

FINAL BILL REPORT

SSB 5988

C 4 L 11 E 2

Synopsis as Enacted

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

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Hobbs, Litzow, Fain, Keiser, Frockt, Chase and Kline).

Senate Committee on Financial Institutions, Housing & Insurance

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 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.

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.

Summary: 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.

Votes on Final Passage:

Second Special Session

Senate	47	0
House	95	1

Effective: December 20, 2011