



June 8, 2011

Dear Customer:

As an update to our letter of April 29, 2011 in regards to Washington 2SHB 1362, the second stage becomes effective 7-22-11 and expands the pre-foreclosure notice and meeting requirements before a loan may be referred to foreclosure. It establishes procedures for the borrower to seek the aid of an attorney or a housing counselor approved by the United States Department of Housing and Urban Development or approved by the Washington state housing finance commission and allows for the attorney or counselor to recommend the borrower for mediation. Mediation cannot be requested solely by the borrower.

The statute has been amended and applies to all owner-occupied properties. The initial letter to the borrower has been significantly changed and must include specific language that the homeowner must contact the beneficiary within 30 days from the date of the letter or a Notice of Default may be issued and they may lose their home in foreclosure. It must state that if they do respond, they will have an additional 60 days to meet with their lender before a Notice of Default may be issued. A copy of the initial letter developed by the Department of Commerce is enclosed.

If the borrower does not respond within 30 days of the initial contact letter, the foreclosure may be initiated and a Notice of Default may be issued 30 days after satisfying the due diligence requirements.

If the borrower responds within 30 days of the date of the letter, they will have an additional 60 days to meet with their lender before a Notice of Default may be issued. If the borrower, their housing counselor or attorney requests a meeting, the beneficiary or agent shall schedule the meeting to occur before the notice of default is issued. An assessment of the borrower's financial ability to modify or restructure the loan obligation and a discussion of options MUST occur during the meeting. This meeting must be in person unless the requirement is waived in writing by the borrower and their representative. The lender/servicer may participate by telephone or video conference; however a representative of the beneficiary must also be at the meeting in person.

If, after the initial contact a borrower has designated a housing counselor or attorney to discuss with the beneficiary or their agent options for the borrower to avoid foreclosure, the borrower shall advise the beneficiary or their agent and provide contact information to the beneficiary or their agent. The beneficiary or their agent shall then contact the borrower's representative to meet. The beneficiary or their agent and the borrower and their representative shall attempt to reach a resolution within 90 days from the initial contact.

A housing counselor or the attorney assisting a borrower may refer the borrower to a mediation program if:

- It is determined that mediation is appropriate based on the individual circumstances
- A notice of sale has not been recorded

Referral to mediation by a housing counselor or attorney does not preclude a trustee from issuing a notice of default if the pre-foreclosure requirements have been met. The trustee must have confirmation that the meet and confer meeting has taken place prior to issuing a Notice of Default. If mediation is requested within the 30 day time period from the issuance of the NOD, the Notice of Sale cannot be issued until the mediation is completed.

The housing counselor/attorney referring a borrower to mediation shall send notice to the borrower and the department stating mediation is appropriate. Within 10 days of receiving the notice the department shall select a mediator and send notice describing the documents and information required for mediation to the:

- Beneficiary
- Borrower
- Housing counselor / attorney
- Trustee

Within 45 days of receiving the referral from the department, the mediator shall:

- Convene a mediation session
- Send notice to the borrower, beneficiary and the department of the time, date and location of the mediation session at least 15 days prior to the mediation.
- Advise all parties of the documents and information that must be provided and the deadlines for providing the documentation.

Within 7 days after mediation, the mediator must send a written certificate to the department, beneficiary, borrower, attorney or housing counselor and the trustee. The notice must contain:

- Date of mediation
- Persons in attendance (person or video/conference call)
- Resolution reached
- Parties participated in good faith
- NPV test used

If the certificate is not received by the trustee within 10 days after the certificate was due, the trustee may record a NOS.

If an agreement is not reached at mediation and all parties acted in good faith, the beneficiary may proceed with foreclosure.

If an agreement is not reached at mediation and the mediator's certificate reflects that the net present value of the modified loan exceeds the anticipated net recovery at foreclosure, this shall constitute a basis for the borrower to enjoin the foreclosure.

A financial institution that certifies to the Department of Commerce that it was not a beneficiary in more than 250 foreclosure sales in a calendar year is exempt from the mediation provisions.

We suggest you review with counsel the information regarding compliance with HB1362 pre-foreclosure notices and mediation as well as the reporting and payment to the Department of Commerce for each NOD issued. The report and payment are due on a quarterly basis to the Department of Commerce. Additional information may be obtained from the Department of Commerce at www.commerce.wa.gov, search under the Foreclosure Fairness Act.

A copy of the bill and the amended Loss Mitigation Form which will need to be forwarded to T.D. Service Company prior to commencement of the foreclosure are attached. If you have any questions or concerns, feel free to contact me at 714 480-5640 or lkidder@tdsf.com.

You may also view state specific information on the Legislative Update Section on our website. Simply go to www.tdsf.com and click on the "Legislative Updates" Tab from our Home Page.

Sincerely,

A handwritten signature in cursive script that reads "Linda Kidder".

Linda Kidder
Senior Vice President/Operations

Attachments:
2SHB 1362
Notice of Pre-Foreclosure Options
Loss Mitigation Form