

ESHB 1108 Summary

ATTENTION: The scope of this document will be on the direct effects ESHB 1108 has on the Foreclosure Fairness Program, as many parts of the bill do not impact the program as it currently exists. You may need to seek private counsel to clarify the portions of the bill that may affect your organization but are not addressed in this document. The Department of Commerce (Commerce) provides this summary as a courtesy; it may not be viewed as a legal opinion, interpretation or advice. Any individual or entity that relies on the information in this summary without seeking private counsel does so at their own risk.

The governor signed ESHB 1108 on May 3, 2021. The changes created by this legislation have several different dates of effect. However, multiple sections began immediately upon signing. Several sections take effect on Jan. 1, 2022, as well as June 30, 2023. For reference, see the chart below:

EFFECTIVE DATES	SECTION OF ESHB 1108
May 3, 2021 (Immediately)	1, 2, 3, 4, 6, 7, 8, 10, 15, 16, 17
Jan. 1, 2022	5, 9, 11, 12
June 30, 2023	13, 14

This bill amends RCW 61.24.005, 61.24.030, 61.24.031, 61.24.135, 61.24.165, 61.24.166, 61.24.172, and 61.24.173, adds a new section to chapter 61.24 and 42.56, creates new sections and repeals RCW 61.24.173.

ESHB 1108 was codified as Chapter 151, Laws of 2021. To view the session law, click [here](#).

ESHB 1108 includes several revisions to the exemption structure of the Foreclosure Fairness Program and changes to the property attributes eligible to participate in mediation. This bill also contains an emergency clause in Section 15, which prompts the immediate application of multiple areas of change due to the effects of the COVID-19 Pandemic.

Owner-Occupied Requirement Change

In Section 2, the definition of "Residential Real Property" under RCW 61.24.005 is revised to remove the owner-occupied requirement when evaluating an eligible referral under RCW 61.24.163. Please note, Section 2 is associated with the emergency clause outlined in Section 15 and has taken effect as of May 3, 2021.

Section 6 removes the owner-occupied requirement described in RCW 61.24.165. This bill allows for eligible mediation to occur through the Foreclosure Fairness Program for deeds of trust recorded against residential real property of up to four units and which are not owner-occupied as of the date of the initial contact. The only exception is when the original borrower is deceased and the person referred is a successor in interest (RCW 61.24.165(5)). In this case, the referred person would need to have been in residence.

Please note, Section 6 is associated with the emergency clause outlined in Section 15 and has taken effect as of May 3, 2021.

Ineligibility Revision

Section 6 amends RCW 61.24.165 to include an additional mode of ineligibility for barring a referral to mediation. Section 6(2)(d) introduces language barring a referral to mediation under RCW 61.24.163 if the property is vested in a partnership, corporation or limited liability company when the notice of default is issued.

Beneficiary Exemptions

- **Exemption from Fees (2021, 2022):** Federally insured depository institutions that certify under penalty of perjury that fewer than 50 notices of trustee sales were recorded on its behalf in the 2019 calendar year are exempt from paying the fees outlined in RCW 61.24.173 during the 2021 and 2022 calendar years.
- **Exemption from Mediation (2021, 2022):** Federally insured depository institutions that certify under penalty of perjury they were not a beneficiary of deeds of trust in more than 250 trustee sales of residential real property in the 2019 calendar year are exempt from mediation as outlined in RCW 61.24.166 during the 2021 and 2022 calendar years.
- **Future Exemptions (2023):** Beginning Jan. 1, 2023, fee exemption status will be based on the number of notices of default a beneficiary issued in the previous calendar year rather than the notices of trustee sales. If a federally insured depository institution produces less than 250 notices of default in the previous calendar, they would qualify for fee exemption status under the changes made by ESHB 1108. See the "Beneficiary Fee Structure Change" section below for more information.

Beneficiary Fee Structure Change

Section 11 of ESHB 1108 adds a new section to Chapter 61.24, changing how the fee for the Foreclosure Fairness Program is structured. Currently, under RCW 61.24.173, beneficiaries must pay a fee into the Foreclosure Fairness Account in a lump sum each quarter based on the number of recorded notices of trustee sales issued by them or on their behalf in the prior quarter. The current fee based on the recording of a notice of trustee sale is set at \$325.

ESHB 1108 changes this fee to base it on the number of notices of default a beneficiary issues by them or on their behalf in the prior quarter beginning Jan. 1, 2022. The new fee based on the recording of a notice of default will be set at \$250.

NOTE: Commerce will produce new exemption and referral forms to reflect the changes in the statute made by ESHB 1108.

Foreclosure Mediation Program

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