

HOUSE BILL REPORT

SHB 2876

As Passed Legislature

Title: An act relating to the foreclosure of deeds of trust.

Brief Description: Addressing the foreclosure of deeds of trust.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Kirby and Griffey).

Brief History:

Committee Activity:

Judiciary: 1/28/16, 2/4/16 [DPS];

Appropriations: 2/9/16 [DPS(JUDI)].

Floor Activity:

Passed House: 2/16/16, 97-0.

Passed Senate: 3/4/16, 48-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Revises expenditures from the Foreclosure Fairness Account (Account).
- Changes the trigger for remittances to the Account, repealing the section that required certain beneficiaries to remit based on the number of notices of default issued and including a new section that requires certain beneficiaries to remit based on the number of recorded notices of trustees' sale.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Kuderer, Muri, Orwall and Stokesbary.

Staff: Cece Clynch (786-7195).

HOUSE COMMITTEE ON APPROPRIATIONS

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.

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Condotta, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger and Van Werven.

Staff: Meghan Morris (786-7119).

Background:

Most loan obligations for residential real property in Washington are secured by deeds of trust. In 2011 the Foreclosure Fairness Act (Act) was enacted, making changes to the process related to the nonjudicial foreclosure of deeds of trust. As part of those changes, the Foreclosure Fairness Program (Program) was established.

A variety of agencies are involved with the Program. Their roles and responsibilities are set forth below:

- The Department of Commerce (Department) is charged with the overall development and management of the Program, including the mediation program. The Department is responsible for training, approving, and maintaining a list of approved foreclosure mediators and assigning them to mediation cases. The director of the Department authorizes expenditures from the Foreclosure Fairness Account (the Account).
- The Housing Finance Commission administers the homeowner counseling program and oversees a toll-free hotline where homeowners in need of foreclosure prevention assistance can call and receive free foreclosure prevention counseling.
- The Department of Financial Institutions (DFI) is responsible for conducting homeowner prepurchase and postpurchase outreach and educational programs, and raising public awareness of the services provided under the Program.
- The Office of the Attorney General (AGO) Consumer Protection Division investigates consumer protection complaints and enforces deed of trust foreclosure laws.
- The Office of Civil Legal Aid contracts with qualified legal aid programs to provide free legal assistance to low-income and moderate-income homeowners in matters related to foreclosure.

Certain beneficiaries are required to remit a \$250 fee to the Department, for deposit into the Account, for each notice of default issued on owner-occupied residential real property in the state. This does not apply to: any beneficiary or loan servicer that is a federally insured depository institution and that certifies under penalty of perjury that it has issued, or directed the issue of, fewer than 250 notices of default in the preceding year; or, beneficiaries that are homeowners' or condominium associations.

Authorized expenditures from the Account are as follows:

- no less than 71 percent of the funds must be used for providing housing counselors to borrowers, except that this amount may be less than 71 percent if necessary to meet

the funding level specified for the AGO Consumer Protection Division for enforcement and the Department;

- up to 6 percent, or \$655,000 per biennium, whichever amount is greater, to the AGO to be used to enforce the law with respect to deeds of trust;
- up to 2 percent to the Office of Civil Legal Aid to be used for the purpose of contracting with qualified legal aid programs for legal representation of homeowners in matters relating to foreclosure;
- up to 18 percent, or \$1.4 million per biennium, whichever amount is greater, to the Department to be used for implementation and operation of the Act; and
- up to 3 percent to the DFI to conduct homeowner prepurchase and postpurchase outreach and education programs.

Summary of Substitute Bill:

Biennial expenditures of the monies in the Account are changed:

- \$400,000 to fund the counselor referral hotline;
- 69 percent of the remaining funds for the purposes of providing housing counseling activities;
- 8 percent of the remaining funds to the AGO to be used by the Consumer Protection Division to enforce chapter 61.24 RCW;
- 6 percent to the Office of Civil Legal Aid to be used for the representation of homeowners in matters related to foreclosure; and
- 17 percent to the Department to be used for implementation and operation of the Act.

There will no longer be provision of any funds to the DFI for outreach and education.

The section which required certain beneficiaries to remit \$250 per notice of default to the Department for deposit into the Account is repealed. A savings clause is included, preserving any existing right acquired or liability or obligation incurred under the repealed section.

Beginning July 1, 2016, certain beneficiaries must remit \$250 for every notice of trustee's sale recorded on residential real property, excluding the recording of an amended notice of trustee's sale and notices of trustee's sale for which a fee was paid under the repealed section for a notice of default supporting that notice of trustee's sale. For purposes of this section:

- "Residential real property" includes residential real property with up to four dwelling units, whether or not the property or any part thereof is owner-occupied.
- The remittance requirement does not apply to: any beneficiary or loan servicer that is a federally insured depository institution and that certifies under penalty of perjury that fewer than 50 notices of trustee's sale were recorded on its behalf in the preceding year; or, any homeowners' or condominium association beneficiaries.

The same reporting requirements as applied under the repealed section to remitting beneficiaries are made applicable to remitting beneficiaries under this new section. Similarly, failure to comply with this new section is an unfair or deceptive act in trade or commerce and an unfair method of competition under the Consumer Protection Act, just as was provided with respect to violations of the repealed section.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2016.

Staff Summary of Public Testimony (Judiciary):

(In support) In 2011 when the Act was enacted, there was a huge foreclosure crisis and a need for a system to help homeowners. Since that time, the program has provided counseling to 26,000 people and there have been 8,000 mediations, with about half of those reaching an agreement. It is good news that the numbers of foreclosures have gone down. There is a need, however, to make sure the program has the necessary financial support to continue. The 250 exemption threshold for mediation remains, but this bill reduces the exemption threshold for which beneficiaries pay the \$250 fee down from 250 to 50, and it is based on notices of trustee's sale rather than notices of default. This is an agreed-upon bill in front of you. It is the result of extensive work by stakeholders. This right-sizes the program. The bill provides money for counseling. Although it cuts funds for the AGO, that office supports the bill and is proud that through this program there is access to counseling, mediation, and consumer protections. The bill is supported and should be passed.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The good news is that foreclosures are down dramatically in our state, from a high of about 44,000 in 2011 to about 16,500 in 2015. We believe there is a predictable glide path down to a new normal, in about three or four years, of around 10,000 foreclosures per year. House Bill (HB) 2876 is the product of cooperative discussions between consumer groups, the Office of Civil Legal Aid, the Department of Commerce, the Housing Finance Commission, and industry representatives. The goal of the discussions was to right-size the Fairness Foreclosure Act (FFA), given that foreclosures are down considerably and the funding for the FFA is based on fees paid by the industry. It is important that HB 2876 not only continues the program in a broad sense but also ensures housing counselors will remain available across the state free of charge for people facing a home foreclosure.

(Opposed) None.

Persons Testifying (Judiciary): Representative Orwall, prime sponsor; Jessica Fortescue, Washington Bankers Association; Mike Webb, Office of the Attorney General; and Denise Rodriguez, Washington Homeownership Resource Center.

Persons Testifying (Appropriations): Denny Eliason, Washington Bankers Association and United Financial Lobby.

Persons Signed In To Testify But Not Testifying (Judiciary): Pina Belgrano; Michelle Darnell; James Wexler; Daniel Fievez; Steven Nielson, Libertarian Party Washington; and Curtis Hart, Libertarian Party of Cowlitz County.

Persons Signed In To Testify But Not Testifying (Appropriations): None.