

FINAL BILL REPORT

ESHB 1108

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Synopsis as Enacted

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

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Orwall, Ortiz-Self, Kloba, Hackney, Chopp, Santos, Macri, Pollet and Harris-Talley).

House Committee on Civil Rights & Judiciary
Senate Committee on Business, Financial Services & Trade

Background:

Nonjudicial Foreclosure of Deeds of Trust.

Most loan obligations for residential real property are secured by deeds of trust, which may be foreclosed either through the judicial process or a nonjudicial trustee's sale.

The Deeds of Trust Act (DOTA) imposes detailed notice and process requirements for nonjudicial foreclosure of deeds of trust on residential real property, which is defined as property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit. In 2011, the Foreclosure Fairness Act (FFA) was enacted, making changes to the process related to the nonjudicial foreclosure of deeds of trust under the DOTA, and establishing the Foreclosure Fairness Program (Program).

Meet and Confer Requirement.

Before a beneficiary may issue a notice of default (NOD) to a borrower of a loan secured by a deed of trust on owner-occupied residential real property, the beneficiary must make initial contact with the borrower by letter and provide the borrower with a notice of pre-foreclosure options in accordance with specified requirements. A notice of pre-foreclosure options must inform the borrower of the opportunity to meet with the beneficiary in an attempt to work out an alternative to the foreclosure. This "meet and confer" requirement applies only to deeds of trust that are recorded against owner-occupied residential real

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property.

If a borrower does not respond to the initial contact letter, a NOD may be issued 30 days after a trustee or beneficiary satisfies the due diligence requirements, including making several attempts to contact the borrower by mail and telephone and providing means for the borrower to contact the beneficiary in a timely manner. If a borrower responds within 30 days of the initial contact letter, a NOD may not be issued until 90 days after the initial contact with the borrower.

Notice of Default and Other Requisites to Trustee's Sale.

At least 30 days before notice of trustee's sale (NOTS) may be recorded, a borrower must be provided with a NOD that contains specified information, including a description of the property, a concise statement of the alleged default, an itemized account of the amount in arrears, and statement that failure to cure default within a certain timeframe may lead to the property being sold at public auction. If the property is owner-occupied residential real property, a NOD must also include a prominent statement providing specific information about the foreclosure process and the options a homeowner may have available, including housing counseling, mediation, and legal help.

In addition to issuing a NOD, several other requirements must be met in order for a deed of trust to be nonjudicially foreclosed through a trustee's sale, including that the trustee has proof that the beneficiary is the owner of the obligation secured by the deed of trust on residential real property. A declaration by the beneficiary that the beneficiary is the actual holder is sufficient proof. Additionally, a beneficiary must have complied with the "meet and confer" requirement and, if applicable, the mediation requirement.

Mediation Requirement Under the Foreclosure Fairness Act.

Among other things, the FFA created a mediation process applicable to beneficiaries and borrowers of deeds of trust on owner-occupied residential real property. 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.

For purposes of the foreclosure mediation program, "owner-occupied residential real property" includes residential real property up to four units.

Remittance Requirements Under the Foreclosure Fairness Act.

Nonexempt beneficiaries must remit \$325 to the Department of Commerce for every original NOTS recorded on residential real property. 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 NOTS 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.

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.

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 and early 2021, resulting in the continued foreclosure moratorium for federally backed mortgage loans until June 30, 2021.

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 to remain in effect until the state is no longer operating under a state of emergency declaration.

Summary:

Extension of Certain Pre-Foreclosure Requirements to Residential Real Property of Up to Four Units and Removal of the Owner-Occupied Requirement.

The "meet and confer" requirement is extended to residential real property of up to four units, and the restriction that the property be owner-occupied is removed.

The following requisites to a trustee's sale are made applicable to residential real property of up to four units, and, where applicable, the requirement that the property be owner-occupied is removed:

- notice of default;
- prominent statement with specific information about the foreclosure process and homeowner's options;
- a beneficiary's declaration to prove that the beneficiary is the owner of the obligation secured by the deed of trust; and
- compliance with the "meet and confer" requirement and, if applicable, the mediation

requirement.

The requirement that residential real property of up to four units be owner-occupied for purposes of the foreclosure mediation program is removed.

Modification of the Mediation Exemption.

The mediation requirement does not apply to deeds of trusts where the grantor is a partnership, corporation, or limited liability company, or where the property is vested in a partnership, corporation, or limited liability company at the time the NOD is issued.

For the 2021 and 2022 calendar years, whether 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.

Beginning on January 1, 2023, a beneficiary is exempt from foreclosure mediation if it certifies that during the preceding calendar year, it was not a beneficiary of deeds of trust in more than 250 trustee sales of residential real properties of up to four units, whether or not a property is owner-occupied.

Modification of the Remittance Requirement and Exemption.

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 the NOTS that were recorded on its behalf in 2019 rather than 2020 and 2021 respectively.

Beginning on January 1, 2022, the remittance requirement is modified to be based on the number of the NOD, rather than the NOTS, that a beneficiary issues or causes to be issued during the previous quarter. Specifically, a beneficiary must:

- report to the Department of Commerce the total number of residential real properties for which the beneficiary has issued a NOD during the previous quarter, together with the street address, city, and zip code; and
- remit \$250 for each residential property for which a NOD has been issued to the Department of Commerce to be deposited into the Account.

Information obtained by the Department of Commerce under these provisions is exempt from disclosure under the Public Records Act.

After January 1, 2022, the NOTS-based remittance of \$325 per every recorded NOTS is required only with respect to the NOTS for which remittance and reporting for that same residential real property was not made pursuant to the new \$250 NOD-based remittance requirement.

Beginning on January 1, 2023, the remittance exemption is also modified to be based on the

number of NOD, rather than the NOTS, issued during the preceding year. Specifically, a beneficiary is exempt from the remittance requirement if it certifies that it has issued or caused to be issued fewer than 250 NOD during the preceding year.

Votes on Final Passage:

House	96	0	
Senate	46	0	(Senate amended)
House	98	0	(House concurred)

Effective: May 3, 2021

January 1, 2022 (Sections 5, 9, 11, and 12)

June 30, 2023 (Sections 13 and 14)