

SENATE BILL REPORT

SB 5686

As Reported by Senate Committee On:
Housing, February 19, 2025
Ways & Means, February 28, 2025

Title: An act relating to expanding and funding the foreclosure mediation program.

Brief Description: Expanding and funding the foreclosure mediation program.

Sponsors: Senators Orwall, Frame, Hasegawa and Nobles.

Brief History:

Committee Activity: Housing: 2/14/25, 2/19/25 [DPS-WM, w/oRec].
Ways & Means: 2/26/25, 2/28/25 [DP2S, DNP].

Brief Summary of Second Substitute Bill

- Expands the Foreclosure Mediation Program (program) to include unit owners who receive a notice of delinquency for past due assessments from an association and establishes the process and timelines for mediation.
- Establishes an \$80 fee collected on certain residential mortgage loan originations to be remitted to the foreclosure fairness account and revises the distributions to fund the program.

SENATE COMMITTEE ON HOUSING

Majority Report: That Substitute Senate Bill No. 5686 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Bateman, Chair; Alvarado, Vice Chair; Orwall, Salomon and Trudeau.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Goehner, Ranking Member; Gildon.

Staff: Bill Fosbre (786-7531)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5686 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Cleveland, Conway, Dhingra, Hansen, Hasegawa, Kauffman, Pedersen, Riccelli, Saldaña, Wellman and Wilson, C..

Minority Report: Do not pass.

Signed by Senators Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Dozier, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Wagoner and Warnick.

Staff: Trevor Press (786-7446)

Background: Foreclosure Mediation Program. The Foreclosure Mediation Program (program) provides Washington homeowners facing foreclosure the opportunity to be referred by a housing counselor or attorney to mediation with their lender to review available options to avoid foreclosure. Mediation is a process where a neutral third party helps the homeowner, and the lender reach a voluntary and negotiated agreement. The Department of Commerce (Commerce) oversees the implementation of this program.

An attorney or housing counselor must refer the homeowner to foreclosure mediation by sending a referral form to Commerce stating mediation is appropriate. Under the program, a borrower may be referred to mediation any time after a notice default has been issued but no later than 90 days prior to the date of sale listed in the notice of trustee's sale. The housing counselor or referring attorney will send notice to the borrower and Commerce. Within ten days of receiving the notice, Commerce shall send a notice to the beneficiary, housing counselor or attorney and trustee, and select a mediator. Within 23 days of Commerce's notice, the borrower shall transmit to the mediator and beneficiary the initial homeowner financial information worksheet that must include: (1) borrower's current and future income, (2) debts and obligations, (3) assets, (4) expenses, (5) tax returns for the previous two years, (6) hardship information, and (7) other applicable information commonly required by any applicable federal mortgage relief program.

Within 20 days of the beneficiary's receipt of the borrower's documents the beneficiary shall transmit:

- an accurate statement containing the balance of the loan within 30 days of the date on which the beneficiary's documents are due to the parties;
- copies of the note and deed of trust;

- proof that the entity claiming to be the beneficiary is the owner of any promissory note or obligation secured by the deed of trust;
- the best estimate of any arrearage and an itemized statement of the arrearages;
- an itemized list of the best estimate of fees and charges outstanding;
- the payment history and schedule for the preceding 12 months, or since default, whichever is longer, including a breakdown of all fees and charges claimed;
- all borrower related and mortgage related input data used in any net present values analysis;
- an explanation regarding any denial for a loan modification, forbearance, or other alternative to foreclosure;
- appraisal or other broker price opinion most recently relied upon by the beneficiary not more than 90 days old at the time of the scheduled mediation; and
- the portion or excerpt of the pooling and servicing agreement or other investor restriction that prohibits the beneficiary from implementing a modification, if the beneficiary claims it cannot implement a modification due to limitations in a pooling and servicing agreement.

Within 70 days of receiving the referral from Commerce, the mediator shall convene a mediation session in the county where the property is located, unless the parties agree on another location.

The participants in mediation must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, modification of a delinquent assessment, modification of late fees or charges associated with a delinquent assessment, or some other workout plan.

If referred to mediation, the homeowner and lender split the mediation fees.

Commerce is required to prepare an annual report to the Legislature on the performance of the program. The report must include:

- performance of the program, including the number of borrowers referred to the program;
- the results of the program, including the number of mediations requested, the number of certifications of good faith issued, the number of borrowers and beneficiaries who failed to mediate in good faith, and the reasons for the failure to mediate in good faith, if known, the numbers of loans restructured or modified, the change in the borrower's monthly payment for principal and interest and the number of principal write-downs and interest rate reductions, and, to the extent practical, the number of borrowers who report a default within a year of restructuring or modification;
- information received by housing counselors regarding outcomes of foreclosure; and
- any recommendations for changes to the statute regarding the program.

Foreclosure Fairness Account. For each residential real property for which a notice of

default has been issued, the mortgage beneficiary issuing the notice shall remit a \$250 fee to Commerce to be deposited into the Foreclosure Fairness Account (FFA). The FFA is subject to allotment procedures, but an appropriation is not required for expenditures. Authorized expenditures from the FFA are \$400,000 per biennium to fund the counselor referral hotline, and the remaining funds:

- 69 percent for housing counseling activities;
- 8 percent to the Attorney General's Office (AGO) to enforce Consumer Protection Act (CPA) violations related to deeds of trust;
- 6 percent to the Office of Civil Legal Aid (OCLA) for the representation of homeowners in matters related to foreclosure; and
- 17 percent to Commerce to implement and operate the program.

Notice of Delinquency. Homeowner's associations, condo associations, and common interest communities (associations) are required to assess and collect against all unit owners the costs associated with the operation, maintenance, repair or replacement of common areas or elements. After following the statutory process for collection of non-payment of assessments, including providing notice of delinquency to the unit owner, the association may when certain conditions are met, place a lien on the unit owner's property and pursue foreclosure or enforcement of the lien.

Summary of Bill (Second Substitute): Foreclosure Mediation Program. Beginning January 1, 2026, the program is expanded to allow unit owners within properties governed by associations who receive a notice of delinquency for past due assessments to contact a housing counselor within the program to reach a resolution with the association. The bill provides separate procedures for deed of trust foreclosures and delinquent assessment foreclosures.

The association shall provide to the mediator and the unit owner the following documents: (1) an itemized ledger for the proceeding 12 months, (2) copy of all association liens placed against the property, and (3) copies of the current association declarations, bylaws, and any other governing documents for the association.

After receiving receipt of the association's documents, the unit owner shall provide to the mediator and the association the following documents: (1) evidence of any unit owner payments to the association that are not reflected in the association ledger, if any, (2) statement of hardship, if relevant, and (3) if the unit owner is interested in a payment plan, a proposed schedule of payments to resolve the arrears.

Beginning December 1, 2026, Commerce's report to the Legislature on the performance of the program must also include:

- the number of unit owners who are referred to mediation by a housing counselor or attorney;
- the number of unit owners and associations who failed to mediate in good faith, and the reasons for the failure to mediate in good faith;

- if known, the number of debts for delinquent assessments restructured or modified;
- the change in the unit owner's periodic assessment payments including any reductions in late charges or interest rates; and
- to the extent practical, the number of unit owners who report a delinquency within a year of restructuring or modification.

Foreclosure Fairness Account. A foreclosure prevention fee of \$80 shall be assessed for each residential mortgage loan originated, excepting only reverse mortgage loans issued to seniors over the age of 61, and remitted at the time of closing by the escrow agent processing the loan into the FFA. This foreclosure prevention fee may be financed in the loan and paid from the loan proceeds or from any borrower cash contribution at the time of closing.

The funds must be distributed as follows:

- 50 percent for providing housing counseling activities;
- 8 percent to AGO to enforce CPA violations related to deeds of trust;
- 16.5 percent to OCLA for the representation of homeowners in matters related to foreclosure;
- 15 percent to fund the foreclosure prevention hotline;
- 0.5 percent to fund outreach; and
- 10 percent to Commerce to implement and operate the program.

If the program needs to not require full use of the allocation, Commerce may reallocate those funds to increase the percentage of another agency or organization authorized to receive the funds.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Moves the fee from the Consumer Loan Act to the Foreclosure Fairness Act.
- Changes escrow company to escrow agent.
- Adds authority for Commerce to make policies and procedures related to the implementation, collection, and management of the fee.

EFFECT OF CHANGES MADE BY HOUSING COMMITTEE (First Substitute):

- Allows delinquent assessments to be referred to mediation from either a judicial or non-judicial foreclosure.
- Separates the deed of trust foreclosure process from the delinquent assessment process.
- Specifies that delinquent assessment foreclosure can be referred to mediation any time after a notice of delinquency but no later than 30 days prior to a sale.
- Changes the list of documents to be supplied to the mediator, and requires the association provide documents first and then the unit owner, all documents are shared

- with each party and the mediator.
- Removes the confidentiality provision related to the sharing of the mediation documents.
- Provides that if a unit owner has been referred to mediation before the filing of a judicial foreclosure, the association may not file a complaint for judicial foreclosure until the association receives the mediator's certification stating that the mediation has been completed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Housing): *The committee recommended a different version of the bill than what was heard.* PRO: The Foreclosure Fairness Act has helped thousands of people stay in their homes probably in the thousands, and one of the big component of the act is mediation. Mediation keeps people in their homes.

Far too many homeowners are facing foreclosure. It's difficult to navigate the process without the resources. Foreclosure disproportionately impacts low income and marginalized communities. The Foreclosure Fairness Program has been a lifeline for providing mediation services, legal assistance and financial counseling to help prevent foreclosures. It's been incredibly successful, beneficial to both consumers and lenders and provides critical resources to help consumers understand their rights during a stressful and confusing time. This bill provides that lifeline.

Strongly support this bill in particular, its creation of an additional source of funding to support the important work of the Foreclosure Fairness Program. These new funds are vital to ensuring the good work by our partners in the Foreclosure Fairness Program. It will help ensure the Attorney General's Office can dedicate resources to helping homeowners and lenders to explore alternatives, provide consumers with information about foreclosure fairness and refer consumers to housing and legal aid. Without sustainable funding from SB 5686, we risk losing this critical safety net.

CON: It appears that a mediation referral can be made after 30 days prior to a trustee sale, meaning that mandatory mediation could actually occur after a lawsuit's been filed and after a judge or a jury has ruled on the merits of a case.

If the mediation requires the unit owner and association to meet in person it will significantly increase the cost of collecting delinquent assessments for associations, and

those costs would be passed on to all owners and increased housing costs.

The bill requires documents be shared that are irrelevant to the mediation and will be a barrier to referral. It doesn't allow documents to be shared with the other party that makes them useless in mediation. It creates a new duty of confidentiality on mediators, which is simply unworkable, and mediators will leave the program if it sticks.

OTHER: Department of Commerce manages the foreclosure fairness account that provides resources through the statutory direction to our partner agencies for the hotline counseling services, legal aid and funding to the Attorney General's Office. Generally, the cost of the program is about \$8 million per fiscal year. The current fee based on default notices generates on average \$1 million per year. Commerce estimates the proposed fee would generate about \$7 million per year from the bill.

Persons Testifying (Housing): PRO: Senator Tina Orwall, Prime Sponsor; Steve Horvath, HOA United; Raelene Schifano, HOA United; Denise Rodriguez, Washington Homeownership Resource Center; Marc Cote, Parkview Services; Tareva Marshall, Northwest Justice Project; Amanda Martin, NW Consumer Law Center; Paula Sardinas, WBBA (WA Build Black Alliance); Heidi Anderson, Washington Attorney General's Office.

CON: Patrick McDonald, Pody & McDonald, PLLC.

OTHER: Jeff Bean, Mediator, The Bean Law Firm PLLC; Kyle Jung, WA State Department of Commerce.

Persons Signed In To Testify But Not Testifying (Housing): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: There is no oversight of foreclosures in these communities and there are many factors that go into putting a person into foreclosure. This bill will add the reporting factor. We will be able to take this and help find ways to keep people in their homes. Housing counselors are really knowledgeable and they will be able to keep a lot of us housed in Washington. In 2024, the Washington Homeowner Resource Center served 12,000 homeowners in distress which is far above a typical year and we expect need to remain high. Federal funds expire July 1st and without funding from this bill the capacity will decrease leaving as many as 9000 households without this safety net.

OTHER: Bankers do not have a problem with the continued funding of the mediation and counseling services and we don't have a problem with the shift in the funding source. The funding mechanism in this bill is based on an outdated notion of the way mortgages are originated these days. Seventy percent of the mortgages that are originated in Washington are for federal government, for Fannie Mae and Freddie Mac. And two-thirds of them are done by out-of-state internet based companies. The majority of originations are going to be

out of state. Does Commerce have the ability to get that money from out-of-state companies or is it only going to fall on those of us who are left in Washington State? Also, there is no definition of escrow company.

Persons Testifying (Ways & Means): PRO: Raelene Schifano; Denise Rodriguez, Washington Homeownership Resource Center.

OTHER: Brad Tower.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.