

§6321-A. Foreclosure mediation program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Court" means the Supreme Judicial Court. [PL 2009, c. 402, §18 (NEW).]

B. "Program" means the foreclosure mediation program established pursuant to subsection 3. [PL 2009, c. 402, §18 (NEW).]
[PL 2009, c. 402, §18 (NEW).]

2. Notice; summons and complaint; foreclosure proceedings. When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property of no more than 4 units that is the primary residence of the owner-occupant, the plaintiff shall attach to the front of the foreclosure complaint a one-page form notice to the defendant as developed by the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection in accordance with this subsection and section 6112, subsection 3. The form notice must be written in language that is plain and readily understandable by the general public.

At a minimum, the form notice must contain the following:

A. A statement that failure to answer the complaint will result in foreclosure of the property subject to the mortgage; [PL 2009, c. 402, §18 (NEW).]

B. A sample answer and an explanation that the defendant may fill out the form and return it to the court in the envelope provided as the answer to the complaint. If the debtor returns the form to the court, the defendant does not need to file a more formal answer or responsive pleading and will be scheduled for mediation in accordance with this section; and [PL 2009, c. 402, §18 (NEW).]

C. A description of the program. [PL 2009, c. 402, §18 (NEW).]
[PL 2009, c. 402, §18 (NEW).]

3. Foreclosure mediation program established. Under the authority granted in Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation program to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must use the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website.
[PL 2009, c. 402, §18 (NEW).]

4. Financial information confidential. Except for financial information included as part of a foreclosure complaint or any answer filed with the court, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available as necessary, to the court, the attorneys whose appearances are entered in the case and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used for purposes other than mediation.
[PL 2009, c. 402, §18 (NEW).]

5. No waiver of rights. The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.
[PL 2009, c. 402, §18 (NEW).]

6. Commencement of mediation. When a defendant returns the notice required under subsection 2 or otherwise requests mediation or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

[PL 2009, c. 402, §18 (NEW).]

7. Provisions of mediation services; filing and fees. The court shall:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

- (1) Are trained in mediation and relevant aspects of the law related to real estate, mortgage procedures, foreclosure or foreclosure prevention;
- (2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;
- (3) Have knowledge of mortgage assistance programs;
- (4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets;
- (5) Are knowledgeable in principal loss mitigation and mortgage loan servicing guidelines and regulations; and
- (6) Are capable of facilitating and likely to facilitate identification of and compliance with principal loss mitigation and mortgage loan servicing guidelines and regulations.

The court may establish an orientation program for mediators and require that mediators receive such orientation prior to being appointed; [PL 2013, c. 521, Pt. F, §1 (AMD).]

B. Report annually to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

- (1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and
- (2) The results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and number of homeowners who default on mortgages within a year after restructuring, to the extent the court has available information; [PL 2009, c. 402, §18 (NEW).]

C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on or after June 15, 2009 to support mediation services to be paid for by the plaintiff; and [PL 2009, c. 402, §18 (NEW).]

D. Make recommendations for any changes to the program to the Legislature. [PL 2009, c. 402, §18 (NEW).]

[PL 2013, c. 521, Pt. F, §1 (AMD).]

8. Referral to mortgage assistance programs. At any time during the mediation process, the mediator may refer the defendant to housing counseling or mortgage assistance programs.

[PL 2009, c. 402, §18 (NEW).]

9. No entry of judgment. For any foreclosure complaint filed after January 1, 2010 that is scheduled for mediation in accordance with this section, a final judgment may not issue until a mediator's report has been completed pursuant to subsection 13.

[PL 2009, c. 402, §18 (NEW).]

10. Application of mediation provisions to ongoing foreclosure proceedings. The requirements of this section apply to foreclosures filed after January 1, 2010. The court may in its discretion require

mediation for an owner-occupied residential property that is the primary residence of the owner-occupant and that is in the foreclosure process but not scheduled for sale before January 1, 2010 and an owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant and that is scheduled for sale before that date.

[PL 2009, c. 402, §18 (NEW).]

11. Parties to mediation. A mediator shall include in the mediation process under this section any person the mediator determines is necessary for effective mediation. Mediation and appearance in person are mandatory for:

- A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the action, except that the mortgagee may participate by telephone or electronic means as long as that mortgagee is represented with authority to agree to a proposed settlement; [PL 2009, c. 476, Pt. B, §6 (AMD); PL 2009, c. 476, Pt. B, §9 (AFF).]
- B. The defendant; [PL 2009, c. 402, §18 (NEW).]
- C. Counsel for the plaintiff; and [PL 2009, c. 402, §18 (NEW).]
- D. Counsel for the defendant, if represented. [PL 2009, c. 402, §18 (NEW).]

A mortgage servicer as defined in section 6113, subsection 1, paragraph B-1 participating in the mediation process submits to the jurisdiction of the court with respect to the power of the court to sanction parties who fail to participate in the mediation process in good faith as required by section 6113, subsection 2.

[PL 2021, c. 203, §2 (AMD).]

12. Good faith effort. Each party and each party's attorney, if any, must be present at mediation as required by this section and shall make a good faith effort to mediate all issues. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions. A mortgage servicer as defined in section 6113, subsection 1, paragraph B-1 participating in the mediation process shall participate in good faith as required by section 6113, subsection 2. In determining the nature and extent of appropriate sanctions, the court shall consider the need for deterrence of similar future conduct by the entity being sanctioned and by others and may take into account prior orders imposing sanctions upon the sanctioned party, whether in the same case or in other previous cases. The imposition of any sanction does not bar any independent action by a defendant to seek recovery with respect to the actions giving rise to the order of sanctions.

[PL 2021, c. 203, §3 (AMD).]

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of net present value. If the mediation did not result in the settlement or dismissal of the action, the report must include the outcomes of the Net Present Value Worksheet or other determination of net present value. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith. The mediator's report must also include a statement of all agreements reached at mediation, with sufficient specificity to put all parties on notice of their obligations under agreements reached at mediation, including but not limited to a description of all documents that must be completed and provided pursuant to the agreements reached at mediation and the time frame during which all actions are required to be taken by the parties, including decisions and determinations of eligibility for all loss mitigation options. The mediator's report must identify the name of any mortgage servicer as defined in section 6113, subsection 1, paragraph B-1 that participates in the mediation process, and any order of sanctions must likewise identify the name of the mortgage servicer.

[PL 2021, c. 203, §4 (AMD).]

14. Records. The court shall maintain records or other information relating to the program as necessary to meet the reporting requirements in subsection 7, paragraph B.
[PL 2009, c. 402, §18 (NEW).]

SECTION HISTORY

PL 2009, c. 402, §18 (NEW). PL 2009, c. 476, Pt. B, §§6, 7 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2013, c. 521, Pt. F, §§1, 2 (AMD). PL 2019, c. 363, §§2-4 (AMD). RR 2019, c. 1, Pt. A, §14 (COR). PL 2021, c. 203, §§2-4 (AMD).

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