Washington's Foreclosure Fairness Act ("FFA" or "Act")
8 amended the Deed of Trust Act, Chapter 61.24 RCW. The FFA requires specific notices to be
9 issued to a borrower before a Trustee's sale can be scheduled or held. These pre-foreclosure
10 notice requirements substantially changed the procedures required for a lender to issue both a
11 Notice of Default and a Notice of Trustee's sale. RCW 61.24.030-031.

12 5. On September 22, 2011, Plaintiffs' bankruptcy debts, including the mortgage
13 serviced by Defendant CitiMortgage, were discharged. *See Aff. of Watson*, ¶ 7, Exh. 6.

14 6. On November 8, 2011, Defendant NWTS recorded an Amended Notice of
15 Trustee Sale under King County Record No. 20111108001313 (hereinafter "NOTS-2¹"). *Id.*, ¶ 8,
16 Exh. 7. The sale date was set for December 23, 2011. *Id.*

17 7. Prior to recording NOTS-2, Defendants NWTS did not initiate contact with
18 Plaintiffs and exercise due diligence, nor did they issue a Notice of Default that complied with
19 the requirements of RCW 61.24.031. *Id.*, ¶ 8.

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24 ¹ There were two Amended Notice of Trustee Sale documents recorded on the same date, so technically the second
25 Amended Notice of sale is the third Notice, but since NW Trustee Services has referred to the third Amended Notice
as "NOTS-2" we will refer to it the same to avoid confusion.

1 8. Defendants NWTS referenced the NoTS1 but not the NOTS-2 in its Trustee's
2 Deed recorded on January 10, 2012. *Id.*, Exh. 9. Defendants NWTS also stated in the Trustee's
3 Deed that "[a]ll legal requirements and all provisions of [Plaintiffs'] Deed of Trust have been
4 complied with, as to acts to performed and notices to be given, as provided in chapter 61.24." *Id.*
5 However, the evidence shows that Defendants NWTS did not comply with the requirements of
6 RCW 61.24, as amended by the FFA.

7 9. On December 23, 2011, Plaintiffs' Property was sold by NWTS for \$348,000.
8 The trustee's sale took place 182 days after the originally scheduled sale date. *Id.*, Exh. 9.

9 10. Had the Plaintiffs received the pre-foreclosure notices required by the FFA, they
10 would have taken advantage of the FFA and obtained a foreclosure mediation referral from a
11 HUD Counselor or attorney to stop the sale. *Id.*

12 11. On April 27, 2012, Defendants NWTS and CitiMortgage filed a Joint Motion for
13 Summary Judgment. On June 7, 2012, Plaintiffs filed an Opposition to Defendants' Joint Motion
14 for Summary Judgment.

15 12. On June 29, 2012, a hearing was held, with oral argument, on Defendants' Joint
16 Motion for Summary Judgment. Defendant CitiMortgage was dismissed as to all claims. The
17 Court requested that Plaintiffs and Defendant NWTS provide supplemental briefs regarding the
18 procedures NWTS was required to follow to properly issue a Notice of Trustee Sale after
19 Plaintiffs discharge in bankruptcy and the 120 day limit for postponement of a Trustee Sale had
20 lapsed. The Court also held that whether Plaintiffs' CPA claims could withstand summary
21 judgment was dependent on whether the Court found NWTS to have violated the FFA.
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III. STATEMENT OF ISSUE

1. Did Defendant NWTs comply with the Deed of Trust Act, as amended by the Foreclosure Fairness Act, when it issued its Notice of Trustee Sale on November 8, 2012?

IV. EVIDENCE RELIED UPON

Plaintiff relies upon the Affidavit of Daniel Watson and the Exhibits attached thereto, Declaration of Michele McNeill and the Exhibits attached thereto, and the records and files herein.

V. ARGUMENT AND AUTHORITY

Because the Deed of Trust Act, chapter 61.24 RCW, dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, "lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor." *Albice v. Premier Mortg. Services of Washington, Inc.*, 276 P.3d 1277, 1281 (Wash. May 24, 2012); *Amresco independence Funding, Inc. v. SPS Props., LLC*, 129 Wn.App. 532, 537, 119 P.3d 884 (2005). A trustee is not authorized to conduct a sale after 120 days from the original sale date "without reissuing the statutory notices." *Albice*, 276 P.3d at 1282.

A. The NOTS-2 Was Intended To Be a Continuance in Violation of the 120 day rule or it was a New Notice and NWTs Failed to Comply with the Notice and Publication Requirements.

RCW 61 .24.130(4) does not apply if the trustee's sale has been continued under RCW 61.24.040(6). *First-Citizens Bank & Trust Co. v. Cordet*, 2011 WL 4929041, *2 (Wash.App. Div. 2). While most steps in a nonjudicial foreclosure are stayed by a grantor's bankruptcy filing, continuances of the sale date are not. *Matter of Roach*, 660 F.2d 1316, 1318-19 (9th Cir. 1981). If the 120 day continuance period has not expired before relief from the bankruptcy stay

1 is granted or the stay lifted, RCW 61.24.130(5) provides that the trustee may proceed under the
2 initial notice of sale on any date within the 120 day period.

3 If the 120 day period has expired before relief from the bankruptcy stay is granted or the
4 stay lifted, RCW 61.24.130(4) allows the trustee to set a new sale date *not less than* 45 days after
5 the stay expires or relief from the stay is granted (emphasis added). At least 30 days before the
6 sale the trustee must record, mail and post or serve the new notice of trustee's sale in compliance
7 with RCW 61.24.040(1)(a)-(f). RCW 61.24.130(4)(a). The trustee must publish the new notice of
8 sale on two separate occasions in a legal newspaper in the county where the property is situated.
9 RCW 61.24.130(4)(b). As with any new notice, the trustee can continue the sale for up to 120
10 days. RCW 61.24.130(6).

11 But, RCW 61.24.130(4) is predicated on a proper notice of default having been issued
12 prior to the notice of Trustee's sale. Had NWTS been within the 120 day continuance rule, then
13 the NOTS-2 would relate back to the notice of default that was issued prior to the enactment of
14 the FFA. But, once NWTS had to issue a new notice of sale, it was required to reissue a notice
15 of default in compliance with RCW 61.24.030(1)-(9), as amended by the FFA. *Albice*, 276 P.3d
16 at 1282.

17 In the present matter, NWTS admits that the December 23, 2011 sale date was beyond
18 the 120 day continuance period. If the NOTS-2 was intended to be a continuance of the NoTS1,
19 then the NOTS-2 was void and the sale wrongful. If, on the other hand, the NOTS-2 was a
20 "new" notice then the NOTS-2 was still void and the sale wrongful because NWTS failed to
21 publish the notice as required by RCW 61.24.130(4)(b) and it failed to reissue the statutory
22 notice of default as required by *Albice*.

23 Although NWTS refers to its NOTS-2 as a "new" notice, the notice itself is entitled
24 "Amended Notice of Trustee Sale", and the Trustee Deed refers to the NoTS1 not the NOTS-2.
25

1 If the NOTS-2 was in fact a new notice, then why the need to amend the initial notice, and why
2 refer to the NoTS1 in the Trustee Deed? Because NWTS did not consider the NOTS-2 a new
3 notice. The NOTS-2 was intended to continue the original sale date which is why NWTS failed
4 to publish the NOTS-2 as required by RCW 61.24.130(4)(b). When a notice of trustee sale is
5 continued, re-publishing of the notice is not required. RCW 61.24.040(6). And, if the NOTS-2
6 was in fact a new notice of sale, then NWTS was required to reissue a notice of default pursuant
7 to *Albice* and publish the NOTS-2 which it admits in its brief it did not do (and discovery would
8 ultimately have disclosed). Thus, either way you look at it, NWTS failed to comply with the
9 foreclosure requirements by either violating the 120 day continuance rule or by violating the
10 post-stay publication requirements of RCW 61.24.130(4)(b) or by failing to reissue a notice of
11 default that under *Albice* is required when a new notice of sale is issued outside the 120 day
12 continuance period.

13 **B. In Order To Properly Record a New Notice of Trustee's Sale on November 8, 2011,**
14 **Defendant NWTS Had To Comply With The FFA, Which Went Into Effect on July**
15 **21, 2011.**

16 Defendant NWTS acknowledges that NOTS-2 recorded on November 8, 2011, fell
17 outside the 120-day time limit imposed by RCW § 61.24.040(6). According to NWTS, "the
18 NOTS-2 is *not* a continuance of the NOTS- 1, but instead, is a new notice of trustee's sale
19 designating a new sale date and time." *See Defendant's Supplemental Brief in Favor of Amended*
20 *joint Motion of Summary Judgment*, p.4. This very fact is fatal to NWTS' argument, because at
21 the time NOTS-2 was issued, the FFA was in effect, and set forth new requirements that a lender
22 or their agent must follow in order to properly record a notice of trustee's sale.

23 NWTS did not provide Watson with the notice of default required by *Albice* and RCW
24 61.24.030(8) before it recorded its "new" notice of Trustee's sale. NWTS did not fulfill the
25

1 requirements of RCW 61.24.030(9) that must be met before a notice of default can be issued.
2 NWTS admits that it did not reissue a statutory notice of default prior to recording the NOTS-2.
3 NWTS failed to comply with the initial contact and due diligence requirements of RCW
4 61.24.031(5) that are required prior to issuing a notice of default and notice of trustee's sale.
5 RCW 61.24.031(1)(a). The initial contact requirements include a letter with the following
6 language:

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

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

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

18 *If you filed bankruptcy or have been discharged in bankruptcy, this*
19 *communication is not intended as an attempt to collect a debt from you*
20 *personally, but is notice of enforcement of the deed of trust lien against the*
21 *property. If you wish to avoid foreclosure and keep your property, this notice sets*
22 *forth your rights and options." . . .*

23 RCW 61.24.031(c)(1)(emphasis added). Thus, even borrowers who have filed bankruptcy or
24 have been discharged in bankruptcy are entitled to receive this initial contact letter before a new
25 notice of trustee's sale can be recorded.

The NOTS-2 was invalid either because it was a continuance of the initial notice and
outside the 120 day period or because NWTS failed to publish the NOTS-2 in a legal newspaper
as required by RCW 61.24.030(4)(b) or because NWTS failed to comply with the new initial

1 contact and statutory notice of default requirements before it issued its new notice of trustee's
2 sale.

3
4 **C. Because Defendant NWTS Violated the FFA, It Also Violated the Washington
5 Consumer Protection Act.**

6 As set forth above and in Plaintiffs' Opposition, NWTS failed to comply with the new
7 initial contact and statutory notice of default requirements before it issued its new notice of
8 trustee's sale. Accordingly, Plaintiffs' CPA claim should survive summary judgment.

9 **VI. PROPOSED ORDER**

10 A Proposed Order granting the relief requested accompanies this brief.

11 Dated this 27th day of July, 2012.

12 SKYLINE LAW GROUP PLLC

13
14 By: Michele K. McNeill
15 Michele K. McNeill, WSBA # 32052
16 Attorney for Plaintiffs
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CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1362

62nd Legislature
2011 Regular Session

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

Speaker of the House of Representatives

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

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

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

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1362

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

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

READ FIRST TIME 02/25/11.

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

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

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

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

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

7 (2) Therefore, the legislature intends to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 Can you pay and stop the foreclosure process?

33 Do you dispute the failure to pay?

34 Can you sell your property to preserve your equity?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (8) As used in this section:

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

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

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

22 **"FORECLOSURE LOSS MITIGATION FORM**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) Securing a commercial loan;

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

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

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

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

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

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

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

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

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

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

24 (d) Retired judges of Washington courts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

--- END ---