



## FORECLOSURE FAIRNESS PROGRAM

### ELIGIBILITY CRITERIA & GUIDANCE FOR REFERRALS TO MEDIATION

---

Homeowners (borrowers) can be referred to the Department of Commerce (Commerce) for foreclosure mediation **ONLY** by a housing counselor or an attorney, as specified in the Foreclosure Fairness Act (FFA), [RCW 61.24](#). Each referring attorney and housing counselor has the responsibility to carefully review the circumstances of the borrower(s) and confirm eligibility for mediation prior to submitting the *Referral to Foreclosure Mediation* (the "Referral") to Commerce ([RCW 61.24.160](#) and [RCW 61.24.163](#)). Referrers may find the below checklist useful to ensure that their submittal is complete and accurate.

#### ELIGIBILITY CHECKLIST

- Owner-occupied residential real estate property:** The FFA applies **ONLY** to deeds of trust recorded against owner-occupied residential real property. "Owner-occupied" means property that is the principal residence of the borrower. "Residential real property" means property consisting solely of a single-family residence, a residential condominium unit, a residential cooperative unit, or as of 6/12/2014 residential real property of up to four units ([RCW 61.24.005\(13\)](#)). The property must have been owner-occupied as of the date of the initial contact under [RCW 61.24.031](#) was made (see [RCW 61.24.165](#)).
  
- Borrower Definition Expanded (as of 6/12/2014, HB 2723):**  
The FFA allows a person to be referred to mediation if the borrower is deceased and this person is a successor in interest of the deceased borrower who occupies the property as his or her primary residence ([RCW 61.24.165\(5\)](#)).  
  
The FFA also allows a person to be referred to mediation if this person has been awarded title to the property in a proceeding for dissolution or legal separation ([RCW 61.24.165\(6\)](#)).  
  
It is the responsibility of the referring attorney/counselor to determine and indicate the grounds for eligibility on the Referral form submitted to Commerce. Please note that Commerce does not have the authority to give legal advice.
  
- Voluntary mediation (as of 6/12/2014, HB 2723):** For a "voluntary mediation" Referral pursuant to [RCW 61.24.163\(1\)](#), the beneficiary<sup>1</sup> and borrower(s) must fill out and sign an "AGREEMENT TO VOLUNTARILY ENTER THE FORECLOSURE MEDIATION PROGRAM." A template is included in the

---

<sup>1</sup> "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation. ([RCW 61.24.005\(2\)](#))

Referral form located on the FFP website at [www.commerce.wa.gov/foreclosures](http://www.commerce.wa.gov/foreclosures). A copy of the signed agreement must be attached to the Referral submitted to Commerce.

- Timelines:** FFA recognizes a borrower's eligibility based on the following:
  1. Borrowers who received a Notice of Default prior to July 22, 2011, are eligible to be referred up to one day prior to the date of the Trustee Sale.
  2. Borrowers who received a Notice of Default after July 22, 2011, are eligible to be referred until 20 days after the date a Notice of Trustee Sale has been recorded.
  
- Loan type:** The FFA does NOT apply to deeds of trust:
  - (a) Securing a commercial loan;
  - (b) Securing obligations of a grantor who is not the borrower or a guarantor; or
  - (c) Securing a purchaser's obligations under a seller-financed sale.
  
- Beneficiary exemption status:** The FFA does NOT apply to beneficiaries that are exempt from foreclosure mediation. The exempt status of beneficiaries can be verified on the FFP website at [www.commerce.wa.gov/foreclosure](http://www.commerce.wa.gov/foreclosure).
  
- Association beneficiaries:** The FFA does NOT apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.
  
- Notification dates:** The referrer MUST include ALL notification dates that apply to the subject property. These are: Notice of Pre-Foreclosure Options, Notice of Default, and Notice of Trustee Sale recording date. If the borrower did not receive any of these notifications, N/A must be entered in the appropriate box(es)—they should not be left blank.  
NOTE: The borrower MUST have received a Notice of Default to be eligible for mediation.
  
- Referrals during bankruptcy:** If a borrower meets all the FFA eligibility criteria and is currently in bankruptcy, Commerce will accept and process their Referral if one of the following items accompanies the Referral form:
  1. Evidence of a relief from the stay; **OR**
  2. A consent letter from the debtor to the beneficiary pursuant to RULE 4001-2 (Federal Rules of Bankruptcy Procedure) meeting the following criteria: letter is in writing; letter is signed by either the debtor or their attorney; letter identifies beneficiary on the deed of trust; letter contains words to the effect that the debtor consents to the beneficiary participating in mediation under the FFA; and letter contains words to the effect that mediation is for purposes of negotiation of a modification of the debt secured by the deed of trust.
  
- Trustee contact information required:** Commerce is required by statute to notify the current Trustee that a Referral has been received. A Referral cannot be processed unless the Trustee information (name, address, etc.) is provided on the Referral form.

**NOTE:** For borrowers with Notices of Default issued prior to 7/22/2011, in order to notify a Trustee prior to a Friday sale, we must receive an eligible, complete Referral by noon on the Thursday before the scheduled date of the trustee sale. Receiving the Referral earlier increases the chance of notifying the Trustee before the sale. Ensure the Referral is given immediate attention by also checking the box at the top of the Referral form. Please note that Commerce has no control over a Trustee's decision to postpone a sale.

- Signature:** To ensure the validity of a Referral, the signature of the referring attorney or housing counselor is required on the Referral form. An electronic/scanned copy of the signed form transmitted by email (PDF attachment) or fax is acceptable.
- Borrower's copy of the Referral:** The statute requires the referring attorney or housing counselor to send a copy of the Referral to the borrower(s) ([RCW 61.24.163\(2\)](#)).

### **SUBMITTING A REFERRAL TO DEPARTMENT OF COMMERCE**

The Referral form must be completely filled-out and hand-signed by the referring attorney or housing counselor.

We prefer that referrals are scanned (after being hand-signed) and emailed to us, in an effort to speed up our processing and response time. Scanned referrals may be emailed to [ForeclosureMediation@commerce.wa.gov](mailto:ForeclosureMediation@commerce.wa.gov). In the email Subject line, identify the last name(s) of the borrower(s) and state "New Referral" (e.g., *Smith – New Referral*).

Referrals may also be faxed to (360) 586-0966. If the Referral is faxed, it is the responsibility of the referrer to confirm the document was received by our staff. Mailing hard copies is no longer required.

The referrer **MUST** include an EMAIL address where they can receive notices from Commerce. Commerce will send the "Referral for Foreclosure Mediation Notice" (as required by [RCW 61.24.163\(3\)](#)) by email to the referrer, mediator, and trustee, and by mail to the borrower(s) and the beneficiary.