

HOUSE BILL REPORT

HB 2723

As Passed House:
February 13, 2014

Title: An act relating to foreclosures.

Brief Description: Modifying certain provisions governing foreclosures.

Sponsors: Representatives Gregerson, Rodne, Orwall, Jinkins, Robinson, Freeman, Takko, Farrell, Bergquist, Riccelli, Fitzgibbon, Senn, Ryu, Morrell, Ortiz-Self, Clibborn, Kagi and Goodman.

Brief History:

Committee Activity:

Judiciary: 2/4/14, 2/5/14 [DP];

Appropriations Subcommittee on General Government & Information Technology:
2/6/14 [DP].

Floor Activity:

Passed House: 2/13/14, 98-0.

Brief Summary of Bill

- Amends the Foreclosure Fairness Act to:
 - provide that the location of the pre-foreclosure meeting and mediation is the county in which the property is located, rather than where the borrower resides;
 - require registered or certified mail, return receipt requested, in addition to first-class mail for notices of pre-foreclosure options;
 - modify the foreclosure loss mitigation form to include more specific information about what transpired with respect to any meet and confer process that occurred;
 - define, for purposes of the mediation program, owner-occupied residential real property to include residential real property of up to four units;
 - permit the Department of Commerce to authorize mediator fees;
 - require the beneficiary to provide documentation for mediation purposes relative to *any* investor restriction that prohibits the beneficiary from implementing a modification; and
 - modify the allocation of funds from the Foreclosure Fairness Account.

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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Cece Clynch (786-7195).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: Do pass. Signed by 9 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Christian, Dunshee, S. Hunt, Jinkins, Springer and Taylor.

Staff: Andy Toulon (786-7178).

Background:

Foreclosure Fairness Act.

Meet and Confer Process.

Before a beneficiary may issue a notice of default to a borrower of a loan secured by a deed of trust on owner-occupied residential real property, a notice of pre-foreclosure options must be mailed to the borrower via first-class mail. If the borrower requests a meeting with the beneficiary, the meeting may be by telephone, unless the borrower requests in writing that it be in person. In-person meetings are to be held in the county where the borrower resides.

Mediation and Mediators.

Among other things, the Foreclosure Fairness Act (FFA) created a mediation process applicable to beneficiaries and borrowers of deeds of trust on owner-occupied residential real property. "Residential real property" is defined as "property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit."

The borrower must be referred to mediation by a housing counselor or attorney. The referral 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. A mediation session must be held within 70 days of the referral from the Department and within the county where the borrower resides. The beneficiary and borrower must exchange required documents within specified time frames. Included in the documentation required of a beneficiary is the portion or excerpt of any pooling and servicing agreement that prohibits the beneficiary from implementing a modification of the loan.

Unless the parties agree otherwise, a foreclosure mediator's fee may not exceed \$400 for a mediation session lasting between one and three hours.

Beneficiary Reporting and Remittance Requirements.

Every quarter, a beneficiary that issues notices of default on owner-occupied residential real property must report to the Department the number of owner-occupied residential real properties for which the beneficiary has issued a notice of default during the previous quarter and remit \$250 per property to the Department. The reporting and remitting requirement does not apply to beneficiaries that issued fewer than 250 notices of default in the previous year.

Allocation of Funds.

The funds remitted by beneficiaries are allocated between different agencies. In particular, not less than 76 percent of the funds must be used for providing housing counselors to borrowers, except that this amount may be less than 76 percent if necessary to meet the funding level specified for the Office of the Attorney General Consumer Protection Division for enforcement. Up to 13 percent, or \$590,000, whichever amount is greater, is directed to the Department for implementation and operation of the FFA.

Summary of Bill:

Foreclosure Fairness Act.

Meet and Confer Process.

The notice of pre-foreclosure options that must be sent by the beneficiary or authorized agent to the borrower must be sent by registered or certified mail, return receipt requested, in addition to sending it via first-class mail.

If the meeting is requested to be held in person, the meeting must be held in the county where the property is located, unless the parties agree otherwise, rather than where the borrower resides.

The declaration that is required of the beneficiary, authorized agent, or trustee, also known as the "foreclosure loss mitigation form" is modified to add additional descriptive information or explanations as to what efforts were made to meet and confer with the borrower and what transpired as a result:

- If the borrower responded, but did not request a meeting, this fact is to be noted.
- If a meeting was requested and held, the date, time, and location is to be specified.
- If a meeting was requested, but the borrower did not appear, specific information relative to the scheduling of that meeting is required.
- If the borrower did not respond, that is to be specifically noted.
- A space for additional optional explanatory comments is added.

Mediation and Mediators.

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

Even if the borrower fails to elect to mediate within the applicable time frame, the borrower and the beneficiary may nevertheless agree in writing to enter the mediation program. This is permissive, not mandatory.

Documents required of the beneficiary for purposes of mediation must include the portion or excerpt of *any* investor restriction that prohibits the beneficiary from implementing a modification, and not just the portion or excerpt of a pooling and servicing agreement that includes such a prohibition.

Mediation sessions are to be convened in the county where the property is located, not where the borrower resides.

The reasonable fee that a mediator may charge is that which is authorized by statute *or* which is authorized by the Department. The fee does not have to be authorized by both the statute and the Department.

Allocation of Funds.

Some of the specifics with respect to expenditures from the Foreclosure Fairness Account are modified as follows:

- No less than 71 percent, rather than no less than 76 percent, must be used for the purposes of providing counseling.
- Up to 18 percent or \$1.4 million, rather than up to 13 percent or \$590,000, whichever amount is greater, is directed to the Department for implementation and operation of the FFA.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Judiciary):

(In support) Many people were visionaries when they put the FFA in place. It was a bipartisan effort. Representative Orwall should be especially commended for her work on this over several years. A collaborative process has led to this bill, with 20 to 30 people putting about 15 hours of work into crafting it. The stakeholders brought many issues to the table. What is included in this bill is that list whittled down. These are thoughtful and important technical amendments.

(Neutral) From the description, it sounds like a bill that can be supported but closer analysis is required to be certain. Anything that would lessen the oversight of banks would be opposed. There are ongoing problems and concerns and the process needs to be more exacting. Banks are continuing to thwart the processes that were put in place. There have been at least two recent judicial findings of bad faith negotiation against one large financial institution. There has also been a successful suit against a trustee in which the court said that, as a wholly-owned subsidiary of another large financial institution, the trustee was not neutral. Often banks produce false information, fail to adhere to the guidelines for the meet and confer process, and refuse mediation. Mediators have indicated that they have no authority to address a challenge to the beneficiary's declaration. It was a securitization and investment Ponzi scheme that led to all of these foreclosures. There is ongoing litigation

regarding whether the Legislature has the constitutional authority to establish a nonjudicial foreclosure process.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government & Information Technology):

(In support) The change in revenues is due to a reallocation in the percentages of the fund that is going to the Department of Commerce (Department) for implementation of the fund Foreclosure Fairness Act. That is necessitated by the declining rate of foreclosures. As the number of foreclosures goes down, the amount that is going to the Department to implement the program is also going down, which results in a need to change the percentages.

(Opposed) None.

Persons Testifying (Judiciary): (In support) Representative Gregerson, prime sponsor; Bruce Neas, Columbia Legal Services; and Denny Eliason, Washington Bankers Association.

(Neutral) Christopher King, Financial Revival Group.

Persons Testifying (Appropriations Subcommittee on General Government & Information Technology): Bruce Neas, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government & Information Technology): None.