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## Judiciary Committee

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### HB 2163

**Title:** An act relating to making imperative changes to the foreclosure fairness act to ensure mediators' participation.

**Brief Description:** Making imperative changes to the foreclosure fairness act to ensure mediators' participation.

**Sponsors:** Representatives Orwall, Kagi, Hasegawa, Cody, Dunshee, Ladenburg, Tharinger, Reykdal, Santos and Maxwell.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Provides foreclosure mediators immunity from civil liability, except in cases of willful or wanton misconduct.</li><li>• Removes the requirement that a foreclosure mediator obtain a waiver signed by both parties stating that neither party may call the mediator as a live witness.</li></ul>
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**Hearing Date:** 12/12/11

**Staff:** Trudes Tango (786-7384).

**Background:**

Earlier this year, the Legislature enacted 2SHB 1362, the Foreclosure Fairness Act (FFA). Among other things, the FFA established a foreclosure mediation process that applies to certain beneficiaries and borrowers of deeds of trust on owner-occupied residential property.

Generally, for mediation under the FFA to apply, the borrower must be referred to mediation by a housing counselor or attorney before a notice of sale has been recorded. The referral to mediation is sent to the Department of Commerce (Department), which selects a mediator from a list of approved foreclosure mediators and sends notice to the parties.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

The FFA specifies that prior to scheduling a mediation session, the mediator must require the parties to sign a waiver stating that neither party may call the mediator as a live witness in any litigation pertaining to a foreclosure action between the parties.

Under the FFA, foreclosure mediators may be attorneys who are active members of the Washington state Bar, employees of the U.S. Department of Housing and Urban Development-approved housing counseling agencies or approved by the state Housing Finance Commission, employees and volunteers of Dispute Resolution Centers (DRCs), and retired judges of Washington courts. Approved foreclosure mediators must go through a training program, be familiar with relevant aspects of the law, and have knowledge of community-based resources and mortgage assistance programs.

Under the statutes governing DRCs, employees and volunteers of DRCs are immune from suit in any civil action based on any proceedings or other official acts performed in their capacity as employees or volunteers, except in cases of willful or wanton misconduct.

**Summary of Bill:**

A mediator under the FFA is immune from suit in any civil action based on any proceeding or other official acts performed in his or her capacity as a foreclosure mediator, except in cases of willful or wanton misconduct.

The provision requiring the mediator to obtain a waiver signed by both parties stating that neither party may call the mediator as a live witness is removed. A mediator is not subject to compulsory process to testify in any litigation pertaining to a foreclosure action between the parties. However, the mediator's certification and all information and material presented as part of the mediation process may be deemed admissible evidence, subject to court rules, in any litigation pertaining to a foreclosure action between the parties.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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