

SENATE BILL REPORT

HB 2723

As of February 26, 2014

Title: An act relating to foreclosures.

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.

Brief History: Passed House: 2/13/14, 98-0.

Committee Activity: Financial Institutions, Housing & Insurance: 2/25/14.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: Residential Foreclosures. Unlike a mortgage, which requires judicial foreclosure, a deed of trust may be nonjudicially foreclosed if the borrower defaults on the loan obligation. The Deeds of Trust Act establishes procedures for foreclosure and imposes certain requirements on beneficiaries and trustees.

Meet and Confer. In 2008 the Legislature enacted legislation requiring a beneficiary to contact a borrower by sending a form, developed by the Department of Commerce (Commerce), before issuing a notice of default. The letter must urge the borrower to contact a housing counselor or attorney as soon as possible. If the borrower requests a meeting with the beneficiary, the meeting must be in person unless waived by the borrower. However, a person authorized to make decisions for the beneficiary may participate by phone. This is referred to as the meet and confer requirement. The meet and confer requirement applies to all deeds of trust made on owner-occupied residential property.

Foreclosure Fairness Act (Act). In 2011 the Legislature enacted the Act. The Act is designed to help homeowners and their lenders explore possible alternatives to foreclosure and reach a resolution when possible. Lenders must notify borrowers prior to initiating the foreclosure of the availability of foreclosure counseling and the potential for foreclosure mediation. Commerce administers the foreclosure mediation program. Both the lender and homeowner pay for the mediation services. Lenders and servicers conducting more than 250 foreclosures in Washington State in the previous year pay \$250 for each notice of default issued. The fee

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provides funding for free homeownership counseling, attorneys to prosecute violations of the Washington Consumer Protection Act, and foreclosure prevention outreach.

Summary of Bill: Meet and Confer. 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. The initial contact with the borrower must be made by sending a letter to the borrower by both first-class and either registered or certified mail, return receipt requested. The Foreclosure Loss Mitigation Form is revised to provide more specific information, including space for optional additional explanatory comments.

Mediation. If the borrower has failed to elect to mediate within the applicable timeframe, the borrower and the beneficiary may, but are under no duty to, agree in writing to enter the foreclosure mediation program. If a loan cannot be modified pursuant to a pooling or servicing agreement, or other investor restriction, that portion of the information must be provided to the mediator and borrower. Unless agreed otherwise, mediation must occur in the county where the property resides. A mediator's fee can not exceed \$400 unless the parties or Commerce agree otherwise.

Application of Mediation Provisions. A person may be referred to mediation if the borrower is deceased and the person is a successor in interest of the deceased borrower who occupies the property as the successor's primary residence. A person may be referred to mediation if the person has been awarded title to the property in a proceeding for dissolution or legal separation. Neither situations impose an affirmative duty on the beneficiary to accept an assumption of the loan.

Foreclosure Fairness Account. At least 71 percent of funds in the Foreclosure Fairness Account must be used for housing counseling, unless additional funding is needed to fund the activities of the Office of the Attorney General or Commerce under the Act. Up to 18 percent or \$1.4 million per biennium, whichever is greater, may be expended by Commerce for the implementation and operation of the Act.

Under the Act, the definition of residential real property is amended to include owner-occupied residential real property of up to four units.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill provides valuable homeowner education and represents some changes to the foreclosure process as agreed to by a stakeholder group representing all aspects of residential foreclosures. These changes help streamline the process. There was no opposition to this bill in the House.

Persons Testifying: PRO: Representative Gregerson, prime sponsor; Denny Eliason, WA Bankers Assn., United Financial Lobby; Bruce Neas, Columbia Legal Services.