Dash 9 Amendment to Senate Bill 558- The Truth About What It Does and Why It Is Needed

The amendment was drafted to address numerous technical and procedural problems created by SB 1552 (2012). It incorporates the recommendations of numerous real estate and title insurance attorneys with practical experience about the foreclosure process.

What the amendment does:

1. Preserves the rights of homeowners to require a face-to-face meeting with their lender to allow another opportunity for them to negotiate an alternative to foreclosure. **Advocates have refused to agree that if a borrower, having been notified of his or her right to mediation, does not choose to show up at the scheduled meeting time, the lender is entitled to proceed.**
2. Preserves the right of a borrower to "opt in" to the mediation process. **Advocates want to change the process, established in SB 1552, that consumers may choose mediation, and replace it with a requirement that borrowers expressly "opt out" if they want to avoid the responsibilities and costs to them of a mediation process they might not want.**
3. Clarifies definitions so that small lenders can determine with certainty if they are exempt from the new requirements, and so that all parties can determine if borrowers are homeowners (not just property speculators) eligible to require lenders to comply with the new process. **Advocates have refused to agree to a definition of "residential trust deed" that clarifies that speculators are not eligible.**
4. Eliminates unnecessary delay in the mandatory mediation process so that the face-to-face meetings occur sooner and decisions are reached more promptly. **Advocates have argued for unnecessary lengthening of the process, whereas all objective parties agree that an efficient and timely process is best for everyone.**
5. Puts clear requirements into the statute so that the cost and delay of agency rulemaking is eliminated. **Advocates want these new changes to be effective in 91 days, a timeline much shorter than federal regulators believe is necessary to implement changes like these. If implementation is delayed by rulemaking, where we have the opportunity to specify requirements so no rulemaking is necessary, failure is almost assured!**
6. Reduces the production of unnecessary paperwork by both homeowners and lenders, so that only those documents actually needed to determine a borrower's eligibility for an alternative to foreclosure are required. **Advocates want lenders (and to some degree also borrowers) to produce paperwork before mediation that is unnecessary for the parties to agree to a foreclosure alternative. Lenders believe that the paperwork required should be limited to that necessary for the parties to reach an agreement.**

7. Maintains the fee structure currently specified in SB 1552 and the Attorney General's rules. **SB 558 as introduced would have no statutory cap on fees on lenders. Advocates refuse to agree to a cap on fees.**
8. Clarifies what information has to be given to borrowers who do not qualify for an alternative to foreclosure, do not participate in any mediation, or do not comply with an agreed alternative to foreclosure, and eliminates liability for lenders who "substantially" comply with these detailed notice requirements. **Advocates want to "catch" lenders, including small, exempt lenders, in a liability trap if attorneys think their explanations are not in sufficiently "plain language," or if they make a technical paperwork mistake in the process.**
9. Eliminates the unworkable requirements adopted in SB 1552 for postponing non-judicial foreclosure sales, and makes the process consistent with the sale postponement process for sheriff's sales after judicial foreclosures. **Advocates want to require lenders, including small, exempt lenders, to comply more detailed, and often unworkable, notification requirements when foreclosure sales are postponed, beyond what it required for sheriff's sales after judicial foreclosures.**

What the amendments do not do:

1. **The amendments DO NOT restrict the Attorney General's authority to oversee the program** – they simply make procedural requirements clear enough in the law so that unnecessary rulemaking – which delays the ability of lenders to implements necessary changes – is avoided.
2. **The amendments DO NOT reduce the ability of the Attorney General to use her current authority under the Unlawful Trade Practices Act to pursue "bad actors"**, although the amendments DO eliminate the proposed duplication of AG enforcement authority.
3. **The amendments DO NOT "keep homeowners in the dark" about the foreclosure sale date.** The process would be the same as that used for postponing sheriff's sales following judicial foreclosure of residential property.
4. **The amendments DO NOT create a "financial barrier" for homeowners to sue for failure to get written notice that they are not eligible for a foreclosure alternative**, but they DO provide protection for lenders who provide the required notice from claims that the explanation of the reasons they didn't qualify, or how they failed to comply, is written in sufficiently detailed and written in "plain language" – the current very subjective standard.

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