
Judiciary Committee

HB 2057

Title: An act relating to the services and processes available when residential real property is abandoned or in foreclosure.

Brief Description: Concerning services and processes available when residential real property is abandoned or in foreclosure.

Sponsors: Representative Orwall.

Brief Summary of Bill

- Makes findings that there are issues that should be addressed with respect to: the financially viable provision of Foreclosure Fairness Program services; and processes to address abandoned properties.
- Directs the Housing Finance Commission to create a process for obtaining certificates of abandonment for abandoned properties.

Hearing Date: 2/14/17

Staff: Cece Clynch (786-7195).

Background:

Foreclosure Fairness Program and Account.

Most loan obligations for residential real property in Washington are secured by deeds of trust. In 2011 the Foreclosure Fairness 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, and the services they provide, are set forth below:

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.

- The Department of Commerce (Department) is charged with the overall development and management of the Program. The Department is also 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 Office of the Attorney General 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 must remit \$250 to the Department for every notice of trustee's sale recorded on residential real property, excluding the recording of an amended 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.

Monies in the Account pay for the Program, including mediation, counseling, consumer protection, and legal representation.

Jordan v. Nationstar.

In 2016 a majority of the Washington Supreme Court held in Jordan v. Nationstar that under Washington's lien theory of mortgages and statutory provisions a borrower and a lender cannot, prior to default, enter into a contractual agreement that allows the lender to enter, maintain, and secure the property prior to foreclosure. The majority recognized that, absent post-default consent, a lender may use a statutory receivership to gain access to the property prior to foreclosure, and that this is not the exclusive avenue, but it did not indicate what particular other remedies might be available. The dissent, on the other hand, would have held that a lender may, pursuant to a pre-default agreement, enter, maintain, and secure seemingly abandoned property before foreclosure.

Summary of Bill:

Findings are made that there are issues that should be addressed with respect to:

- making changes in order that services such as housing counseling, mediation, legal services, and consumer protection remain available and that the provision of these services is financially viable; and
- putting in place processes to address abandoned properties in order to avoid, or remediate in a timely manner, problems caused by events, such as extreme weather conditions and vandalism, while continuing to respect the rights of the homeowner.

The Housing Finance Commission is directed to create a process by which entities such as servicers may apply to obtain a certificate of abandonment for abandoned properties.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.