

1 H.600

2 Introduced by Representative Grad of Moretown

3 Referred to Committee on

4 Date:

5 Subject: Court procedure; mediation

6 Statement of purpose: This bill proposes to extend the requirement of
7 mandatory mediation in foreclosure proceedings beyond the expiration of the
8 federal Home Affordable Modification Program.

9 An act relating to mandatory mediation in foreclosure proceedings

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 12 V.S.A. § 4631 is amended to read:~~

12 ~~§ 4631. MEDIATION PROGRAM ESTABLISHED~~

13 ~~(a) This subchapter establishes a program to assure the availability of~~

14 ~~mediation and application of the federal Home Affordable Modification~~

15 ~~Program (“HAMP”) requirements and consideration of alternatives to~~

16 ~~foreclosure in actions for foreclosure of a mortgage on any dwelling house of~~

17 ~~four units or less that is occupied by the owner as a principal residence.~~

18 ~~(b) The requirements of this subchapter shall not apply only to foreclosure~~

19 ~~actions involving loans that are subject to the federal HAMP guidelines actions~~

20 ~~for foreclosure of a mortgage held by:~~

1 ~~(1) a person that is not engaged in the business of lending;~~

2 (2) an individual who provides owner financing secured by a residential
3 mortgage loan on a dwelling that served as the individual's residence or
4 inherited property that served as the deceased's residence;

5 (3) an individual who provides financing to an immediate family
6 member secured by a residential mortgage loan. For purposes of this
7 subchapter, "immediate family member" includes: a spouse, child, sibling,
8 parent, grandparent, grandchild, aunt, uncle, nephew, niece, stepparents,
9 stepchildren, stepsiblings, step grandparents, step grandchild, adoptive
10 relationships, and former spouses dividing property in connection with a
11 divorce or separation.

12 (c) To be qualified to act as a mediator under this subchapter, an individual
13 shall be licensed to practice law in the state and shall be required to have taken
14 a specialized, continuing legal education training course on foreclosure
15 prevention or loss mitigation approved by the Vermont Bar Association.

16 Sec. 2. 12 V.S.A. § 4632 is amended to read:

17 § 4632. OPPORTUNITY TO MEDIATE

18 * * *

19 (b) The court shall set the matter for a status conference no later than 90
20 days from the date that the mortgagor either filed a notice of appearance or

1 ~~requested mediation, unless the mediator's report is filed with the court prior to~~
2 ~~such time.~~

3 (c) Unless the mortgagee agrees otherwise, all mediation shall be
4 completed prior to the expiration of the redemption period. The redemption
5 period shall not be stayed on account of pending mediation.

6 ~~(e)~~(d) In an action for foreclosure of a mortgage on any dwelling house of
7 four units or less that is occupied by the owner as a principal residence, the
8 mortgagee shall serve upon the mortgagor two copies of the notice described in
9 subsection ~~(d)~~(e) of this section with the summons and complaint. The
10 supreme court may by rule consolidate this notice with other
11 foreclosure-related notices as long as the consolidation is consistent with the
12 content and format of the notice under this subsection.

13 ~~(d)~~(e) The notice required by subsection ~~(e)~~(d) of this section shall:

- 14 (1) be on a form approved by the court administrator;
- 15 (2) advise the homeowner of the homeowner's rights in foreclosure
16 proceedings under this subchapter;
- 17 (3) state the importance of participating in mediation even if the
18 homeowner is currently communicating with the mortgagee or servicer;
- 19 (4) provide contact information for legal services; and
- 20 (5) incorporate a form that can be used by the homeowner to request
21 mediation from the court.

1 ~~(e)(f) The court may, on motion of a party, find that the requirements of~~
2 this subchapter have been met and that the parties are not required to
3 participate in mediation under this subchapter if the mortgagee files a motion
4 and establishes to the satisfaction of the court that it has complied with the
5 applicable requirements of ~~HAMP~~ subsection 4633(a) of this chapter and
6 supports its motion with sworn affidavits that:

7 (1) include the calculations and inputs required by ~~HAMP~~ subsection
8 4633(a) of this chapter and employed by the mortgagee; and

9 (2) demonstrate that the mortgagee or servicer met with the mortgagor
10 in person or via videoconferencing or made reasonable efforts to meet with the
11 mortgagor in person.

12 Sec. 3. 12 V.S.A. § 4633 is amended to read:

13 § 4633. MEDIATION

14 (a) During all mediations under this subchapter:

15 (1) the parties shall address all issues of foreclosure, including proof of
16 ownership of the note and any transfers of the note; calculation of the sums due
17 on the note for the principal, interest, and costs or fees; and all available
18 foreclosure prevention tools.

19 (2) the mortgagee shall use and consider all available foreclosure
20 prevention tools, including reinstatement, loan modification, forbearance,
21 deed-in-lieu and short sale, ~~and the calculations, assumptions, and forms~~

1 ~~established by the HAMP guidelines, including all HAMP-related “net present~~
2 ~~value” calculations in.~~ In considering a loan modification conducted under this
3 subchapter, the mortgagee shall use the affordable loan modification standards
4 and net present value (NPV) calculation required under any applicable federal
5 mortgage relief program, including the Home Affordable Modification
6 Program (HAMP), and any other program that applies to a loan insured or held
7 by Fannie Mae, Freddie Mac, and Federal Housing Administration, the
8 Veterans Administration, or the Rural Housing Service. If such calculation or
9 program is not required or the mortgagee does not qualify for any such
10 program, then the mortgagee shall determine whether the mortgagor qualifies
11 for an affordable loan modification that results in a monthly payment of
12 principal, interest, property taxes, insurance, and association fees of 31 percent
13 or less of the mortgagor’s gross monthly income using the calculations,
14 assumptions, and forms that are established by the Federal Deposit Insurance
15 Corporation (FDIC) and published in the FDIC loan modification program
16 guide.

17 ~~(2)(3)~~ the mortgagee shall produce for the mortgagor and mediator
18 documentation of its consideration of the options available in this subdivision
19 and subdivision ~~(1)(2)~~ of this subsection, including the data used in and the
20 outcome of any HAMP-related “net present value” calculation; and a
21 description of the NPV test used to evaluate the mortgagor for a loan

1 ~~modification in compliance with subdivision (2) of this subsection, along with~~
2 a copy of the completed NPV calculation and inputs, including the result of the
3 NPV test expressed in a dollar amount.

4 (4) If the outcome of the NPV calculation conducted under any
5 applicable federal mortgage relief or government-sponsored enterprise
6 program favors modification of the terms of the mortgage, the mortgagee shall
7 offer a loan modification with such terms to the mortgagor.

8 ~~(3) where~~ (5) Where the mortgagee claims that a pooling and servicing
9 or other similar agreement prohibits modification, the mortgagee shall produce
10 a copy of the agreement. All agreement documents shall be confidential and
11 shall not be included in the mediator's report.

12 (b) In all mediations under this subchapter, the mortgagor shall make a
13 good faith effort to provide to the mediator 20 days prior to the first mediation,
14 or within a time determined by the mediator to be appropriate in order to allow
15 for verification of the information provided by the mortgagee, ~~information on~~
16 proof of his or her household income, including income from employment,
17 self-employment, public benefits, and rental proceedings, and any other
18 information required by HAMP any applicable federal mortgage relief program
19 or, if no federal mortgage relief program applies, the information required to
20 be provided by the FDIC unless already provided.

1 ~~(c) The parties to a mediation under this subchapter shall cooperate in good~~
2 ~~faith under the direction of the mediator to produce the information required by~~
3 ~~subsections (a) and (b) of this section in a timely manner so as to permit the~~
4 ~~mediation process to function effectively.~~

5 (d)(1) The following persons shall participate in any mediation under this
6 subchapter:

7 (A) the mortgagee, or any other person, including the mortgage's
8 servicing agent, who meets the qualifications required by subdivision (2) of
9 this subsection;

10 (B) counsel for the mortgagee; and

11 (C) the mortgagor, and counsel for the mortgagor, if represented.

12 (2) The mortgagee or mortgagee's servicing agent, if present, shall have:

13 (A) authority to agree to a proposed settlement, loan modification, or
14 dismissal of the foreclosure action;

15 (B) real time access during the mediation to the mortgagor's account
16 information and to the records relating to consideration of the options available
17 in subdivisions ~~(a)(1)(2)~~ and ~~(2)(3)~~ of this section, including the data and
18 factors considered in evaluating each such foreclosure prevention tool; and

19 (C) the ability and authority to perform necessary ~~HAMP-related~~ "net
20 ~~present value~~" NPV calculations as required by subdivision (a)(2) of this

1 ~~section and to consider other options available in subdivisions subdivision~~

2 (a)(1) and (2) of this section during the mediation.

3 (e) The mediator may permit a party identified in subdivision (d)(1)(A) of
4 this section to participate in mediation by telephone or videoconferencing.

5 (f) The mediator may include in the mediation process under this
6 subchapter any other person the mediator determines would assist in the
7 mediation.

8 (g) Unless the parties agree otherwise, all mediations under this subchapter
9 shall take place in the county in which the foreclosure action is brought
10 pursuant to subsection 4523(a) of this title.

11 Sec. 4. 12 V.S.A. § 4634(a) is amended to read:

12 (a) Within seven days of the conclusion of any mediation under this
13 subchapter, the mediator shall report in writing the results of the process to the
14 court ~~and, to both parties, and to the office of the attorney general.~~

15 Sec. 5. EFFECTIVE DATE

16 ~~This act shall take effect on July 1, 2012.~~

Sec. 1. INTENT

By use of the term "mediation" in the present context, the General Assembly does not intend to alter the procedures that are applicable in mediations in other contexts or to modify in any way the model standards of conduct for mediators adopted by the American Arbitration Association, the American Bar

Association, and the Association for Conflict Resolution.

Sec. 2. 12 V.S.A. § 4631 is amended to read:

§ 4631. *MEDIATION PROGRAM ESTABLISHED*

* * *

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken ~~a~~ the specialized, continuing legal education training ~~course~~ courses on foreclosure prevention or loss mitigation approved by the Vermont Bar Association. The court administrator, in consultation with the Vermont Bar Association, shall implement a system which ensures that the mediator is chosen through a randomized selection process in all mediations conducted pursuant to this chapter.

Sec. 3. 12 V.S.A. § 4632 is amended to read:

§ 4632. *OPPORTUNITY TO MEDIATE*

* * *

(b) The court shall hold a status conference no later than 90 days from the date that the mortgagor requested mediation, unless the mediator's report is filed with the court prior to such time.

(c) Unless the mortgagee agrees otherwise, all mediation shall be completed prior to the expiration of the redemption period. The redemption period shall not be stayed on account of pending mediation.

~~(e)~~(d) *In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection ~~(d)~~(e) of this section with the summons and complaint. The supreme court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.*

~~(d)~~(e) *The notice required by subsection ~~(e)~~(d) of this section shall:*

- (1) be on a form approved by the court administrator;*
- (2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;*
- (3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;*
- (4) provide contact information for legal services; and*
- (5) incorporate a form that can be used by the homeowner to request mediation from the court.*

~~(e)~~(f) *The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the*

applicable requirements of HAMP and supports its motion with sworn affidavits that:

(1) include the calculations and inputs required by HAMP and employed by the mortgagee; and

(2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.

Sec. 4. 12 V.S.A. § 4633 is amended to read:

§ 4633. MEDIATION

(a) During all mediations under this subchapter:

(1) ~~the~~ The parties shall address proof of ownership of the note and any transfers of the note; calculation of the sums due on the note for the principal, interest, and costs or fees; and all available foreclosure prevention tools.

(2) The mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related “net present value” calculations in considering a loan modification conducted under this subchapter;

~~(2)(3)~~ ~~the~~ The mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision

and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related “net present value” calculation; ~~and~~

(3)(4) ~~where~~ Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator’s report.

* * *

Sec. 5. 12 V.S.A. § 4634(a) is amended to read:

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court ~~and~~, to both parties, and to the department of banking, insurance, securities, and health care administration.

Sec. 6. FORECLOSURE MEDIATION PROGRAM STUDY COMMITTEE

(a) Creation of committee. There is created a foreclosure mediation program study committee to consider appropriate measures for Vermont to take in response to the anticipated repeal of the state foreclosure mediation program when the federal Home Affordable Modification Program (“HAMP”) is repealed on December 3, 2013.

(b) Membership. The foreclosure mediation program study committee shall be composed of seven members. The members of the committee shall be as follows:

(1) The administrative judge or designee.

(2) The attorney general or designee.

(3) The commissioner of banking, insurance, securities, and health care administration or designee.

(4) One member appointed by the Vermont Bar Association.

(5) One member appointed by Vermont Legal Aid.

(6) One member appointed by the Vermont Bankers Association.

(7) One member with experience as a mediator in foreclosure proceedings appointed by the Vermont Bar Association.

(c) Powers and duties. The committee shall study whether changes in state law and policy should be made in response to the anticipated repeal of Vermont's foreclosure mediation program when the federal HAMP is repealed on December 3, 2013. The committee's study shall include consideration of:

(1) the impacts of the anticipated repeal of Vermont's foreclosure mediation program and any measures that would be advisable for Vermont to take in response to the repeal;

(2) whether the Vermont foreclosure mediation program should be amended to be consistent with national settlements or standards, and whether a state foreclosure mediation program is necessary in light of such national settlements or standards;

(3) whether the mortgagee or the mortgagee's attorney should be required to be physically present at the proceeding; and

(4) whether the mediation proceeding should address all issues related to the foreclosure.

(d) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before December 1, 2012.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.