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## S.1731

[Preserving Homes and Communities Act of 2009 \(Introduced in Senate\)](#)

### SECTION 1. SHORT TITLE.

This Act may be cited as the `Preserving Homes and Communities Act of 2009`.

### SEC. 2. LOAN MODIFICATION REQUIREMENTS.

(a) Definitions- In this section--

- (1) the term `covered mortgagee` means--
- (A) a mortgagee under a federally related mortgage loan; and
- (B) the agent of a mortgagee under a federally related mortgage loan;
- (2) the term `covered mortgagor` means an individual who is a mortgagor under a federally related mortgage loan--
- (A) made by a covered mortgagee;

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FEEDBACK

(B) secured by the principal residence of the mortgagor; and

(C) on which the mortgagor cannot make payments due to financial hardship, as determined by the Secretary;

(3) the term `federally related mortgage loan` has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602);

(4) the term `home loan modification protocol` means a home loan modification protocol that is developed under a home loan modification program put into effect by the Secretary of the Treasury;

(5) the term `qualified loan modification` means a modification to the terms of a mortgage agreement between a covered mortgagee and a covered mortgagor that is made pursuant to a determination by the covered mortgagee using a home loan modification protocol that a modification would produce a greater net present value than foreclosure to--

- (A) the covered mortgagee; or
- (B) in the aggregate, all persons that hold an interest in the mortgage agreement; and
- (6) the term `Secretary` means the Secretary of Housing and Urban Development.

(b) Loan Modification Required-

(1) IN GENERAL- A covered mortgagee may not initiate or continue a foreclosure proceeding against a covered mortgagor that is otherwise authorized under State law unless--

(A) the covered mortgagee has determined whether the covered mortgagor is eligible for a qualified loan modification;

(B) in the case of a covered mortgagor who the covered mortgagee determines is eligible for a qualified loan modification, the covered mortgagee has offered a qualified loan modification to the covered mortgagor; and

(C) in the case of a covered mortgagor who the covered mortgagee determines is not eligible for a qualified loan modification, the covered mortgagee has made available to the covered mortgagor the note, deed of trust, or any other document necessary to establish the right of the mortgagor to foreclose on the mortgage.

(2) NO WAIVER OF RIGHTS- A covered mortgagee may not require a covered mortgagor to waive any right of the covered mortgagor as a condition of making a qualified loan modification.

## (3) SALE OF REAL PROPERTY SECURING MORTGAGE-

(A) SALE- A covered mortgagee may not sell the real property securing the mortgage of a covered mortgagor unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(B) ACTION BY PURCHASER- A person that purchases from a covered mortgagee the real property securing the mortgage of a covered mortgagor may not recover possession of the real property unless the covered mortgagee submits to the appropriate State entity in the State in which the real property is located, a certification that the covered mortgagee has made a determination under paragraph (1)(A).

(C) CERTIFICATION STANDARDS-- The Secretary shall establish minimum standards for the certification required under this paragraph.

(4) DEFENSE TO FORECLOSURE- Failure to comply with this subsection shall be a defense to foreclosure.

(5) RULE OF CONSTRUCTION- Nothing in this subsection may be construed to prevent a covered mortgagee from offering or making a loan modification with a lower payment, lower interest rate, or principal reduction beyond that required by a modification made using a home loan modification protocol with respect to a covered mortgagor.

## (c) Fees Prohibited-

(1) LOAN MODIFICATION FEES PROHIBITED- A covered mortgagee may not charge a fee to a covered mortgagor for carrying out the requirements under subsection (b).

## (2) FORECLOSURE-RELATED FEES-

(A) IN GENERAL - Except as provided in subparagraph (B), a mortgagee may not charge a foreclosure-related fee to a mortgagor before--

- (i) the mortgagee has made a determination under subsection (b)(1); and
- (ii) the mortgagee has entered the foreclosure process.

(B) DELINQUENCY FEES- A mortgagee may charge a delinquency fee for late payment by the mortgagor.

(3) FEES NOT IN CONTRACT- A mortgagee may charge to a mortgagor only such fees as have been specified in advance by the mortgage agreement.

(4) FEES FOR EXPENSES INCURRED- A mortgagee may charge a fee to a mortgagor only for services actually performed by the mortgagee or a third party in relation to the mortgage agreement. For purposes of this paragraph, the term 'third party' does not include an affiliate or subsidiary of the mortgagee.

(5) PENALTY- The Secretary shall collect from any mortgagee that charges a fee in violation of this subsection an amount equal to \$6,000 for each such fee.

(d) Regulations- Not later than 3 months after the date of enactment of this Act, the Secretary shall issue by notice any requirements to carry out this section. The Secretary shall subsequently issue, after notice and comment, final regulations to carry out this section.

**SEC. 3. GRANTS TO STATES TO ASSIST HOMEOWNERS IN DEFAULT.**

Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x) is amended by adding at the end the following:

(g) Grants to States To Assist Homeowners in Default-

(1) DEFINITIONS- In this subsection--

(A) the term 'eligible agency' means a State housing finance agency or an agency designated by the State as an eligible agency;

(B) the term 'eligible homeowner' means a mortgagor who--

(i) is a permanent resident of the State in which the principal residence of the mortgagor is located;

(ii) agrees to seek counseling from a counseling agency approved by the Secretary if the eligible homeowner receives a loan or grant made using funds under this subsection;

(iii) is suffering from financial hardship which is unexpected or due to circumstances beyond the control of the mortgagor;

(iv) is unable to correct any delinquency on any amounts past due on the home loan of such mortgagor within

a reasonable time without financial assistance;

(v) has requested a loan modification from the mortgagee;

(vi) is unable to make full payment on any home loan payment due for all liens within the 30-day period following the date of the application by the mortgagor for a loan or grant using funds under this subsection;

(vii) the eligible agency determines has a reasonable probability of resuming full payments due for all liens on the mortgage of such mortgagor not later than 15 months after the date on which the mortgagor receives a loan or grant using funds under this subsection; and

(viii) has not previously received a loan or grant using funds under this subsection; and

(C) the term "mortgagor" means a mortgagor under a mortgage---

(i) secured by a 1- to 4-family owner-occupied residence (including a 1-family unit in a condominium project and a membership interest and occupancy agreement in a cooperative housing project) that is used as the principal residence of the mortgagor;

(ii) with an interest rate that does not exceed the prime rate of interest at the time of loan origination, as such prime rate is determined by not less than 75 percent of the 30 largest depository institutions in the United States; and

(iii) for an amount that does not exceed the conforming loan limit for conventional mortgages, as determined under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)).

(2) GRANT PROGRAM ESTABLISHED- The Secretary shall award grants to eligible agencies, to enable eligible agencies to provide--

(A) 1-time emergency grants or subsidized loans to eligible homeowners to assist such eligible homeowners in satisfying any amounts past due on their home loans;

(B) grants or subsidized loans to eligible homeowners for a specified number of future mortgage payments by the eligible homeowners; and

(C) stipends of not more than \$1,500 to assist with relocation expenses for homeowners not eligible for the program.

(3) ADDITIONAL SERVICES PROVIDED BY ELIGIBLE AGENCY- An eligible agency that receives a grant under this subsection shall provide--

(A) a readily accessible source for information on, and referral to, public services available to assist a homeowner who is in default on their home loan;

(B) a homeowner with referrals to counseling agencies approved by the Department of Housing and Urban Development that may be able to assist that homeowner, if that homeowner is in default on their home loan;

(C) information to homeowners on available community resources relating to homeownership, including--

(i) public assistance or benefits programs;

(ii) mortgage assistance programs, including programs that help homeowners prepare documents for loan modification applications;

(iii) home repair assistance programs;

(iv) legal assistance programs;

(v) utility assistance programs;

(vi) food assistance programs; and

(vii) other Federal, State, or local government funded social services; and

(D) staff who--

(i) are able to conduct a brief assessment of the situation of a homeowner; and

(ii) based on such assessment, make appropriate referrals to, and provide application information regarding, programs that can provide assistance to such homeowner.

(4) FORMULA- Not later than 3 months after the date of enactment of the Preserving Homes and Communities Act of 2009, the Secretary shall develop a formula for the award of funds under this subsection that includes the following

factors:

` (A) The population of the State, as determined by the Bureau of the Census in most recent estimate of the resident population of the State.

` (B) The rate of mortgages in the State that are delinquent more than 90 days.

` (C) The ratio of foreclosures to owner-occupied households in the State.

` (D) The change, if any, in the rate of unemployment in the State between 2007 and 2008.

` (5) PROGRAM REQUIREMENTS-

` (A) SELECTION CRITERIA-

` (i) IN GENERAL- Each eligible entity that receives a grant under this subsection shall develop selection criteria for eligible homeowners seeking a grant or subsidized loan under this subsection.

` (ii) INCOME REPORTING- A mortgagor that receives a grant or subsidized loan under this subsection shall be required, in accordance with criteria prescribed by the eligible agency, to report any increase in income.

` (B) LOAN REQUIREMENTS-

` (i) INTEREST RATE- Any loan made using a grant under this subsection shall carry a simple annual percentage rate of interest which shall not exceed the prime rate of interest, as such prime rate is determined from time to time by not less than 75 percent of the 30 largest depository institutions in the United States.

` (ii) COMPOUND INTEREST PROHIBITED- Interest on the outstanding principal balance of any loan under this subsection shall not compound.

` (iii) BALANCE DUE-

` (i) IN GENERAL- The principal of any loan made under this paragraph, including any interest accrued on such principal, shall not be due and payable unless the real property securing such loan is sold or transferred.

` (ii) DEPOSIT OF BALANCE DUE- If an event described in subclause (i) occurs, the principal of any loan made under this subsection, including any interest accrued on such principal, shall immediately become due and payable to the eligible agency from which the loan originated.

` (iv) PREPAYMENT- Any eligible homeowner who receives a loan using a grant made under this subsection may repay the loan in full, without penalty, by lump sum or by installment payments, at any time prior to the loan becoming due and payable.

` (v) MAXIMUM AMOUNT- The amount of any loan to any 1 eligible homeowner under this subsection may not exceed 20 percent of the original mortgage amount borrowed by the eligible homeowner.

` (vi) SUBORDINATION- Any loan made using a grant under this subsection will be subordinated to any refinancing of the first mortgage, any preexisting subordinate financing, any purchase money mortgage, or subordinated for any other reason, as determined by the eligible agency.

` (6) SEPARATE ACCOUNT-

` (A) SEPARATE ACCOUNT- An eligible agency that receives a grant under this subsection shall establish a separate account in which to hold amounts received under this subsection.

` (B) REPAYMENT OF LOANS- Any amounts repaid on a subsidized loan made under this subsection shall be deposited in the account established under subparagraph (A).

` (C) OTHER FUNDING- Amounts donated or otherwise directed to be used for purposes of this subsection may be deposited in the account established under subparagraph (A) to help capitalize such account.

` (7) USE OF GRANT FUNDS-

` (A) IN GENERAL- Subject to subparagraph (B), any amounts made available for purposes of this subsection may be used only for the purposes described in paragraph (2).

` (B) EXCEPTION FOR ADMINISTRATIVE COSTS- An eligible agency may use not more than 5 percent of any funds received under this subsection for administrative costs relating to activities carried out under paragraph (2).

` (8) EXISTING LOAN FUNDS- Any eligible agency with a previously existing fund established to make loans to assist homeowners in satisfying any amounts past due on their home loan or for future payments may use funds appropriated for purposes of this subsection for that existing loan fund, even if the eligibility, application, program, or use requirements for that loan program differ from the eligibility, application, program, and use requirements of this subsection, unless such use

is expressly determined by the Secretary to be inappropriate.

- (9) AUTHORIZATION OF APPROPRIATIONS-- There are authorized to be appropriated to carry out this section--
- (A) \$6,375,000,000 for fiscal year 2010; and
  - (B) such sums as may be necessary for each of fiscal years 2011 through 2013. .

#### **SEC. 4. MEDIATION INITIATIVES.**

(a) Definitions-- In this section--

- (1) the term 'mortgagee' includes the agent of a mortgagee; and
  - (2) the term 'Secretary' means the Secretary of Housing and Urban Development.
- (b) Grant Program Established- The Secretary shall establish a grant program to make competitive grants to State and local governments to establish mediation programs that assist mortgagors facing foreclosure.

(c) Mediation Programs-- A mediation program established using a grant under this section shall--

- (1) require participation in the program by--
  - (A) any mortgagee that initiates a foreclosure proceeding; and
  - (B) any mortgagor who is subject to a foreclosure proceeding;
- (2) require any mortgagee or mortgagor required to participate in the program to make a good faith effort to resolve issues relating to foreclosure proceedings through mediation;
- (3) if mediation is not made available to the mortgagor before a foreclosure proceeding is initiated, allow the mortgagor to request mediation at any time before a foreclosure sale;
- (4) provide for--
  - (A) supervision by a State court (or a State court in conjunction with an agency or department of a State or local government) of the mediation program;
  - (B) selection and training of neutral, third-party mediators by a State court (or an agency or department of the State or local government);
  - (C) penalties to be imposed by a State court, or an agency or department of a State or local government, if a mortgagor fails to comply with an order to participate in mediation; and
  - (D) consideration by a State court (or an agency or department of a State or local government) of recommendations by a mediator relating to penalties for failure to fulfill the requirements of the mediation program;
- (5) require that each mortgagee that participates in the mediation program make available to the mortgagor, before and during participation in the mediation program, documentation of--
  - (A) a loan modification calculation or net present value calculation made by the mortgagee in relation to the mortgage using a home loan modification protocol--
    - (i) developed under a home loan modification program put into effect by the Secretary of the Treasury or the Secretary; or
    - (ii) approved by the Secretary;
  - (B) the loan origination, including any note, deed of trust, or other document necessary to establish the right of the mortgagee to foreclose on the mortgage;
  - (C) any pooling and servicing agreement that the mortgagee believes prohibits a loan modification;
  - (D) the payment history of the mortgagor and a detailed accounting of any costs or fees associated with the account of the mortgagor; and
  - (E) the specific alternatives to foreclosure considered by the mortgagee, including loan modifications, workout agreements, and short sales;
- (6) prohibit a mortgagee from shifting the costs of participation in the mediation program, including the attorney's fees of the mortgagor, to a mortgagor;
- (7) provide that--

- (A) any holder of a junior lien against the property that secures a mortgage that is the subject of a mediation--
- (i) be notified of the mediation; and
  - (ii) be permitted to participate in the mediation; and
- (B) any proceeding initiated by a holder of a junior lien against the property that secures a mortgage that is the subject of a mediation be stayed pending the mediation;
- (8) provide information to mortgagors about housing counselors approved by the Secretary; and
- (9) be free of charge to the mortgagor and mortgagee.
- (d) Recordkeeping- A State or local government that receives a grant under this section shall keep a record of the outcome of each mediation carried out under the mediation program, including the nature of any loan modification made as a result of participation in the mediation program.
- (e) Targeting- A State that receives a grant under this section may establish--
- (1) a State-wide mediation program; or
  - (2) a mediation program in a specific locality that the State determines has a high need for such program due to--
    - (A) the number of foreclosures in the locality; or
    - (B) other characteristics of the locality that contribute to the number of foreclosures in the locality.
- (f) Federal Share- The Federal share of the cost of a mediation program established using a grant under this section may not exceed 50 percent.
- (g) Authorization of Appropriations- There are authorized to be appropriated to carry out this section--
- (1) \$80,000,000 for fiscal year 2010; and
  - (2) such sums as may be necessary for each of fiscal years 2011 through 2013.

**SEC.**

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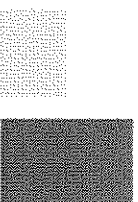
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## S. 1731, The Preserving Homes and Communities Act of 2009

S. 1731 would require certain mortgagees to make loan modifications, to establish a grant program for State and local government mediation programs, to create databases on foreclosures.

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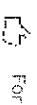
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## S.1731

Preserving Homes and Communities Act of 2009 (Introduced in Senate)

### SEC. 5. OVERSIGHT OF PUBLIC AND PRIVATE EFFORTS TO REDUCE MORTGAGE DEFAULTS AND FORECLOSURES.

(a) Definitions - In this section--

(1) the term `heads of appropriate agencies' means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Director of the Office of Thrift Supervision, and a representative of State banking regulators selected by the Secretary of Housing and Urban Development;

(2) the term `mortgagee' means--

(A) an original lender under a mortgage;

(B) any servicers, affiliates, agents, subsidiaries, successors, or assignees of an original lender; and

(C) any subsequent purchaser, trustee, or transferee of any mortgage or credit instrument issued by an original lender;

(3) the term `Secretary' means the Secretary of Housing and Urban Development; and

(4) the term `servicer' means any person who collects on a home loan, whether such person is the owner, the holder, the assignee, the nominee for the loan, or the beneficiary of a trust, or any person acting on behalf of such person.

(b) Monitoring of Home Loans-

(1) **IN GENERAL**--The Secretary, in consultation with the heads of appropriate agencies, shall develop and implement a plan to monitor--

(A) conditions and trends in homeownership and the mortgage industry, in order to predict trends in foreclosures to better understand other critical aspects of the mortgage market; and

(B) the effectiveness of public efforts to reduce mortgage defaults and foreclosures.

(2) **REPORT TO CONGRESS**--Not later than 1 year after the development of the plan under paragraph (1), and each year thereafter, the Secretary shall submit a report to Congress that--

(A) summarizes and describes the findings of the monitoring required under paragraph (1); and

(B) includes recommendations or proposals for legislative or administrative action necessary--

(i) to increase the authority of the Secretary to levy penalties against any mortgagee, or other person or entity, who fails to comply with the requirements described in this section;

(ii) to improve coordination between public and private initiatives to reduce the overall rate of mortgage defaults and foreclosures; and

(iii) to improve coordination between initiatives undertaken by Federal, State, and local governments.

(c) National Database on Defaults and Foreclosures-

(1) **IN GENERAL**--The Secretary, in consultation with the heads of appropriate agencies, shall develop recommendations for a national database on mortgage defaults and foreclosures that--

(A) provide information to Federal regulatory agencies on--

[+]  
feedback

- (i) mortgagees that generate home loans that go into default or foreclosure at a rate significantly higher than the national average for such mortgagees;
  - (ii) the factors associated with such higher rates; and
  - (iii) other factors and indicators that the Secretary determines are critical to monitoring the mortgage markets; and
- (B) provide information to Federal, State, and local governments on loans, defaults, foreclosure initiations, foreclosure completions, and sheriff sales that--
- (i) is not otherwise readily available;
  - (ii) would allow for a better understanding of local, regional, and national trends in delinquencies, defaults, and foreclosures; and
  - (iii) helps improve public policies that reduce defaults and foreclosures.
- (2) CONSIDERATIONS- In developing the recommendations under paragraph (1), the Secretary shall take into consideration privacy concerns and legal issues relating to such concerns, including the advisability of establishing rules relating to access to information obtained under subsection (d).
- (3) REPORT TO CONGRESS ON NATIONAL DATABASE- Not later than 12 months after the date of enactment of this Act, the Secretary shall submit a report to Congress that contains--
- (A) the recommendations developed under paragraph (1); and
  - (B) an estimate of the cost of maintaining the database described in paragraph (1).
- (d) Provision of Data-
- (1) DATA REPORT REQUIRED- Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the heads of appropriate agencies, shall issue final rules that require each mortgagee or servicer that originates or services not fewer than 100 loans in a calendar year (or any other person that the Secretary determines can effectively provide the data described in paragraph (2)) to submit a report to the Secretary not less frequently than once each quarter that contains data the Secretary determines are necessary to carry out this section.
- (2) CONTENTS OF REPORT- Each report submitted under paragraph (1) shall contain data that--
- (A) for each loan, use the identification requirements that are established under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) for data reporting, including--
    - (i) the year of origination;
    - (ii) the agency code of the originator;
    - (iii) the respondent identification number of the originator; and
    - (iv) the identifying number for the loan;
  - (B) describe the characteristics of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--
    - (i) the loan-to-value ratio at the time of origination for each mortgage on the property;
    - (ii) the type of mortgage, such as a fixed-rate or adjustable-rate mortgage; and
    - (iii) any other loan or loan underwriting characteristics determined by the Secretary to be necessary in order to meet the requirements of paragraph (1) and that are not already available to the Secretary through a national mortgage database;
  - (C) include the performance outcome of each home loan originated in the preceding 12 months by the mortgagee or servicer (or, in the case of the first report required to be submitted under this subsection, all active loans originated by the mortgagee or servicer), including--
    - (i) whether such home loan was in delinquency at any point in such 12-month period; and
    - (ii) whether any foreclosure proceeding was initiated on such home loan during such 12-month period;
  - (D) are sufficient to establish for each home loan that at any point during the preceding 12 months had become 60 or more days delinquent with respect to a payment on any amount due under the home loan, or for which a foreclosure proceeding was initiated, the interest rate on such home loan at the time of such delinquency or foreclosure;

- (E) include information relating to foreclosures, including--
- (i) the date of all foreclosures initiated by the mortgagee or servicer; and
  - (ii) the combined loan-to-value ratio of all mortgages on a home at the time foreclosure proceedings were initiated;
- (F) for a home loan that is in foreclosure, include information on all actions, including loan modifications, taken to resolve the problem that led to the initiation of foreclosure proceedings and all actions undertaken prior to initiation of a foreclosure proceeding to resolve a delinquency or default;
- (G) identify each home loan for which a foreclosure proceeding was completed in the preceding 12 months, including--
- (i) foreclosure proceedings initiated in such 12-month period; and
  - (ii) the date of the foreclosure completion; and
- (H) include any other information that the Secretary determines is necessary to carry out this section.
- (3) COMPLIANCE PLAN AND REPORT- The Secretary, in consultation with the heads of appropriate agencies, shall--
- (A) develop a plan to monitor the compliance with the requirements established in this subsection by mortgagees and servicers; and
  - (B) submit to Congress a report on such plan.
- (e) Consolidated Database- The Federal Financial Institutions Examination Council shall create a consolidated database that establishes a connection between the data provided under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) and the data provided under this subsection.
- (f) Authorization of Appropriations- There are authorized to be appropriated to carry out this section--
- (1) \$5,000,000 for fiscal year 2010; and
  - (2) such sums as may be necessary for each of fiscal years 2011 through 2013.

## SEC. 6. HOUSING TRUST FUND.

From funds received by the Secretary of the Treasury from the sale of warrants under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.), the Secretary of the Treasury shall transfer and credit \$1,000,000,000 to the Housing Trust Fund established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4568) for use in accordance with such section.

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**MASSACHUSETTS**

**(PENDING)**

HOUSE DOCKET, NO. 4057 FILED ON: 2/12/2009

**HOUSE . . . . . No. 4003**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Vincent A. Pedone**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to a foreclosure mediation program.

\_\_\_\_\_  
PETITION OF:

NAME: Vincent A. Pedone DISTRICT/ADDRESS: 15th Worcester

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO A FORECLOSURE MEDIATION PROGRAM.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Subsection (a) of section 35A of chapter 244 of the General Laws is hereby amended by  
2 striking out the second sentence.

3 SECTION 2. Subsection (c) of said section 35A of chapter 244 of the General Laws is hereby amended  
4 by adding the following clause:-

5 (7) the mortgagor shall be offered the opportunity to participate in a court-supervised foreclosure  
6 mediation program. In that program the mortgagor will have the opportunity to negotiate an agreement  
7 with the mortgagee. The mortgagor is encouraged to meet with a housing counselor or attorney prior to  
8 mediation.

9 SECTION 3. Section 35A of chapter 244 of the General Laws is hereby amended by adding the  
10 following subsection:-

11 (g) The commissioner of the division of banks shall make available to the chief justice for administration  
12 and management a copy of the notice required by this section.

13 SECTION 4. Chapter 244 of the Massachusetts General Laws is hereby amended by inserting after  
14 section 35A the following section:-

15 Section 35B. (a) A mortgagee shall not initiate a foreclosure of a residential real property consisting of a  
16 dwelling house with accommodations for 4 or less separate households and occupied in whole or in part  
17 by the mortgagor unless it has made a good faith review of the borrower's financial situation and offered,  
18 whenever feasible, a loan modification, or other option to assist the borrower in bringing the arrear  
19 current. A good faith review of the borrower's financial situation includes, but is not limited to, an  
20 evaluation of the mortgagor's eligibility for all loan modification programs established by the federal  
21 government or the mortgage industry, and if the mortgagor's elects, participation in the foreclosure  
22 mediation program established in this section. Failure to comply with this section constitutes a defense to  
23 the foreclosure.

24 (b) Not later than June 30, 2009 the chief justice for administration and management shall  
25 establish in each judicial district a foreclosure mediation program in actions to foreclose mortgages on  
26 residential real property consisting of a dwelling house with accommodations for 4 or less separate

27 households and occupied in whole or in part by the mortgagor.

28 (c) The foreclosure mediation program shall: (i) address all the issues related to the foreclosure,  
29 including, but not limited to, reinstatement of the mortgage, and the restructuring of the mortgage debt;  
30 and (ii) be conducted by mediators who are employed by the court, trained in mediation and all relevant  
31 aspects of the law, as determined by the chief justice for administration and management, have  
32 knowledge of the community-based resources that are available in the commonwealth, and have  
33 knowledge of any assistance programs established by the commonwealth or other sources. Such  
34 mediators may refer mortgagors who participate in the foreclosure mediation program to community-  
35 based resources when appropriate and to assistance programs.

36 (d) Upon receiving notice from the commissioner of the division of banks of a filing pursuant to  
37 subsection (f) of section 35A, the court shall send a notice of the availability of the mediation program to  
38 the mortgagor. The notice shall inform mortgagors of the program and encourage mortgagors to meet  
39 with a housing counselor or attorney prior to mediation. The mortgagor has 15 business days to return a  
40 foreclosure mediation request form to the court.

41 (e) The mediation period under the foreclosure mediation program established in this section shall  
42 commence when the court sends notice to each party that a foreclosure mediation request form has been  
43 submitted by a mortgagor to the court, which notice shall be sent not later than three business days after  
44 the court receives a completed foreclosure mediation request form. Except as outlined in subsection (g),  
45 the mediation period shall conclude not more than 60 days after the return day for the foreclosure action.

46 (f) The first mediation session shall be held not later than 10 business days after the court sends  
47 notice to all parties that a foreclosure mediation request form has been submitted to the court. The  
48 mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to  
49 agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's  
50 counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation,  
51 provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available  
52 during the mediation session by telephone or electronic means.

53 (g) Not later than 5 business days after the conclusion of the first mediation session, the mediator  
54 shall determine whether the parties will benefit from further mediation. The mediator shall file with the  
55 court a report setting forth such determination and mail a copy of such report to each appearing party. If  
56 the mediator reports to the court that the parties will not benefit from further mediation, the mediation  
57 period shall terminate automatically. If the mediator reports to the court after the first mediation session  
58 that the parties may benefit from further mediation, the mediation period shall continue for an additional  
59 30 days.

60 (h) The chief justice for administration and management shall establish policies and procedures to  
61 implement this section. Such policies and procedures shall, at a minimum, provide that the mediator shall  
62 advise the mortgagor at the first mediation session required by this section that: (i) during the mediation  
63 period, the foreclosure process is suspended; (ii) if the parties are unable to come to an agreement and the  
64 foreclosure process resumes, such mediation does not suspend the mortgagor's obligation to respond to  
65 the foreclosure action in accordance with applicable law; and (iii) a foreclosure sale may cause the  
66 mortgagor to lose the residential real property.

67 (i) If no agreement is reached during the mediation, the mortgagor shall receive written notice as  
68 to when the foreclosure proceeding will resume and a description of the ensuing procedure.

69 (j) An affidavit demonstrating compliance with subsection (a) shall be filed by the mortgagee, or  
70 anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

71 (k) The money necessary to establish and operate the foreclosure mediation program shall be  
72 appropriated to the judicial department.

**NEW YORK (PENDING)**

2009-2010 Regular Sessions

I N A S S E M B L Y

May 11, 2009

Introduced by M. of A. JEFFRIES, JAFFEE, COLTON, CAMARA, ESPAILLAT,  
ROSENTHAL, WALKER, REILLY, O'DONNELL, BENJAMIN, COOK, LANCMAN, BARRON,  
PERRY, CASTRO -- Multi-Sponsored by -- M. of A. FIELDS, GLICK, HEAST-  
IE, MENG, PEOPLES, PHEFFER, THIELE, WEISENBERG -- read once and  
referred to the Committee on Banks

AN ACT enacting the "foreclosure diversion act of 2009"; to amend the  
real property actions and proceedings law, in relation to giving  
notice to mortgagors of the availability of foreclosure prevention  
counseling; to amend the banking law and the civil practice law and  
rules, in relation to settlement conferences; to amend the real prop-  
erty actions and proceedings law, in relation to availability of a  
settlement conference in pending foreclosure actions; to amend the  
real property actions and proceedings law, in relation to providing a  
one-year postponement on foreclosures; to amend the judiciary law, in  
relation to the assignment of foreclosure actions; and to repeal  
certain provisions of the civil practice law and rules relating there-  
to

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "foreclosure diversion act of 2009".  
3 S 2. Statement of legislative purpose and findings. The legislature  
4 finds and declares that there is a public emergency; that the extension  
5 of unaffordable mortgage loans, unaffordable second mortgages and unaf-  
6 fordable home equity loans have resulted in thousands of homeowners  
7 losing their homes. The problems associated with these loans adversely  
8 affect the availability of capital, the demand for housing, the value of  
9 real estate, and more importantly, the ability of homeowners to keep  
10 their homes and communities viable. The pending reset of interest rates  
11 in many home mortgages, second mortgages and home equity loans will only  
12 exacerbate this situation for many homeowners. The expectation that many

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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LBD08584-10-9

1 such variable rate mortgages will fall into foreclosure upon the reset  
2 of the interest rate compels the state to take action. State assistance  
3 to homeowners through a counseling program is necessary in order to stem  
4 this crisis.  
5 S 3. Definitions. As used in this act, the following words and phrases

6 shall have the following meanings:  
7 1. "Commissioner" shall mean the commissioner of the state division of  
8 housing and community renewal.  
9 2. "Department" shall mean the banking department.  
10 3. "Division" shall mean the state division of housing and community  
11 renewal.  
12 4. "Eligible homeowners" shall mean any resident of this state  
13 currently residing in a home located in this state subject to a home  
14 loan who the commissioner determines, pursuant to the eligibility  
15 restrictions set forth in this act, is in need of foreclosure diversion  
16 assistance.  
17 5. "Home loan" shall mean a residential home mortgage loan, including  
18 an open-end credit plan, other than a reverse mortgage transaction, in  
19 which:  
20 (a) the borrower is a natural person;  
21 (b) the debt is incurred by the borrower primarily for personal, fami-  
22 ly or household purposes;  
23 (c) the loan is secured by a mortgage or deed of trust on real estate  
24 upon which there is located a structure or structures intended princi-  
25 pally for occupancy of 1 to 4 families which is occupied by the borrower  
26 as the borrower's principal dwelling; and  
27 (d) the property is located in this state.  
28 6. "Lender" shall mean (a) a mortgage banker as defined in paragraph  
29 (F) of subdivision 1 of section 590 of the banking law, or (b) an exempt  
30 organization as defined in paragraph (e) of subdivision 1 of section 590  
31 of the banking law, or (c) a mortgage loan servicer as defined in para-  
32 graph (h) of subdivision 1 of section 590 of the banking law.  
33 7. "Non-profit assistance provider" shall mean a corporation or group  
34 of corporations organized under the provisions of the not-for-profit  
35 corporation law, including but not limited to neighborhood preservation  
36 companies as defined in section 902 of the private housing finance law,  
37 entities that perform housing preservation and community renewal activi-  
38 ties pursuant to article 17 of the private housing finance law, common-  
39 ly referred to as rural preservation companies, and legal service  
40 providers, and municipalities.  
41 8. "Service area" shall mean the established or stated boundaries of a  
42 non-profit assistance provider or, if an assistance provider does not  
43 have established boundaries for the geographic area in which it provides  
44 services, the geographic area defined in its proposal to the division to  
45 be a service provider.  
46 9. "Superintendent" shall mean the superintendent of banks.  
47 S 4. Education and outreach to homeowners. In coordination with the  
48 division and the consumer protection board, the department shall under-  
49 take outreach activities directed at any homeowners whose homes are  
50 subject to foreclosure. Such outreach activities shall include, but not  
51 be limited to:  
52 1. the production and broadcast of public service announcements using  
53 electronic media to inform the general public of the availability of  
54 counseling through the New York state foreclosure diversion program  
55 established by this act. Such public service announcements shall inform  
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1 the homeowner of the nature and purpose of the counseling and provide a  
2 website and phone number for the homeowner to utilize; and  
3 2. the inclusion of a description on the internet websites maintained  
4 by the division, the banking department and the consumer protection  
5 board of the New York state foreclosure diversion program and a listing

6 of those entities that provide counseling with respect to the program.  
7 Such listing shall include the address and phone number of each entity.  
8 5. Subdivisions 1 and 3 of section 1303 of the real property actions  
9 and proceedings law, as amended by chapter 472 of the laws of 2008, are  
10 amended to read as follows:

11 1. The foreclosing party in a mortgage foreclosure action, which  
12 involves residential real property consisting of owner-occupied one-to-  
13 four-family dwellings shall provide notice to the mortgagor in accord-  
14 ance with the provisions of this section with regard to information and  
15 assistance about the foreclosure process. SUCH NOTICE SHALL INCLUDE  
16 INFORMATION ABOUT THE AVAILABILITY OF THE FORECLOSURE DIVERSION PROGRAM  
17 AND ITS ABILITY TO ASSIST HOMEOWNERS IN AVOIDING FORECLOSURE AND THE  
18 MANDATORY COUNSELING REQUIRED FOR PARTICIPATION IN THE FORECLOSURE  
19 DIVERSION PROGRAM. SUCH NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY  
20 THE BANKING DEPARTMENT AND PROVIDED BY THE DIVISION OF HOUSING AND  
21 COMMUNITY RENEWAL PURSUANT TO SECTION FOUR OF THE FORECLOSURE DIVERSION  
22 ACT OF 2009 AND THE NAMES AND CONTACT INFORMATION FOR ALL NOT-FOR-PROFIT  
23 ASSISTANCE PROVIDERS AUTHORIZED BY THE DEPARTMENT TO PROVIDE HOUSING  
24 COUNSELING SERVICES TO HOMEOWNERS.

25 3. The notice required by this section shall appear as follows:

26 Help for Homeowners in Foreclosure  
27 New York State Law requires that we send you this notice about the  
28 foreclosure process. Please read it carefully.

29 BEFORE YOU ATTEND A SETTLEMENT CONFERENCE, YOU ARE STRONGLY URGED TO  
30 SCHEDULE AND ATTEND A COUNSELING SESSION BY CALLING THE BANKING DEPART-  
31 MENT AT THE FOLLOWING HOTLINE NUMBER: \_\_\_\_\_

32 Summons and Complaint

33 You are in danger of losing your home. If you fail to respond to the  
34 summons and complaint in this foreclosure action, you may lose your  
35 home. Please read the summons and complaint carefully. You should imme-  
36 diately contact an attorney or your local legal aid office to obtain  
37 advice on how to protect yourself. YOU SHOULD IMMEDIATELY SEEK OUT AN  
38 APPROVED LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS CAN BE OBTAINED  
39 BY CALLING THE HOTLINE. IF YOU DO NOT ATTEND A COUNSELING SESSION, YOU  
40 WILL NOT BE ELIGIBLE TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLO-  
41 SURE DIVERSION PROGRAM. THIS WILL NOT AFFECT YOUR RIGHT TO A SETTLEMENT  
42 CONFERENCE, BUT WILL AFFECT YOUR ELIGIBILITY FOR A POSTPONEMENT OF FORE-  
43 CLOSURE UNDER THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

44 Sources of Information and Assistance

45 The State encourages you to become informed about your options in  
46 foreclosure. In addition to seeking assistance from an attorney or legal  
47 aid office, there are government agencies and non-profit organizations  
48 that you may contact for information about possible options, including  
49 trying to work with your lender during this process.

50 To locate an entity near you, you may call the toll-free helpline  
51 maintained by the New York State Banking Department at \_\_\_\_\_  
52 (enter number) or visit the Department's website at \_\_\_\_\_  
53 (enter web address).

54 Foreclosure rescue scams

55 Be careful of people who approach you with offers to "save" your home.  
56 There are individuals who watch for notices of foreclosure actions in  
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1 order to unfairly profit from a homeowner's distress. You should be  
2 extremely careful about any such promises and any suggestions that you  
3 pay them a fee or sign over your deed. State law requires anyone offer-  
4 ing such services for profit to enter into a contract which fully

5 describes the services they will perform and fees they will charge, and  
6 which prohibits them from taking any money from you until they have  
7 completed all such promised services.

8 S 6. The banking law is amended by adding a new section 6-n to read  
9 as follows:

10 S 6-N. COUNSELING OF MORTGAGEES. 1. THE DEPARTMENT SHALL ESTABLISH A  
11 PROCEDURE TO COUNSEL HOMEOWNERS WHOSE PROPERTY IS SUBJECT TO OR ABOUT TO  
12 BECOME SUBJECT TO FORECLOSURE.

13 2. A COUNSELOR FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY  
14 THE DEPARTMENT SHALL MEET WITH ALL HOMEOWNERS PRIOR TO THEIR SCHEDULED  
15 SETTLEMENT CONFERENCE. THE COUNSELOR SHALL ALSO CONSULT WITH THE FORE-  
16 CLOSING PARTY OR SUCH PARTY'S REPRESENTATIVE AND ATTEMPT TO FORMULATE A  
17 REPAYMENT SCHEDULE THAT IS ACCEPTABLE TO BOTH THE HOMEOWNER AND THE  
18 FORECLOSING PARTY. IF THE PARTIES AGREE, THEY SHALL FILE A CERTIFICATE  
19 OF RESOLUTION WITH THE COURT OF JURISDICTION.

20 3. IF THE COUNSELOR IS UNABLE TO NEGOTIATE AN ACCEPTABLE RESOLUTION,  
21 THE PARTIES SHALL FILE A CERTIFICATE OF PARTICIPATION WITH THE COURT OF  
22 JURISDICTION AND THE SCHEDULED SETTLEMENT CONFERENCE SHALL PROCEED.

23 S 7. Rule 3408 of the civil practice law and rules is REPEALED and a  
24 new rule 3408 is added to read as follows:

25 RULE 3408. MANDATORY SETTLEMENT CONFERENCE IN RESIDENTIAL FORECLOSURE  
26 ACTIONS. 1. IN ANY RESIDENTIAL FORECLOSURE ACTION IN WHICH THE DEFENDANT  
27 IS A RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COURT SHALL  
28 HOLD A MANDATORY CONFERENCE WITHIN NINETY DAYS AFTER THE DATE WHEN PROOF  
29 OF SERVICE IS FILED WITH THE COUNTY CLERK, OR ON SUCH ADJOURNED DATE AS  
30 HAS BEEN AGREED TO BY THE PARTIES, FOR THE PURPOSE OF HOLDING SETTLEMENT  
31 DISCUSSIONS PERTAINING TO THE RELATIVE RIGHTS AND OBLIGATIONS OF THE  
32 PARTIES UNDER THE MORTGAGE LOAN DOCUMENTS, INCLUDING, BUT NOT LIMITED TO  
33 DETERMINING WHETHER THE PARTIES CAN REACH A MUTUALLY AGREABLE RESOL-  
34 UTION TO HELP THE DEFENDANT AVOID LOSING HIS OR HER HOME, AND EVALUATING  
35 THE POTENTIAL FOR A RESOLUTION IN WHICH PAYMENT SCHEDULES OR AMOUNTS MAY  
36 BE MODIFIED OR OTHER WORKOUT OPTIONS MAY BE AGREED TO, AND FOR WHATEVER  
37 OTHER PURPOSES THE COURT DEEMS APPROPRIATE.

38 2. THE COURT SHALL CAUSE A NOTICE TO BE SENT TO THE PARTIES BY CERTI-  
39 FIED MAIL INFORMING THEM OF THE DATE, TIME, AND LOCATION OF THE CONFER-  
40 ENCE, AND INFORMING THE HOMEOWNER OF HIS OR HER OPTION OF PARTICIPATION  
41 IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM ESTABLISHED  
42 PURSUANT TO THE FORECLOSURE DIVERSION ACT OF 2009. THE NOTICE SHALL  
43 INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT PURSUANT TO  
44 THE FORECLOSURE DIVERSION ACT OF 2009 AND A STATEMENT THAT THE HOMEOWNER  
45 MUST COMPLETE A COUNSELING SESSION PRIOR TO HIS OR HER SCHEDULED SETTLE-  
46 MENT CONFERENCE IN ORDER TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE  
47 FORECLOSURE DIVERSION PROGRAM.

48 3. IF THE HOMEOWNER COMPLETES A COUNSELING SESSION WITH A COUNSELOR  
49 FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DEPARTMENT,  
50 SUCH COUNSELOR SHALL SEND A LOAN MODIFICATION PROPOSAL TO THE FORECLOS-  
51 ING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE. THE  
52 FORECLOSING PARTY SHALL, PRIOR TO THE SETTLEMENT CONFERENCE, REVIEW THE  
53 MODIFICATION PROPOSAL AND MAKE A GOOD FAITH EFFORT TO REACH A RESOLUTION  
54 WITH THE HOMEOWNER.

55 4. AT THE INITIAL CONFERENCE HELD PURSUANT TO THIS SECTION, ANY  
56 DEFENDANT CURRENTLY APPEARING PRO SE, SHALL BE DEEMED TO HAVE MADE A  
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1 MOTION TO PROCEED AS A POOR PERSON UNDER SECTION ELEVEN HUNDRED ONE OF  
2 THE CIVIL PRACTICE LAW AND RULES. THE COURT SHALL DETERMINE WHETHER SUCH  
3 PERMISSION SHALL BE GRANTED PURSUANT TO STANDARDS SET FORTH IN SECTION

4 ELEVEN HUNDRED ONE OF THIS CHAPTER. IF THE COURT APPOINT'S DEFENDANT  
5 COUNSEL PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TWO OF  
6 THIS CHAPTER, IT SHALL ADJOURN THE CONFERENCE TO A DATE CERTAIN FOR  
7 APPEARANCE OF COUNSEL AND SETTLEMENT DISCUSSIONS PURSUANT TO SUBDIVISION  
8 ONE OF THIS SECTION, AND OTHERWISE SHALL PROCEED WITH THE CONFERENCE.  
9 5. AT ANY CONFERENCE HELD PURSUANT TO THIS SECTION, THE PLAINTIFF  
10 SHALL APPEAR IN PERSON OR BY COUNSEL, AND IF APPEARING BY COUNSEL, SUCH  
11 COUNSEL SHALL BE FULLY AUTHORIZED TO DISPOSE OF THE CASE. THE DEFENDANT  
12 SHALL APPEAR IN PERSON OR BY COUNSEL. IF THE DEFENDANT IS APPEARING PRO  
13 SE, THE COURT SHALL ADVISE THE DEFENDANT OF THE NATURE OF THE ACTION AND  
14 HIS OR HER RIGHTS AND RESPONSIBILITIES AS A DEFENDANT. WHERE APPROPRI-  
15 ATE, THE COURT MAY PERMIT A REPRESENTATIVE OF THE PLAINTIFF TO ATTEND  
16 THE SETTLEMENT CONFERENCE TELEPHONICALLY OR BY VIDEO-CONFERENCE.  
17 6. BOTH PARTIES MUST HAVE ANY SUPPORTING DOCUMENTATION WITH THEM AT  
18 THE TIME OF THE CONFERENCE. IF THE HOMEOWNER ATTENDED A COUNSELING  
19 SESSION WITH AN APPROVED COUNSELOR, SUCH COUNSELOR MUST HAVE GIVEN A  
20 LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS  
21 PRIOR TO THE SETTLEMENT CONFERENCE.  
22 7. THE COURT SHALL PRESIDE OVER THE CONFERENCE IN AN EFFORT TO ESTAB-  
23 LISH A REPAYMENT PLAN THAT IS ACCEPTABLE TO THE LENDER THAT ALLOWS THE  
24 HOMEOWNER TO REMAIN IN THE HOME.  
25 8. AFTER THE SETTLEMENT CONFERENCE, THE COURT SHALL PRODUCE A REPORT  
26 FINALIZING AND DETAILING ANY TERMS AND CONDITIONS THAT HAVE BEEN AGREED  
27 UPON BY THE PARTIES. SUCH REPORT SHALL BE MADE PART OF THE RECORD FOR  
28 THE ACTION.  
29 8. The real property actions and proceedings law is amended by  
30 adding a new section 1316 to read as follows:  
31 S 1316. THE COURT SHALL NOTIFY THE DEFENDANT OF ANY FORECLOSURE ACTION  
32 ON A RESIDENTIAL MORTGAGE LOAN, IN WHICH THE ACTION WAS INITIATED BUT  
33 WHERE THE FINAL ORDER OF JUDGMENT WAS NOT ISSUED PRIOR TO THE EFFECTIVE  
34 DATE OF THE FORECLOSURE DIVERSION ACT OF 2009, THAT SUCH DEFENDANT MAY  
35 REQUEST A SETTLEMENT CONFERENCE IN ACCORDANCE WITH RULE THIRTY-FOUR  
36 HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.  
37 9. The real property actions and proceedings law is amended by  
38 adding a new section 1305 to read as follows:  
39 S 1305. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORE-  
40 CLOSE A RESIDENTIAL MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN  
41 SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS  
42 SECTION.  
43 2. TIMING OF POSTPONEMENT. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED  
44 ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A RESIDENTIAL  
45 MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN  
46 ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING FOR A PERIOD  
47 OF NINETY DAYS. IF THE MORTGAGOR RECEIVES COUNSELING FROM A NOT-FOR-PRO-  
48 FIT ASSISTANCE PROVIDER APPROVED BY THE DIVISION AND SUBSEQUENTLY  
49 PARTICIPATES IN A SETTLEMENT CONFERENCE, THEN THE COURT BEFORE WHICH  
50 SUCH ACTION IS PENDING SHALL HOLD SUCH ACTION IN ABEYANCE FOR AN ADDI-  
51 TIONAL NINE MONTHS. SUCH ADDITIONAL PERIOD OF TIME IS INTENDED TO  
52 PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORE-  
53 STALL FORECLOSURE WHEREVER POSSIBLE.  
54 3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE  
55 HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORT-  
56 GAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD  
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1 SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION.  
2 MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES

3 MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR  
4 PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES  
5 AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A  
6 MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN  
7 COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST  
8 COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A  
9 SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES  
10 WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH  
11 CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON  
12 PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL  
13 FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE  
14 BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.  
15 4. PRIMA FACIE CASE. A MORTGAGOR MUST ESTABLISH A PRIMA FACIE CASE IN  
16 THE MOTION OR PLEADING. AMENDMENTS TO SUCH MOTION OR PLEADING SHALL BE  
17 LIBERALLY GRANTED. SUCH PLEADING MUST ESTABLISH THAT:  
18 A. THE MORTGAGOR IS A NATURAL PERSON; AND  
19 B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMI-  
20 LY OR HOUSEHOLD PURPOSES; AND  
21 C. THE LOAN IS SECURED BY A MORTGAGE, SECOND MORTGAGE OR HOME EQUITY  
22 LOAN ON REAL PROPERTY WHICH IS IMPROVED WITH A RESIDENTIAL BUILDING  
23 CONTAINING ONE TO FOUR DWELLING UNITS; AND  
24 D. THE REAL PROPERTY SUBJECT TO FORECLOSURE IS THE PRINCIPAL RESIDENCE  
25 OF THE MORTGAGOR; AND  
26 E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND  
27 F. THE REAL PROPERTY IS LOCATED IN THIS STATE.  
28 5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTAB-  
29 LISHED, THE COURT OFFICER OR MEDIATOR PRESIDING OVER THE SETTLEMENT  
30 CONFERENCE SET FORTH IN RULE 3408 OF THE CIVIL PRACTICE LAW AND RULES  
31 SHALL WORK WITH THE PARTIES TO ESTABLISH THE TERMS OF A MONTHLY PAYMENT  
32 SCHEDULE WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH  
33 PARTIES UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END, THE  
34 COURT OFFICER OR MEDIATOR SHALL INQUIRE INTO THE FINANCES OF BOTH THE  
35 MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF SUCH INQUIRY SHALL BE TO  
36 DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE MORTGAGEE'S  
37 FINANCIAL POSITION AND TO DETERMINE THE AMOUNT WHICH THE MORTGAGOR WILL  
38 BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL BE APPLIED TO THE PRIN-  
39 CIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE FINANCIAL CONDITION OF  
40 THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE  
41 FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY AMOUNT MAY BE  
42 INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN THE DISCRETION  
43 OF THE COURT OFFICER OR MEDIATOR. IT IS WITHIN THE COURT OFFICER'S OR  
44 MEDIATOR'S DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH  
45 PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST.  
46 THE PURPOSE OF SUCH MONTHLY PAYMENTS IS TO PRESERVE THE RELATIVE FINAN-  
47 CIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN  
48 NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR. FAILURE TO  
49 ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR  
50 LIFTING OF THE ABEYANCE.  
51 6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND  
52 JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN ORDER WHICH  
53 SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT UPON ALL  
54 PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN DATE FOR  
55 THE RE-EXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE POSTPONEMENT TIME  
56 PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE COURT MAY  
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2 THE PURVIEW OF THIS SECTION, HOWEVER, IN NO EVENT SHALL SUCH ORDER POST-  
3 PONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-EXAMINATION OF THE  
4 PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE TO THE  
5 PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE DATE OF THE  
6 ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE FORECLO-  
7 SURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION IS POSSI-  
8 BLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS ELAPSED.

9 ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME REGARDLESS  
10 OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE. MULTIPLE POST-  
11 PONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF WARRANTED BY

12 THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE STATE.

13 7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURIS-  
14 DICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLI-  
15 CATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT  
16 PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT  
17 ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH  
18 TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY  
19 REQUIRE.

20 S 10. The judiciary law is amended by adding a new section 2--c to read  
21 as follows:

22 S 2-C. INDIVIDUAL ASSIGNMENTS. THE UNIFIED COURT SYSTEM, IN ACCORDANCE  
23 WITH THEIR INDIVIDUAL ASSIGNMENT SYSTEM, SHALL ENSURE THAT ALL CAUSES OF  
24 ACTION TO FORECLOSE ON REAL PROPERTY SHALL BE ASSIGNED TO THE SAME JUDGE  
25 OR JUDGES, TO THE EXTENT PRACTICABLE.

26 S 11. Notwithstanding the ninety day provision in subdivision 1 of  
27 rule 3408 of the civil practice law and rules, a judge shall schedule  
28 settlement conferences pursuant to such section for any foreclosure  
29 proceeding currently on their calendar.

30 S 12. This act shall take effect on the sixtieth day after it shall  
31 have become a law. Effective immediately, the superintendent of banks  
32 may promulgate any rule or regulation necessary for the timely implemen-  
33 tation of this act on its effective date.

**WISCONSIN (PENDING)**



State of Missouri  
2009 – 2010 LEGISLATURE

LRB-0962/1  
RPN:wj:md

## 2009 SENATE BILL 255

August 11, 2009 – Introduced by Senators TAYLOR, LASSA, WIRCH, LEHMAN and HOLPERIN, cosponsored by Representatives YOUNG, GRIGSBY, BERCEAU, ROYS, CLARK, TURNER, A. WILLIAMS, ZERNICK, RICHARDS and KESSLER. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

- 1 AN ACT to amend 904.085 (2) (a); and to create 846.03 of the statutes; relating  
2 to: notification of default and mediation regarding residential real property  
3 subject to foreclosure and granting rule-making authority.
- 

### *Analysis by the Legislative Reference Bureau*

Under current law, if a mortgagee brings an action for foreclosure of a mortgage on a residential property, the homeowner (mortgagor or borrower) is served with a summons and complaint and the normal civil procedural rules of pleadings, discovery of evidence, pretrial, and trial apply. If the court finds that the mortgagee has the right to the foreclosure, the court issues a judgment for foreclosure of the mortgage, which entitles the mortgagee to force a sale of the property after a redemption period has ended.

This bill creates a process to allow a borrower who owes a first or second mortgage loan on a residential property to seek mediation when the borrower is in default on the loan and the mortgagee is beginning a mortgage foreclosure action. Under the bill, if the borrower has failed to make two consecutive mortgage loan payments, the mortgagee must send the borrower a notice when commencing a foreclosure action. The notice must inform the borrower of the default and what must be done to cure the default, state that the mortgagee intends to start a foreclosure action, and provide the names and addresses of credit counseling services available to homeowners.

Under the bill, when a mortgagee starts a foreclosure action, the mortgagee must inform the borrower of the right to request mediation by submitting a request

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to the director of state courts (director). If mediation is requested, the foreclosure action is stayed until mediation is completed. When the borrower requests mediation, the bill requires the director to refer the borrower to a financial analyst for advice regarding the mortgage foreclosure and to provide the mortgagee and borrower with names of persons who are available to provide mediation services. The bill requires the director to create a list of persons who have knowledge of financial matters to serve as mediators, create a separate list of persons to serve as financial analysts, and provide those persons with training related to their duties under the bill.

The bill requires the director to notify the parties of the time and place of the mediation session. The mediator may not compel a settlement between the parties, but must attempt to achieve a resolution of the issues involved in the mediation. The bill requires the parties to engage in the mediation in good faith, which includes attending the mediation sessions, providing full information to the mediator and other party, and considering debt restructuring alternatives as a method of resolving the default. The cost of the mediator may be added to the mortgage loan payments required by the borrower.

Under the bill, if the mediator determines that the borrower or mortgagee has not mediated in good faith, the mediator provides that information to the court. If the mortgagee has not mediated in good faith, the court may supervise the mediation directly, prohibit the mortgagee from continuing an action to foreclose on the residential property for 180 days, or order the mortgagee to pay the borrower's court costs, including attorney fees. If the borrower has not mediated in good faith, the mortgagee may proceed immediately to foreclose on the residential property.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 846.03 of the statutes is created to read:

2           **846.03 Notification and mediation before foreclosure of residential**  
3           **real property. (1)** In this section:

4           (a) "Borrower" means the person who gives to the mortgagee a first or 2nd  
5 mortgage on the residential real property owned by the person, to provide security  
6 for repayment of the first or 2nd mortgage loan provided to the borrower.

7           (b) "Director" means the director of state courts.

1 (c) "First mortgage loan" means a loan on residential real property that is  
2 secured by a first lien real estate mortgage.

3 (d) "Mortgage" means a person who receives a first or 2nd mortgage on  
4 residential real property to secure payment of a first or 2nd mortgage loan made to  
5 the owner of the residential real property.

6 (e) "Residential real property" means real property on which a one-family to  
7 4-family dwelling is constructed or intended to be constructed in this state and that  
8 the owner of the real property uses, or intends to use, as his or her principal place  
9 of residence.

10 (f) "Second mortgage loan" means a loan on residential real property, including  
11 the renewal or refinancing of an existing 2nd mortgage loan, that is secured by a real  
12 estate mortgage, is subordinate to a first mortgage loan, includes a penalty for  
13 prepayment of the loan, and has a payment schedule that causes the principal  
14 balance to not decrease or to increase.

15 **(2) NOTICE OF DEFAULT REQUIRED.** (a) If a borrower has failed to make full  
16 scheduled payments on a first or 2nd mortgage loan for 2 consecutive payment  
17 periods and the failure to make these payments renders the borrower in default  
18 under the terms of the first or 2nd mortgage loan, a mortgagee holding or servicing  
19 the first or 2nd mortgage loan shall, before commencing an action to foreclose on the  
20 first or 2nd mortgage loan, provide the borrower with a notice no later than 45 days  
21 after the due date for the 2nd payment period and shall make a good faith effort to  
22 speak to the borrower and inform him or her of the contents of the notice.

23 (b) The notice required under par. (a) shall inform the borrower of all of the  
24 following:

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1 1. Any action or procedure required of the borrower to cure the default on the  
2 first or 2nd mortgage loan, including any amount that must be paid to cure the  
3 default and to bring the borrower current on the first or 2nd mortgage loan, and any  
4 date by which the action or procedure must be taken.

5 2. The names and addresses of adjustment service companies licensed under  
6 s. 218.02 that offer credit counseling services to homeowners.

7 3. The legal description and the postal address of the residential real property  
8 that is the subject of the first or 2nd mortgage loan.

9 4. That the mortgagee intends to bring an action to obtain a court judgment of  
10 foreclosure on the first or 2nd mortgage loan.

11 (c) If a mortgagee commences an action to foreclose on the first or 2nd mortgage  
12 loan without meeting the requirements under this subsection, the court in which the  
13 action is commenced shall, on its own motion or on the motion of a party, dismiss the  
14 action and may charge the mortgagee with costs, including the borrower's attorney  
15 fees.

16 **(3) COMMENCEMENT OF MORTGAGE FORECLOSURE AND MEDIATION NOTICE.** (a) When  
17 the mortgagee commences an action to foreclose on a first or 2nd mortgage loan, the  
18 mortgagee shall provide the borrower with a notice regarding the right to mediation  
19 and a mediation request form. The mediation request form shall include spaces to  
20 fill in the information necessary to identify the mortgagee, borrower, and residential  
21 real property involved and the date the form was received from the mortgagee and  
22 shall include the location where the form should be sent. The notice shall inform the  
23 borrower of all of the following:

24 1. That the borrower has the right to request mediation regarding the first or  
25 2nd mortgage loan, provided that the borrower has not participated in mediation

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1 within the past 2 years, or agreed to certain loan modifications with the same  
2 mortgagee on the same residential real property within the past 3 years. The notice  
3 shall include an explanation of when the limit on mediation as the result of a loan  
4 modification applies.

5 2. That the right to mediation under this section regarding a first or 2nd  
6 mortgage loan applies only once.

7 3. That to request mediation, the borrower must submit a request for mediation  
8 to the director within 14 working days after receipt of the notice of the right to  
9 mediation.

10 4. That the action to foreclose the residential real property will be stayed until  
11 the mediation ends if mediation is requested within 10 days after receipt of the  
12 notice.

13 5. That if mediation is not requested within 10 working days, the mortgagee  
14 may immediately continue the action to foreclose on the first or 2nd mortgage loan.

15 6. That if mediation is requested, the director will provide financial analysis  
16 assistance to the borrower to prepare for the mediation.

17 7. The name, telephone number, and address of the mortgagee.

18 8. The address where the request for mediation must be sent.

19 (b) To request mediation, the borrower shall submit a completed mediation  
20 request form, or a substantially similar form, to the director within 10 working days  
21 after receipt of the right to mediation from the mortgagee.

22 **(4) REQUEST FOR MEDIATION.** (a) Within 10 working days after receipt of a notice  
23 of the right to mediation under sub. (3), the borrower may submit a request to the  
24 director for mediation. If the director receives a request for mediation, the director  
25 shall notify the parties of the request as provided in sub. (6). Within 5 working days

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1 after notifying the parties, the mortgagee may submit information to the director  
2 asserting that the borrower is not eligible for mediation under pars. (b) or (c). If the  
3 mortgagee submits the information, the director shall immediately provide the  
4 borrower with the information and allow the borrower 5 working days to submit  
5 information to the director in response to the mortgagee's assertion. The director  
6 shall determine if the borrower has the right to mediation and notify both parties of  
7 that decision within 15 working days of receipt of the mortgagee's submitted  
8 information. The director's determination is appealable to the circuit court.

9 (b) If the borrower has participated in mediation with the same mortgagee on  
10 the same residential real property within the past 2 years, the borrower is not eligible  
11 for mediation under this section.

12 (c) If the borrower has agreed to a loan modification with the same mortgagee  
13 on the same residential real property within the past 3 years, the borrower is not  
14 eligible for mediation under this section. This paragraph does not apply if the loan  
15 modification did not meet the debt-to-income guidelines established by a federal  
16 agency that insures or guarantees loans. This paragraph does not apply if the loan  
17 modification did not take into account the borrower's ratio of current assets to  
18 current liabilities at the time the loan modification was completed.

19 (d) If a borrower has requested mediation under this subsection and has not  
20 been found ineligible for mediation under par. (a), (b), or (c), the director shall notify  
21 the court that the borrower has requested mediation and is eligible for mediation  
22 under this section. Upon receipt of the notification, the court shall stay the  
23 foreclosure action until the mediation is completed.

24 (5) MEDIATORS AND FINANCIAL ANALYSIS. (a) The director shall create a list of  
25 persons who have the character and ability to serve as mediators, and who have

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1 knowledge of financial or residential housing matters and of mediation processes, to  
2 act as mediators under this section. The director shall create a list of persons who  
3 have the character and ability to serve as financial analysts, and who have  
4 knowledge of financial and residential housing matters, to act as financial analysts  
5 under this section. The director shall provide each mediator with sufficient training  
6 to develop or maintain the skills necessary to perform his or her duties under this  
7 section.

8 (b) The mortgagee shall compensate mediators and financial analysts for travel  
9 and other necessary expenses in amounts the director approves. A mortgagee may  
10 recover the costs of compensating any mediator and financial analyst used in the  
11 mediation by adding that cost to the periodic payments made by the borrower on the  
12 first or 2nd mortgage loan. A mortgagee may not recover the costs of compensating  
13 mediators and financial analysts under this paragraph if the mortgagee does not  
14 mediate in good faith. If a mortgagee mediates in good faith but the borrower does  
15 not mediate in good faith, the borrower shall compensate any mediator and financial  
16 analyst used in the mediation.

17 (c) Mediators and financial analysts are immune from civil liability for any act  
18 or omission within the scope of their performance of their duties under this section.

19 (d) All mediators and financial analysts shall keep confidential all information  
20 and records obtained in performing their duties under this section. The director shall  
21 keep confidential all information and records that may serve to identify any party  
22 to mediation under this section. Any information required to be kept confidential  
23 under this paragraph may be disclosed if the director and the parties agree to  
24 disclosure.

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1           **(6) MEDIATION PROCESS.** (a) Within 3 working days after receipt of a request for  
2 mediation, the director shall notify the borrower and mortgagee of receipt of the  
3 request and provide the mortgagor with the name, telephone number, and address  
4 of a financial analyst who can without charge provide the borrower with advice and  
5 written materials to help him or her prepare for the mediation. The financial analyst  
6 may meet with the borrower to prepare for the mediation.

7           (b) If the residential real property is located in whole or part in a county having  
8 a population of 500,000 or more, the borrower shall meet with a counselor certified  
9 by the federal department of housing and urban development before mediation as a  
10 condition of having the right to mediation under this subsection.

11           (c) Within 10 working days after determining under sub. (4) that mediation  
12 may occur, the director shall provide the borrower and mortgagee with the names,  
13 telephone numbers, and addresses of not fewer than 2 mediators in the geographical  
14 area in which the residential real property is located. Within 5 working days after  
15 the director submits to the parties the names of the mediators, each party shall select  
16 a mediator and notify the director of the party's selection. If the parties agree on a  
17 mediator, the director shall notify them of the agreed upon mediator within 5  
18 working days after receipt of their selection. If the parties do not agree on a mediator,  
19 if one party does not notify the director of a selection in a timely manner, or if both  
20 parties so request, the director shall, within 15 days after the director submitted the  
21 names of the mediators to the parties, select a mediator and notify the parties of the  
22 selection.

23           (d) Within 10 working days after the parties are notified of the selection of a  
24 mediator, the director shall notify the parties and the mediator of the place and time

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1 of the first mediation session. The first mediation session shall take place not later  
2 than 20 working days after the parties are notified of the selection of a mediator.

3 (e) The mediator shall encourage a voluntary settlement between the parties.  
4 The mediator may not compel a settlement. The mediator shall advise the parties  
5 of assistance programs that are available and attempt to arrive at a fair agreement  
6 to adjust, refinance, or pay the first or 2nd mortgage loan. The mediator shall  
7 schedule meetings of the parties, direct the parties to prepare for the meetings,  
8 attempt to achieve a resolution to the issues between the parties and, if the parties  
9 request, assist the parties in preparing a written agreement. All mediation meetings  
10 shall be held in this state and be conducted under the laws of this state and may be  
11 held using telecommunications.

12 (f) Mediation may continue during a period not to exceed 60 days after the first  
13 mediation session. After the expiration of the 60 days, the parties may no longer  
14 participate in the mediation process regarding the same first or 2nd mortgage loan  
15 unless the parties and the mediator agree to continue the mediation.

16 (g) The parties have full responsibility for reaching and enforcing any mediated  
17 agreement. The mediation agreement may be enforced by the circuit court for the  
18 county in which the residential real property is located.

19 (h) The parties shall engage in mediation in good faith. Failure to mediate in  
20 good faith includes any of the following:

21 1. Failing on a regular basis to attend and participate in mediation sessions  
22 without good cause.

23 2. Failing to provide full information regarding the party's financial  
24 obligations.

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1 3. Failure of a party to designate a representative with adequate authority to  
2 fully settle, compromise, or otherwise mediate the matter.

3 4. Failure of a party to consider debt restructuring alternatives and to provide  
4 a written statement as to why debt restructuring alternatives are unacceptable.

5 5. Other similar behavior that indicates the lack of good faith of a party to  
6 engage in mediation.

7 (i) If the mediator determines that a party is not engaged in the mediation in  
8 good faith or that the borrower has withdrawn from the mediation, the mediator  
9 shall provide to both of the parties and to the director an affidavit indicating the  
10 reasons for the determination. If a party disagrees with the mediator's affidavit that  
11 he or she is not acting in good faith, the party may request by motion that the circuit  
12 court review the mediator's determination. If the court finds that the mediator's  
13 determination was in error, the court shall order the mediator to continue the  
14 mediation.

15 (j) If the mediator provides an affidavit indicating that the borrower is not  
16 acting in good faith or has withdrawn from the mediation, and the borrower has not  
17 requested a review of the mediator's determination under par. (i) or the court has  
18 found that the mediator's determination was correct, the mortgagee may  
19 immediately proceed with any legal remedies to foreclose on the first or 2nd  
20 mortgage loan.

21 (k) If the mediator provides an affidavit indicating that the mortgagee is not  
22 acting in good faith, and the mortgagee has not requested a review of the mediator's  
23 determination under par. (i) or the court has found that the mediator's determination  
24 was correct, the borrower may seek an order by motion in the circuit court to have  
25 the court supervise mediation between the parties. The borrower shall include a copy

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1 of the mediator's affidavit with the motion filed with the court. Upon receipt of the  
2 motion and affidavit, the court shall hold a hearing to determine if the parties should  
3 be subject to mediation supervised by the court. The court may require the parties  
4 to mediate in good faith under the court's supervision for up to 60 working days and  
5 may issue any orders necessary to enforce the requirement. If the court finds that  
6 the mortgagee has not participated in the court-ordered mediation in good faith, the  
7 court shall prohibit the mortgagee from continuing any action to foreclose on the first  
8 or 2nd mortgage loan for 180 days. In addition, the court shall order the mortgagee  
9 to pay costs and attorney fees incurred by the mortgagee related to the court action  
10 under this subsection.

11 **(7) REDEMPTION PERIOD REDUCED.** If the parties have completed the mediation  
12 process under sub. (6) and agree that the foreclosure action should continue, the  
13 redemption period shall be reduced to 6 months after the judgment for foreclosure  
14 is entered.

15 **(8) OTHER CREDITORS: NO DELAY.** With respect to mediation between parties  
16 before an action to which they are parties has been initiated, no agreement to  
17 mediate, or the fact that mediation is currently occurring, may have the effect of  
18 delaying, postponing, or extending any time limits in any legal proceeding  
19 commenced to enforce a mortgage, land contract, lien, security interest, or judgment  
20 commenced by a creditor other than the mortgagee participating in the mediation.

21 **(9) FORMS, RULE MAKING, AND PUBLICITY.** (a) The director shall prepare all forms  
22 necessary for the administration of this section and shall ensure that the forms are  
23 disseminated to the clerks of circuit court for distribution to the public without  
24 charge.

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1 (b) The director shall publicize the availability of mediation under this section  
2 and the procedures necessary to obtain mediation.

3 (c) The director, in consultation with the University of Wisconsin–Extension,  
4 shall promulgate rules necessary to implement this section.

5 **(10) SUNSET.** This section does not apply to actions to foreclose on a first or 2nd  
6 mortgage loan that are commenced after December 31, 2011.

7 **SECTION 2.** 904.085 (2) (a) of the statutes is amended to read:

8 904.085 (2) (a) “Mediation” means mediation under s. 93.50 (3), conciliation  
9 under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation  
10 under s. 115.797, negotiation under s. 289.33 (9), mediation under ch. 655 or s.  
11 767.405 or 846.03, or any similar statutory, contractual, or court–referred process  
12 facilitating the voluntary resolution of disputes. “Mediation” does not include  
13 binding arbitration or appraisal.

14 (END)