



2022 Report to the Legislature on Foreclosure Trustees

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Introduction

This report is submitted to the Washington State Legislature pursuant to a proviso in Section 152 of the 2022 operating budget, Senate Bill 5693.¹ That proviso directed the Department of Financial Institutions (DFI) to conduct a survey of foreclosure trustees doing business in the State of Washington for owner-occupied residential real property between January 1, 2017, and December 31, 2019. The survey was to include:

- The name and place of business of the trustee, its owner, and any affiliated firms or businesses that do business in Washington;
- The number of notices of trustee sale filed each year for each beneficiary;
- Templates without personally identifiable information of all notices sent to borrowers within the survey period; and
- Samples of service contracts between the trustee and each beneficiary.

The proviso directed DFI to submit a report to the legislature on the results of the survey by January 1, 2023. Please refer to [Appendix A](#) to review the text of the budget proviso that commissioned this report.

Scope

The scope of the survey included 38 non-judicial foreclosure trustees identified as performing non-judicial foreclosures on owner-occupied real properties in the State of Washington between January 1, 2017, and December 31, 2019. See [Appendix B](#) for the list of trustees surveyed.

The survey was developed by DFI. Information sought from the trustees can be generally categorized as: 1) Contact information and corporate structure; 2) Foreclosure data collected by trustees; 3) Communication with borrowers and lenders/beneficiaries; 4) Trustee fees and expenses; and, 5) Trustee Compliance, Audits, and Training. See [Appendix C](#) for the text of *Non-Judicial Foreclosure Trustee Survey*. See also, [Appendix E](#) for the *Cover Letter* that was sent to all identified trustees.

Executive Summary

DFI identified potentially 38 trustees performing non-judicial foreclosures on owner-occupied real properties in the State of Washington between January 1, 2017, and December 31, 2019. DFI received 19 survey responses. Eight trustees participated in the survey, representing three quarters of the non-judicial foreclosure activity in Washington during the relevant scope period. Of the eight respondents to the survey, seven respondents are corporations and one is a law firm. For the seven corporations, three confirmed that at least one officer of the company is a Washington resident, and one reported that it is a licensed title insurance company. See the *Report Methodology* section for more information.

DFI could not ascertain the exact number of homes that went into foreclosure during the scope period. Based on data from the Washington State Department of Commerce, DFI identified 1,629 foreclosure mediation referrals during the scope period. Of those, 446 went to mediation where an agreement was

¹ ESSB 5693, 67th Leg. Reg. Sess. (Wash. 2022).

reached and 323 went to mediation where no agreement was reached. In the remaining 860 cases, no mediation occurred, meaning that several different final outcomes were possible, including non-judicial foreclosure. See the *Data Analysis of Non-Judicial Foreclosures* section for more information.

DFI reviewed 19 complaints that were submitted to the Consumer Financial Protection Bureau regarding the non-judicial foreclosure process. A majority of these complaints pertained to the lender or the loan terms. See the *Complaints to Regulators* section for more information.

The survey responses showed that all trustees surveyed maintain an established office in the State of Washington; however, it is unclear if telephone services are maintained at these offices as required by statute. Some survey responses indicated that trustees may have employees in other states working on Washington loans. See the *Survey Results* section for more information.

Survey respondents reported varying degrees of communication with borrowers. This communication includes status of the non-judicial foreclosure, payoff amounts, and dates pertaining to the sale. The trustees' opinions differed as to whether the borrowers communicate with the correct party to assist them. See the *Survey Results* section for more information.

Trustees that responded to the survey appear to work with a variety of beneficiaries (lenders or servicers). There are no exclusivity or volume requirements in the sample contracts provided by the trustees. See the *Survey Results* section for more information.

Trustees reported their compensation is fee-based. They stated that the beneficiaries pay for all fees whether or not a non-judicial foreclosure goes to sale. See the *Survey Results* section for more information.

Trustees described their internal processes with regard to legal compliance, consumer complaints, audits, and training. See the *Survey Results* section for more information.

Glossary

Beneficiary	Holder of the instrument or document that secures the loan obligation by the Deed of Trust. Generally, the beneficiary is the lender (e.g. bank) or the servicer.
Borrower	A person who is liable for all or part of the loan obligation secured by the Deed of Trust under the instrument or other document.
Lender	Financial institution that loaned the money for the purchase of owner-occupied residential property.
Servicer	Collects homeowner's mortgage payments and passes those payments on to investors, tax authorities, and insurers. The servicer may also be the beneficiary and/or lender.
Trustee	The person designated as the trustee in the Deed of Trust or appointed under RCW 61.24.010. The trustee follows instructions located in the Deed of Trust in the event there is non-payment, leading to foreclosure.

Background – Non-Judicial Foreclosure Process

Washington is one of 30 states that use a non-judicial foreclosure process.² The non-judicial foreclosure process in Washington is set forth in [Chapter 61.24 RCW](#). Under Washington law, if a borrower fails to make payment under the terms of a mortgage secured by a Deed of Trust, a trustee, beneficiary, or authorized agent must perform statutory due diligence before a non-judicial foreclosure process is initiated.³ The beneficiary or its agent is required to send a contact letter to the borrower.⁴ This letter informs the borrower that they must respond within 30 days or a Notice of Default may be issued.⁵ The notice must also advise the borrower that they should contact a housing counselor.⁶ This pre-foreclosure due diligence process requires the beneficiary to attempt to contact the borrower by both letter and phone.⁷

If the borrower does not respond within 14 days, a second letter must be sent by certified mail with return receipt requested.⁸ If the borrower responds to the beneficiary's due diligence steps, there will be a 90-day waiting period prior to issuing the Notice of Default.⁹ If the borrower does not respond, the beneficiary may issue the Notice of Default after 30 days.¹⁰ The Notice of Default must be sent to the borrower at their last known address by both first-class and either registered or certified mail, return receipt requested and the Notice of Default must either be posted on the premises or personally served on the borrower.¹¹

Borrowers have rights to mediation at certain points in the non-judicial foreclosure process.¹² If the borrower has not requested mediation, a Notice of Sale will be issued 30 days after the Notice of Default.¹³ The required terms of the Notice of Sale are set forth in statute.¹⁴ A copy of the Notice of Sale must be transmitted to the borrower by first class mail and by either certified or registered mail, return receipt requested, and must be posted on the property or served on any occupant of the property.¹⁵ This Notice of Sale mailing must be completed at least 120 days prior to the sale.¹⁶ In addition, the Notice of Sale must be recorded in the county where the property resides.¹⁷

² States that use a non-judicial foreclosure process are Alabama, Alaska, Arizona, Arkansas, California, Colorado, District of Columbia (sometimes), Georgia, Idaho, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. Amy Loftsgordon, *Chart: Judicial v. Nonjudicial Foreclosures*, Nolo, <https://www.nolo.com/legal-encyclopedia/chart-judicial-v-nonjudicial-foreclosures.html> (last visited December 21, 2022).

³ [RCW 61.24.031\(1\)](#)

⁴ [RCW 61.24.031\(1\)\(b\)](#)

⁵ [RCW 61.24.031\(1\)\(c\)\(i\)](#)

⁶ [RCW 61.24.031\(1\)\(c\)\(i\)](#)

⁷ [RCW 61.24.031\(1\)\(b\)](#)

⁸ [RCW 61.24.031\(5\)\(c\)](#)

⁹ [RCW 61.24.031\(1\)\(a\)\(ii\)](#)

¹⁰ [RCW 61.24.031\(1\)\(a\)\(i\)](#)

¹¹ [RCW 61.24.030\(8\)](#)

¹² [RCW 61.24.163](#)

¹³ [RCW 61.24.030\(8\)](#)

¹⁴ [RCW 61.24.040](#)

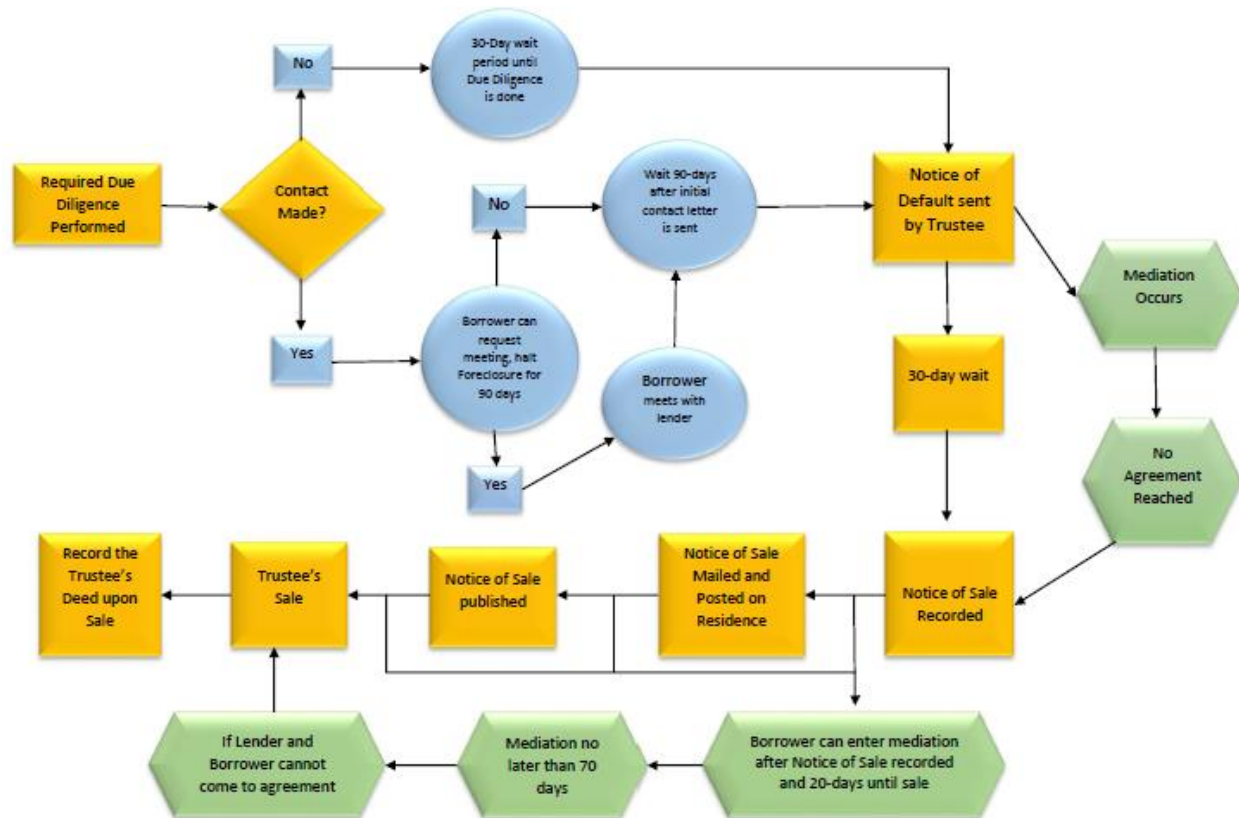
¹⁵ [RCW 61.24.040\(1\)](#)

¹⁶ [RCW 61.24.040\(1\)](#)

¹⁷ [RCW 61.24.040\(1\)](#)

The Notice of Sale will be published in a newspaper in the county where the property resides between five weeks and four weeks prior to the non-judicial foreclosure sale date and once again between two weeks and one week prior to the non-judicial foreclosure sale.¹⁸ The foreclosure sale will happen on a Friday, or barring a holiday, then on the following Monday.¹⁹ The deed will be recorded 15 days after the trustee's sale.²⁰ The following flow chart illustrates the process described above.

Figure 1 - Non-Judicial Foreclosure Flow Chart



Report Methodology

DFI's first priority was to identify the number of non-judicial foreclosure trustees actively doing business in the State of Washington during the period of January 1, 2017, through December 31, 2019. DFI used a number of different methods and resources to identify these entities. Potential entities acting as trustees in a non-judicial foreclosure capacity were identified using complaint data from DFI, the Consumer Financial Protection Bureau (CFPB), and information from the Attorney General's Office. DFI also contacted the Washington State Bar Association, which did not have responsive data or information. Other state agency data used to identify trustees came from the Washington State Secretary of State's website and the Department of Commerce's foreclosure mediation referral data.

¹⁸ [RCW 61.24.040\(5\)](#)

¹⁹ [RCW 61.24.040\(9\)](#)

²⁰ [RCW 61.24.050\(1\)](#)

The United Trustees Association (UTA) and some of its members also assisted with this study. First, DFI held meetings with UTA and its membership to discuss the non-judicial foreclosure trustee process. Second, the UTA and its membership provided initial feedback regarding the survey questions.

By distilling down the data from various sources, DFI was able to identify 38 active trustees that appear to operate in Washington for the relevant time period. See [Appendix A](#) for the list of *Trustees Surveyed*.

DFI contacted all 38 identified trustees for participation in the survey. Of those 38 trustees, DFI received 19 responses.

Of the 19 survey responses received by DFI:

- Eight participated in the survey;
- Three responded that the company only provides services for commercial foreclosures;
- Seven have stopped performing non-judicial foreclosures, do not perform non-judicial foreclosures at all, or do not handle non-judicial foreclosures in the State of Washington; and
- One company responded it recently dissolved.

Based on the Department of Commerce's mediation referral data, the eight trustees that participated in the survey represent 74.64% of the non-judicial foreclosure activity by active trustees during the scope period. To review the survey questions provided to participants, refer to [Appendix C](#) *Non-Judicial Foreclosure Trustee Survey*.

Under RCW 61.24.010, to be a qualified trustee in the State of Washington, a trustee must be:

- A domestic corporation or limited liability company incorporated in Washington where at least one officer is a Washington resident;
- A title insurance company licensed under chapter 48.17 RCW;
- An attorney who is an active member of the Washington state bar association;
- A professional corporation incorporated under chapter 18.100 RCW; or
- An agency or instrumentality of the United States government.

Of the eight respondents to the survey, seven respondents are corporations and one is a law firm. For the seven corporations, three confirmed that at least one officer of the company is a Washington resident, and one reported that it is a licensed title insurance company in the State of Washington that qualifies under RCW 61.24.010 (1)(b).

Data Analysis of Non-Judicial Foreclosures

Exact Non-Judicial Foreclosure Data Unknown

DFI could not ascertain the total number of non-judicial foreclosures on owner occupied homes between January 1, 2017, and December 31, 2019. These foreclosure transactions are recorded in the county in which the property resides. DFI reached out to a number of the larger county auditors in Washington to inquire about receiving this data. DFI learned that county auditors do not track foreclosure trustee sales

differently from other sales of real property. When DFI tried to extract the data from county databases, DFI found it was unable to differentiate trustee deed sales for non-judicial foreclosures from trustee deed sales by other means. Due to unavailable foreclosure data, DFI could not extract verifiable data on the total number of non-judicial foreclosure trustee sales in the specified time frame.

Department of Commerce Data

DFI appreciates the assistance provided by the Department of Commerce. The Department of Commerce helped identify potential trustees. By way of background, at certain points in the foreclosure process homeowners must be given the option to be referred to the Department of Commerce by either an attorney or housing counselor to begin the mediation process. For a more thorough review of the mediation process, please refer to the Department of Commerce's [Foreclosure Fairness Program website](#).²¹ It should be noted that properties may go in and out of foreclosure several times, thus possibly distorting the data obtained.

The Department of Commerce shared data of all mediation referrals made during the specified time frame (January 1, 2017, and December 31, 2019). According to that data, there were a total of 1,629 foreclosure mediation referrals made to the Department of Commerce during the reported time frame. Of those, 1,563 (96%) referrals were made by 10 trustees.

Of these ten trustees, three dissolved in 2019, and three did not respond to the survey. The remaining four trustees that did respond to the survey represent 1,215 (74.59%) of the mediation referrals made during the applicable time frame.

Of the 1,629 foreclosure mediation referrals to the Department of Commerce, in 860 of those cases (representing 52.79%), no mediation occurred, meaning that several different final outcomes were possible, including foreclosure. Those final outcomes are not tracked by the Department of Commerce. See Figure 2.

Figure 2 – Mediation Referral Breakdown

Outcomes	2017	2018	2019	Total	Percentage
No Mediation Session Occurred	327	259	274	860	52.79%
Mediation - Agreement Reached	186	152	108	446	27.38%
Mediation - No Agreement Reached	137	127	59	323	19.83%
Total	650	538	441	1,629	100.00%

A further breakdown of the Department of Commerce's mediation referral data showed that 769 of 1,629 referrals went to mediation. See Figure 3. Of these, 446 (58%) reached a modification agreement in mediation, resulting in no foreclosure. The other 323 (42%) did not reach an agreement. DFI was unable to ascertain the outcome of the 323 referrals where no agreement was reached and DFI could not conclude as to whether these ended in foreclosure.

²¹ *Washington State Foreclosure Fairness Program*, <https://www.commerce.wa.gov/building-infrastructure/housing/foreclosure-fairness/> (last visited December 21, 2022).

Figure 3 – Mediation Outcomes

Mediation Break down	2017	2018	2019	Total	Percentage
Mediation - Agreement Reached	186	152	108	446	58%
Mediation - No Agreement Reached	137	127	59	323	42%
Total	323	279	167	769	100%

Trustee Data

Trustees provided their own foreclosure data as part of the survey. Trustees commented that there are limitations in their data based on how various requests are tracked. For instance, foreclosures can stop and restart resulting in a property being counted multiple times. Or, foreclosure trustee sales in the scope period may be from foreclosures that started outside of the scope period. This limits DFI's ability to understand the true volume of foreclosure sales that were from foreclosures in the scope period using the trustee(s) data.

While the final foreclosure numbers could not be gleaned from the Department of Commerce data or from county auditors, based on the data reported by the trustees, approximately 37.14% of Notices of Sale issued by the Trustees ended in a foreclosure sale, and 7.32% were halted due to the borrower filing bankruptcy.

When the foreclosures sales did occur, the property was generally awarded to the beneficiary 41.54% of time and a non-beneficiary was awarded the property 58.46% of time.

Complaints to Regulators

During the applicable timeframe, 19 complaints were submitted to the Consumer Financial Protection Bureau (CFPB) regarding the non-judicial foreclosure process. The CFPB data provided did not list specific trustees, nor did the complaints state the trustee by name. Therefore, there was no way to verify the complaints made.

Ten of the CFPB complaints dealt with the lender. The majority of the lender complaints asserted that the issues leading to foreclosure stemmed from the structure of the loan itself. For example, one complaint alleges that the Annual Percentage Yield (APY) was calculated incorrectly by two percentage points. This increase in APY caused the payment to increase and was alleged as a direct factor in the foreclosure. However, no one issue could be identified as a leading cause with regard to the structure of the loan.

Three CFPB complaints asserted that the trustees were invalidly acting in the State of Washington due to the trustee's offices residing in other states.

Three CFPB complaints made allegations about the foreclosure process itself. The allegations were that the beneficiary and trustee experienced communication issues that led to the foreclosure process moving forward where the complainant felt the process should have halted.

Many of the same complaints made to CFPB were also reported to DFI. DFI could not find any themes or trends in the complaints that differed from those submitted to the CFPB.

Survey Results

The survey sought information from the trustees, which can be generally categorized as: 1) Contact information and corporate structure; 2) Foreclosure data collected by trustees; 3) Communication with borrowers and lenders/beneficiaries; 4) Trustee fees and expenses; and, 5) Trustee Compliance, Audits, and Training. See [Appendix C](#) for the *Non-Judicial Foreclosure Trustee Survey*. The following section provides a general summary of the findings resulting from survey responses.

Contact Information and Corporate Structure

Under [RCW 61.24.030\(6\)](#), trustees operating in the State of Washington must maintain a physical office in this state and must have a telephone service at that office. All trustees that responded to the survey reported an established office located in the State of Washington; however, it is unclear if a telephone service is located at these addresses as required by statute.

Of the eight trustees surveyed, DFI was able to verify:

- Two trustees had a phone number located in the State of Washington;
- Five trustees had a toll free phone number (*i.e.* prefix of 844 or 866); and
- One trustee had a phone number that is not identified as a toll free number or located in the State of Washington.

The majority of the trustees reported having employees that work outside of the state performing non-judicial foreclosure work on Washington loans. As stated above in the *Complaints to Regulators* section of this report, three complaints dealt with assertions that the trustees did not have a legal right to act as a trustee for property in the State of Washington due to being located out of state.

The majority of the trustees reported they were corporate entities with generally two or fewer majority owners. One trustee reported it is a law firm and one trustee reported it is a licensed title insurance company, as described in the *Report Methodology* section, above. A few trustees reported having affiliate companies located outside of the state including law firms that practice residential real estate services.

Communication

The survey asked about the level of communication between trustees and borrowers, providing the following possible responses: Minimal to no communication; Moderate communication; and Considerable communication. Trustees' answer to the question about the frequency of communication between trustees and borrowers varied. The majority of trustees responded their communication with borrowers was "moderate communication" with the remaining trustees stating there was "minimal to no communication."

Trustees reported that there are a number of factors that may cause trustees and borrowers to have minimal communication during the foreclosure process. Trustees are restricted in the information they can and cannot provide. Trustees report that much of what they can provide is limited to the status of the foreclosure, such as reinstatement and/or payoff amounts, and dates pertaining to the sale. Trustees can provide the documents needed to postpone a sale and provide the dates these documents are needed for postponement. The trustee can assist in facilitating communication between the borrower and beneficiary by providing the contact information for the beneficiary's loss mitigation department.

Trustees are not the beneficiary, servicer, or lender so they are unable to assist with any terms, obligations, or modifications to the loan.

The survey asked trustees whether “Borrowers are communicating with the proper party in order to stay a foreclosure sale.” The survey options were: Agree; Somewhat agree; Neither agree nor disagree; Somewhat agree; or Disagree. Trustees reported either “Neither agree nor disagree” or “Somewhat agree” that the borrower is making contact with the correct party to assist them in the foreclosure.

Based on complaints submitted to DFI and the CFPB, borrowers might not understand the differences between the beneficiary/servicer and the trustee. When asked about this point, the majority of trustees “Somewhat agree” that borrowers generally confuse the trustee with the beneficiary/servicer.

When asked if borrowers understand the role of the lender/beneficiary, trustees varied in their responses. The majority of trustees surveyed answered, “Neither agree nor disagree” regarding their perception of the borrowers’ understanding of the role of the trustee in this process. Trustees reported that they do their best to educate borrowers to help them understand the trustee’s role and will often provide further information regarding the foreclosure process as well as explain the borrower’s rights. The Notice of Sale provided to the borrowers by the trustee is required by statute to inform the borrowers of their right to mediation and includes phone numbers and websites where they can get further assistance in understanding their rights and responsibilities as well as legal aid assistance.

Some trustees reported that better education about their role could help eliminate their erroneous inclusion in certain lawsuits. Trustees stated they are added to a lawsuits in instances where they are not party to the allegations. When this occurs, trustees have to defend and incur expenses due to the lack of understanding the duties of the foreclosure trustee role. Based on the answers from the trustees in this survey and the document examples provided by the trustees, the trustees stated they do their best to guide borrowers through the information provided on notices or through direct communication with the borrower.

Trustee Neutrality

While it is beneficiaries who contract with trustees to facilitate the non-judicial foreclosure process, trustees have an obligation to remain neutral and have a duty of good faith to borrowers, beneficiaries, and grantors.²² Trustees and beneficiaries typically do not work exclusively with one another. Based on conversations with trustees, beneficiaries will engage with a number of different trustees. The data from the Department of Commerce supports this assertion. That data indicates that trustees work with a diverse portfolio of beneficiaries. Trustees during the relevant survey period worked with an average of 34 different beneficiaries. Of those 34 beneficiaries, trustees worked with 16 of them more than once.

The trustees surveyed reported, on average, working with 55 different beneficiaries/servicers during our survey period. While this is higher than the Department of Commerce data, it is consistent with information provided by trustees that they work with a wide range of servicers in Washington.

There is no exclusivity or volume requirements in the sample contracts provided by the trustees. The trustee has the power to remove themselves as the trustee voluntarily or if there are legal or ethical obligations. Conversely, the beneficiary can terminate the trustee at any time without cause provided

²² [RCW 61.24.010\(4\)](#)

they give written notice. Additionally, both parties have the ability to cease representation during the foreclosure proceedings. See [Appendix F Sample Documents](#).

Trustees maintain that when having to decide whether to stay a foreclosure they must adhere to the laws governing foreclosures. There are times when a trustee can stay a foreclosure. Trustees stated they will look at a number of factors when deciding to stay a foreclosure sale. Some of these factors include but are not limited to the likelihood that postponement could result in avoiding a foreclosure, history of borrower engagement, if there was any prior litigation or current litigation, and if a stay of foreclosure sale is allowed under the statute. Trustees will have senior management review all factors before deciding to stay a foreclosure sale, and may consult outside counsel on these matters if necessary. Trustees will share each request with the beneficiary as well as request a response. The majority of the trustees surveyed indicated that they were able to decide to stay a foreclosure depending on the outcome of the factors stated above, with one stating they wait for instruction from the beneficiary on how to proceed.

Compensation

A trustee's compensation is solely fee-based. The cost for a non-judicial foreclosure has the potential for being costly to the beneficiary. Costs depend on factors such as location of the property, unpaid principal balance of the loan, and client and/or investor requirements. Other fees that are incurred during the process are mailing costs for Notice of Default and Notice of Sale and recording costs for documents such as Substitution of Trustee, Trustee's Deed, and rescissions. The billing of the fees by the trustees are iterative, and the beneficiary is responsible for paying all fees to the trustees whether a foreclosure goes to sale or not.

Title defects can cause issues during the foreclosure process and trustees are responsible for identifying and curing title defects. Curing title defects can be a significant cost, which may be covered by title insurance. A claim can be submitted if the defect is covered by the policy. If it is not, the trustee will seek to remedy the defect. Some of these title defects include, but are not limited to, legal description issues, incorrect vesting, unrecorded Deed of Trust, or deeds being recorded out of order, to name a few. All of these have impacts that can slow down the process and must be corrected. Correcting such defaults will incur additional expenses to the beneficiary.

Costs of publishing notices can be significant and trustees take cost into consideration when choosing a publication. Under [RCW 61.24.040](#), the Notice of Sale is required to be published in a newspaper in the county or city where the property is located. Trustees have the discretion to choose which publication they will publish the Notice of Sale; however, some counties provide a list of approved publications to choose from. There are other considerations outside of cost that affect a trustee's choice of publication, such as availability dates and the intended audience of those interested in foreclosure sales such as investors. In addition to the publication in a physical medium, trustees will publish online to reach a broader audience. One such example is auction.com, an online auction business that specializes real estate sales, including foreclosures.

Training

The trustees who responded to the survey report providing regular training for staff working on Washington loans whether or not they are physically located in the State of Washington. Trustees report that they focus on ensuring their employees understand Washington laws and regulations pertaining to

the non-judicial foreclosure process. Trustees report providing continual training and communication to keep their teams up to date on any changes that occur.

The trustees that provided examples of some of their training materials for the non-judicial foreclosure process had very robust and detailed materials. Examples of these trainings included detailed overviews of the non-judicial foreclosure process for Washington State, title defects and the process to fix such defects, title insurance training, how to identify if the borrower is active military, adherence to required timelines, and bankruptcy status verification, to name a few.

Training also generally includes ensuring that the beneficiary has done its due diligence regarding the loan prior to moving to foreclosure. The trustees require from the beneficiaries documentation of all contact or attempted contact with the borrower, pre-foreclosure letters, security instrument(s) and any assignments, and a copy of the endorsed note along with an affidavit they hold the note under penalty of perjury, and security in the property prior to moving forward.

Compliance with Existing Laws

Trustees reported that they make active efforts to ensure that they are compliant with all laws, regulations, and guidelines applicable to non-judicial foreclosures. Trustees reported and demonstrated with documentation multiple levels of oversight pertaining to compliance with laws and regulations. Many trustees maintain an internal audit department as well as external client and investor audits with the goal of ensuring compliance with all Federal, state, and local laws and client expectations. The external audits by their clients vary in scope but reportedly cover all aspects of the trustees' business.

The trustees provided redacted or blank samples of contracts for business between the beneficiary and the trustee. The contracts explain the role of the trustee and their obligations, specifically the adherence to all applicable federal, state, and local laws, regulations and ordinances, as well as policies by Federal Home Loan Mortgage Company (FHLMC), Federal National Mortgage Association (FNMA), U.S. Department of Housing and Urban Development (HUD), Veteran Affairs (VA), and any other policies and guidelines affecting services provided by the beneficiary. See [Appendix F Sample Documents](#) for more information.

Trustees Complaint Process

One survey question DFI asked was how trustees handle complaints from borrowers. Trustees did not specify if they had a policy on how to handle complaints. The trustees surveyed have different ways they track and handle complaints that come in either from the borrower or the beneficiary. Trustees described varying procedures for handling complaints from borrowers. Some look to their client/beneficiary policies on how they respond and will pause action on the foreclosure until the complaint has been responded to or resolved. Other trustees have all complaints reviewed by management, and when applicable, the beneficiary will review to provide a response. If it is specific to the trustee's actions during a foreclosure it will be reviewed and responded to by senior management. Other trustees have a clear escalation policy where employees must escalate certain matters to their supervisors to be reviewed. Others will include in-house and outside counsel when needed prior to responding the complaint. Some allow employees to resolve complaints or determine if escalation is needed. Escalation in these instances is similar with other trustee's processes in it moving to supervisors and/or in-house counsel for review and response to the complaints as needed. Many attest to documenting all complaints and maintain tracking records for the foreclosure file.

Comments by Trustees

Trustees reported that there is no incentive, monetarily or otherwise, to move to a foreclosure sale. As stated above, the trustee's compensation is solely fee-based, and they are compensated whether a foreclosure goes to sale or not.

Trustees expressed that they have a good faith duty to all parties involved, including the beneficiary, servicer, and borrower.

Summary and Conclusion

DFI identified potentially 38 trustees performing non-judicial foreclosures on owner-occupied real properties in the State of Washington between January 1, 2017, and December 31, 2019. DFI received 19 survey responses and eight trustees participated in the survey.

DFI could not ascertain the exact numbers of homes that went into foreclosure during the scope period. DFI reviewed 19 complaints that were submitted to the Consumer Financial Protection Bureau regarding the non-judicial foreclosure process. A majority of the complaints had to do with the lender or the loan terms.

The survey responses showed that all trustees surveyed maintain an established office in the State of Washington. It is unclear if telephone services are maintained at these offices as required by statute. Some survey responses indicated that trustees may have employees in other states working on Washington loans. Survey respondents reported varying degrees of communication with borrowers. Trustees that responded to the survey appear to work with a variety of beneficiaries (lenders or servicers). There are no exclusivity or volume requirements in the sample contracts provided by the trustees. Trustees also reported their compensation is fee-based, and beneficiaries pay for all fees whether or not a non-judicial foreclosure goes to sale.

Last, trustees described their internal processes with regard to legal compliance, consumer complaints, audits, and training. In this regard, DFI is relying on the representations contained in the survey responses to support many general conclusions contained in this report about such practices of trustees.

Appendix A – Legislative Proviso

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5693

Chapter 297, Laws of 2022
(partial veto)

67th Legislature
2022 Regular Session

SUPPLEMENTAL OPERATING BUDGET

EFFECTIVE DATE: March 31, 2022

Passed by the Senate March 10, 2022
Yeas 29 Nays 19

DENNY HECK
President of the Senate

Passed by the House March 10, 2022
Yeas 57 Nays 41

LAURIE JINKINS
**Speaker of the House of
Representatives**

Approved March 31, 2022 5:04 PM with
the exception of certain items that
were vetoed (see veto message).

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **ENGROSSED
SUBSTITUTE SENATE BILL 5693** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

SARAH BANNISTER

Secretary

FILED

April 1, 2022

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5693

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rolfes, L. Wilson, and Nguyen; by request of Office of Financial Management)

READ FIRST TIME 02/24/22.

1 AN ACT Relating to fiscal matters; amending RCW 28B.92.205,
2 41.60.050, 41.80.010, 43.31.605, 43.41.450, 43.43.837, 43.70.715,
3 43.79.505, 43.83B.430, 43.101.435, 43.216.1368, 43.216.270,
4 43.348.080, 50A.10.030, 70A.200.140, 71.24.580, 74.13.802, 74.46.561,
5 and 76.04.516; amending 2021 c 334 ss 1, 101, 102, 103, 104, 105,
6 106, 107, 108, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121,
7 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135,
8 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149,
9 150, 151, 152, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211,
10 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225,
11 226, 227, 228, 229, 230, 301, 302, 303, 304, 305, 306, 307, 308, 309,
12 310, 311, 401, 402, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510,
13 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 603, 605,
14 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619,
15 701, 702, 704, 705, 706, 718, 723, 724, 744, 745, 746, 748, 753, 801,
16 802, 803, 805, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919,
17 920, 921, 922, 923, 924, 925, 928, 929, 930, 932, 933, 934, 935, 936,
18 937, 939, 940, 941, 942, 943, 945, 946, 947, 948, and 1002
19 (uncodified); adding new sections to chapter 43.79 RCW; adding a new
20 section to chapter 43.330 RCW; adding new sections to 2021 c 334
21 (uncodified); repealing 2021 c 334 ss 730, 731, 732, 733, 734, 735,
22 736, 737, 749, and 752 (uncodified); making appropriations; and
23 declaring an emergency.

Appendix A

(18) \$2,375,000 of the consolidated technology services revolving account—state appropriation is provided solely for the implementation of the recommendations of the cloud transition task force report to include:

(a) Establishing a cloud readiness program to help agencies plan and prepare for transitioning to cloud computing;

(b) Establishing the cloud retraining program to provide a coordinated approach to skills development and retraining; and

(c) Staffing to define career pathways and core competencies for the state's information technology workforce.

(19) \$100,000 of the general fund—state appropriation for fiscal year 2023 is provided solely for the office of the chief information officer, who must:

(a) Prepare with the cooperation of state agencies and make publicly available on its website, by January 1, 2023, an initial inventory of all automated decision systems that are currently being used by state agencies; and

(b) Adopt guidance, by June 30, 2022, for state agencies regarding minimum standards that should be used for automated decision systems the agency plans to develop or procure during the 2023 fiscal year.

**Sec. 150 was partially vetoed. See message at end of chapter.*

Sec. 151. 2021 c 334 s 152 (uncodified) is amended to read as follows:

FOR THE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Professional Engineers' Account—State Appropriation.	((\$4,190,000))
	<u>\$4,229,000</u>
TOTAL APPROPRIATION.	((\$4,190,000))
	<u>\$4,229,000</u>

NEW SECTION. **Sec. 152.** A new section is added to 2021 c 334 (uncodified) to read as follows:

FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

Financial Services Regulation Nonappropriated

Account—State Appropriation.	\$140,000
TOTAL APPROPRIATION.	\$140,000

Appendix A

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation is provided solely for the department of financial institutions to conduct a survey of foreclosure trustees doing business in the state of Washington for owner-occupied residential real property between January 1, 2017, and December 31, 2019.

(1) The survey must include:

(a) The name and place of business of the trustee, its owner, and any affiliated firms or businesses that do business in Washington;

(b) The number of notices of trustee sale filed each year for each beneficiary;

(c) Templates without personally identifiable information of all notices sent to borrowers within the survey period; and

(d) Samples of service contracts between the trustee and each beneficiary.

(2) By January 1, 2023, the department of financial institutions shall submit a report to the legislature on the results of the survey and include a discussion of the regulation of foreclosure trustees in Washington's nonjudicial foreclosure system.

NEW SECTION. **Sec. 153.** A new section is added to 2021 c 334 (uncodified) to read as follows:

FOR THE WASHINGTON STATE LEADERSHIP BOARD

Washington State Leadership Board Account—State

Appropriation (FY 2023)	\$637,000
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TOTAL APPROPRIATION.	\$637,000
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The appropriation in this section is subject to the following conditions and limitations:

(1) \$187,000 of the Washington state leadership board account—state appropriation is provided solely for implementation of Senate Bill No. 5750 (WA state leadership board). If the bill is not enacted by June 30, 2022, the amounts provided in this subsection shall lapse.

(2) \$450,000 of the Washington state leadership board account—state appropriation for fiscal year 2023 is provided solely for implementing programming in RCW 43.15.030, and specifically the Washington world fellows program, sports mentoring program/boundless Washington, compassion scholars, and the Washington state leadership awards. If Senate Bill No. 5750 (WA state leadership board) is not

Appendix B – Trustees Surveyed

Trustee Surveyed

No.	Trustee	Contact Information	Response
1.	First American Mortgage Solutions	920 Fifth Ave, Suite 1250, Seattle, WA. 98104	Received
2.	Clear Recon Corp.	601 W 1 st Ave Suite 1400, Spokane WA 99201	Received
3.	Trustee Corps+	606 W Gowe St, Kent WA. 98032	Received
4.	Malcolm Cisneros, A Law Corporation+	2112 Business Center Dr., 2nd Floor, Irvine, CA 92612	Received
5.	MTC Financial Inc.+	606 W Gowe St, Kent WA. 98032	Received
6.	Quality Loan Servicing Corp*	108 1 st Ave S #450, Seattle, WA. 98104	Received
7.	McCarthy & Holthus, LLP*	108 1st Avenue South, #400, Seattle WA. 98104	Received
8.	Law Offices of Jason C. Tatman	5677 Oberlin Dr #210, San Diego, CA. 92121	Received
9.	Assured Lender Services, Inc.	111 Pacifica, Suite 140, Irvine, CA. 92618	Commercial foreclosures only
10.	Beacon Default Management, Inc.	30101 Agoura Court, Suite 203, Agoura Hills, CA. 91301	Commercial foreclosures only
11.	Trustee and Corporate Services, Inc.	801 2 nd Ave Suite 700, Seattle WA. 98104	Commercial foreclosures only
12.	Nestor Trustee Services, LLC	2850 Redhill Ave., Suite 240, Santa Ana, CA. 92705	Does not handle foreclosures in Washington
13.	BD Trustee Services LLC	300 Commercial St., Bellingham, WA. 98225	Does not work as foreclosure trustee
14.	Affinia Default Services, LLC	320 120th Ave NE, Suite B203, Bellevue, WA. 98005	Started working as foreclosure trustee in 2020
15.	Fidelity National Title Group	1101 Investment Blvd., Suite 170, El Dorado Hills, CA. 95762	No longer does foreclosures
16.	Total Lender Solutions	1016 57th St E	Did not do foreclosures during this period
17.	Lawyers Title	16755 Von Karman, Suite 100, Irvine, CA. 92606	No response
18.	S.B.S. Trust Deed Network	31194 La Baya Drive, Suite 106, Westlake Village, CA. 91362	Dissolved
19.	The Mortgage Law Firm	27455 Tierra Alta Way, Suite B, Temecula, CA. 92128	No response
20.	The Wolf Firm, A Law Corporation	1851 East 1st Street, Suite 100, Santa Ana, CA. 92705	No response

Trustee Surveyed

21.	Aztec Foreclosure Corporation of Washington	1499 SE Tech Center Place Suite 255, Vancouver, WA.	No response
22.	Campbell Barnett PLLC	317 South Meridian Po box 488, Puyallup, WA. 93871	No response
23.	Evergreen Trustee Services, Inc.	1 SW COLUMBIA ST STE 900, Portland, OR. 97204	No response
24.	Independent Trustee Foreclosures, Inc.	437 29TH ST NE, STE G, OFFICE C, Puyallup, WA. 98372	No response
25.	Juniper Trustee Services Corp	11 Front St S, Ste. 101, Issaquah, WA. 98027	No response
26.	Master Trustee Services LLC	1201 1st Ave S Suite 305, Seattle, WA. 98134	No response
27.	National Trustee Corp	12661 Gain St, Pacoima, CA 91331	No response
28.	SW&W Trustee Services (Washington) LLC	1420 5th Ave Suite 3400, Seattle, WA. 98101	No response
29.	Titan Trustee Services, Inc.	601 Union St Suite 2600, Seattle, WA. 98101	No response
30.	Trustee Services of Washington, Inc.	1002 10th St., Snohomish, WA. 98290	No response
31.	Weinstein & Riley, PS	2001 Western Ave Suite 400, Seattle, WA. 98121	No response
32.	West Seattle Trusteed Properties, Inc.	4740 44 th Ave Suite 201, Seattle, WA. 98116	No response
33.	Western Progressive/Altisource	1000 Abernathy RD #200, Atlanta GA. 30326	No response
34.	Zieve Brodnax and Steele LLP	11335 122nd Way Suite 105, Kirkland, WA. 98034	No response
35.	Ghidotti Berger, LLP	1920 Old Tustin Ave, Santa Ana, CA. 92705	No response
36.	Default Resolution Network	1101 Investment Blvd. Suite 170, El Dorado Hills, CA. 95762	No longer doing foreclosures
37.	Law Offices of James Strichartz	201 Queen Anne Ave N, Seattle WA. 98109	No response
38.	Olympic Trustee Services LLC	2711 Vista Place W, University Place, WA. 98466	No response

‡ denotes entities affiliated with MTC Financial Inc.

*denotes entities affiliated with Quality Loan Services

Appendix C – Non-Judicial Foreclosure Trustee Survey

Non-Judicial Foreclosure Trustee Survey



Name of Survey Taker:
Company Name:
Role at Company:
Contact Information:
Date:

1. Please list the legal name of your company.
2. If you use another trade name in Washington, i.e. a DBA, please list that name.
3. Please list the company address.
4. Is this address the principal office of the company?
☐ Yes
☐ No
If no, please give the address for the principal office for the company.

5. What is your structure for the Washington State based company?

- ☐ Sole Proprietor
- ☐ General Partnership
- ☐ Limited Liability Partnership
- ☐ Limited Partnership
- ☐ Limited Liability Corporation
- ☐ Corporation
- ☐ Law Firm
- ☐ Professional Corporation
- ☐ Professional Limited Liability Company
- ☐ Non-profit Corporation

6. Please list the name(s) of the majority owner(s) of your company (defined as owning 25% or more of the legal entity) and the percentage of ownership.

7. Does your company have any affiliates (defined as an entity under common ownership)?

- ☐ Yes
- ☐ No

If yes, please identify each affiliate along with the address of the principal office for each identified affiliate entity.

8. Does your company have any subsidiaries (defined as an entity under the company's control)?

- ☐ Yes
- ☐ No

If yes, please identify each subsidiary along with the address of the principal office for each identified subsidiary entity.

9. How many employees does your company currently employ?
10. Are all employees located in the State of Washington?
☐ Yes
☐ No
11. How many employees located outside of Washington perform non-judicial foreclosures in the State of Washington?
12. How many loan servicers did you do business with between January 1, 2017, and December 31, 2019, for Washington borrowers?
13. How many 120 day "Notices of Sale" did you issue between January 1, 2017, and December 31, 2019, for Washington borrowers?
14. Of these 120 day "Notices of Sale" issued between January 1, 2017, and December 31, 2019:
- a. How many ended in a foreclosure sale?
 - b. How many were halted due to the borrower filing for bankruptcy?

15. Of the completed foreclosure sales:

- a. How many sales were awarded to the beneficiary?

- b. How many sales were awarded to non-beneficiary third parties?

16. List all the factors that go into choosing an entity for publishing notices of foreclosure sale?

- ☐ Cost
- ☐ Intended Audience
- ☐ Most prestigious or well known
- ☐ Other, please explain

17. Based on your experience in interacting with borrowers:

- a. Borrowers generally understand the role of the trustee.
 - ☐ Agree
 - ☐ Somewhat Agree
 - ☐ Neither Agree nor Disagree
 - ☐ Somewhat Disagree
 - ☐ Disagree

- b. Borrowers often confuse the trustee with the lender/beneficiary.
 - ☐ Agree
 - ☐ Somewhat Agree
 - ☐ Neither Agree nor Disagree
 - ☐ Somewhat Disagree
 - ☐ Disagree

- c. Borrowers are communicating with the proper party in order to stay a foreclosure sale.
 - ☐ Agree
 - ☐ Somewhat Agree
 - ☐ Neither Agree nor Disagree
 - ☐ Somewhat Disagree
 - ☐ Disagree

18. What improvements (law or otherwise) could be made to clarify the trustee's role?

19. What improvements (law or otherwise) could be made to provide overall clarity and understanding of the foreclosure process to the borrower, beneficiaries, or the general public?

20. In a typical foreclosure process, the frequency of communication between you (trustee) and the beneficiary is?

- ☐ Minimal to no Communication
- ☐ Moderate Communication
- ☐ Considerable Communication

21. In a typical foreclosure process, the frequency of communication between you (trustee) and the borrower during a typical foreclosure process?

- ☐ Minimal to no Communication
- ☐ Moderate Communication
- ☐ Considerable Communication

22. Describe the different types of information and services a borrower would receive from speaking with a trustee vs. their lender or servicer? What types of information and/or services does a trustee, as opposed to a lender/servicer, have the ability to give a borrower?

23. If a borrower provides last-minute information that could stay a foreclosure sale, but it is in your discretion as to whether to proceed, does your company have a repeatable internal process that aids in making a final decision (i.e. internal policies, decision matrix, or factors to be considered)?

☐ Yes

☐ No

a. If so, please provide the general policy, decision matrix, or factors considered used to make the final decision.

24. Describe your processes and procedures for responding to complaints by either the beneficiary and/or borrower?

25. List all fees and expenses that a trustee incurs during the foreclosure process.

26. How does a trustee recoup these expenses and fees if a foreclosure goes to trustee sale?

27. How does a trustee recoup these expenses and fees if a foreclosure does not go to trustee sale?

28. Describe how your company verifies it is in compliance with Washington's foreclosure laws (internal audits, external audits, etc.)?

29. Describe the regular and ongoing training your company provides to employees regarding compliance with Washington's foreclosure laws.

Document Requests

Below are a list of documents we are requesting in addition to this completed survey. We understand the need for protecting your clients and privileged information. We are requesting examples or templates of these types of documents. You can email these to marco.andrade@dfi.wa.gov or mail them to:

Marco Andrade
Management Analyst
Department of Financial Institutions
150 Israel Rd. SW
Olympia, WA. 98501

- Contracts between trustee and beneficiaries
- Example published notices of sale for foreclosure
- Example documents sent by beneficiary verifying they are holder of note
- Policy and operating procedures

If you have any questions regarding the survey please contact Marco Andrade at marco.andrade@dfi.wa.gov, or 360.790.8072.

Appendix D – Sample Documents

Appendix D

Recording Requested By :
«TitleCompany»

When Recorded Mail To :
«FinalTrusteeCompany»
c/o «WACcompany»
«WACaddress»
«WACcity» «WACstate» «WACzip»

TS No : «CaseKey»
Abbreviated Legal : «LegalSummary»

NOTICE OF TRUSTEE'S SALE

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

Grantor: «TrustorVesting»
Current Beneficiary of the Deed of Trust: «CurrentBeneficiaryName»
Current Trustee of the Deed of Trust: «FinalTrusteeCompany»
Current Mortgage Servicer of the Deed of Trust: «CurrentServicerName»
Reference Number of the Deed of Trust: «InstrumentNumber» , in Book «DeedBook» , Page «DeedPage»
Parcel Number(s) : «PropertyParcel»

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee, «FinalTrusteeCompany», SUCCESSOR TRUSTEE, on «SaleDate», at «SaleTime», «SaleLocation», will 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 «County», State of Washington, to-wit :

«LegalDescription»

And commonly known as : «PropertyAddress»
«PropertyCity» «PropertyState» «PropertyPostalCode»

(The undersigned trustee disclaims any liability for any incorrectness of the above street address or other common designation)

which is subject to that certain Deed of Trust dated «DeedDatedDate», recorded «RecordingDate» under Auditor's File No «InstrumentNumber», in Book «DeedBook», Page «DeedPage», records of «County» County, Washington , from «TrustorVesting» Grantor , to «OriginalTrusteeVestingInfo» as Trustee, to secure an obligation in favor of «OriginalBeneficiaryVesting» as Beneficiary.

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.

III.

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

Failure to pay when due the following amounts which are now in arrears : \$ «TotalA» ; (together with any subsequent payments, late charges, advances, costs and fees thereafter due)

IV.

The sum owing on the obligation secured by the Deed of Trust is : Principal \$ «UnpaidPrinBal» , together with interest as provided in the Note or other instrument secured from «LastPaymentReceived» , and such other costs and fees as are due under the Note of 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 said Deed of Trust as provided by statute. The sale will be made without warranty expressed or implied, regarding title, possession or encumbrances on «SaleDate» . The defaults referred to in Paragraph III must be cured by «SaleDate11DaysBefore» (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 «SaleDate11DaysBefore» (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 «SaleDate11DaysBefore» (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 :

SEE ATTACHED EXHIBIT "A"

by both first class and certified mail on «WANODMailedStepCompletedDate» , proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served on «WANODPostingCompletedDate» , 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.

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.

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

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

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

SEEKING ASSISTANCE

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

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

Telephone : (877) 894-4663 Website : www.homeownership.wa.gov

The United States Department of Housing and Urban Development

Telephone : (800) 569-4287 Website : www.hud.gov

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

Telephone : (888) 201-1014 Website : <http://nwjustice.org/get-legal-help>

If available, the expected opening bid and/or postponement information may be available by calling the following telephone number before the sale : «SaleVendorBidLine», or the website of «SaleVendorWebsite». No warranties or guarantees are made as to the accuracy or completeness of the information provided.

Dated : _____

«FinalTrusteeCompany»

Signature

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Printed Name and Title
«FinalTrusteeCompany»
c/o «WACcompany»
«WACaddress»
«WACcity» «WACstate» «WACzip»
Telephone : «TrusteePhone» or «WACphone»

State of Texas
County of Tarrant

On _____ before me _____, Notary Public, personally

appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature (seal)

Exhibit A

Notice of Default Mailing Information

**Declaration of Beneficiary
Pursuant to RCW 61.24.030**

Original Trustor(s) : «TrustorVesting»

Beneficiary : «CurrentBeneficiaryName»

Current Servicer : «CurrentServicerName»

Property : «PropertyAddress», «PropertyCity» «PropertyState» «PropertyPostalCode»

TS No : «CaseKey»

I _____, declare under penalty of perjury that :

1. «CurrentBeneficiaryName» is the current beneficiary and holder of the promissory note or other obligation secured by the deed of trust for the above-mentioned loan

2. The address for the current Beneficiary is :

«CurrentBeneficiaryAddress»

«CurrentBeneficiaryCity» «CurrentBeneficiaryState» «CurrentBeneficiaryZip»

3. The address and telephone number of the current servicer of the loan is :

«CurrentServicerAddress»

«CurrentServicerCity» «CurrentServicerState» «CurrentServicerZip»

Phone : «CurrentServicerPhone»

«CurrentBeneficiaryName»

Dated : _____

Signed

Print Name

Title

STATEMENT OF WORK FOR TRUSTEE SERVICES

This Statement of Work (“SOW”) is dated as of the SOW Effective Date below, by and between _____, and Click here to enter Client name, Click here to choose a, an Click here to enter the entity formation state Click here to choose an entity type (“Client”), and is entered into pursuant to the terms and conditions of that certain Click here to enter the name of the Master Agreement (the “Master Agreement”) dated Click here to enter a date, by and between Click here to enter Client name in Master and

. All capitalized terms used herein shall have the meaning set forth in the Master Agreement unless expressly indicated otherwise, or as separately defined within this SOW. Company and Client shall collectively be referred to as “the Parties,” individually as “a Party.”

Except to the extent modified or amended within this SOW, the terms and conditions of the Master Agreement are incorporated herein as if fully set forth below. In the event of a conflict between the terms and conditions of the Master Agreement and this SOW, the terms of this SOW shall control.

1. **SOW Effective Date** - Click here to enter a date
2. **SOW Expiration Date** - Click here to enter a date
3. **SOW Term** – Click here to choose a Term
4. **SOW Termination.** The termination provisions of the Master Agreement Click here to choose termination terms
5. **Services.** Company shall provide the services set forth in the attached Schedule A (“Services”).
6. **Fees.** The Services shall be provided by Company in exchange for the fees set forth in the attached Schedule(s) (“Fees”). Company reserves the right to update or change its Fees for the Services under this SOW at any time upon 30 days advance written notice to Client for any reason, including, but not limited to, a material change in volume commitments, geographic distribution of Orders, or requests for Services that are outside the scope of Company’s standard guidelines resulting in additional expense. All Fees are exclusive of applicable taxes, including without limitation, sales and use taxes. Company reserves the right at any time, including after the expiration or termination of this SOW, to collect from Client any taxes that are applicable to the Services as levied on such Services by a governing authority. Client acknowledges that it shall be responsible for the payment of all Fees for Services that are rendered by Company regardless of whether Client has been paid for the Services, the loan has a zero unpaid principal balance, the loan is service transferred or for any other reason. Client shall reimburse Company (at actual cost) for any third party fees that Company incurs as a result of Client’s requirement, if any, for Company to use a third party invoice processing system and Company shall have no responsibility for these third party fees. All Fees for Services shall be paid within 30 days of the invoice date, subject to any further modifications in any Schedule(s) of this SOW relating to particular Services. Company shall send all invoices to:

Invoicing Address:

Click here to enter street address

Click here to enter city, state and zip code

At any time during the Term of this SOW, if Client or its Affiliate is in default of its payment obligations under this SOW or any other agreement or engagement (where a contract is not in place) between Client (or its Affiliate) and Company (or its Affiliate), Company shall have the right, in its sole discretion, to require Client to set aside a monetary reserve in an account that is made available to Company to withdraw payment from for future billings and/or any amount that is owed by Client to Company under this SOW.

- 6.1. **Termination in Whole or in Part/Ownership/Fees.** Upon termination, Client shall be responsible for all fees associated with the Services performed by Company under the terms of this SOW. Client may recall any loan for any reason. After a loan is recalled, Company shall cooperate with Client’s reasonable requests concerning the

Appendix D

loan, including, but not limited to, providing Client or, at Client's direction, a successor trustee with: (a) the physical and electronic files related to the Loan; (b) Company's ledger sheet or print out of all financial information related to the Loan, such as amount owed, payments, interest, costs, attorneys' fees, etc.; and (c) notification of pending dates or deadlines.

- 7. Order Placement.** An Order shall mean a request from Client to provide the Services, which includes all information that Company requires to perform the requested Services ("Order").
- 8. Affiliates/Subcontractors.** Some portion of the Services may be provided by an Affiliate or subcontractor of the Company, and Company shall have sole discretion in the selection of Affiliates and subcontractors used to perform the Services.
- 9. Relationship Managers (Contacts)**

Company Contact	Client Contact
Click here to enter name Click here to enter title Click here to enter street address Click here to enter city, state and zip code Click here to enter phone number Click here to enter email address	Click here to enter name Click here to enter title Click here to enter street address Click here to enter city, state and zip code Click here to enter phone number Click here to enter email address

- 10. Notices.** All notices permitted or required to be delivered under the terms of this SOW shall be addressed as follows:

To Company:

With cc to:

To Client: [Click here to enter street address](#)
[Click here to enter city, state and zip code](#)
Attention: [Click here to enter name](#)

- 11. Change Request.** The terms and conditions of this SOW may only be modified in a writing signed by both Parties.

- 12. Schedules.** This SOW includes the following Schedules:

Schedule A (Services)
Schedule B (Fees)

- 13. Counterparts.** This SOW may be executed in one or more counterparts, including subsequent amendments and addendums, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument and may be sufficiently evidenced by one counterpart. Execution of this SOW at different times and places by the Parties hereto shall not affect the validity hereof. Signatures may be provided via wet signature, electronic mark, or electronic signature and shall not be denied legal effect. A signature on a copy of this SOW received by either Party by portable document format (PDF), e-signature technology or other electronic means is binding upon the other Party as an original. The Parties shall treat a photocopy of such document as a duplicate original.

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14. Entire Agreement. This SOW, any and all required attachments (including the Schedules referenced above), and the Master Agreement constitute the entire understanding between the Parties with regard to the subject matter of this SOW. The Parties have not made any oral or written representations, warranties, agreements, arrangements, or undertakings between themselves with regard to the subject matter in this SOW that are not fully expressed in this SOW.

THE PARTIES HAVE READ, UNDERSTOOD, AND AGREE TO THE TERMS AND CONDITIONS OF THIS SOW.

Name: _____

Title: _____

Click here to enter Client name

Name: _____

Title: _____

**Schedule A
Services**

1. Compliance with Professional Standards. Company shall at all times perform its duties under this SOW in accordance with: (a) all applicable federal, state and local laws, rules, regulations, and orders of general application in each state in which the Services are performed (“Applicable Laws”); and (b) the guidelines, rules, regulations and policies promulgated by FHLMC, FNMA, HUD, VA and any other entity issuing the same with respect to matters affecting the Services being provided to Client (“Agency Guidelines”). If there are any other requirements, policies, or procedures that Client requires Company to follow, Client shall send written notification to Company and Company shall comply with such directives pursuant to the instructions received; provided that Company shall be afforded a reasonable amount of time to implement the directives. If the additional directives result in increased expense to Company, Company shall be permitted to adjust its Fees accordingly. In the event Company is not able to comply with the additional directives, Company may terminate this SOW.

2. Written Correspondence. All written correspondence relating to the performance of the Services (not formal contractual Notice per Section 10 of the SOW) shall be directed to:

[Click here to enter name](#)

[Click here to enter title](#)

[Click here to enter street address](#)

[Click here to enter city, state and zip code](#)

[Click here to enter email address](#)

3. General Notification Requirements. If discovered by Company during the performance of Services as relating to the subject Property, Company shall inform Client of the following matters:

- a. Bankruptcy filings
- b. Dismissals, discharges and relief from stay, objections and adversary proceedings
- c. Notification upon completion of any confirmations or redemption periods
- d. Foreclosure deed recording dates
- e. Requests to hold/postpone/reschedule sale dates
- f. Requests for workout alternatives (i.e. short sale, payment plan, modification, DIL)
- g. Upcoming 1st lien sales that may impact 2nd lien position
- h. Home Owner Association Liens
- i. Condominium Association Liens
- j. IRS Liens
- k. Probate

4. Foreclosure. Company shall perform the following in connection with assigned foreclosure Orders:

- a. Open new foreclosure in trustee management system
- b. Order and process beneficiary check
- c. Beneficiary check audit
- d. Preparation of Notice of Default
- e. Record Substitution of Company/Notice of Default
- f. Review 10-day letter and complete first mailings
- g. Review of TSG
- h. Coordinate mediation (NV only)
- i. Complete second mailing
- j. Order publication and posting
- k. Order and review publication endorsements
- l. Prepare and send IRS notices (if applicable)
- m. Prepare and record Notice of Sale
- n. Update tracking steps in client systems
- o. Manage all incoming client communications

Appendix D

- p. Input and monitor bankruptcy and hold information
- q. Obtain and provide payoff and reinstatement quotes
- r. Process reinstatement/payoff funds
- s. Handle incoming borrower phone calls
- t. Obtain and prepare bid
- u. Complete pre-sale audit
- v. Order and review sale endorsements
- w. Complete title clearance and bankruptcy check for sale
- x. Process sales results
- y. Prepare Company's Deed Upon Sale
- z. Record Company's Deed Upon Sale
- aa. Provide performance reporting
- bb. Submit final Company invoice
- cc. Post Sale Conveyance (if applicable)

4.1 File Order. Company shall proceed with foreclosure activities immediately upon receipt of an Order from Client. Acknowledgement of foreclosure Orders will be sent within 48 hours. Company shall be responsible for handling any title issues that are encountered during the foreclosure process if within the control of the Company and to the extent permitted by Applicable Law. These issues include but are not limited to: (a) improperly executed deeds; (b) chain of title and ownership issues (including missing assignments of security instruments or missing endorsements on promissory notes); (c) notary error on deeds; (d) security deeds recorded out of order; (e) title issues due to lack of access to the property; (f) any and all title issues as they relate or can arise due to a mobile home; and (g) prior unsatisfied security deeds. Client shall inform Company if a foreclosure sale needs to be postponed due to title issues. All title issues shall be resolved (or insured against through issuance of title insurance) as of the foreclosure sale to ensure timely recording of deeds and resale of the property.

4.2 Preparation of Documents. To the extent permitted by Applicable Law, Company is responsible for preparing, or coordinating the preparation of, all documents required to complete the non-judicial foreclosure action, including, but not limited to, assignments of mortgage, substitutions of trustee, notices of default etc. for Fees agreed to in advance by the Parties. If additional information is needed to prepare the documents, Client shall timely provide the requested information. To the extent required by Applicable Law, all documents shall contain appropriate notary acknowledgements or jurats.

4.3 Document Recording. Unless otherwise instructed, Company is responsible for submitting documents to the local recording body to be recorded. Any and all fees, costs and taxes, if applicable, for recording (collectively, "Recording Fees") shall be prepaid by Company and shall be reimbursed by Client. Company shall not be responsible for any errors by the local recording body relating to the posting, indexing or recording of documents or the refusal of the local recording body to comply with the instructions provided by Company.

4.4 Voluntary Withdrawal. Company may unilaterally decide to no longer serve as trustee on any Order. In the event Company intends to withdraw as trustee it will provide notice to Client of its intent to withdraw 30 days prior to the effective date of the withdrawal.

4.5 Original Documents. If Company has received original loan documents, they shall be returned to Client in order to complete the satisfaction/release of lien in the case of a payoff, or for custodial filing in the case of reinstatement. The original loan documents shall be returned to Client within three (3) days of reinstatement, payoff, file closure, or Client's written request. If original documents are received by Company after payoff/reinstatement funds have already been remitted to Client, Company shall return them to Client upon Client's request.

4.6 Notification of Sale Date. Company shall schedule foreclosure sale dates at the earliest date possible and available and then notify Client of the scheduled sale date within two (2) business days of the sale being set. Company shall not suspend, continue or postpone an action unless specifically requested to do so by Client.

4.7 Bidding Instructions. No sale shall be held without Client's bidding instructions for that specific sale date, unless prior written approval to prepare the foreclosure bid has been received.

4.8 Third Party Bidders. If a third-party is the successful bidder at the foreclosure sale, Company shall send the Client proceeds from the sale to Client, together with a detailed breakdown of the funds disbursed, at the earliest date possible, but in any event in accordance with statutory laws. All foreclosure sales shall be conditioned specifically to limit the time to close as well as allow for forfeiture of the down payment and the assessment of per diem interest (if an extension to close is granted) if the terms are not met. All contact information for the third-party bidder must be collected, verified and maintained. If there is a delay in receipt of the third party proceeds, Client must be advised of the reason for the delay. Client will determine if an extension will be granted to the third party or if the property shall be rescheduled for sale.

4.9 Redeemed Properties. If the property is redeemed during the redemption period, Company shall send the Client proceeds from the sale to Client, together with a detailed breakdown of the bills and documentation clearly itemizing the amount collected, at the earliest date possible, but in any event in accordance with statutory laws. If there will be a delay in receipt of the redemption proceeds, Company must advise Client of the reason for the delay.

5. Deed in Lieu Transactions. If an approved workout is a deed-in-lieu of foreclosure transaction, Company shall generate, if permissible under Applicable Laws, and execute the appropriate documents and acquire the appropriate signatures to transfer ownership to Client or the appropriate investor/agency.

6. Limitations of Liability. Company agrees that it shall be responsible for, and will reimburse to Client, all actual direct losses and direct damages incurred by Client solely as a result of Company's failure to perform its Services in accordance with Applicable Law and Agency Guidelines, including, the following:

- a. Client's loss of right to reimbursement of ordinary foreclosure fees and costs incurred and normally recovered from an agency responsible for promulgating Agency Guidelines. Any lost trustee's fees and/or costs that are not recoverable from such agency as a result of an error by Company shall be billed to Company at the rate that Client would have received reimbursement from the agency.
- b. Client's inability to recover costs that would be incurred as a result of having to redo (start over) the foreclosure (i.e. mailing of required notices, publication costs, posting costs, auctioneer fees, title fees, etc.).
- c. Imposition of curtailments upon Client by an agency responsible for promulgating Agency Guidelines due to Company's delay in completing the foreclosure, as set forth under the applicable servicer/lender/investor guidelines. In the case of interest curtailment, Company's sole liability for any loss or damage caused by Company's error in completing the foreclosure shall be limited to the amount of interest loss curtailed from the date of the error to the date the required statutory action was accurately completed.

Company shall not be responsible for errors in the Services that are not created by Company, including, but not limited to, Client (or its designee) providing incorrect data or incorrect information to Company. Additionally, and notwithstanding anything to the contrary contained in this SOW or the Master Agreement, Company expressly disclaims all other liability to Client or any other person or entity for loss or damage caused by errors or omissions in the Services, including indirect, incidental, consequential, or punitive damages, regardless of whether such errors or omissions result from negligence, accident, or other cause. To the extent that the applicable jurisdiction does not permit the exclusion or limitation of monetary damages as set forth herein, Company's liability for an error or omission in the Services shall be limited to the maximum extent permitted by law in such jurisdiction.

Schedule B
Fees

Appendix E – Cover Letter



September 14, 2022

To Whom it May Concern,

My name is Marco Andrade, and I work for the Washington State Department of Financial Institutions (DFI). In the 2022 legislative session, the Washington State Legislature (Legislature) tasked DFI to perform a study on non-judicial foreclosures in a budget proviso ([SB 5693, Section 152](#)). In the proviso, DFI is required to conduct a survey of foreclosure trustees doing business in the State of Washington for owner-occupied residential real property between January 1, 2017, and December 31, 2019.

Attached with this letter is the survey the Legislature has requested us to conduct. Please take a few moments to review and complete this survey. At the end of the survey there is a list of document requests. We understand the need for protecting your clients and privileged information. We are requesting examples or templates of these types of documents.

Please send the completed survey and requested documents to me by **September 30, 2022**. Your Participation in this survey is not mandatory. If we do not receive a response from you, non-participation will be noted in our final report to the Legislature. Please feel free to reach out to me at any time with questions or concerns. I can be reached via phone or e-mail at the information below. Thank you for your assistance in this endeavor.

Sincerely,

Marco Andrade
Management Analyst
Department of Financial Institutions

360.790.8072



Marco.Andrade@dfi.wa.gov



www.dfi.wa.gov



150 Israel Rd SW, Olympia WA. 98501

