

# FINAL BILL REPORT

## HB 2723

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Synopsis as Enacted

**Brief Description:** Modifying certain provisions governing foreclosures.

**Sponsors:** Representatives Gregerson, Rodne, Orwall, Jinkins, Robinson, Freeman, Takko, Farrell, Bergquist, Riccelli, Fitzgibbon, Senn, Ryu, Morrell, Ortiz-Self, Clibborn, Kagi and Goodman.

**House Committee on Judiciary**  
**House Committee on Appropriations Subcommittee on General Government & Information Technology**  
**Senate Committee on Financial Institutions, Housing & Insurance**

**Background:**

The Foreclosure Fairness Act (FFA) is foreclosure prevention legislation enacted in 2011. This act included a number of provisions aimed at increasing communication between beneficiaries and borrowers.

*Meet and Confer Process.*

Before a beneficiary may issue a notice of default to a borrower of a loan secured by a deed of trust on owner-occupied residential real property, a notice of pre-foreclosure options must be mailed to the borrower via first-class mail. If the borrower requests a meeting with the beneficiary, the meeting may be by telephone, unless the borrower requests in writing that it be in person. In-person meetings must be held in the county where the borrower resides.

*Mediation and Mediators.*

The FFA created a mediation process applicable to beneficiaries and borrowers of deeds of trust on owner-occupied residential real property, which is defined as property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit.

The borrower must be referred to mediation by a housing counselor or attorney. The referral 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. A mediation session must be held within 70 days of the referral from the Department and within the county where the borrower resides. The beneficiary and borrower must exchange required documents within

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specified time frames. Included in the documentation required of a beneficiary is the portion or excerpt of any pooling and servicing agreement that prohibits the beneficiary from implementing a modification of the loan.

Unless the parties agree otherwise, a foreclosure mediator's fee may not exceed \$400 for a mediation session lasting between one and three hours.

*Beneficiary Reporting and Remittance 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 to the Department. The reporting and remitting requirement does not apply to beneficiaries that issued fewer than 250 notices of default in the previous year.

*Allocation of Funds.*

The funds remitted by beneficiaries are allocated between different agencies. In particular, not less than 76 percent of the funds must be used for providing housing counselors to borrowers, except that this amount may be less than 76 percent if necessary to meet the funding level specified for the Office of the Attorney General Consumer Protection Division for enforcement. Up to 13 percent, or \$590,000, whichever amount is greater, is directed to the Department for implementation and operation of the FFA.

**Summary:**

*Meet and Confer Process.*

The notice of pre-foreclosure options that must be sent by the beneficiary or authorized agent to the borrower must be sent by registered or certified mail, return receipt requested, in addition to sending it via first-class mail.

If the meeting is requested to be held in person, the meeting must be held in the county where the property is located, unless the parties agree otherwise, rather than where the borrower resides.

The declaration that is required of the beneficiary, authorized agent, or trustee, also known as the "foreclosure loss mitigation form" is modified to add additional descriptive information or explanations as to what efforts were made to meet and confer with the borrower and what transpired as a result:

- If the borrower responded, but did not request a meeting, this fact is to be noted.
- If a meeting was requested and held, the date, time, and location is to be specified.
- If a meeting was requested, but the borrower did not appear, specific information relative to the scheduling of that meeting is required.
- If the borrower did not respond, that is to be specifically noted.
- A space for additional optional explanatory comments is added.

*Mediation and Mediators.*

For purposes of the foreclosure mediation program, owner-occupied residential real property includes residential real property of up to four units.

Even if the borrower fails to elect to mediate within the applicable time frame, the borrower and the beneficiary may nevertheless agree in writing to enter the mediation program.

Documents required of the beneficiary for purposes of mediation must include the portion or excerpt of *any* investor restriction that prohibits the beneficiary from implementing a modification and not just the portion or excerpt of a pooling and servicing agreement that includes such a prohibition.

Mediation sessions are to be convened in the county where the property is located, not where the borrower resides.

The reasonable fee that a mediator may charge is that which is authorized by statute *or* which is authorized by the Department. The fee does not have to be authorized by both the statute and the Department.

*Allocation of Funds.*

Some of the specifics with respect to expenditures from the Foreclosure Fairness Account are modified as follows:

- No less than 71 percent, rather than no less than 76 percent, must be used for the purposes of providing counseling.
- Up to 18 percent or \$1.4 million, rather than up to 13 percent or \$590,000, whichever amount is greater, is directed to the Department for implementation and operation of the FFA.

**Votes on Final Passage:**

House	98	0
Senate	49	0

**Effective:** June 12, 2014