



# Bankers Advisory

## COMPLIANCE MONITOR

April 17, 2014

### *State of Washington Amends Foreclosure Fairness Act*

**By Margaret Wright**

The Washington State Legislature has passed House Bill 2723 amending the Foreclosure Fairness Act. The purpose of the Foreclosure Fairness Act ("the Act") is to encourage homeowners to utilize housing counseling, facilitate communication between homeowners and beneficiaries in an effort to avoid foreclosure whenever possible and to provide guidance where foreclosure mediation has been recommended. The recent amendments are effective June 12, 2014.

#### **Definitions (RCW 61.24.005)**

The Act "Residential Real Property" definition has been amended to now include owner-occupied residential real property of up to four units.

#### **Notice of Default (RCW 61.24.031)**

Prior to issuing the notice of default a beneficiary must make contact with the borrower by letter which contains certain required information including a notification that the borrower will have an opportunity to meet with the beneficiary. The Act has been amended to state that where such a meeting is requested to be held in person it must be held in the county where the property is located. Previously the meeting was required to be held in the county where the borrower resides.

The notice of default may be issued where the beneficiary has demonstrated due diligence but was unable to meet with the borrower. The Act further outlines the steps that must be taken in order to demonstrate the due diligence requirements were met. To meet the due diligence requirements in part, the Act has been amended to clarify that the beneficiary must now send the required contact letter by both first class and either registered or certified mail, return receipt requested, to the address in the beneficiary's records and the property address. Previously the letter was only required to be sent by first class mail.

#### *Foreclosure Loss Mitigation Form Amended*

The notice of default must include a declaration which affirms the beneficiary has contacted the borrower or attempted with due diligence to contact the borrower according to the Act's requirements, or that the borrower has surrendered the property to the beneficiary. For the purpose of making this declaration, the Act includes a model Foreclosure Loss Mitigation Form which includes a selection of options outlining the beneficiary's compliance with the requirements.

The provided model Foreclosure Loss Mitigation Form has been amended to clarify the action selections including:

- an option where the borrower responded to the beneficiary's contact letter but a meeting was not requested;

- an option where a meeting was requested by the borrower but the borrower did not appear at the scheduled time;
- an option for where the beneficiary exercised due diligence but the borrower did not respond; and,
- an amendment to the option where a meeting did occur to include the date, time and location of the meeting.

Also added to the model form is an "Additional Optional Explanatory Comments" section where the beneficiary may include additional information as necessary to explain as needed beyond the provided options.

### **Foreclosure Mediation Program (RCW 61.24.163)**

The Act includes specific requirements where a borrower has been referred to mediation by a housing counselor or attorney. This section includes requirements concerning mediation timelines, mediation procedures, permissible fees and duties and responsibilities of the mediator, borrower and beneficiary. Amendments to this section include a clarification that borrower and beneficiary may still agree in writing to enter the foreclosure mediation program even though the borrower may not have elected to mediate within the timeframe as outlined.

Where a borrower is referred to mediation, the Act requires both the borrower and beneficiary submit certain required documentation. The information required to be submitted by the beneficiary has now been amended to clarify that documentation evidencing other investor's restrictions to or prohibition of modification agreements must be provided, where previously this section referenced only evidence of restrictions contained in pooling and servicing agreements.

Similar to the location of initial borrower and beneficiary in person meeting, the Act has been amended to change the location of the mediation session to be held where the property is located, rather than where the borrower resides.

The section concerning mediator fees has also been amended to include a technical clarification that in addition to as outlined in the regulation, fees may also be charged as authorized by the department of commerce.

### **Foreclosure Mediation Program: Application (RCW 61.24.165)**

For the purposes of referral and mediation where a person who occupies the property is a successor in interest to a deceased borrower or has been awarded title to the property in a proceeding for dissolution or legal separation they may be treated as "the borrower" for purposes of mediation. In these cases this person may be referred to meditation where the referring counselor or attorney has determined their eligibility. Although this person may be treated as the borrower for mediation purposes this section does not require the beneficiary to accept an assumption of the loan.

### **Foreclosure Fairness Account (RCW 61.24.172)**

A beneficiary issuing a notice of default for an owner-occupied residential real property must remit \$250.00 to the department of commerce to be deposited into the foreclosure fairness account.

The amendment to this section concerns the foreclosure fairness account expenditure limits. Changes include a change in the percentage of the account used for the provision of housing counseling services to no less than seventy-one percent and an increase in the percentage of the account used for implementation of the foreclosure fairness act to up to eighteen percent or one million four hundred, whichever is greater.

**View the amendments in their entirety:**

<http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Session%20Laws/House/2723.SL.pdf>



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