

# SENATE BILL REPORT

## SB 5988

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As Reported by Senate Committee On:  
Financial Institutions, Housing & Insurance, December 13, 2011

**Title:** An act relating to making imperative changes to the foreclosure fairness act to ensure mediators' participation.

**Brief Description:** Making imperative changes to the foreclosure fairness act to ensure mediators' participation.

**Sponsors:** Senators Hobbs, Litzow, Fain, Keiser, Frockt, Chase and Kline.

**Brief History:**

**Committee Activity:** Financial Institutions, Housing & Insurance: 12/13/11 [DPS].

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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Majority Report:** That Substitute Senate Bill No. 5988 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Fain, Haugen, Keiser and Litzow.

**Staff:** Alison Mendiola (786-7483)

**Background:** Uniform Mediation Act. The Uniform Mediation Act (UMA) governs mediations and provides for confidentiality and privilege against disclosure.

Dispute Resolution Centers. Under the Dispute Resolution Center (DRC) statute, employees and volunteers of a DRC are immune from suit in any civil action based on any proceedings or other official acts performed in their capacity as employees or volunteers, except in cases of willful or wanton misconduct.

Foreclosure Fairness Act. Earlier this year, the Legislature passed 2SHB 1362 which is known as the Foreclosure Fairness Act (Act). This Act, among other things, creates a mediation process for homeowners in an owner-occupied residential property who are facing foreclosure. A homeowner may only be referred to mediation by a housing counselor or attorney. The Act provides a timeline for the mediator to schedule the mediation, specifies what documents are needed at the mediation, and directs the mediator to provide a certification that includes the date, time, and location of the mediation; the names of the parties who participated; whether a resolution was reached; whether the parties participated

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in the mediation in good faith; and a description of the net present value test used. This mediator's certification is needed before the trustee can record the Notice of Sale, unless the certificate is not received by the trustee ten days after it was due in which case the trustee can record the Notice of Sale.

Mediations that occur under the Act are not governed by UMA.

The Act specifies that prior to scheduling a mediation session, the mediator shall require that both parties sign a waiver stating that neither party may call the mediator as a live witness in any litigation pertaining to the foreclosure action between the parties. Although the mediator may not be called as a live witness, the mediator's certification may be deemed admissible evidence in such litigation.

**Summary of Bill (Recommended Substitute):** The requirement that the mediator have both parties sign a live-witness waiver is eliminated and the live-witness waiver language is instead added to the statute. DRC mediators are provided with immunity while acting as a foreclosure mediator, except in cases of willful or wanton misconduct. In addition to the mediator's certification being admissible evidence, any and all information and material used as part of the mediation may be considered admissible evidence, subject to court rules, in any litigation relating to a foreclosure action between the parties.

**EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute):** The immunity language is narrowed from all mediators who provide foreclosure mediation to DRC employees or volunteers who provide foreclosure mediation under the Foreclosure Fairness Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Original Bill:** PRO: There have been over 700 mediation referrals, 63 percent have asked for a time extension due to current requirements (signing the live-witness waiver). This bill fixes that problem. Convening mediation is requiring uncompensated time of mediators, how can we offer services we're not getting paid for? Eliminating the live-witness form will cut down the time it takes to schedule a mediation down to half of it's current time. DRCs provide a majority of the foreclosure mediation. However, King County DRC is reviewing monthly whether to continue foreclosure mediations and Clark County DRC has already pulled out.

Stakeholders are working on technical fixes for regular session. As for this bill, there is a consensus and an immediate need to move this bill during special session. Bankers never intended to hold mediators culpable and this bill would provide that immunity. We're the third non-judicial foreclosure state to enact a bill as big as this one, providing for mediation, and there was an unanticipated consequence that has impacted mediators therefore impacting

banks and homeowners facing foreclosure. We need to address this issue now to continue to the communication between banks and homeowners.

**Persons Testifying:** PRO: Dan McConnon, Department of Commerce; Maralise Hood Quan, Pierce County DRC, Resolution Washington; Denny Eliason, Washington Bankers Association; and Bruce Neas, Columbia Legal Services.