



Department of Commerce
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Deed of Trust Act Stakeholder Workgroup

Foreclosure Fairness Program

December 2015
Report to the Legislature
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Acknowledgements

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Introduction

Background

The Department of Commerce (Commerce) was directed by the Legislature ([ESSB 6052, Sec. 128](#)) to convene a work group of interested stakeholders to review Washington's Deed of Trust Act contained in [Title 61 RCW](#). The stakeholder work group was tasked with making recommendations to ensure that the act remains a workable system for financial institutions, loan servicing companies, trustees, homeowners, and borrowers.

A preliminary planning meeting took place on September 9, 2015. This meeting included a small group of core stakeholders, including legislators, legislative staff, Governor's Office, banking industry, trustees, homeowner advocates, Commerce, the Housing Finance Commission, and the Attorney General's Office.

During this meeting it was determined that two separate stakeholder workgroups needed to be formed to meet the intent of the Legislature. The first workgroup is focused on Deed of Trust Act issues that did not involve the Foreclosure Fairness Act. The second work group is focused on Deed of Trust Act issues specific to the Foreclosure Fairness Act.

Status of Stakeholder Workgroups

Deed of Trust Act Stakeholder Work Group

The Deed of Trust Act stakeholder workgroup met on October 16, 2015. The group included legislators, legislative staff, Governor's Office, banking industry, trustees, homeowner advocates, Commerce, and the Attorney General's Office.

The discussion was focused on conflicting statutory language in the act in regards to the definition of the *owner* of a note and the *holder* of a note. How those definitions are interpreted greatly impacts how the act should be applied.

At the time of the first meeting, this specific issue was in litigation at the Washington State Supreme Court in the *Brown v. Commerce* case. The court's decision on this case will establish what the correct interpretation of the act will be moving forward. The work group participants agreed that, regardless of the outcome of the court's decision, it was in the best interest of the system as a whole to work together to develop recommended statutory changes that would add clarity to the act.

A small group of representatives of home owner advocates, the banking industry, and trustees committed to developing recommended statutory changes. The homeowner advocate representatives agreed to draft preliminary definitions and coordinate a meeting with the other stakeholders in November 2015. This group will continue to work together to determine any statutory changes to this component of the act.

Foreclosure Fairness Act Stakeholder Work Group

The Foreclosure Fairness Act stakeholder workgroup convened on October 27, 2015. The participants included legislators, legislative staff, Governor's Office, members of the banking industry, trustees, homeowner advocates, housing counselors, Dispute Resolution Center mediators, independent mediators, Commerce, Housing Finance Commission Attorney General's Office, Office of Civil and Legal Aid, and Department of Financial Institutions.

The work group discussed three primary aspects of the Foreclosure Fairness Act: (1) access to mediation, (2) the mediation process, and (3) program sustainability and funding. The meeting format allowed for all stakeholders to participate in a dialogue on each of the topics discussed.

Participants shared their opinions, concerns, and possible solutions to the issues at hand. The input provided by the work group is being used to identify key areas where changes to the act would improve the Foreclosure Fairness Act. Commerce will coordinate smaller groups of stakeholder representatives to discuss and determine possible modifications to the act regarding the identified priorities. This work will begin in December 2015 and will include:

Access to Mediation

- Develop a means or method to make the beneficiary information available early in the foreclosure process.
- Increase access to mediation by modifying the statutory criteria that allows an exemption from mediation for some beneficiaries.

The Mediation Process

- Develop a clear definition for beneficiary authority during the mediation process.
- Consider modifications to the statutory timelines specific to the mediation process.

Program Sustainability and Funding

- Remove or modify the statutory criteria that allow beneficiaries an exemption from paying fees for notices of default issued.
- Determine minimum funding levels necessary for each Foreclosure Fairness Act partner to perform work under the act.
- Research and pursue other options of sustaining program funding.
- Consider possible changes to the current allocation methodology.