

---

## Judiciary Committee

---

### HB 2421

**Title:** An act relating to modifying the foreclosure fairness act.

**Brief Description:** Modifying the foreclosure fairness act.

**Sponsors:** Representatives Orwall, Rodne, Ladenburg, Upthegrove, Tharinger, Maxwell, Kelley, Kenney, Kagi, Moscoso and Jinkins; by request of Washington State Department of Commerce.

#### Brief Summary of Bill

- Amends the Foreclosure Fairness Act regarding: (1) when mediation may be requested; (2) the mediators' fees and immunity; and (3) the beneficiaries' reporting requirements.

**Hearing Date:** 1/26/12

**Staff:** Trudes Tango (786-7384).

#### **Background:**

##### Meet and Confer Process.

Before a beneficiary can issue a notice of default to a borrower of a loan secured by a deed of trust on owner-occupied residential real property, the beneficiary must first contact the borrower to explore options to avoid foreclosure. The initial contact must be by letter, containing statutorily required information, and then by telephone. If the borrower requests a meeting with the beneficiary, the meeting must be scheduled before the notice of default is issued. The meeting must be in person, unless the borrower waives that requirement. A person authorized to modify the loan or reach an alternative resolution on behalf of the beneficiary may participate by telephone, so long as a representative of the beneficiary is at the meeting in person. The parties must attempt to reach a resolution under this process within 90 days from the date the initial contact was made.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

This initial "meet and confer" requirement does not apply if the borrower has surrendered the property or the borrower has filed for bankruptcy and the bankruptcy stay remains in place or the bankruptcy court has granted relief from the bankruptcy stay allowing enforcement of the deed of trust.

#### Mediation.

Last year, the Legislature enacted 2SHB 1362, the Foreclosure Fairness Act (FFA), which, among other things, established a foreclosure mediation process that applies to beneficiaries and borrowers of deeds of trust on owner-occupied residential property.

The borrower must be referred to mediation by a housing counselor or attorney and can be referred any time before a notice of sale has been recorded.

The referral to mediation is sent to the Department of Commerce (Department), which selects a mediator from a list of approved foreclosure mediators and sends notice to the parties. Mediators under the FFA may be attorneys who are active members of the Washington state Bar, employees of the U.S. Department of Housing and Urban Development-approved housing counseling agencies or approved by the state Housing Finance Commission, employees and volunteers of Dispute Resolution Centers (DRCs), and retired judges of Washington courts. Approved foreclosure mediators must go through a training program, be familiar with relevant aspects of the law, and have knowledge of community-based resources and mortgage assistance programs.

A foreclosure mediator's fee may not exceed \$400 for a mediation session lasting between one and three hours. Payment of the fee is split equally between the beneficiary and borrower. They must pay the fee seven days before commencement of the mediation or pursuant to the mediator's instructions.

Mediators who are employees or volunteers of DRCs are immune from suit in any civil action based on any proceedings or other official acts performed in their capacity as foreclosure mediators, except in cases of willful or wanton misconduct.

#### Beneficiary Reporting Requirements.

Every quarter, a beneficiary that issues notices of default on owner-occupied residential real property must report to the department the number of owner-occupied residential real properties for which the beneficiary has issued a notice of default during the previous quarter and remit \$250 per property. The reporting and remitting requirement does not apply to beneficiaries that issued fewer than 250 notices of default in the previous year.

#### **Summary of Bill:**

##### Mediation.

A housing counselor or attorney assisting the borrower may refer the borrower to mediation if the borrower is in foreclosure as evidenced by either a notice of default or the notice of preforeclosure options (the initial meet and confer contact).

The mediator fee is for preparing, scheduling, and conducting a mediation session.

The immunity for foreclosure mediators is extended to all foreclosure mediators, regardless of whether the mediator is an employee or volunteer of a DRC.

Beneficiary Reporting Requirements.

The quarterly reporting by beneficiaries to the department must also include updated beneficiary contact information for the person and work group responsible for compliance with the Foreclosure Fairness Act. The quarterly reporting and payments required of beneficiaries are due within 45 days of the end of each quarter.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.