

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2779

(SENATE AUTHORS: TORRES RAY, Hoffman, Johnson and Dahle)

| DATE | D-PG | OFFICIAL STATUS |
|------------|------|---|
| 03/19/2014 | 6379 | Introduction and first reading Referred to Judiciary |

1.1

A bill for an act

1.2

relating to real property; establishing mortgage foreclosure mediation; amending

1.3

Minnesota Statutes 2012, sections 357.18, subdivision 1, by adding a subdivision;

1.4

581.03; Minnesota Statutes 2013 Supplement, section 580.02; proposing coding

1.5

for new law as Minnesota Statutes, chapter 584.

1.6

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7

Section 1. Minnesota Statutes 2012, section 357.18, subdivision 1, is amended to read:

1.8

Subdivision 1. **County recorder fees.** The fees to be charged by the county recorder

1.9

shall be and not exceed the following:

1.10

(1) for indexing and recording any deed or other instrument a fee of \$46; \$10.50

1.11

shall be paid to the state treasury and credited to the general fund; \$10 shall be deposited

1.12

in the technology fund pursuant to subdivision 4; and \$25.50 shall be deposited in the

1.13

county general fund;

1.14

(2) for documents containing multiple assignments, partial releases or satisfactions a

1.15

fee of \$46; if the document cites more than four recorded instruments, an additional fee of

1.16

\$10 for each additional instrument cited over the first four citations;

1.17

(3) for certified copies of any records or papers, \$10;

1.18

(4) for a noncertified copy of any instrument or writing on file or recorded in the

1.19

office of the county recorder, or any specified page or part of it, an amount as determined

1.20

by the county board for each page or fraction of a page specified. If computer or microfilm

1.21

printers are used to reproduce the instrument or writing, a like amount per image;

1.22

(5) for an abstract of title, the fees shall be determined by resolution of the county

1.23

board duly adopted upon the recommendation of the county recorder, and the fees shall

1.24

not exceed \$10 for every entry, \$100 for abstract certificate, \$1 per page for each exhibit

included within an abstract as a part of an abstract entry, and \$5 per name for each required name search certification;

(6) for a copy of an official plat filed pursuant to section 505.08, the fee shall be \$10 and an additional \$5 shall be charged for the certification of each plat;

(7) for filing an amended floor plan in accordance with chapter 515, an amended condominium plat in accordance with chapter 515A, or a common interest community plat or amendment complying with section 515B.2-110, subsection (c), the fee shall be 50 cents per apartment or unit with a minimum fee of \$56;

(8) for a copy of a floor plan filed pursuant to chapter 515, a copy of a condominium plat filed in accordance with chapter 515A, or a copy of a common interest community plat complying with section 515B.2-110, subsection (c), the fee shall be \$1 for each page of the floor plan, condominium plat or common interest community plat with a minimum fee of \$10;

(9) for recording any plat, a fee of \$56, of which \$10.50 must be paid to the state treasury and credited to the general fund, \$10 must be deposited in the technology fund pursuant to subdivision 4, and \$35.50 must be deposited in the county general fund; ~~and~~

(10) for a noncertified copy of any document submitted for recording, if the original document is accompanied by a copy or duplicate original, \$2. Upon receipt of the copy or duplicate original and payment of the fee, a county recorder shall return it marked "copy" or "duplicate," showing the recording date and, if available, the document number assigned to the original; and

(11) for recording a notice of pendency under section 580.032 or a notice of lis pendens under section 557.02, a fee of \$346; \$300 shall be paid to a mortgage foreclosure mediation fund pursuant to subdivision 7; \$10.50 shall be paid to the state treasury and credited to the general fund; \$10 shall be deposited in the technology fund pursuant to subdivision 4; and \$25.50 shall be deposited in the county general fund.

Sec. 2. Minnesota Statutes 2012, section 357.18, is amended by adding a subdivision to read:

Subd. 7. **Mortgage foreclosure mediation fund.** The \$300 fee collected under subdivision 1, clause (11), shall be deposited in a fund for operating the state's mortgage foreclosure mediation program as provided in chapter 584.

Sec. 3. Minnesota Statutes 2013 Supplement, section 580.02, is amended to read:

580.02 REQUISITES FOR FORECLOSURE.

To entitle any party to make such foreclosure, it is requisite:

(1) that some default in a condition of such mortgage has occurred, by which the power to sell has become operative;

(2) that no action or proceeding has been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof, or, if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied, in whole or in part;

(3) that the mortgage has been recorded and, if it has been assigned, that all assignments thereof have been recorded; provided, that, if the mortgage is upon registered land, it shall be sufficient if the mortgage and all assignments thereof have been duly registered;

(4) before the notice of pendency as required under section 580.032 is recorded, the party has complied with section 580.021; and

(5) before or contemporaneous with the notice of sale as required under section 580.03 is recorded, the party has recorded either a fully executed opt-out notice or the affidavit of good faith in mediation as provided in chapter 584, if applicable; and

~~(5)~~ (6) before the foreclosure sale, the party has complied with section 582.043, if applicable.

Sec. 4. Minnesota Statutes 2012, section 581.03, is amended to read:

581.03 JUDGMENT, TRANSCRIPT.

Judgment shall be entered, under the direction of the court, adjudging the amount due, with costs and disbursements, and the sale of the mortgaged premises, or some part thereof, to satisfy such amount, and directing the sheriff to proceed to sell the same according to the provisions of law relating to the sale of real estate on execution, and to make report to the court. A certified transcript of the judgment shall be delivered to the sheriff, and shall be the sheriff's authority for making the sale. Before judgment may be entered, the party seeking judgment must provide the court with either a fully executed opt-out notice or the affidavit of good faith in mediation as provided in chapter 584, if applicable.

Sec. 5. [584.01] DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Foreclosing entity.** "Foreclosing entity" means the person attempting to foreclose a residential mortgage.

Subd. 3. **Homeowner.** "Homeowner" means the mortgagor who is an owner-occupant of the residential property subject to the residential mortgage sought to be foreclosed by the foreclosing entity.

4.1 Subd. 4. **Loss mitigation.** "Loss mitigation" means a temporary or permanent loan
4.2 modification, a forbearance agreement, a repayment agreement, a principal reduction,
4.3 capitalizing arrears, or any other relief intended to allow a mortgagor to retain ownership
4.4 of the property.

4.5 Subd. 5. **Mediator.** "Mediator" means a mediator selected by the State Office of
4.6 Administrative Hearings, as provided in section 584.05.

4.7 Subd. 6. **Office of Administrative Hearings.** "Office of Administrative Hearings"
4.8 means the Office of Administrative Hearings as created by section 14.48.

4.9 Subd. 7. **Residential mortgage.** "Residential mortgage" means a mortgage on a
4.10 property consisting of one to four family dwelling units, one of which the owner occupies
4.11 as the owner's principal place of residency when the notice of pendency under section
4.12 580.032 or the lis pendens for a foreclosure under chapter 581 is recorded.

4.13 Subd. 8. **Single point of contact.** "Single point of contact" means personnel
4.14 authorized by the foreclosing entity or subsequent lienholder to bind the foreclosing entity
4.15 or subsequent lienholder, and bind the owner of any loan note related to the mortgage
4.16 sought to be foreclosed, in mediation as to loss mitigation or other actions to resolve the
4.17 foreclosure. This single point of contact must be an easily accessible and reliable point
4.18 of contact for the homeowner throughout the mediation process who can perform the
4.19 duties imposed on servicers for continuity of contact in Regulation X, Code of Federal
4.20 Regulations, title 12, section 1024.40, if applicable.

4.21 Subd. 9. **Subsequent lienholder.** "Subsequent lienholder" means any creditor having
4.22 a recorded legal or equitable lien upon the residential property subject to the residential
4.23 mortgage, or some part of it, that is junior to the lien held by the foreclosing entity.

4.24 **Sec. 6. [584.02] APPLICABILITY.**

4.25 Subdivision 1. **Applicability.** This chapter applies to foreclosure of mortgages by
4.26 advertisement under chapter 580 and foreclosure of mortgages by actions under chapter
4.27 581 on a residential property. This chapter applies if the foreclosing entity, or any parent,
4.28 subsidiary, successor or person similarly affiliated to the foreclosing entity, or the owner
4.29 of any loan note related to the mortgage sought to be foreclosed, or the servicer or agent of
4.30 the foreclosing entity, has recorded at least 150 notices of pendency under chapter 580 or
4.31 lis pendens under chapter 581 in the year prior to the year of the notice of default.

4.32 Subd. 2. **Additional authority.** The Office of Administrative Hearings may adopt
4.33 rules to carry out the provisions of this chapter. Until December 31, 2015, the Office of
4.34 Administrative Hearings may establish procedures and take other actions necessary to

create the residential foreclosure mediation program provided in this chapter without complying with the rulemaking requirements of chapter 14.

Sec. 7. [584.03] MEDIATION NOTICES.

Subdivision 1. Notice of requested mediation. A foreclosing entity desiring to foreclose a residential mortgage shall notify the Office of Administrative Hearings of the proposed foreclosure. This notice shall be sent by the foreclosing entity to the Office of Administrative Hearings no earlier than 45 days after a homeowner's delinquency on the mortgage. This notice to the Office of Administrative Hearings must include the single point of contact, the address of the property sought to be foreclosed, and the name and most recent telephone number of the homeowner.

Subd. 2. Office of Administrative Hearings notice of mediation. Within 14 days of receiving the notice of default in subdivision 1, the Office of Administrative Hearings shall select a mediator and send by certified mail a notice of the mediation to the homeowner and foreclosing entity. The date of the mediation shall not be less than 60 days after the notice is sent by the Office of Administrative Hearings.

Subd. 3. Foreclosing entity's disclosure of loss mitigation information. **(a)** Within 14 days of receiving the Office of Administrative Hearings' notice of mediation provided for in subdivision 2, the foreclosing entity shall send to the homeowner and the mediator the notice required by this subdivision.

(b) The notice required by this subdivision shall include the following:

(1) a statement of all information the foreclosing entity currently has that has been or may be used in a loss mitigation decision;

(2) if the foreclosing entity reasonably needs more information from the borrower to make a loss mitigation decision, a list of additional information that is needed;

(3) a statement that the homeowner may request the equation used to make any calculation concerning a loss mitigation decision; and

(4) the identity of the single point of contact.

(c) The notice required by this subdivision must be in 14-point boldface type and must be printed on colored paper that is other than the color of the form in subdivision 2. The title of the notice must be in 20-point boldface type. The notice must be on its own page. The notice must appear substantially in the following form:

NOTICE OF INFORMATION NEEDED FOR LOAN MODIFICATION DECISION

You are scheduled to appear for mortgage foreclosure mediation at (date, time, and location of mediation). We are required to send you this notice under the law of the state of Minnesota.

Foreclosure mediation is a state-run program which provides eligible homeowners with the opportunity to work with a neutral third party to modify their mortgage to avoid foreclosure. An agent of (name of foreclosing entity) will be there to negotiate and modify the terms of your loan. Mediations often result in a modification to your loan or other solution to keep you in your house or allow a reasonable resolution to the foreclosure.

We have or may in the future use the following information that we currently possess about you or your home:

(List of all such information)

(If homeowner information necessary) The mediation of the foreclosure on your home is most likely to succeed in a loan modification to help you stay in the home if you provide the following information about you and your home to the mediator:

(List of information and what documents can provide this information).

You also have the right to request from us the formula used in deciding whether you are eligible for a loan modification or other program to help you resolve the foreclosure. You can request this information from the person listed below.

If you have any questions regarding this notice or the mediation process, you can contact the following person:

(Identity and contact information for single point of contact.)

Subd. 4. **Notice to subsequent lienholders.** (a) Within 21 days of the foreclosing entity sending the notice of disclosure of inputs required under subdivision 3, or at least 14 days before the scheduled date of the mediation, whichever is sooner, the foreclosing entity must send to subsequent lienholders a notice identifying the homeowner and the property for which the residential mortgage is in foreclosure, and stating the name of the mediator and the mediation time, date, and location.

(b) The foreclosing entity shall provide the mediator a list of all subsequent lienholders sent the notice required under this subdivision.

Sec. 8. **[584.04] OPT-OUT FORM.**

The homeowner has the option to not participate in mediation. The Office of Administrative Hearings shall provide a notice to the homeowner that the homeowner can complete and send to the Office of Administrative Hearings to decline participation in the mediation process. If the homeowner completes this opt-out form, the Office of Administrative Hearings shall cancel the mediation and provide a copy of this completed opt-out form to the foreclosing entity. The foreclosing entity shall promptly provide a copy of the completed opt-out form to subsequent lienholders previously sent a notice of the mediation by the foreclosing entity.

7.1 Sec. 9. **[584.05] MEDIATORS.**

7.2 Subdivision 1. **Mediator eligibility.** The Office of Administrative Hearings shall
7.3 establish the qualifications necessary for a person to serve as a mediator under this
7.4 chapter. Mediators cannot have a conflict of interest that prevents the mediator from being
7.5 impartial with any party involved in the mediation program.

7.6 Subd. 2. **Duties of the mediator.** At the mediation, the mediator shall:

7.7 (1) listen to the homeowner, foreclosing entity, and subsequent lienholders, if any;

7.8 (2) attempt to mediate between the homeowner, foreclosing entity, and subsequent
7.9 lienholders, if any;

7.10 (3) advise the homeowner, foreclosing entity, and subsequent lienholders, if any, of
7.11 assistance programs available and known to the mediator;

7.12 (4) attempt to arrive at an agreement to fairly adjust, refinance, or pay the mortgage;
7.13 and

7.14 (5) advise, counsel, and assist the homeowner, foreclosing entity, and subsequent
7.15 lienholders, if any, in attempting to arrive at an agreement for the future conduct of the
7.16 financial relations among them.

7.17 Subd. 3. **Mediator liability and immunity.** (a) A mediator is immune from civil
7.18 liability for actions within the scope of the position as mediator. A mediator does not have
7.19 a duty to advise the homeowner, foreclosing entity, or subsequent lienholders, if any,
7.20 about the law or to encourage or assist the homeowner, foreclosing entity, or subsequent
7.21 lienholders, if any, in reserving or establishing legal rights. This subdivision is an addition
7.22 to and not a limitation of immunity otherwise accorded to a mediator under any law.

7.23 (b) A mediator cannot be examined about a communication or document, including
7.24 work notes, made or used in the course of or because of mediation under this chapter. This
7.25 paragraph does not apply to the parties in the dispute in an application to a court by a
7.26 party to have a mediated settlement agreement set aside or reformed. A communication
7.27 or document otherwise not privileged does not become privileged because it is used in
7.28 the cause of mediation. This paragraph is not intended to limit the privilege accorded to
7.29 communication during mediation under any law.

7.30 Sec. 10. **[584.06] FORECLOSING ENTITY GOOD FAITH IN MEDIATION**
7.31 **REQUIRED.**

7.32 Subdivision 1. **Obligation of good faith.** The foreclosing entity must engage in
7.33 mediation in good faith. A foreclosing entity does not participate in good faith if the
7.34 foreclosing entity:

7.35 (1) fails to attend or participate in mediation sessions without good cause;

(2) fails to provide information required under this section, section 584.03, or 584.07 without reasonable justification;

(3) fails to provide a single point of contact for the mediation process;

(4) fails to provide a reasonable explanation for not agreeing to loss mitigation;

(5) takes action or fails to take action that unreasonably obstructs or impedes mediation or loss mitigation; or

(6) engages in any other conduct that evidences lack of good faith in providing loss mitigation or reasonably assisting the homeowner in resolving the foreclosure.

A failure to agree to modify, reduce, restructure, refinance, or forgive debt is not, in itself, evidence of lack of good faith by the foreclosing entity.

Subd. 2. **Mediator's affidavit of good faith in mediation.** If the mediator determines that the foreclosing entity participated in the mediation in good faith, the mediator shall provide to all parties within one week of the end of the mediation, an affidavit attesting to this determination. If the mediator determines that the foreclosing entity has not participated in the mediation in good faith, the mediator shall provide to all parties within one week of the end of the mediation, a report attesting to this determination and the reason for the determination.

Subd. 3. **Foreclosing entity's lack of good faith.** If the homeowner does not execute an opt-out form and the mediator does not provide the foreclosing entity an affidavit of good faith in mediation following a mediation, all actions taken and documents recorded as part of the foreclosure process are void. If the foreclosing entity has been found previously to have failed to participate in the foreclosure process in good faith with respect to the residential mortgage it seeks to foreclose, the foreclosing entity shall be prohibited from taking any action to initiate a new foreclosure for one year.

Sec. 11. **[584.07] MEDIATION PROCESS.**

Subdivision 1. **Appearances.** There will be one mediation session unless the mediator determines that a subsequent session is needed and may be helpful to a successful mediation. The Office of Administrative Hearings may allow the parties to appear through remote communication. The Office of Administrative Hearings may reschedule the time or location of the mediation if reasonably necessary for the participation of a party.

Subd. 2. **Documents required at mediation.** The foreclosing entity shall bring to the mediation the following documents:

(1) the original or certified copy of the mortgage and note, and each assignment or endorsement of the mortgage and note;

9.1 (2) an accurate statement containing the balance of the loan within seven days
9.2 of the date of mediation;

9.3 (3) an accurate statement of any arrearage and an itemized statement of the arrearages;

9.4 (4) the payment history and schedule for the preceding 12 months, or since
9.5 default, whichever is longer, including a breakdown of all fees and charges claimed and
9.6 outstanding; and

9.7 (5) any appraisal or valuation estimate relied upon by the foreclosing entity in
9.8 making a loan mitigation decision.

9.9 Subd. 3. **Mediation agreement.** The foreclosing entity, homeowner, and, if any,
9.10 subsequent lienholders who are parties to an agreement reached in mediation are bound
9.11 by the terms of the agreement, may enforce the mediation agreement as a legal contract,
9.12 and may use the mediation agreement as a defense against an action contrary to the
9.13 mediation agreement.

9.14 Sec. 12. **[584.08] SUBSEQUENT LIENHOLDERS GOOD FAITH IN**
9.15 **MEDIATION REQUIRED.**

9.16 Subdivision 1. **Requirement of good faith.** A subsequent lienholder must
9.17 participate in mediation in good faith. A subsequent lienholder does not participate in
9.18 good faith if the subsequent lienholder:

9.19 (1) fails to attend and participate in mediation sessions without good cause;
9.20 (2) fails to designate and perform the single point of contact with authority to make
9.21 binding commitments to participate in the mediation;

9.22 (3) fails to provide a reasonable explanation for not agreeing to a loss mitigation;

9.23 (4) takes action or fails to take action that unreasonably obstructs or impedes
9.24 mediation or the determination of a loss mitigation; or

9.25 (5) engages in any other conduct that evidences a lack of good faith in providing
9.26 a loss mitigation or reasonably assisting the homeowner in resolving the foreclosure. A
9.27 failure to agree to modify, reduce, restructure, refinance, or forgive debt is not, in itself,
9.28 evidence of lack of good faith by the subsequent lienholder.

9.29 Subd. 2. **Failure to participate in good faith.** If the mediator determines that a
9.30 subsequent lienholder has not participated in good faith in the mediation, the mediator
9.31 shall provide to all parties within one week of the end of the mediation, an affidavit
9.32 attesting to this determination. The homeowner may record this affidavit, which shall have
9.33 the effect of making void the lien of the subsequent lienholder determined to have not
9.34 participated in good faith.