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## Civil Rights & Judiciary Committee

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### HB 1108

**Brief Description:** Maintaining funding and assistance for homeowners navigating the foreclosure process.

**Sponsors:** Representatives Orwall, Ortiz-Self, Kloba, Hackney, Chopp, Santos, Macri, Pollet and Harris-Talley.

#### Brief Summary of Bill

- Provides that, for the 2021 calendar year only, whether or not a beneficiary must participate in mediation under the Foreclosure Fairness Act is determined by the number of the beneficiary's trustee sales that occurred in 2019 rather than 2020.
- Provides that, for the 2021 calendar year only, whether or not a beneficiary must remit a fee into the Foreclosure Fairness Account is determined by the number of notices of trustee's sale that were recorded on its behalf in 2019 rather than 2020.

**Hearing Date:** 1/19/21

**Staff:** Yelena Baker (786-7301).

#### **Background:**

##### Mediation and Remittance Requirements under the Foreclosure Fairness Act.

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

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Among other things, the FFA created a mediation process applicable to beneficiaries and borrowers of deeds of trust on owner-occupied residential real property. For purposes of the foreclosure mediation program, "owner-occupied residential real" property includes residential real property up to four units. Beneficiaries are exempt from foreclosure mediation if they certify under penalty of perjury that they were not a beneficiary of deeds of trust in more than 250 trustee sales of owner-occupied residential real properties during the preceding calendar year.

The Program is funded through fees paid by nonexempt beneficiaries, who must remit \$325 to the Department of Commerce for every original notice of trustee's sale recorded on residential real property. For purposes of the remittance requirement, "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.

Remittances are deposited into the Foreclosure Fairness Account (Account); moneys in the Account pay for the Program, including mediation, counseling, consumer protection, and legal representation of homeowners in matters relating to foreclosure.

#### Federal and state actions relating to foreclosure during the Coronavirus Disease 2019 (COVID-19) pandemic.

In response to the COVID-19 pandemic, the federal government has taken a series of actions relating to mortgage borrowers and foreclosure. Starting March 18, 2020, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act imposed a 60-day foreclosure moratorium, a temporary halt in the initiation or continuation of foreclosure proceedings, for certain federally backed mortgage loans.

Before the CARES Act moratorium was scheduled to expire, the relevant federal agencies that regulate, insure, or guarantee mortgage loans extended the moratorium for their respective loans. These extensions were renewed further several times during 2020, resulting in the continued foreclosure moratorium for federally backed mortgage loans through the end of the year.

The federal foreclosure moratorium is currently set to expire on January 31, 2020, for loans regulated by the Federal Housing Finance Agency, and February 28, 2021, for loans insured or guaranteed by the Federal Housing Administration, the Department of Veterans Affairs, and the U.S. Department of Agriculture.

At the state level, on March 20, 2020, the Washington State Department of Financial Institutions (DFI) issued guidance for state-regulated and exempt residential mortgage loan servicers and requested, but did not require, that residential mortgage loan servicers postpone foreclosures for 90 days. The DFI subsequently extended its guidance and the requested foreclosure moratorium through the end of 2020, with the current guidance effective until February 28, 2021.

**Summary of Bill:**

Legislative findings are made stating that few, if any, beneficiaries will be required to participate in mediation or remit a fee as required by the Foreclosure Fairness Act (FFA) because of the federal foreclosure moratorium in place during much of 2020 and the fact that the FFA exempts a beneficiary from mediation and remittance requirements if the number of trustee's sales or the number of notices of trustee's sale recorded on behalf of that beneficiary in the preceding year do not exceed certain thresholds.

For the 2021 calendar year only, the mediation and remittance requirements under the FFA are modified as follows:

- Whether or not a beneficiary must participate in mediation is determined by the number of its trustee sales that occurred in 2019 rather than 2020.
- Whether or not a beneficiary must remit a fee into the Foreclosure Fairness Account is determined by the number of notices of trustee's sale that were recorded on its behalf in 2019 rather than 2020.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.