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Nonjudicial Foreclosures of Commercial Loans

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Introduction

This article will discuss the nonjudicial foreclosure process under Washington law, as it applies to foreclosures of commercial loans. Consumer loans is beyond the scope of this article. Although foreclosures of consumer loans have the same main elements as commercial foreclosures—an event of default, a formal notice of default, notices of when the trustee's sale will take place, and the trustee's sale itself—there are important differences between the two. Certain provisions in the deed of trust act only apply to consumer loans. Those provisions will generally not be discussed in this article.

In this article, commercial loan and commercial foreclosure have the same meaning as in Washington's deed of trust act, Chapter 61.24 RCW. A commercial loan is a loan that is not made primarily for personal, family or household purposes. RCW 61.24.005(4).

A. Timeline

As the discussion below will show, the nonjudicial foreclosure process is highly technical. There are a number of notices and deadlines, which vary depending on the nature of the property being foreclosed on. To put the discussion of the various elements into context, a timeline of the overall process is included as **Appendix C**.

B. Requirements to Conduct a Nonjudicial Foreclosure

Most commercial foreclosures in the State of Washington are nonjudicial foreclosures. It is the rare case where a commercial lender is better off foreclosing judicially.

However, it is important to remember that the nonjudicial foreclosure is the exception. The default foreclosure process under Washington law is still a judicial foreclosure. To take advantage of the more efficient nonjudicial process, certain requirements have to be met.

General Requirements. The general requirements to conduct a nonjudicial foreclosure are:

1. That the deed of trust contains a power of sale;

2. That the real property is not used principally for agricultural purposes (crops, livestock or aquatic goods);
3. That the beneficiary/lender has not started some other action to collect on the secured obligation, such as a lawsuit (often referred to as the "single-action rule");
4. That the deed of trust has been recorded; and
5. That the trustee has a physical presence/street address in the State of Washington where personal service of process can be made.

RCW 61.24.030(1), (2), (4) – (6).

Residential Properties. There is an additional requirement if the property being foreclosed on is a "residential real property" (a single-family home, a residential condominium unit, or a residential cooperative unit). In those cases, the trustee must have proof that the lender owns the promissory note secured by the deed of trust. A declaration under penalty of perjury to that effect from the lender is enough. RCW 61.24.030(7).

At first glance this requirement seems to apply only to consumer loans. However, it may also apply to commercial loans where the collateral includes a real property that qualifies as a "residential real property".

For example, assume the owner of a small manufacturing business takes out a loan to acquire a new piece of equipment for his business (a commercial loan). As security, the lender is granted a security interest in the equipment. Assume further that the lender would not approve the loan without some additional security. To meet that requirement, the owner agrees to grant the lender a deed of trust against his own home. That loan would still be a commercial loan. The fact that part of the collateral is used for personal/family purposes does not transform it into a consumer loan. What matters is the purpose of the loan, not the purpose of the collateral. If the purpose of the loan is a business purpose, the loan is a commercial loan even if collateral is used for personal purposes. Castronuevo v. General Acceptance Corp., 79 Wn. App. 747, 748-49, 905 P.2d 387 (1995) (overruled on the issue of attorney fees). However, since the house is a

"residential real property", if and when the lender forecloses on its deed of trust, the additional requirement in RCW 61.24.030(7) would seem to apply.

C. The Default

The first step in any foreclosure process is the default; meaning, the borrower's and/or grantor's failure to perform some obligation secured by the deed of trust. The most common and obvious event of default is payment default. Most deeds of trust secure a promissory note or other payment obligation.

However, a deed of trust can secure just about any obligation recognized under the law. And an event of default other than payment default can trigger the power to sell:

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

...

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

RCW 61.24.030(3) (emphasis added).

In commercial loans, borrowers often assume contractual obligations toward their lenders in addition to the obligation to repay the loan. For example, the borrower may agree not to grant junior deeds of trust against the collateral. Or, the borrower may agree to begin and complete construction within a certain time frame.

These other obligations can become important in commercial foreclosures. They affect a borrower's ability to reinstate the loan and avoid a foreclosure. This topic will be discussed in greater detail below, but for now it should be noted that the borrower/grantor must cure *all* events of default in order to reinstate the loan; simply paying the arrearage may not be enough.

D. Notice of Default

The second step in the nonjudicial foreclosure process is to issue a formal Notice of Default. Washington's deed of trust act does not spell out a particular form of notice, but does spell out what has to be included in the Notice of Default.

Required Content. The Notice of Default must have the following information:

1. A description of the property subject to the deed of trust;
2. The county(ies) in which the deed of trust was recorded, and each recording number;
3. A statement that the beneficiary has declared a default, and a "concise statement" of the default;
4. An itemized account of the arrearage;
5. An itemized account of other charges, costs or fees the borrower may be obligated to pay to reinstate the deed of trust before the Notice of Trustee's Sale is issued (there has to be at least 30 days between the Notice of Default and the Notice of Trustee's Sale);
6. A clear and conspicuous statement that the total of the amounts in no. 4 and 5 must be paid to reinstate the deed of trust before the Notice of Trustee's Sale is issued;
7. A statement that a Notice of Trustee's Sale may be issued and the property sold if the default(s) is/are not cured;
8. A statement that issuing the Notice of Trustee's Sale will have the effect of increasing the costs and fees, making the default public, and advertising the property for sale;
9. A statement that the effect of the sale will be to deprive the grantor of all its interest in the property; and
10. A statement that the borrower, grantor and any guarantor has recourse to the courts to contest the default pursuant to RCW 61.24.130.

RCW 61.24.030(8)(a) – (j).

In 2009, the Washington State Legislature enacted additional requirements for consumer loans. For certain deeds of trust is against "owner-occupied residential real property", the trustee must engage in workout discussions with the borrower before it can issue a Notice of Default, and the Notice of Default must have certain additional information spelled out in the statute. RCW 61.24.031(1), (9). These new requirements

only apply to deeds of trust issued in the years 2003-2007, and are set to expire at the end of 2012. They do not apply to commercial loans. RCW 61.24.031(7)(a)(i).

Delivery. The Notice of Default has to be mailed to the grantor's last known address by first-class and registered/certified mail. The notice must also be posted on the property or personally served on the grantor. RCW 61.14.030(8).

Residential Real Property. If the property foreclosed against is a residential real property (defined above), the Notice of Default must also contain (i) the name and address of the owner of the promissory note or other secured obligation and (ii) the name, address and phone number of the loan servicer, if any. RCW 61.24.030(8)(l).

Owner-occupied Residential Real Property. If the property foreclosed against is an *owner-occupied* residential real property, the Notice of Default has to contain certain language spelled out in the statute regarding the options to stop the foreclosure process and resources to get advice on what to do. RCW 61.24.030(8)(k).

"Residential real property" is defined above. "Owner-occupied" is defined as the borrower's principal residence. RCW 61.24.005(8).

Again, these requirements may or may not apply in a commercial context. If the borrower pledged his/her principal residence as collateral for a business loan, the property will most likely qualify as an owner-occupied residential real property, in which case both subsections (k) and (l) would seem to apply.

E. Notice of Trustee's Sale

The third step in the nonjudicial foreclosure process is to issue the Notice of Trustee's Sale together with the Notice of Foreclosure. (The Notice of Foreclosure is discussed below in Part E.)

Statutory Form. Washington's deed of trust act sets out a statutory form for the Notice of Trustee's Sale. RCW 61.24.040(f). An example is attached as **Appendix A**.

Timing. The Notice of Trustee's Sale can be given 30 days after the Notice of Default, and must be given at least 90 days before the trustee's sale takes place. RCW 61.24.030(8), 040(1).

Delivery. The Notice of Trustee's Sale has to be mailed (first-class and certified) to the following persons:

1. The borrower and grantor (if different from borrower);
2. Junior lien claimants (deeds of trust and other liens);
3. Tenants;
4. Occupants, if the property consists of a single-family residence, condominium cooperative, or other dwelling unit in a multiplex or other building containing less than 5 residential units;
5. The plaintiff in any pending lawsuit to foreclose a lien or other encumbrance against the property; and
6. Any other person who has recorded a request for notice pursuant to RCW 61.24.045.

RCW 61.24.040(1)(b) – (d).

The foreclosure has no effect on the lien or interest of anyone who was supposed to get the Notice of Trustee's Sale but did not. Although, this can be remedied by simply conducting the sale again and giving the missed person(s) notice.

Recording. The Notice of Trustee's Sale has to be recorded in each county where the deed of trust is recorded. RCW 61.24.040(1)(a).

Posting/Service. The Notice of Trustee's Sale has to be posted in a conspicuous place on the property. In the alternative, the Notice of Trustee's Sale can be served on any occupant of the property. RCW 61.24.040(1)(e).

Publication. The Notice of Trustee's Sale must be published in a legal newspaper twice before the trustee's sale; once between the 35th and 28th day before the sale, and a second time between the 14th and 7th day before the sale. RCW 61.24.040(3).

Notice to Occupants or Tenants. In the case of a single-family residence, condominium, cooperative, or other dwelling unit in a multiplex or other building containing 5 or fewer units, the Notice of Trustee's Sale must also contain a separate notice to occupants or tenants. Without that notice, the foreclosure does not affect the interests of any occupant or tenant of the foreclosed property. RCW 61.24.040(9).

F. Notice of Foreclosure

In addition to the Notice of Trustee's Sale, the borrower and grantor must also be given a Notice of Foreclosure. This is a separate notice, which is also spelled out in the deed of trust act. RCW 61.24.040(2). An example is attached as **Attachment B**.

The Notice of Foreclosure must be mailed to the borrower/grantor along with the Notice of Trustee's Sale. No one else needs to receive this notice. Also, the Notice of Foreclosure does not have to be recorded, published, posted or personally served on any one. RCW 61.24.040(2).

G. The Trustee's Sale

The fourth step in the nonjudicial foreclosure process is the trustee's sale itself. The trustee's sale is a public auction at which the trustee (or its agent) sells the property to the highest bidder. If several properties are being sold, the trustee has discretion to sell them altogether or one by one. RCW 61.24.040(4).

The location of the sale can be any public location in the county where the property is located, as long as it is designed in the Notice of Trustee's Sale. The sale has to take place on a Friday (or the following Monday if Friday is a holiday). RCW 61.24.040(5).

Continuances. The sale can be continued at the trustee's discretion. The trustee can continue the sale to a later time on the same day by public proclamation at the advertized time and place. To continue the sale to a later day, the trustee must also give notice of the new date, time and place by mail and publication to the ones who were entitled to receive the Notice of Trustee's Sale in the first place. RCW 61.24.040(6).

There can be a succession of continuances for a maximum of 120 days. To continue the sale for more than 120 days (total), the entire process has to start over with a new Notice of Default. RCW 61.24.040(6).

The successful bidder must pay the price bid "forthwith". RCW 61.24.040(7). The purchase price must be paid by cash or its equivalent (like a cashier's check). RCW 61.24.070. In some cases, the trustee will conditionally accept a personal check for part

of the purchase price on the condition that it is replaced with a cash or a cashier's check within a *very* short period of time.

Credit Bids. The foreclosing beneficiary can credit bid all or part of the amount owed. If the beneficiary bids more than the amount owed, it must make up the excess in the same way as any other bidder—that is, by cash, cashier's check or the like. RCW 61.24.070.

The amount of the credit bid can become very important in commercial foreclosures. It affects the lender's ability to seek a deficiency judgment against guarantors.

Assume, for example, that the property being foreclosed on is appraised at \$1 million and the lender is owed \$1.5 million. If the lender credit bid the entire \$1.5 million, it would have a difficult time arguing in a deficiency action later on that the property was only worth \$1 million. By credit bidding the full amount owed, the lender may have effectively precluded any deficiency action against guarantors.

A better approach may be for the lender to submit an opening credit bid at the appraised value (\$1 million). If third parties appear and bid higher, the lender can successively increase its credit bid up to the full amount owed (\$1.5 million). If not, the lender will be the successful bidder at \$1 million, and can pursue a deficiency action for \$500,000 against the guarantors.

Trustee's Deed. Title is conveyed to the successful bidder by a Trustee's Deed. The Trustee's Deed must recite facts establishing that the sale was conducted in compliance with the deed of trust act and the deed of trust. These recitations have to be of facts showing compliance; they cannot be conclusory statements that the sale complied with the act and deed of trust. Properly made, these recitations of fact are prima facie evidence of compliance, and conclusive evidence of compliance in favor of any bona fide purchaser or encumbrancer. RCW 61.24.040(7).

No Redemption. The trustee's sale is final as long as the Trustee's Deed is recorded within 15 days of the trustee accepting the winning bid. RCW 61.24.050.

There is no redemption period in a nonjudicial foreclosure. Id. This is one of the main advantages to a nonjudicial foreclosure compared to a judicial foreclosure.

H. Stopping the Foreclosure

The borrower, guarantors, and junior lienors have two basic ways to avoid a foreclosure: cure the default or restrain the sale. Each is discussed in more detail below.

Curing Defaults. If the defaults spelled out in the Notice of Trustee's Sale are cured in time, the foreclosure must be discontinued. The deadline to cure is 12 days before the trustee's sale. RCW 61.24.090(1) ("At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale ..."). The cure can be by the borrower, grantor, guarantor, or the holder of any junior liens.

The deadline to cure depends on the actual sale date. RCW 61.24.090. If the sale date is continued, the deadline to cure is moved to 12 days before the continued sale date. That is something to take into account when continuing the sale after the deadline to cure has passed.

Assume, for example, that 3 days before the originally-scheduled sale date it becomes advantageous for the beneficiary to continue the sale. Perhaps a third party has shown interest in purchasing the foreclosing lender's interest, and the foreclosing lender wants to engage in negotiations before going through with the foreclosure. The beneficiary could ask the trustee to continue the sale for, say, three weeks to allow those negotiations to take place. But a 3-week continuance would reinstate the opportunity to cure since there would again be more than 11 days until the actual sale date. Depending on the circumstances, that can be very detrimental to the lender's ability to sell its interest. The third party may no longer be interested in buying the promissory note if it can be reinstated.

A practical solution to this is to continue the sale for successive 7-day periods on each scheduled sale date (up to a maximum of 120 days). A 7-day continuance announced on the day of the sale would not reinstate the right to cure since there would be less than 11 days until the continued sale date.

When payment default is one of the defaults (or the only default), the curing party must pay the trustee the entire amount due under secured obligation plus the expenses incurred by the trustee, including reasonable attorney fees and costs. RCW 61.24.090(1)(a), (b).

In this context, the "amount due" is the non-accelerated amount due; it does not include principal amounts that would not have been due had there been no default. To simplify somewhat, if the default is failure to make monthly payments, the amount needed to cure is the missed monthly payments, not the entire amount of the note—even if the lender exercised a right to accelerate the note based on the failure to make monthly payments.

If and when the trustee receives the cure payment, the trustee's sale has to be discontinued and the secured obligation reinstated as though there had been no default, and no acceleration. RCW 61.24.090(3). The trustee must also issue and record a notice of discontinuance. RCW 61.24.090(6).

Restraint of Sale. The borrower, grantor, guarantor, or holder of any junior liens can seek an injunction restraining the sale "on any proper legal or equitable ground". RCW 61.24.130. To obtain this relief, the applicant must be prepared to pay the following amounts:

Default in making monthly payments:	The monthly payments coming due during the restraint.
Default in paying a matured obligation:	The interest accruing on the matured obligation every 30 days.

RCW 61.24.130(1)(a), (b).

In addition to these required conditions, the court can also require the applicant to post a bond or other security to cover any damages sustained because of the injunction. In this context, the borrower's equity in the property is an important factor.

Notice of Motion to Restrain Sale. The applicant must give at least 5 days' notice to the trustee of the motion to restrain the sale. RCW 61.24.130(2).

Waiver. Failure to restrain the foreclosure of a commercial loan generally waives all claims the borrower, grantor, etc. might have had to challenge the sale.

In 2009, the Washington State Legislature introduced a non-waiver statute to the deed of trust act. The non-waiver statute preserves claims for damages based on fraud, violation of Title 19 RCW (business regulations), and failure by the trustee to materially comply with the deed of trust act. It has a fairly limited scope:

- It only applies to owner-occupied residential properties. RCW 61.24.127(4).
- It does not apply to commercial loans. RCW 61.24.127(5).
- It only applies to claims by borrowers and grantors. Other interested parties, such as guarantors or holders of junior liens are not protected by this non-waiver statute.
- The borrower/grantor can only bring claims for money damages. They cannot challenge the validity of the foreclosure sale or cloud title to the foreclosed property. RCW 61.24.127(2)(b) – (f).

I. Surplus Funds

In some cases, the foreclosure sale generates more funds than are owed to the foreclosing lender. In those cases, the surplus funds are deposited with the clerk of the superior court where the sale took place. In this context, surplus funds means any funds left over after the expenses of the sale and the secured obligation are paid in full. RCW 61.24.080.

The trustee must give notice of this deposit of surplus funds to each person who received the Notice of Trustee's Sale.

Junior interests attach to the surplus funds in the same order of priority they had against the foreclosed property. Junior parties can move the superior court to disburse some or all of the surplus funds. Notice of this motion must be personally served or mailed (first class and certified) to all parties who received the trustee's notice of the surplus. RCW 61.24.080.

J. Taking Possession

The successful bidder is generally entitled to possession of the foreclosed property on the 20th day after the trustee's sale. If needed, the successful bidder can resort to an unlawful detainer action to obtain possession. RCW 61.24.060(1).

In the case of residential real property, tenants have 60 days to vacate. RCW 61.24.146. Also, the purchaser must give written notice of the purchase to the tenant/occupant, the form of which is spelled out in the statute. RCW 61.24.060(2).

K. Deficiency Judgments

As a general rule, deficiency judgments are not allowed after a nonjudicial foreclosure. RCW 61.24.100(1). That is the tradeoff in a nonjudicial foreclosure; a nonjudicial foreclosure is generally quicker than a judicial foreclosure, especially since the right of redemption does not apply, but the lender's recovery is generally limited to the property.

However, there are two exceptions for commercial loans:

1. The lender can pursue deficiency judgments against the borrower or grantor in two limited circumstances: for (a) reduction in property value caused by waste; and (b) for wrongful retention of rents, insurance proceeds or condemnation awards. There is an exception to this exception; it does not apply if the collateral is the borrower's principal residence.
2. The lender can pursue deficiency judgments against guarantors, as long as the guarantors were given a certain statutory notice spelled out in RCW 61.24.042.

RCW 61.24.100(3)(a), (c).

Statute of Limitations. An action for deficiency judgment must be started within 1 year of the trustee's sale. RCW 61.24.100(4).

Notice to Guarantors. To preserve the right to pursue a deficiency judgment against guarantors, lenders must give the guarantors the Notice of Default, Notice of

Trustee's Sale and the Notice of Foreclosure, containing the following additional information:

1. The guarantor may be liable for a deficiency judgment;
2. The guarantor has the right to cure the default(s);
3. The guarantor has no right to redeem the property;
4. Any action to enforce the guaranty must be started within 1 year of the date of the trustee's sale; and
5. The guarantor has the right to establish the fair value of the property as of the date of the trustee's sale.

RCW 61.24.042; RCW 61.24.100(5). That last piece, the right to establish the fair market value, will likely be the main defense/point of contention in any deficiency action facing opposition.

Appendixes

- A. Notice of Trustee's Sale
- B. Notice of Foreclosure
- C. Timeline

APPENDIX A

NOTICE OF TRUSTEE'S SALE

I.

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

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

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

II.

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

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

III.

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

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

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

IV.

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

V.

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

VI.

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

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.
.

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

VII.

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

VIII.

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

IX.

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

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

[Name of trustee]

[Address of trustee]

[Phone number of trustee]

[Acknowledgment]

APPENDIX B

NOTICE OF FORECLOSURE

Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

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

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

	Currently due to reinstate on	Estimated amount that will be due to reinstate on (11 days before the date set for sale)
Delinquent payments from,, in the amount of \$ /mo.:	\$	\$
Late charges in the total amount of:	\$	\$
Attorneys' fees:	\$	Estimated Amounts \$
Trustee's fee:	\$	\$
Trustee's expenses: (Itemization)		
Title report	\$	\$

Recording fees	\$. . .	\$. . .
Service/Posting of Notices	\$. . .	\$. . .
Postage/Copying expense	\$. . .	\$. . .
Publication	\$. . .	\$. . .
Telephone charges	\$. . .	\$. . .
Inspection fees	\$. . .	\$. . .
.....	\$. . .	\$. . .
.....	\$. . .	\$. . .
TOTALS	\$. . .	\$. . .

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

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

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

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the day of , . . . [11 days before the sale date], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate or to pay off the entire indebtedness may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary

for you to contact the Trustee before the time you tender reinstatement or the payoff amount so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:, whose address is, telephone () AFTER THE DAY OF,, YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will respond to any written request for current payoff or reinstatement amounts within ten days of receipt of your written request. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

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

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

NAME:

ADDRESS:

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TELEPHONE NUMBER:

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

APPENDIX C

