

# HOUSE BILL REPORT

## HB 1108

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to maintaining funding and assistance for homeowners navigating the foreclosure process.

**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 History:**

**Committee Activity:**

Civil Rights & Judiciary: 1/19/21, 1/22/21 [DPS].

**Brief Summary of Substitute Bill**

- Provides that, for the 2021 and 2022 calendar years, 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 and 2021 respectively.
- Provides that, for the 2021 and 2022 calendar years, 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 recorded on its behalf in 2019 rather than 2020 and 2021 respectively.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Goodman, Kirby, Klippert, Orwall,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Peterson, Thai, Valdez, Walen and Ybarra.

**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).

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 Pandemic.

In response to the Coronavirus Disease 2019 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 United States 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.

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### **Summary of Substitute 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 continuing into 2021, and the fact that the FFA excepts 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 and 2022 calendar years, the mediation requirement and remittance exemption 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 and 2021 respectively.
- 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 and 2021 respectively.

### **Substitute Bill Compared to Original Bill:**

The substitute bill:

- extends the modification of the mediation requirement to the 2022 calendar year so that whether or not a beneficiary must participate in mediation is determined by the number of the beneficiary's trustee sales that occurred in 2019 rather than 2021;
- extends the modification of the remittance exemption to the 2022 calendar year so that whether or not a beneficiary must remit a fee into the Foreclosure Fairness Account is determined by the number of the notices of trustee's sales recorded on its

- behalf in 2019 rather than 2021; and
- modifies the expiration date to from June 30, 2022 to December 31, 2022.
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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The Foreclosure Fairness Act (FFA) is an extremely effective law that mitigates the lenders' relative power advantage over homeowners and creates a forum for fair resolution of mortgage default issues. A large majority of families that access the mediation process through the FFA resolve their mortgage default and retain their homes. The FFA provides a funding mechanism for the mediation program, as well as legal aid and housing counseling support, which are necessary to preserve housing for Washingtonians at risk of foreclosure. It is critical for the positive outcome that financial institutions participate in the mediation and their contributions are key to ensure that these important services remain available and viable.

No one expected the protracted foreclosure moratorium necessary to buoy homeowners during the pandemic, and there are growing concerns about a tidal wave of foreclosures as the end of the federal foreclosure moratorium approaches. Foreclosures tend to affect black, Indigenous, and people of color in a way that they do not other communities. Because of the federal foreclosure moratorium, many if not all financial institutions will qualify for the exemption from the mediation and remittance requirements in 2021. This bill will keep the mediation and the funding for the free counseling available to homeowners.

The cities' priority is to ensure the housing stability for Washingtonians as they work through the effects of the Coronavirus Disease 2019 (COVID-19) pandemic. The state's housing and homelessness support system did not match the need prior to the COVID-19 pandemic, so it is really important to support the stability of people who already have housing. A recent survey showed almost 10 percent of households in the state are behind on their mortgage payments and at risk of foreclosure in two months, so it is critical to pass this bill quickly. Without action, housing safety net services will collapse just as they are most needed.

The FFA mediation process does not apply to Homeowners Associations (HOAs) or Condominium Associations. During the previous housing crises, more homeowners lost their home to their HOA than they did to the banks. An HOA can foreclose nonjudicially in

90 days, and these homeowners are going to be in desperate need of help, so additional protections, including mediation requirements, should be part of the law.

(Opposed) None.

(Other) The mediation program was created so that homeowners in nonjudicial foreclosure, who were not given the benefit of judicial oversight, had an opportunity for a face-to-face conversation with beneficiaries. The FFA also increases transparency and allows homeowners to understand what is happening to their mortgages. The bill will keep this critical proceeding in place and available to homeowners in the time of crisis. Mortgage delinquencies are the highest since the Great Recession and there are many unknowns facing thousands of Washington homeowners. In addition to helping owners, this bill is really is the only option for homeowners in nonjudicial foreclosure to pause the process and seek assistance, and we need to maintain it as we enter a post-pandemic world.

**Persons Testifying:** (In support) Representative Orwall, prime sponsor; Paula Sardinias, Washington Build-Back Black Alliance; Raelene Schifano; Marc Cote, Parkview Services; Nathan Peppin, Department of Commerce; Carl Schroeder, Association of Washington Cities; and Denise Rodriguez, Washington Homeownership Resource Center.

(Other) Joseph Jordan, Northwest Justice Project.

**Persons Signed In To Testify But Not Testifying:** None.