

SENATE BILL REPORT

SHB 2421

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 21, 2012

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

Brief Description: Modifying the foreclosure fairness act.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Rodne, Ladenburg, Upthegrove, Tharinger, Maxwell, Kelley, Kenney, Kagi, Moscoso and Jinkins; by request of Washington State Department of Commerce).

Brief History: Passed House: 2/11/12, 91-1.

Committee Activity: Financial Institutions, Housing & Insurance: 2/21/12 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Staff: Alison Mendiola (786-7483)

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 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.

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.

Mediation. In 2011 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 (Commerce), 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 Commerce 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: Meet and Confer. The meet and confer may occur telephonically unless the borrower makes a written request for an in-person meeting, which would occur in the county where the borrower resides. It is clarified that the meet and confer requirements applies to borrowers who have filed for bankruptcy.

Mediation. A borrower may no longer be referred to mediation during the meet and confer period. A housing counselor or attorney assisting the borrower may refer the borrower to mediation any time after the borrower has received a notice of default but no later than 20 days after the notice of sale has been recorded.

The mediation timeline is clarified:

- within 23 days of receiving Commerce's notice of referral to mediation, the borrower is to transmit the documents required to the mediator and beneficiary;

- within 23 days of receipt of the borrower's documents, the beneficiary is to submit the required documents to the mediator and the borrower;
- within 70 days of receiving the referral from Commerce, the mediator is to convene a mediation session; and
- the mediator is to send written notice to Commerce and the parties 30 days prior to the mediation noting the date, time, and location of the mediation and other required information.

Both the borrower and beneficiary have a duty to mediate in good faith.

The mediator fee is for preparing, scheduling, and conducting a mediation session. The parties must tender the mediation fee within 30 days of Commerce's letter referring the parties to mediation.

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 and Expenditures. The quarterly reporting by beneficiaries to Commerce must also include updated beneficiary contact information for the person and work group responsible for compliance with the FFA. The quarterly reporting and payments required of beneficiaries are due within 45 days of the end of each quarter. Of the money received, funding to agencies and organizations must be provided by Commerce through an interagency agreement or other applicable contract agreement. Of the expenditures; 76 percent is for housing counseling activities to benefit the borrowers and up to 13 percent or \$590,000 per biennium, whichever is greater; for the implementation and operation of the FFA.

Notice of Trustee's Sale. A notice is provided to owners when the notice of trustee's sale is recorded that they have only 20 days to pursue mediation through a housing counselor or attorney.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Section 9 contains an emergency clause and takes effect immediately. The remainder of the bill takes effect ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill represents negotiated stakeholder language improving upon the Foreclosure Fairness Act, which is becoming a model for other states. The fix in December regarding mediator liability was helpful and this bill takes it one step further to provide immunity for all foreclosure mediators. This bill represents over 30 hours of negotiations and will continue to improve the foreclosure process.

Persons Testifying: PRO: Representative Orwall, prime sponsor; Holly Chisa, United Trustees Assn.; Mary Hancock, Dispute Resolution Center of Kitsap County, Resolve WA; Dan McConnon, Commerce; Bruce Neas, Columbia Legal Services; Denny Eliason, WA Bankers Assn.