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Originally published April 13, 2011 at 10:01 PM | Page modified April 14, 2011 at 9:30 PM

Homeowners facing foreclosure win right to mediation

Gov. Chris Gregoire signed a bill Thursday that makes Washington the third state to adopt a foreclosure-mediation program, after Nevada and Maryland.

By Sanjay Bhatt

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Gov. Chris Gregoire signed into law on Thursday a bill that could help more homeowners in Washington state avoid unnecessary foreclosures.

The bill, the "Foreclosure Fairness Act," gives distressed homeowners working with housing counselors or attorneys the right to in-person mediation with the bank or company servicing their mortgage.

Washington, among the 27 states where court approval of foreclosures isn't required, becomes only the third state — after Nevada and Maryland — to adopt a foreclosure-mediation program in which a homeowner can seek to modify terms of their loan.

"There's no silver bullet, but this will at least be a competent response to the irresponsibility of the financial industry," said Bruce Neas, a Columbia Legal Services attorney who helped negotiate the bill.

State regulators, who receive hundreds of complaints each year against national mortgage servicers, have been stymied by federal rules that limit their power to intervene.

The only recourse for homeowners has been going to court, where they're usually outmatched by servicers.

Also Wednesday, federal regulators announced they had ordered eight national banks — Bank of America, Citibank, HSBC, JPMorgan Chase, MetLife Bank, PNC, U.S. Bank and Wells Fargo — to hire an outside firm to review all foreclosure actions from 2009 to 2010 and submit a plan to remedy "all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies" identified by outside consultants.

The move by state lawmakers to require mediation comes as the foreclosure crisis in Washington continues. In the first three months of the year, more than 5,600 homes were seized and more than 7,000 were headed to foreclosure auction, according to RealtyTrac.

In signing the bill Thursday, Gregoire noted that Washington state ranks 10th in the nation in the number of foreclosures and that more than 30,000 families this year face the risk of losing their homes.

The bill also provides an estimated $7.5 million for foreclosure-prevention efforts and more than double the number of housing counselors. Washington has just over 40.

"The real hope is that by adding the counselors, the banks and families would reach some kind of agreement before going to mediation," said Kim Herman, executive director of the Washington State Housing Finance Commission.

Under the new law, once a homeowner becomes delinquent, the servicer must send a letter asking the owner to contact the server and urging the person to call a housing counselor or attorney for help.

Homeowners who respond to the letter would be given 60 more days before the servicer could file a notice of default.

If the counselor or attorney couldn't resolve the issue with the servicer, they could refer the homeowner to a mediator through the state Department of Commerce.

The Commerce Department selects the mediator, who must hold a session within 45 days. The homeowner and servicer share in the cost of the mediator's fee, which can be up to $400.

If the mediator finds the servicer didn't participate in good faith, a homeowner can use that to ask a court to stop the foreclosure. The state Attorney General's Office also could pursue penalties against servicers.

When lawmakers opened negotiations on the bill, consumer advocates were surprised by the bankers' first move.

Without prompting, the Washington Bankers Association offered to pay a $250 fee for every default notice filed, with the stipulation that 80 percent of the money pay for housing counselors.

"It did surprise people," Herman said.

The association, which represents national and community banks, suggested the fee because it wants more delinquent homeowners to work with housing counselors, said James Pishue, the group's president.

National studies show that homeowners who work with trained housing counselors have much higher success rates in reaching an agreement with their servicer.

"We thought that would prevent the need for mediation," Pishue said. "Ultimately it results in fewer foreclosures."

Marc Cote, a housing counselor who oversees the state's foreclosure-prevention hotline, said he's pleased with the measure.

"The main thing I'm hopeful for is that the mediation piece will inspire servicers to resolve the hundreds, in my experience, of [loan] workouts that are still not resolved after months and months."

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