



Foreclosure Fairness Act Mediation Program

Seattle Select Attorneys
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Overview:

What the FFA is and does

Foreclosure Fairness Act

- 132k foreclosures in WA (2009-2012)
- 115k families past due (2010)
- \$2.1m homes decline in value
- \$1.9b equity lost
- Lost state revenue



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Foreclosure Fairness Act

- Other states' programs
- Mandatory mediation
- Framework for communication to avoid foreclosure when possible



photo credit: Highline Times

Origins:

Policy & Legislative History

Policy & Legislative History

Thursday, January 13, 2011

Orwall, Kline introduce foreclosure measure to level playing field for homeowners in crisis



The home foreclosure crisis shows no signs of ending soon, putting tens of thousands of Washington families at risk. Rep. [Tina Orwall](#) and Sen. Adam Kline are teaming up to address the problem.

They announced a new bill to address the problem at a press conference this afternoon. The legislation adopts a multi-pronged approach to stemming

Policy & Legislative History

- Beefed-up meet and confer
- Funds more housing counselors
- Mandatory Mediation: ready access to assist in a fair and timely way



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Policy & Legislative History



Beginnings:
Administration by Department
of Commerce

Program Administration



Department of Commerce
Innovation is in our nature.

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Foreclosure Fairness Program

NEW! Department of Commerce is now accepting applications from eligible mediators interested in mediating Foreclosure Fairness Act (FFA) mediations in Washington State. Eligible applicants need to meet the statutory requirements under [RCW 61.24.169\(1\)](#) and attend FFA-specific training in order to be considered for approval. For more information, please download the [Mediator Application & Training Registration Form](#).

The Foreclosure Fairness Program provides homeowner foreclosure assistance. It is designed to help homeowners and their lenders explore possible alternatives to foreclosure and reach a resolution when possible.

The program was created by the Foreclosure Fairness Act ([RCW 61.24](#)), passed during the 2011 legislative session. Washington state law now requires lenders to notify borrowers, prior to initiating the foreclosure, of the availability of foreclosure counseling and the potential for foreclosure mediation. Department of Commerce administers the foreclosure mediation program ([RCW 61.24.163](#)), as required by the Act.

Homeowners can be referred to Department of Commerce for foreclosure mediation only by a housing counselor or an attorney.

FREE housing counseling is available to help homeowners understand their options and determine the best course of action. Contact a free housing counselor at **1-877-894-HOME (4663)**.

Foreclosure Fairness Program

Mediators

[NEW! Mediator Application & Training Registration](#)

[Mediation Report/Certification Form](#)

[Mediation Scheduling Form](#)

[Approved Mediators List](#)

[Conditional Co-Mediators List](#)

[Expectations of a Foreclosure Mediator](#)

[RCW 61.24.163 - Foreclosure Mediation Program](#)

Referrers

[Referral to Mediation Form and Instructions](#)

[Eligibility Criteria and Referral Guidance](#)

[Financial Institutions Currently Exempt from Mediation](#)

Financial Institutions

Program Administration

- FFA signed April
- FFA effective July
- Create complete program
- Mediator training/experience requirements
- Mediator training
- Approve mediators

2011-12 Legislative Sessions:
FFA Amendments

2011-12 Amendments

- Fall 2011
- Stakeholder working group
- Non-policy process improvements
- Timelines
- Mediator immunity
- Pseudo-privilege
- NPV



Referral & Representation:

What to Do & What to Expect

REFERRAL TO FORECLOSURE MEDIATION

Expedite - Trustee Sale Within the Next 10 Days

Law Firm or Counseling Agency:			
Attorney/Counselor Name:			
Organization Name:			
Address:		County:	
City:		Zip:	
State:		Phone:	
Email: (Dept. of Commerce will send all correspondence and notices to this email)			

Borrower(s) Contact Information:	
If more than two borrowers, use the Additional Information box on the next page.	
Name:	
Address:	
City:	
County:	
State, Zip:	
Email:	
Phone:	
Name:	
Address:	
City:	
County:	
State, Zip:	
Email:	
Phone:	

Property Secured by Deed of Trust:	
Address:	
City:	
County:	
State, Zip:	
Parcel No.:	
Lot No.:	

Client ID:	
------------	--

Beneficiary Contact Information:	
Organization:	
Representative (if known):	
Address:	
City:	
State, Zip:	
Email:	
Phone:	
Loan No.:	

Notice of Pre-Foreclosure Options Letter:	
Date:	
Notice of Default:	
Borrowers with NOD prior to 7/22/2011, may refer to mediation up to one day prior to the date of Trustee Sale.	
Borrowers with NOD after 7/22/2011, are eligible to refer until 20 days after the date a Notice of Trustee Sale has been RECORDED.	
Date:	
Recording of Notice of Trustee Sale:	
Date:	
Date of Trustee Sale:	
Date:	

Referral to Mediation

- By attorney or housing counselor
- When:
After NOD, before NOS +20 days
- “If appropriate based on the individual circumstances”
 - Owner-occupied
 - Non-exempt institution
 - Grantor is borrower or guarantor?
 - Not seller-financed?

Referral to Mediator

- Commerce assigns to:
 - Lawyers
 - DRC volunteers
 - Other mediators

Convening the Mediation

RCW 61.24.163

- Convened within 70 days
- Document exchanges
- Mediator may communicate (assess)
- Payment of mediator's fee
- Mediator may cancel
- Extensions by agreement

In the Mediation

- 2-3 hours
- Mediator may continue once
- More continuances by agreement
- In-person
- Beneficiary's representative with authority on phone/video



In the Mediation

- “Issues that may enable ... resolution”
 - Reinstatement
 - Modification
 - Restructuring
 - Other workout
- Current/future economic circumstances
- NPV
- Calculations/guidelines required by fed-insured loans



Good Faith

- Duty to mediate in good faith
- May include:
 - Failure to participate
 - Failure to provide information
 - Failure to designate representative with authority
 - Asking for release of future claims

Mediator's Certificate

- Good faith
- NPV calculation, data and result
- Consequences:
 - Bad faith of borrower: foreclosure proceeds
 - Bad faith of beneficiary:
 - Defense to non-judicial foreclosure action
 - CPA violation
 - NPV: basis for borrower to enjoin foreclosure (only if affordable modification was not offered)

Mediation Tips

- Communicate
- Know your preferred outcome
- What do you need to do to get the other side to say “yes” to what you want?

The Future of FFA Mediation
Changing, Suing & Gaming



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