



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

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August 4, 2020

Mr. Brad Hendrickson, Secretary of the Senate
Legislative Building 312
PO Box 40600
Olympia, WA 98504-0600

Mr. Bernard Dean, Chief Clerk of the House of Representatives
Legislative Building 338B
PO Box 40600
Olympia, WA 98504-0600

Re: 2019 Foreclosure Fairness Report

Dear Mr. Hendrickson and Mr. Dean:

Commerce's 2019 legislative report on the Foreclosure Fairness Program reflects a still-robust economy in which foreclosures were significantly reduced compared to the most recent housing crisis levels. However, while some households still faced a difficult reality when negotiating with financial institutions, especially in a very strong housing market.

The COVID-19 pandemic has and will continue to significantly alter the foreclosure landscape in 2020 and beyond.

The federal CARES Act brought some relief by establishing a moratorium on foreclosures on properties with federally backed loans. The Department of Financial Institutions estimates upwards of 90% of residential mortgages in Washington are covered by these moratorium and forbearance provisions.

The CARES Act also requires servicers to give homeowners with federally backed mortgages up to two 180-day forbearances. These forbearances, however, have an unintended consequence of potentially bypassing the Notice of Trustee Sales, which is the funding source of the Foreclosure Fairness Program. In April 2020, the recording of Notices of Trustee Sales statewide was down approximately 71% compared to April 2019. In addition, forbearances exacerbate a steady downward trend in program revenues in effect since FY 2013. This loss in revenue is particularly important because the FPP is the only state or federal program that provides homeowners

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technical assistance, legal aid, and mediation as they navigate this economic crisis with their financial institutions. Barring a vaccine or some other significant economic turnaround, a wave of foreclosures equal to or exceeding the recent housing crisis is expected.

Commerce submitted a proposal to the Office of Financial Management to provide some short-term relief to borrowers and will continue to work with interested legislators and foreclosure stakeholders to identify an adjustment in the fee mechanism to address the growing shortfall in revenue.

Please contact Nathan Peppin by phone at (360) 725-2868 or email at Nathan.Peppin@commerce.wa.gov or myself by phone at (360) 725-4144 or email at Cecil.Daniels@commerce.wa.gov if you have any questions regarding this report.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cecil Daniels', is positioned above the printed name.

Cecil Daniels

Managing Director

Community Economic Opportunities Unit

Community Services and Housing Division

Foreclosure Fairness Program



ANNUAL REPORT ON PROGRAM PERFORMANCE PER RCW 61.24.163

August 2020

REPORT TO THE LEGISLATURE

Lisa Brown, Director

Acknowledgments

Washington State Department of Commerce

Diane Klontz, assistant director, Community Services and Housing Division

Cecil Daniels, managing director, Community Economic Opportunities Unit

Nathan Peppin, program manager, Foreclosure Fairness Program

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Washington State Housing Finance Commission

Steve Walker, executive director

Washington State Office of the Attorney General

Bob Ferguson, attorney general

Office of Civil Legal Aid

James Bamberger, director

Special thanks to the Dispute Resolution Centers, Northwest Justice Project, mediators, attorneys and housing counselors who collaborate with the Department of Commerce to implement and deliver the Foreclosure Fairness Program

Special thanks to Jayme Khoo, analysis and visualization manager in the Housing Assistance Unit, and Paul Currington, communications specialist in the Energy Division, for, respectively, the heat maps and graphics contained in this report

Washington State Department of Commerce

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For people with disabilities, this report is available on request in other formats. To submit a request, please call 360.725.4000 (TTY 360.586.0772).

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Executive Summary

Overview

This report provides Foreclosure Fairness Program data to satisfy [RCW 61.24.163](#) as well as additional programmatic context and background. The full text of the legislative reporting requirements are below:

18) Beginning December 1, 2012, and every year thereafter, the department shall report annually to the legislature on:

- (a) The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney;
- (b) The results of the mediation program, including the number of mediations requested by housing counselors and attorneys, 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;
- (c) The information received by housing counselors regarding outcomes of foreclosures; and
- (d) Any recommendations for changes to the statutes regarding the mediation program.

Navigating the Report

To help readers navigate the report, Table 1 provides directions to the locations of the required report data.

Table 1: Annual Reporting Requirements Under RCW 61.24.163(18)

Subsection	Proviso	Location
(a)	"The performance of the program, including the numbers of borrowers who are referred to mediation by a housing counselor or attorney."	Table 3
(b)	"The results of the mediation program, including the number of mediations requested by housing counselors and attorneys."	Tables 5, 6, 7 and 8
(b)	"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."	Tables 6 and 7

Subsection	Proviso	Location
(b)	"The change in the borrower's monthly payment for principal and interest, and the number of principal write-downs and interest rate reductions." ¹	Table 6
(b)	"To the extent practical, the number of borrowers who report a default within a year of restructuring or modification."	The Department of Commerce conducted a survey in 2014 that determined this information is not available.
(c)	"The information received by housing counselors regarding outcomes of foreclosures."	Table 5
(d)	"Any recommendations for changes to the statutes regarding the mediation program."	No recommendations

Key Findings

The two key findings both relate to a decline in foreclosure activity in Washington. Even though the declining number of foreclosures is positive overall, the trend creates new challenges.

1. Declining Funding

Foreclosure activity funds the Foreclosure Fairness Program through a fee beneficiaries pay per Notice of Trustee Sale (NOTS). The decline in foreclosures is overall a positive trend. However, the current revenue source cannot sustain the existing statewide infrastructure as defined in statute. See [Figure 4](#) and [Figure 5](#) for more details on funding and rates of foreclosures versus referrals.

2. Trends Show More Challenging Cases

In this robust economy with a strong housing market, people facing foreclosures are struggling to obtain mediation agreements that include home retention. The program often receives anecdotal reports from housing counselors that they are representing fewer overall borrowers in mediation but that the cases have become more challenging. Data from the Washington State Homeownership Resource Center confirms that the reasons for mortgage defaults have shifted over the past few years (see [Figure 8](#)).

Recommendations

The Department of Commerce does not currently have any recommendations for changes to the statute. The Legislature made statutory changes to the program in the previous two sessions, which this report discusses in the "[Background on Funding](#)" section in the "[Introduction](#)."

¹ Chapter 61.24.163 RCW requires the Department of Commerce to report on "the change in the borrower's monthly payment for principal and interest." This data is contained in private documents that are not available to Commerce and, therefore, is not included in this report.

Conclusions

Washington is not currently experiencing a widespread foreclosure crisis. However, families and individuals who might lose their homes are experiencing personal crises. The Foreclosure Fairness Program is a vital resource to Washington homeowners that helps borrowers preserve homeownership and maintain financial sustainability.

In fiscal year 2019:

- Housing counselors served more than 2,400 homeowners.
- The program received 560 referrals.
- An estimated 6,000 NOTS were recorded.

If Washington were to experience a future economic decline, foreclosures could increase, and the Foreclosure Fairness Program would be an important resource for households facing foreclosure.

Introduction

Background

The Legislature passed the 2011 Foreclosure Fairness Act (Chapter 58, Laws of 2011) at the height of the national foreclosure crisis. The act intended to do two things:

1. Reshape the non-judicial foreclosure process in Washington to help protect homeowners from avoidable foreclosures; and
2. Ensure that, even when foreclosure is unavoidable, the process is fair, transparent, and allows both borrower and beneficiary to meet and make well-informed decisions.

Overview

The Foreclosure Fairness Act assigns the primary responsibility for developing and managing the Foreclosure Fairness Program (FFP) to the Department of Commerce. The agency partners with the following entities to perform the work:

- Washington State Housing Finance Commission (WSHFC)
- Office of the Attorney General (AGO)
- Office of Civil Legal Aid (OCLA)

The Foreclosure Fairness Program also collaborates with:

- Dispute Resolution Centers²
- Mediators
- Attorneys (private and civil legal aid)
- Housing professionals

Initially, the Department of Financial Institutions provided education and outreach on foreclosure prevention. However, given the decrease in available funds, Commerce has assumed these responsibilities on an as-needed basis.

Program Funding

Current Funding Structure

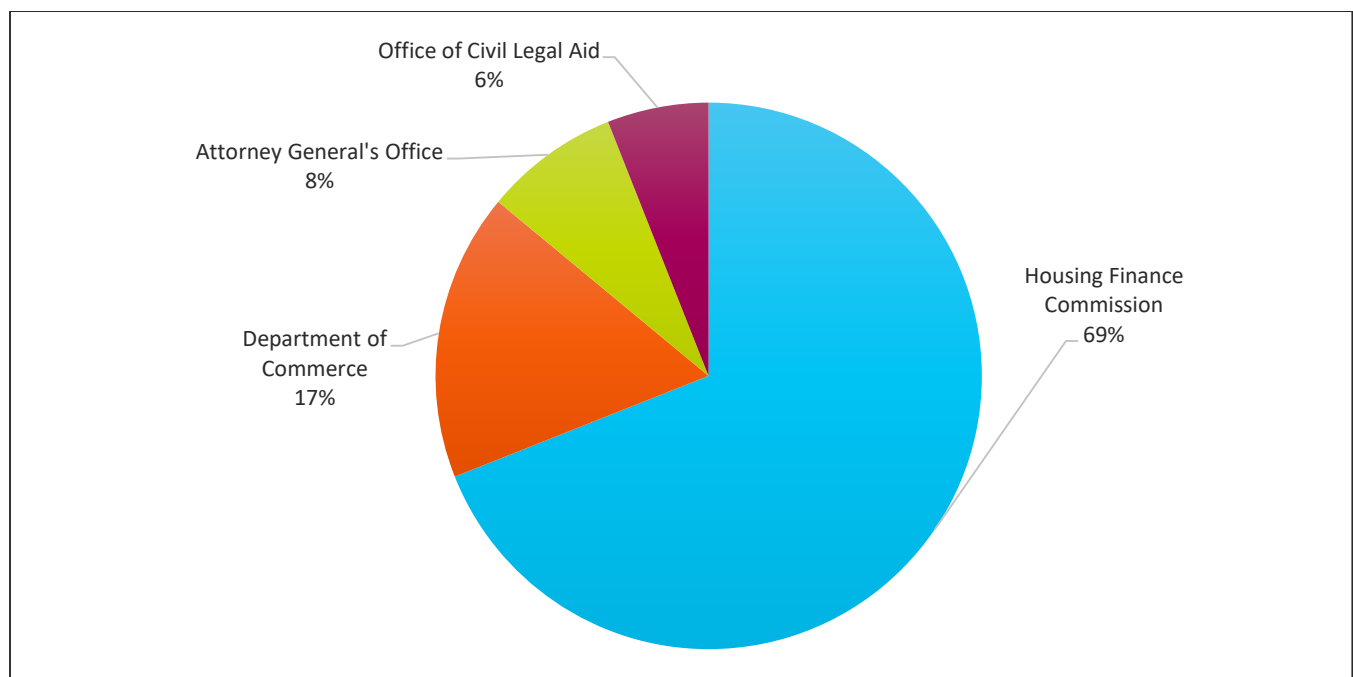
Fees mortgage lenders (“beneficiaries”) pay fund the FFP. As of the second quarter of state fiscal year 2018, each beneficiary must pay a \$325 fee into the Foreclosure Fairness Fund for each original Notice

² Dispute Resolution Centers provide affordable mediation to resolve several types of disputes, including parenting plans, divorces, landlord-tenant issues and foreclosures. Learn more at <http://resolutionwa.org/>.

of Trustee Sale recorded against owner-occupied residential real properties in the state.³ The fund pays for:

- Free-to-homeowners foreclosure counseling
- Consumer protection and enforcement of the Foreclosure Fairness Act
- Development and oversight of the mediation process⁴
- Foreclosure prevention outreach and education
- Legal assistance for low- and moderate-income homeowners

Figure 1: Foreclosure Fairness Program Funding Allocation



Source: Washington State Department of Commerce

Background on Funding

A \$250 fee beneficiaries paid for every issued Notice of Default (NOD) issued originally funded the program. However, a NOD is issued to a borrower and is not a public record. As a result, the program could not determine whether the fee revenue collected fully represented the fee revenue due to the program.

The 2016 Legislature (Chapter 196, Laws of 2016) shifted the source of funds to the recorded Notices of Trustee Sale (NOTS) to reconcile fee revenue more effectively. Additionally, to better identify the fee revenue due to the program, Chapter 306, Laws of 2018 changed the recording process to require

³ Beneficiaries who record fewer than 50 Notices of Trustee Sale in a calendar year are exempt from this fee.

⁴ A separate fee split between homeowner and beneficiary pays mediators.

indexing of these notices. Chapter 306, Laws of 2018 also increased by 30%, to \$325, the fee beneficiaries pay per NOTS.

Lawmakers intended for this change to increase program funding. However, the continued decline in foreclosure activity meant the increased fee offset only some of the declining revenue. The decline in foreclosures is overall a positive trend. However, the current revenue source cannot sustain the existing statewide infrastructure. See [Figure 4](#) and [Figure 5](#) for more details on funding and rates of foreclosures versus referrals.

The passage of Chapter 196, Laws of 2016 modified RCW 61.24.172, which outlines the distribution of funding to the agencies providing services under the Foreclosure Fairness Act. Beginning in state fiscal year 2017, the Homeownership Resource Hotline has received \$400,000 per biennium. The partner agencies receive percentages of the remaining funds (see [Figure 1](#)).

Agency Partner Roles and Responsibilities

Overview

Washington State Office of the Attorney General

The Office of the Attorney General's Consumer Protection Division created the Foreclosure Compliance Program to enforce the Deed of Trust Act. The Foreclosure Compliance Program investigates complaints related to foreclosure.

Washington State Department of Commerce

Commerce is charged with the overall management of the program and the administration of the Foreclosure Fairness Fund. Its FFP is responsible for recruiting, training and approving mediators. Commerce also receives referrals and assigns mediators to eligible cases. Additionally, Commerce is responsible for maintaining a list of approved foreclosure mediators. The act identifies the following groups as eligible to become foreclosure mediators:

- Attorneys
- Retired judges
- U.S. Department of Housing and Urban Development approved housing counselors
- Employees and volunteers of Dispute Resolution Centers

Commerce requires participating mediators to take foreclosure mediation training and have additional documented mediator training and experience.⁵ Currently, 67 active mediators are on Commerce's approved list. Mediators have full discretion in conducting the sessions and in their determinations of outcomes (see [Figure 3](#) for possible mediation outcomes).

⁵ Washington State Department of Commerce, "Interested in Becoming a Mediator?," (2013), <https://www.commerce.wa.gov/wp-content/uploads/2015/11/ffp-interested-in-becoming-mediator-2013.pdf>

Washington State Housing Finance Commission

The WSHFC administers a homeowner-counseling program. The commission also oversees the toll-free Homeownership Resource Hotline,⁶ which provides homeowners with no-cost foreclosure prevention counseling. Much of the FFP funds directed to the WSHFC support free-to-consumers foreclosure-related housing counseling services throughout the state, including:

- Information and referrals
- Preparation for and representation at meet-and-confer sessions
- Preparation for and representation at mediation
- Homeowner education and participation in community projects benefiting homeowners

The WSHFC reports that for state fiscal year 2019, the number of housing counseling agencies dropped from nine to seven (down from 16 when the program started). In addition, the number of foreclosure-prevention counselors dropped from 40 in July 2018 to 30 by June 2019. [Table 2](#) names the seven counseling agencies and the areas of the state they serve.

Table 2: Housing Counseling Agencies and Counties Served

Agency	Service Area
American Financial Solutions	Statewide, but primarily Kitsap, King, Pierce and Snohomish counties
Parkview Services	Statewide
Urban League of Metropolitan Seattle	Statewide, but primarily King, Pierce and Snohomish counties
Community Housing Resource Center	Clark, Cowlitz, Lewis and Skamania counties
SNAP (Spokane Neighborhood Action Partners)	Spokane County and most of Eastern Washington
Northwest Consumer Law Center	Statewide
Northwest Justice Project	Statewide

Source: Washington State Housing Finance Commission

Office of Civil Legal Aid

The Office of Civil Legal Aid (OCLA) contracts with qualified legal aid programs to provide no-cost legal assistance to low- and moderate-income homeowners in matters related to foreclosure. Commerce partners with OCLA to provide this assistance. OCLA grants all of the Foreclosure Fairness Act funds it receives to the statewide Northwest Justice Project (NJP) for this work.⁷

⁶ 1-877-894-HOME (4663)

⁷ Data representing NJP's housing counselor services is included in data provided by the WSHFC.

NJP provides housing counseling services as well as no-cost legal services to low- and middle-income homeowners facing foreclosure on their primary residences. These legal services include representation in defense of all forms of foreclosure, including mortgage, property tax, utility lien, court-ordered forced-sale and homeowner/community associations.

Borrowers in danger of losing their homes often need help to address civil legal needs in addition to foreclosure. In certain instances, NJP's advocates address other consumer needs as well to achieve greater economic security. That might mean challenging or negotiating other debts and liabilities or helping the homeowner apply for property tax relief to reduce monthly expenses. In instances beyond their expertise, the advocates refer homeowners to other resources or community partners.

In response to reduced funding for foreclosure-related services, and to avoid overall staff reductions, NJP has reorganized its approach to foreclosure prevention. Instead of focusing one temporary specialized unit exclusively on foreclosure defense, beginning in January 2019, NJP spread its foreclosure defense work throughout its field offices. Now nearly 30 advocates provide foreclosure assistance at NJP. Spreading the Foreclosure Unit's expertise across the state has made foreclosure prevention a permanent priority in all 18 offices.⁸

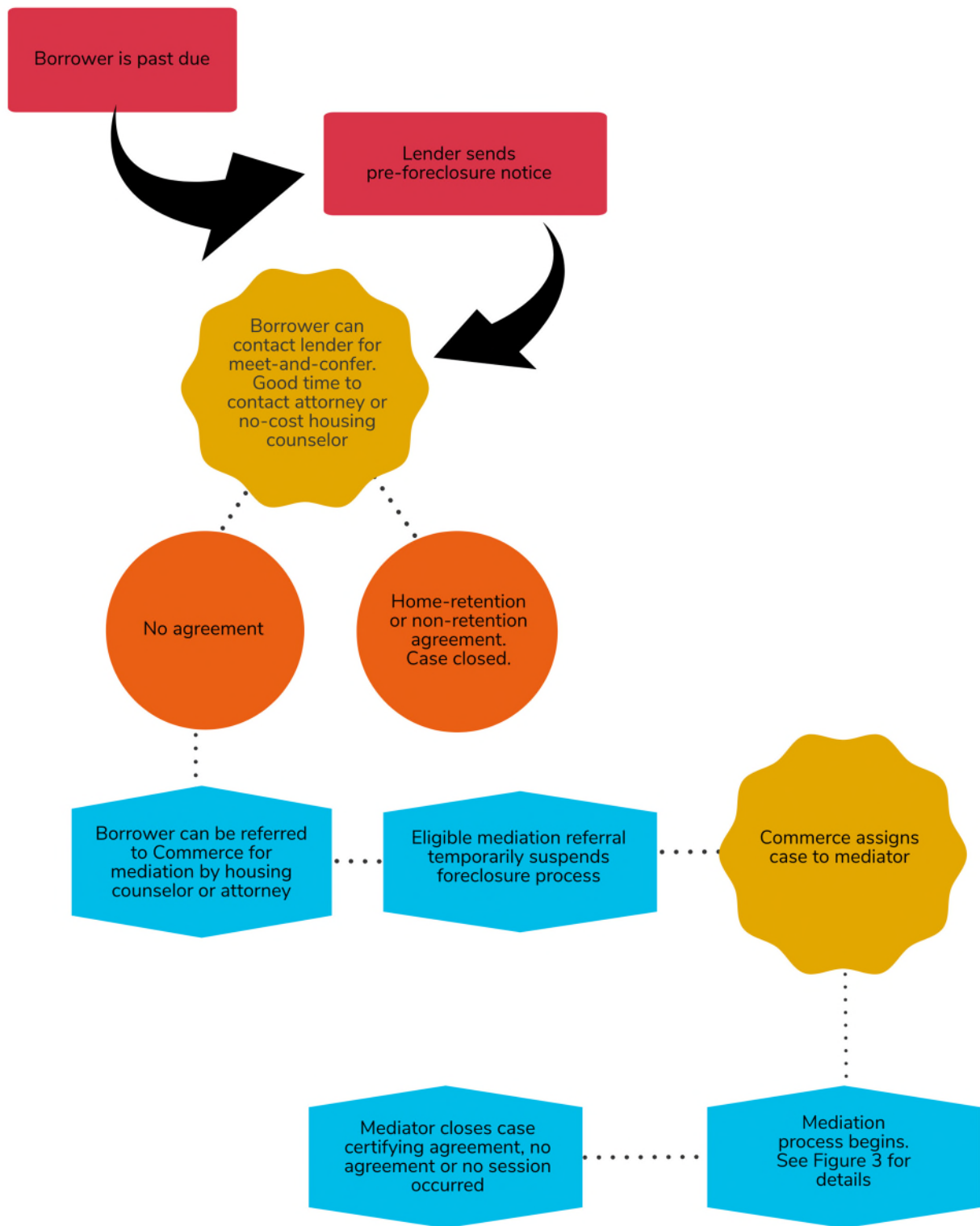
Foreclosure Process

The Foreclosure Fairness Act and FFP enable borrowers to access no-cost foreclosure prevention assistance. Through the Washington State Homeownership Resource Center (WHRC), borrowers can access services before, during and after beginning the foreclosure process. Homeowners can also choose to pay for representation by a private attorney.

The meet-and-confer period, outlined in the Deed of Trust Act, identifies clear steps of notification before foreclosure and requires the beneficiary to meet with the borrower if the borrower requests a meet-and-confer session. [Figure 2](#) maps the foreclosure process from past-due mortgage payments through mediation. [Figure 3](#) maps the foreclosure mediation process and possible outcomes.

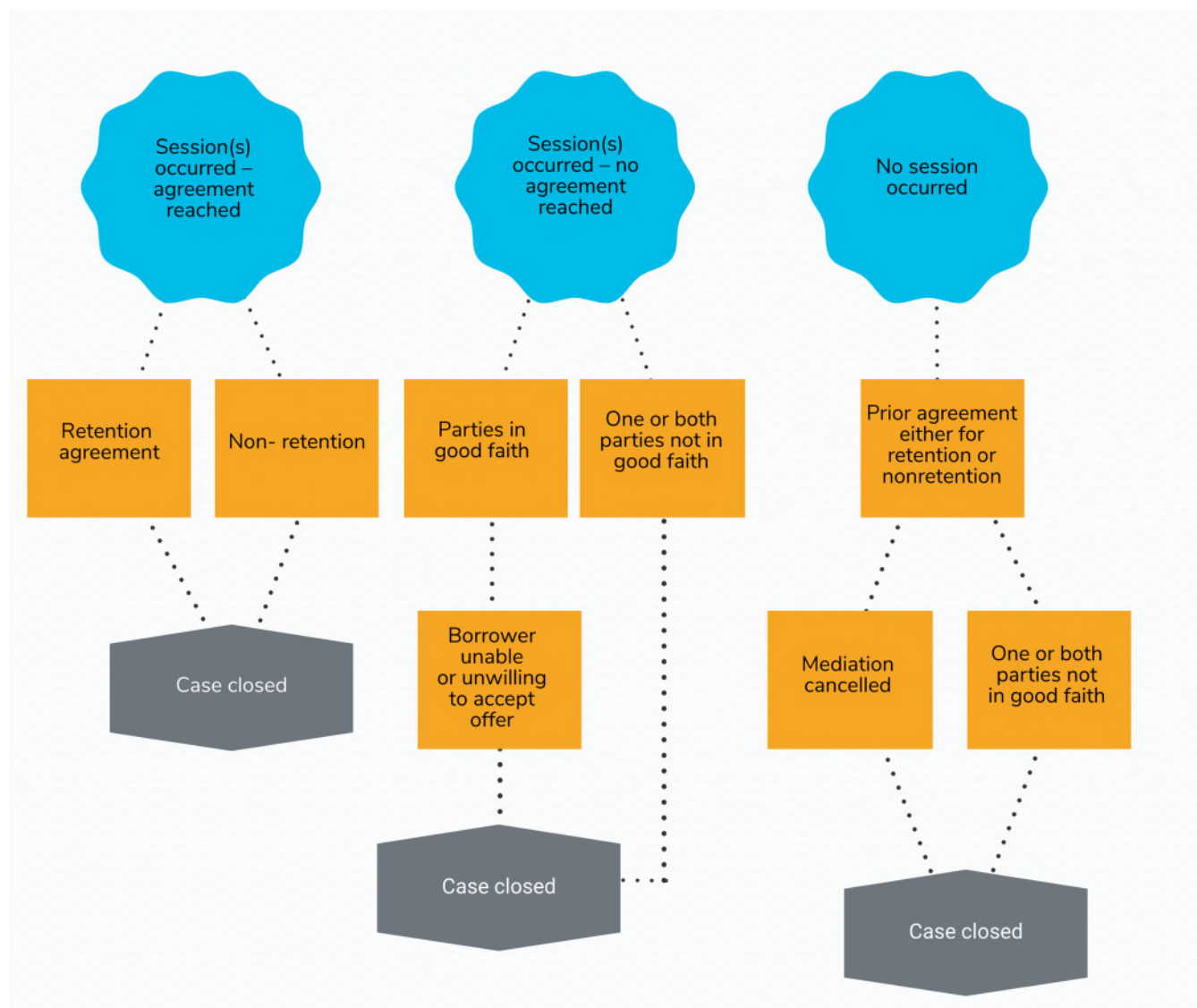
⁸ Northwest Justice Project

Figure 2: Foreclosure Process



Source: Washington State Department of Commerce

Figure 3: Foreclosure Mediation Process and Possible Outcomes



Source: Washington State Department of Commerce

Negative Effects of Foreclosure

Losing a home has many negative effects, foremost financially. For many middle- and low-income homeowners, their homes are their largest assets. Homeownership has long been viewed as a sound investment opportunity to fund retirement, provide for a dependent's education and ensure general financial stability.⁹

⁹ Federal Reserve Bank of New York, "SCE Housing Survey," (2019), <https://www.newyorkfed.org/microeconomics/sce/housing#main>

The assets a family loses due to foreclosure can reverberate across several generations through lost inheritances, no matter how small.¹⁰ A foreclosure can result in a significant loss of points on a borrower's credit report.¹¹ That effect can last up to seven years, during which the borrower has limited access to credit at affordable rates. Tax implications can occur as well if the Internal Revenue Service identifies any forgiven debt as income.

Benefits of Mediation

Mediation yields many overall benefits to beneficiaries and homeowners. Both parties benefit from a structured and organized mediation process that provides the opportunity to engage in a facilitated discussion about alternatives to foreclosure. For the borrower, a loan modification might result in the reduction of their mortgage principal, an interest rate reduction, and lower, more affordable monthly payments.

However, not all successful mediations result in the borrower keeping the home. When a family's income or other circumstances make it impossible to keep the home, a non-retention agreement can give a borrower more time to leave or sell on his, her or their terms. Non-retention agreements can also help preserve or improve a borrower's financial stability.

¹⁰ Saegert et al, "Mortgage Foreclosure and Health Disparities: Serial Displacement as Asset Extraction in African American Populations," *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, Vol. 88, No. 3, (2011), <https://opencuny.org/alternativehousingresearch/files/2012/03/mortgage-foreclosure-and-health.saegertetal.pdf>

¹¹ Experian, "Understanding Foreclosure," (2020), <https://www.experian.com/blogs/ask-experian/what-is-a-foreclosure/>

Foreclosure Fairness Program Outcomes

Background on Data

Data from Commerce reflects program performance for state fiscal years 2012 through 2019, the life of the FFP so far. State fiscal year data gives a snapshot of certain functions within the Foreclosure Fairness Program (FFP), but it does not always reflect the full impact on borrowers, neighborhoods and communities as some mediations span several years. In some cases, the tables below compare data from the life of the program to data from state fiscal year 2019 to provide a more complete context.

Program Outcomes

The following tables and figures show data as required in statute. See [Table 1](#) for a crosswalk of statutory reporting requirements as they relate to the tables and figures below.

[Table 3](#) reflects an overview of mediation referrals the FFP received.

Table 3: Mediation Referrals – Foreclosure Fairness Program

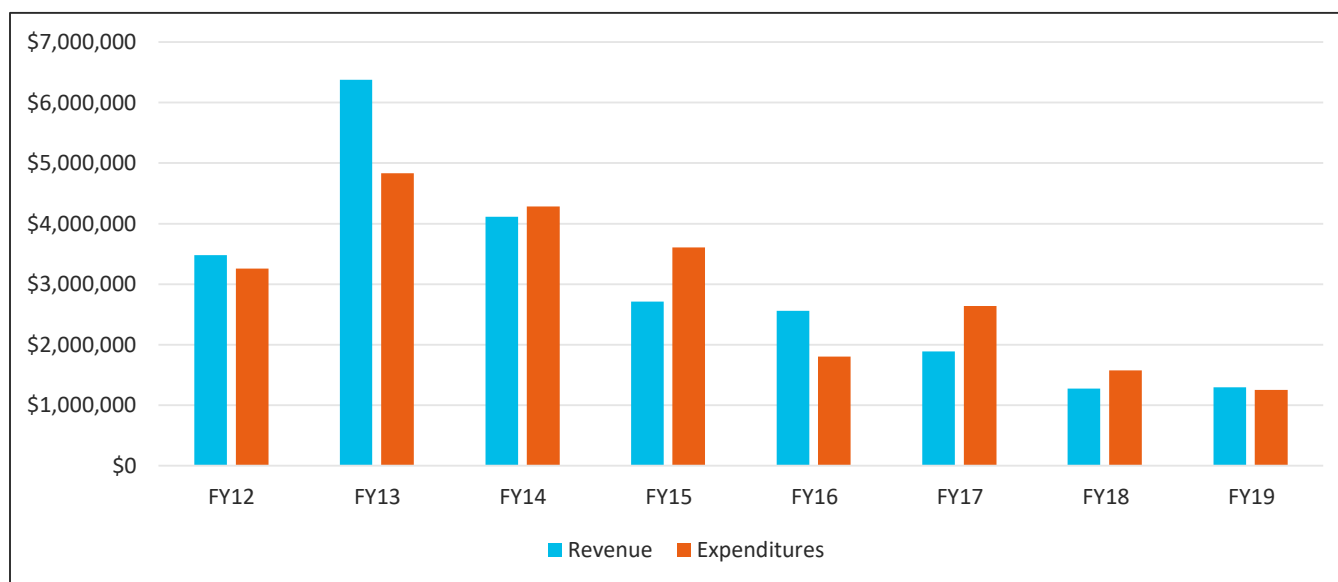
Mediation Referrals	Cases Since Program Start, State FY 2012-19	Cases State FY 2019
Total Mediation Referrals Received	11,389	560
Referred by Housing Counselors	4,876 (43%)	324 (58%)
Referred by Attorneys (Private and Civil Legal Aid)	6,513 (57%)	236 (42%)
Cases Assigned to Mediators (Includes Cases That Have Been Mediated, Closed, or Currently Pending an Outcome)	10,271	523
Cases Complete/Closed	9,665	599
Cases Ineligible for Mediation (Typically Because the Beneficiary was Exempt or the Referral Missed the Window of Eligibility in Statute)	1,174	40

Source: Washington State Housing Finance Commission

The number of foreclosures has been declining since 2013 because of favorable conditions in the real estate market, increased alternatives to foreclosure and enhanced residential mortgage lending standards.

[Figure 4](#) shows the declining revenues and expenditures for the program from state fiscal year 2012 through 2019.

Figure 4: Revenues and Expenditures, State Fiscal Years 2012-2019



Source: Washington State Department of Commerce

Data in [Table 4](#) reflect the services housing counselors provide to borrowers requesting meet-and-confer sessions. In the foreclosure process, meet-and-confer sessions take place before mediation. This table does not include information on such services provided by private attorneys, who are not required to report their activities. The Foreclosure Fairness Program funds services provided by HUD-certified housing counselors and legal aid attorneys who report their activities regularly to the WSHFC.

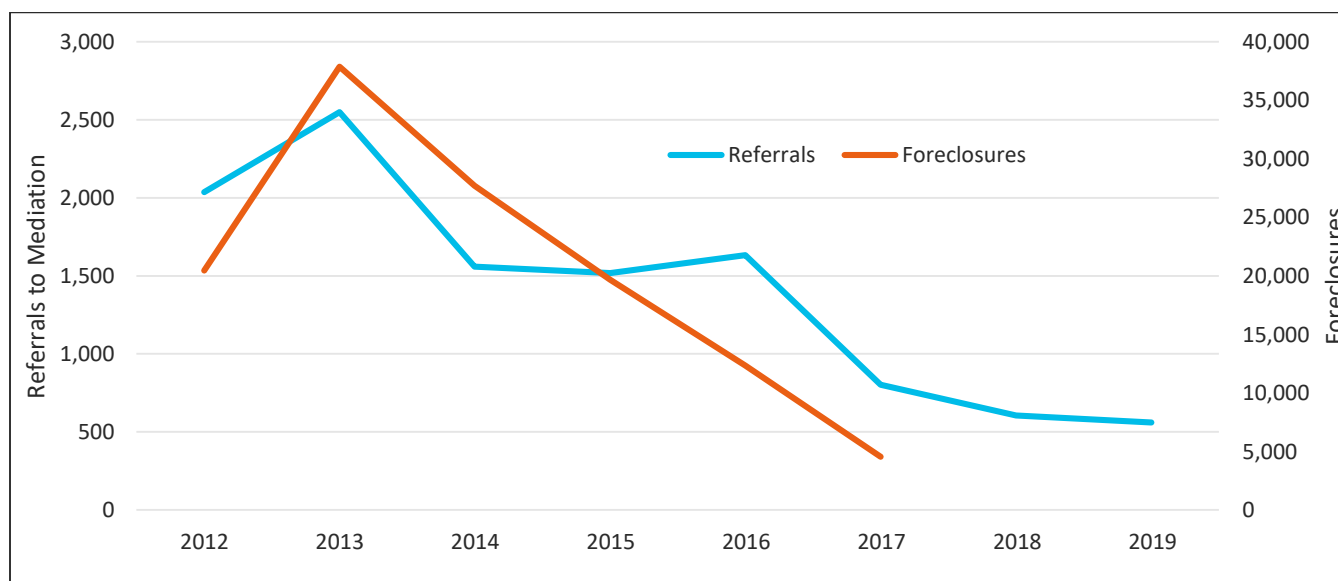
Table 4: Housing Counselors – Meet-and-Confer Outcomes

Category Description	Cases in State FY 2019
Outputs	
Total Number of Meet-and-Confer Sessions Attended	748
Outcomes	
Number of Pending Outcomes	661
Number of Withdrawals from Counseling	4
Number of Home-Retention Agreements	56
Number of Non-retention Agreements	6
Number of No Agreements	21

Source: Washington State Housing Finance Commission

Figure 5 shows that since the establishment of the FFP, the rate of referrals to mediation generally coincides with the rate of foreclosures in Washington.

Figure 5: Rate of Foreclosures Versus Referrals, Calendar Years 2012-2019



Source: Zillow previously provided the unpublished data on foreclosures. However, that data is no longer available, so the foreclosure line ends in 2017. The Washington State Department of Commerce provides the data on referrals.

Tables 5, 6 and 7 reflect the outcomes of all certified cases since the inception of the program with numbers for fiscal year 2019 highlighted. These tables contain data from the FFP database and include referrals received from both housing counselors and private attorneys.

Table 5: Housing Counseling Agencies' Overall Outcomes in SFY 2019

Category Description	Cases in State FY 2019
Outputs	
Clients	2453
Referrals to Other Services	454
Outcomes	
Pending Outcomes (Still in Counseling)	1298
Withdrawals from Counseling	76
Home Retention Agreements	561
Non-Retention Agreements	71
No Agreements	429
Foreclosures	18

Source: Washington State Housing Finance Commission

Table 6: Mediation Session Outcomes Where Agreement Was Reached

Outcomes	Cases in State FY 2012-19	Cases in State FY 2019
Mediation Session(s) Occurred – Agreement Reached	2,870	177
Borrower Stayed in Home (Subcategories Below Are Not Mutually Exclusive)	2,225	122
Reinstatements	191	18
Repayments	63	9
Extensions	191	10
Adjusted Rate to Fixed Rate	222	5
Amortization Extensions	491	26
Interest Rate Reductions	936	17
Principal Reductions	117	1
Monthly Principal Payment Reductions	374	7
Monthly Interest Payment Reductions	266	3
Refinances	59	9
Other Loan Structures/Modifications	870	40
Principal Forbearances	173	2
Interest Forbearances/Write-offs	44	1
Fees and Penalties Forbearances/Write-offs	35	0
Other Forbearances ¹²	64	3

Source: Washington State Department of Commerce

¹² From the way the certification is structured, Commerce is not able to identify unique restructures and modifications.

Table 7: Outcomes in Which No Mediation Occurred

Outcomes in Which No Mediation Occurred	Cases State FY 2012-19	Cases State FY 2019
Home-Retention Agreement Reached Prior to Session	2,040	146
Non-retention Agreement Reached Prior to Session	265	20
Borrower Withdrew from Mediation (Not Included in Other Categories)	646	18
Borrower Not in Good Faith ¹³	682	73
Beneficiary Not in Good Faith	71	10
Both Borrower and Beneficiary Not in Good Faith ¹⁴	15	3

Source: Washington State Department of Commerce

Table 8: Mediation Session Outcomes — Borrower Did Not Stay in Home

Non-retention (Categories Are Not Mutually Exclusive)	Cases State FY 2012-19	Cases State FY 2019
Deeds in Lieu	55	1
Short Sales	231	6
Voluntary Surrenders	47	2
Cash for Keys	30	1
Other Non-retention Agreements	398	47

Source: Washington State Department of Commerce

The 2018 Legislature increased the indexing requirements of trustee sale notices that county auditors record for residential properties. This change gave the FFP a more accurate count of residential properties in foreclosure. However, the 39 county auditors use several different technologies. Therefore, Commerce is working to get accurate and consistent data. [Figures 6](#) and [7](#) provide a

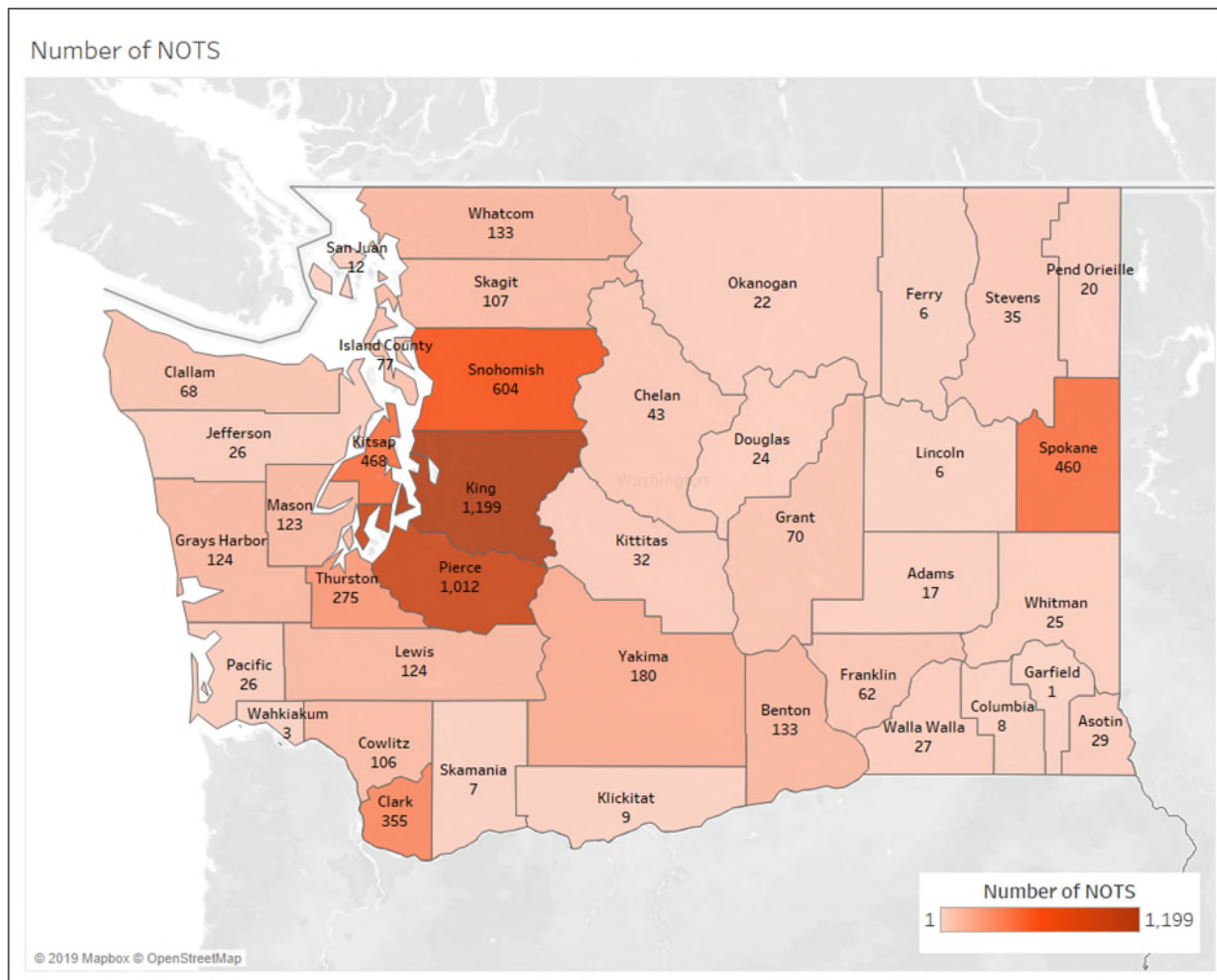
¹³ Typically, reported reasons for lack of good faith for either or both the borrower and beneficiary include:

- Lack of timely or accurate provisioning of documents to the mediator and other party
- Failure to appear at or participate in mediation
- Failure to pay the mandated share of the mediation fee
- Beneficiary's representative was not been authorized to make binding decisions

¹⁴ Even though the certification specifically tracks parties "not in good faith," multiple outcomes are not explicitly tracked as being in "good faith."

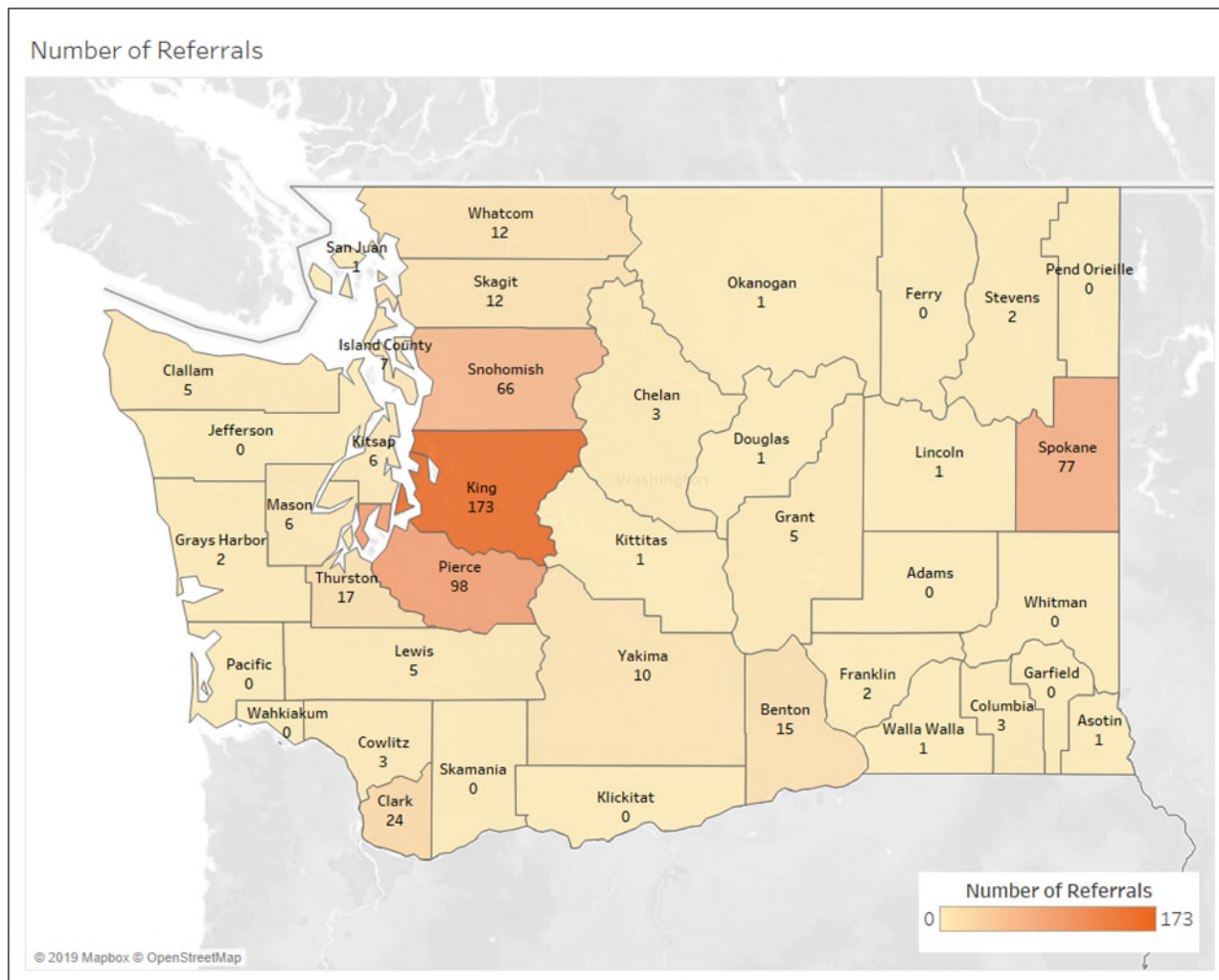
comparison of the numbers of NOTS recorded in each county during fiscal year 2019 and the number of FFP referrals each county received.

Figure 6: Notices of Trustee Sales Recorded by County in State Fiscal Year 2019



Source: Washington State County Auditors

Figure 7: Mediation Referrals Received in State Fiscal Year 2019



Source: Washington State Department of Commerce

Program Administrative Accomplishments

Stakeholder Meetings

During state fiscal year 2019, all partners participated in stakeholder meetings that Rep. Tina Orwall held concerning:

- Funding levels for the Foreclosure Fairness Account (and, therefore, the availability of housing counselors and legal aid attorneys as well as the administration of the mediation program)
- Surfacing concerns related to the denial of modification requests due to investor/beneficiary restrictions, underwriting or other guidelines

Functional Changes

During state fiscal year 2019, Commerce employees made internal changes to better meet the needs of the program.

Communications with Unrepresented Borrowers

Several mediators expressed concerns about borrowers who are referred to mediation not receiving representation through the process. In response, Commerce instituted a new practice to reach out to all borrowers newly referred to the program but unrepresented to:

- Inform them of the availability of no-cost housing counselors
- Connect them to the Washington Homeownership Resource Center

Cleanup of Pending Cases

Commerce instituted a semi-annual cleanup of any cases the agency had not received communication about for at least six months. In spring 2019, the process resulted in the closing and certification of more than 200 dormant cases. This regular check-in with mediators should help keep the status of cases current.

Mediator Survey

In spring 2019, Commerce surveyed all mediators regarding any training or communication issues. In response, beginning in December 2019, Commerce began sending occasional email updates to all mediators. The updates provide the broader community of mediators with current information on changes or trends in the program and address questions or issues raised in survey responses.

Enforcement of Foreclosure Fairness Act

The Consumer Protection Division of the Washington State Attorney General's Office created the Foreclosure Compliance Program (FCP) to enforce the Deed of Trust Act, as required by that act. See [Table 9](#) for a summary of enforcement activities for state fiscal year 2019.

Table 9: Foreclosure Compliance Program Activity in State Fiscal Year 2019

Type of Complaint	Number of Complaints	Comments
Total Consumer Complaints	289	Includes complaints and inquiries about mortgage loans, foreclosures and loan-servicing problems
Escalated Complaints	31	About loan servicing, foreclosure mediation and other foreclosure matters
Complaints Received from Housing Counselors	23	About loan servicing, foreclosure mediation and other foreclosure matters
Complaints Received from Attorneys and Real Estate Professionals	8	About loan servicing, foreclosure mediation and other foreclosure matters

Source: Washington State Office of the Attorney General

In addition to these consumer complaints and other inquiries, since July 1, 2018, the FCP has focused on protecting consumers in mortgage loan, foreclosure, loan servicing and related matters. To do so, they engaged in affirmative advocacy and seven consumer-protection-enforcement actions.

Consumer-Protection-Enforcement Actions and Consumer Advocacy¹⁵

James et al. v. Safeguard Properties LLC

On March 25, 2019, the Attorney General's Office (AGO) submitted an amicus curiae brief to the U.S. Ninth Circuit Court of Appeals in James et al. v. Safeguard Properties LLC in support of the consumer protection claim advanced by the plaintiff-appellant homeowners in that case.

The central issue involves whether the defendant loan servicer, Safeguard, violated the Consumer Protection Act by entering the homeowners' properties to secure possession after default but before foreclosure. This appeal remains pending before the Ninth Circuit Court of Appeals.

Lawsuit Against Real Estate Investment Network LLC (REIN)

On May 17, 2018, the AGO filed a lawsuit against REIN and three individuals. It alleges that the parties engaged in unfair and deceptive acts or practices when they helped homeowners obtain excess funds following judicial and non-judicial foreclosure sales. Those funds were composed of foreclosure sale proceeds remaining after the foreclosed debt was satisfied and the costs of the sale were paid.

On May 29, 2018, the court entered a stipulated preliminary injunction restraining REIN and its employees from engaging in the alleged activities. This case remains pending before the King County Superior Court.

Consent Decree Obtained Against Miriam Lozano Doing Business as Primera Services

On Sept. 19, 2017, the AGO obtained a consent decree in a previously filed lawsuit against Miriam Lozano (doing business as Primera Services) related to Ms. Lozano's unlicensed and deceptive practices as a mortgage broker. Ms. Lozano purported to help distressed homeowners obtain a mortgage loan modification and avoid foreclosure. The consent decree provides for full restitution of identified consumers and enjoins Ms. Lozano from engaging in similar violations in the future.

Between July 1, 2018, and June 30, 2019, the AGO continued its compliance supervision and enforcement role concerning that consent decree by overseeing and distributing restitution payments received from Ms. Lozano.

Ongoing Case-Specific Problem Solving

Finally, and more generally, the FCP regularly receives case-specific and issue-related input from Commerce, including requests to respond to homeowners and counselors. The FCP and Commerce work collaboratively in these matters to resolve common issues.

¹⁵ Provided by the Washington State Office of the Attorney General

Current Foreclosure Climate

Effects of an Improved Economy

In this robust economy with a strong housing market, individuals facing foreclosures are struggling to obtain mediation agreements that include home retention. Commerce often receives anecdotal reports from housing counselors that they are representing fewer overall borrowers in mediation but that the cases have become more challenging. In some cases, beneficiary underwriting guidelines are more restrictive, making it increasingly difficult for borrowers to obtain a modification. Increased equity, which can satisfy the debt, can also make finding a retention option difficult.

Data from the WHRC confirms that the reasons for mortgage defaults have shifted over the past few years (see [Figure 8](#)). When borrowers default because they cannot afford their mortgage due to loss of income or employment, the case is usually straightforward. In contrast, when borrowers default because of divorce, death in the family or health issues, other complex legal issues are often involved. These cases have increased as a percentage of overall foreclosures in the past few years.

Without the ability to retain their homes through a loan modification, some view a non-retention strategy as a success because it avoids many of the negative effects of foreclosure. However, it is not optimal, especially since it is becoming harder to find alternative affordable housing options in many Washington communities.¹⁶

Trends Reported by Housing Counseling Agencies

The following anecdotes from housing counseling agencies are consistent with trends emerging through the processing of mediation certifications. Commerce does not have firm data on these trends.

- Parkview Services noticed an increase in defaults for Federal Housing Administration (FHA) loans issued within the past three years. Of particular concern were defaults within the first year. Under FHA guidelines, no workout option¹⁷ is provided to borrowers within the first year.
- Several agencies expressed that their clients were experiencing increasing difficulty when seeking a modification and that some beneficiary underwriting guidelines seem to preclude some clients from involvement in the foreclosure fairness program. Guidelines for FHA, Fannie Mae and Freddie Mac loans became stricter, and beneficiaries deny modifications if borrowers do not meet the underwriting criteria.¹⁸

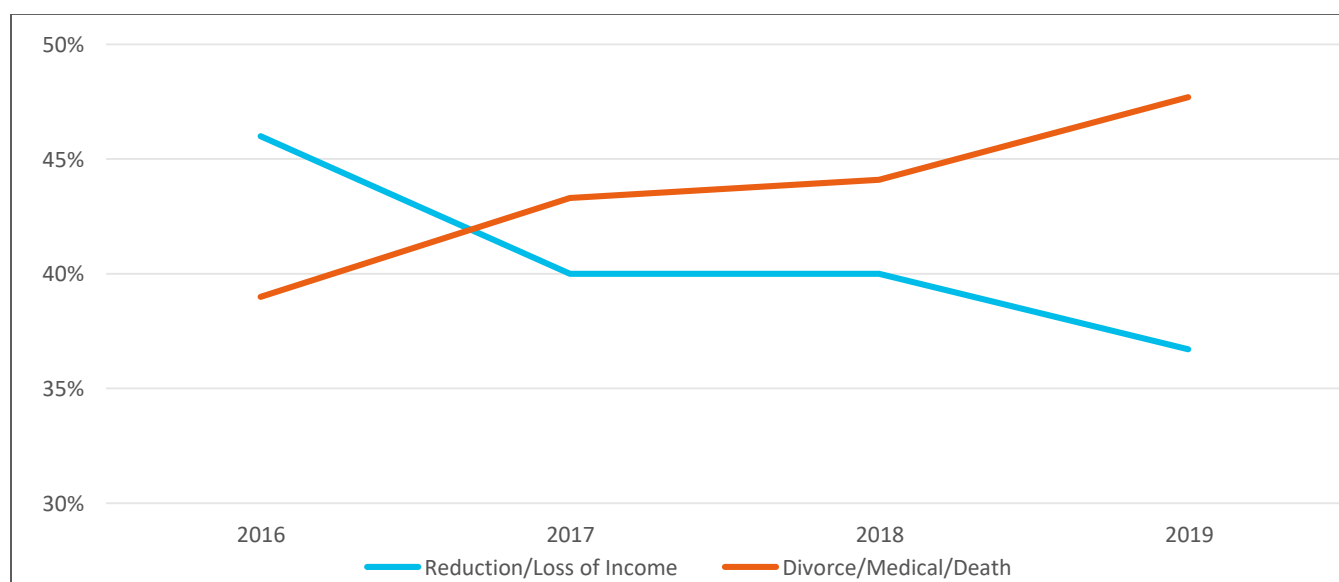
¹⁶ Washington State Department of Commerce, "2018 Affordable Housing Update," (2019), <https://www.commerce.wa.gov/wp-content/uploads/2019/01/COMMERCE-affordable-housing-update.pdf>

¹⁷ Loan workout options are agreements between beneficiaries and borrowers to avoid foreclosures. https://www.hud.gov/program_offices/housing/sfh/econ/loanworkoutsolutions

¹⁸ Two underwriting guidelines cause difficulties when a home has equity: 1) An interest rate cannot be lowered when equity is present; 2) A modification is not available if it would result in an increased payment. Both criteria have common-sense qualities, but when combined, it becomes more difficult to modify a loan. Due to the real estate market gains, many homes now have equity, preventing a lower interest rate. However, in order for a modification to work the arrears are typically capitalized (added into) with the principal balance. If the interest rate cannot be lowered and you have loan balances increasing with the capitalized arrears, the math produces increased payments and when these guidelines are used, it does not allow for a modification.

- Urban League of Metropolitan Seattle stated that with the change in rules for home equity conversion mortgages (HECM), fewer seniors were qualifying for reverse mortgages. Reverse mortgages have been used in some cases to avoid foreclosure.
- Several agencies reported seeing an increase in tax-related and homeowner association-related foreclosures, for which few home-retention options exist.
- Many agencies expressed that the 2016 sunset of the Home Affordable Mortgage Programs (HAMP) and HAMP's standard guidelines has made the process more difficult.
- Even though housing counselors represented fewer clients their cases were more challenging. Additional data (see [Figure 8](#)) from the WHRC showed that the reasons for default trended away from job or financial loss and moved toward personal upheavals related to health, divorce or death.

Figure 8: Change in Reasons People Are in Default, 2016-2019



Source: Washington Homeowners Resource Center

Stories Housing Counselors Shared

Housing counselors shared the following stories that reflect some of the obstacles borrowers face in the current climate. The stories are shared here with express permission.

"[A married couple] experienced a medical hardship, which significantly reduced their income. They were unable to refinance their loan due to underwriting restrictions. They attempted to obtain assistance directly with the Servicer but were rejected as they had already obtained the maximum number of modifications allowed. They came to American Financial Solutions (AFS) for housing counseling and were referred for mediation. The mediation process ended with no agreement, as no modification was available, and the Borrowers did not have sufficient funds to reinstate the loan. However, the mediation process had suspended the foreclosure process for several months, and during this time, the homeowners improved their circumstances greatly and saved \$30,000 for a down payment toward the delinquency. AFS sought an exception request from Fannie Mae directly for an extended repayment plan. This was approved. The repayment plan is sustainable and canceled the foreclosure."

Angela C. Anderson, lead housing counselor
American Financial Solutions

"A Snohomish County resident living on Social Security fell into default when she traveled to California to care for her dying mother. While gone, she failed to renew her property tax exemption. This resulted in an increased monthly escrow payment of \$400 per month and a new and higher mortgage payment, which she could not afford. Northwest Justice Project referred her to the Foreclosure Fairness Program, and at the first mediation session, a timeline for responses to the completed modification application was agreed to. The borrower was informed that the only criteria for a modification would be her ability to afford the new mortgage. Shortly after the mediation, the borrower learned her modification request had been denied as she had too much equity in the house. As this contradicted the statements from the beneficiary made earlier in the mediation, the denial was appealed. Unfortunately that appeal, and the option to modify the loan was denied. However, at the next mediation session, the borrower learned that the beneficiary's side had taken the extra step to review the underwriting criteria and find a path to offer the modification. The loan modification decreased the borrower's mortgage payment by \$800 a month. The modification allows her safe and decent housing on a low income and the ability to accrue wealth in the home."

Joe Jordan, senior attorney
Northwest Justice Project