

1 S.291

2 Introduced by Senator Campbell

3 Referred to Committee on

4 Subject: Court procedure; chancery proceedings; foreclosure

5 Statement of purpose: This bill proposes to establish a program to require

6 mediation in actions for foreclosure of a mortgage on any dwelling house of

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

8 An act relating to mediation in foreclosure proceedings

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

10 Sec. 1. 12 V.S.A. § 4523 is amended to read:

11 § 4523. VENUE; JOINDER OF PARTIES; RECORDING

12 \* \* \*

13 (b) The plaintiff shall file a copy of the complaint in the town clerk's office

14 in each town where the mortgaged property is located. The plaintiff shall

15 attach to the complaint proof of ownership of the mortgage and note, including

16 evidence of the mortgage note, mortgage deed, and all assignments and

17 endorsements of the note and mortgage. The clerk of the town shall minute on

18 the margin of the record of the mortgage that a copy of foreclosure proceedings

19 on the mortgage is filed. The filing shall be sufficient notice of the pendency

20 of the action to all persons who acquire any interest or lien on the mortgaged

1 premises between the dates of filing the copy of foreclosure and the recording  
2 of the final judgment in the proceedings. Without further notice or service,  
3 those persons shall be bound by the judgment entered in the cause and be  
4 foreclosed from all rights or equity in the premises as completely as though  
5 they had been parties in the original action.

6 \* \* \*

7 Sec. 2. 12 V.S.A. § 4531a is amended to read:

8 § 4531a. FORECLOSURE; POWER OF SALE

9 (a) When a power of sale is contained in a mortgage and the plaintiff in the  
10 foreclosure complaint, or the defendant in his or her answer requests a sale, the  
11 court may upon entry of judgment of foreclosure order that if the property is  
12 not redeemed within the time period allowed by the court, the property be sold  
13 pursuant to such power and the court may further determine the time and  
14 manner of the sale. If a sale is ordered with respect to any property other than  
15 farmland or a dwelling house of ~~two~~ four units or less when currently occupied  
16 by the owner as his or her principal residence, the redemption period shall be  
17 eliminated or reduced by the court to no more than 30 days. If the property is  
18 not redeemed, the plaintiff shall thereupon execute the power of sale and do all  
19 things required by it or by the court. No sale of a dwelling house of ~~two~~ four  
20 units or less when currently occupied by the owner as his or her principal  
21 residence may take place within seven months of service of the foreclosure

1 complaint, unless the court finds that the occupant is making waste of the  
2 property or the parties mutually agree after suit to a shorter period.

3 (b) When a power of sale is contained in a mortgage relating to any  
4 property except for a dwelling house of ~~two~~ four units or less that is occupied  
5 by the owner as a principal residence, or farmland, instead of a suit and decree  
6 of foreclosure, the mortgagee or assignee may, upon breach of mortgage  
7 condition, exercise the power of sale without first commencing a foreclosure  
8 action or obtaining a foreclosure decree, and may give notices and do all such  
9 acts as are authorized or required by the power, including the giving of a  
10 foreclosure deed upon the completion of the foreclosure sale; but no sale under  
11 and by virtue of a power of sale shall be valid and effectual to foreclose the  
12 mortgage unless the conditions of sections 4532 and 4533a of this title are  
13 complied with.

14 \* \* \*

15 Sec. 3. 12 V.S.A. chapter 163, subchapter 9 is added to read:

16 Subchapter 9. Mediation in Foreclosure Actions

17 § 4701. MEDIATION PROGRAM ESTABLISHED

18 (a) This subchapter establishes a program to require mediation in actions  
19 for foreclosure of a mortgage on any dwelling house of four units or less that is  
20 occupied by the owner as a principal residence.

1       (b) The supreme court shall administer the foreclosure mediation program  
2       and shall promulgate such rules as are necessary to implement the program.

3       (c) The supreme court shall compile a list of mediators who are qualified to  
4       act as mediators under this subchapter, who shall be licensed to practice law in  
5       the state, trained in mediation and foreclosure law, and knowledgeable about  
6       relevant mortgage assistance programs and regulations relating to loan  
7       modifications.

8       (d) The foreclosure mediation program under this subchapter shall be  
9       supported by court fees paid by plaintiffs in foreclosure actions and  
10       administered by the supreme court.

11       § 4702. NOTICE IN FORECLOSURE ACTIONS

12       (a) Whenever a person commences an action for foreclosure of a mortgage  
13       on any dwelling house of four units or less that is occupied by the owner as a  
14       principal residence, the plaintiff shall attach to the front of the foreclosure  
15       complaint a form notice in language prescribed by the supreme court that is  
16       readily understandable by the general public.

17       (b) At a minimum, the form notice shall contain the following:

18               (1) a statement that failure to answer the complaint will result in  
19       foreclosure of the property subject to the mortgage;

20               (2) a sample answer with an explanation that the defendant may fill out  
21       the form and return it to the court as the answer to the complaint;

1           (3) a statement that if the defendant returns the form to the court or  
2           otherwise contacts the court, the case will be scheduled for mediation; and

3           (4) a description of the mediation program under this subchapter.

4           § 4703. MEDIATION

5           (a) In an action for foreclosure of a mortgage on any dwelling house of four  
6           units or less that is occupied by the owner as a principal residence, whenever  
7           the defendant files an answer, returns the sample answer referred to in  
8           subdivision 4702(b)(2) of this subchapter, or otherwise contacts the court in a  
9           foreclosure action prior to a foreclosure sale, the court shall refer the case to  
10           mediation pursuant to this subchapter.

11           (b) At any time during mediation under this subchapter, the mediator may  
12           refer the defendant to housing counseling or mortgage assistance programs.

13           (c) In all mediations under this subchapter, the plaintiff shall:

14           (1) Consider all available foreclosure prevention tools, including  
15           reinstatement, loan modification, forbearance, deed in lieu of foreclosure, and  
16           short sale.

17           (2) Use all applicable federal and state guidelines on loan modification,  
18           including the Home Affordable Modification Program guidelines and net  
19           present value test where applicable, in considering a loan modification.

20           (3) Where the plaintiff claims that a pooling and service or similar  
21           agreement prohibits modification, produce a copy of the agreement.

1           (4) Upon conclusion of the mediation, produce documentation of its  
2           consideration of each available foreclosure prevention tool, including the data  
3           and factors considered in evaluating a particular foreclosure prevention tool.

4           (5) Upon the request of the defendant, produce a copy of the property  
5           appraisal, loan payment history, loss mitigation history, or any other document  
6           contained in the loan servicing file or combination of these.

7           (d)(1) Except as provided in subdivision (2) of this subsection, the  
8           following persons shall participate in person in any mediation under this  
9           subchapter:

10           (A) the mortgagee, and any other person, including the mortgagee's  
11           servicing agent, who has the authority to agree to a proposed settlement, loan  
12           modification, or dismissal of the foreclosure action;

13           (B) counsel for the plaintiff; and

14           (C) counsel for the defendant, if represented.

15           (2) The court may, for good cause, permit a party identified in  
16           subdivision (1) of this subsection to participate in mediation by  
17           videoconferencing.

18           (e) The mediator shall include in the mediation process under this  
19           subchapter any other person the mediator determines is necessary for effective  
20           mediation.

1       § 4704. GOOD FAITH EFFORT

2           (a) The mortgagee and the mortgagee's servicing agent, if a participant in a  
3       mediation under this subchapter, shall make a good faith effort to mediate all  
4       issues.

5           (b) A failure to comply with the requirements of section 4703 of this title  
6       shall be deemed to be a failure to mediate in good faith.

7           (c) Failure to mediate in good faith under this section shall result in  
8       dismissal of the foreclosure action with prejudice and such other sanctions as  
9       the court deems appropriate.

10       § 4705. MEDIATION REPORT

11       A mediator shall complete a report for each mediation under this  
12       subchapter, including:

13           (1) a description of the parties' compliance with each of the  
14       requirements of this subchapter; and

15           (2) the mediator's opinion as to whether mediation was in good faith as  
16       required by section 4704 of this title.

17       § 4706. NO ENTRY OF JUDGMENT OR FORECLOSURE SALE

18           (a) In any foreclosure action commenced after the effective date of this  
19       subchapter that is referred to mediation under this subchapter, no final  
20       judgment shall be entered by the court until the mediator has submitted a report

1 to the court pursuant to section 4705 of this title, including a determination that  
2 the mediation was in good faith as required by section 4704 of this title.

3 (b) If a defendant requests mediation after judgment has been entered, the  
4 plaintiff may not proceed with a foreclosure sale until after the mediation has  
5 been completed, the mediator has submitted his or her report to the court, and  
6 the court has authorized the plaintiff to proceed with the sale.

7 § 4707. EFFECT OF MEDIATION PROGRAM ON FORECLOSURE

8 ACTIONS FILED PRIOR TO EFFECTIVE DATE

9 The court may, in its discretion, require mediation in any foreclosure action  
10 on a mortgage on any dwelling house of four units or less that is occupied by  
11 the owner as a principal residence that was commenced prior to the effective  
12 date of this subchapter but has not yet resulted in foreclosure sale.

13 § 4708. FINANCIAL INFORMATION CONFIDENTIAL; NO WAIVER OF

14 RIGHTS; COSTS OF MEDIATION; EXEMPTIONS

15 (a) Financial information disclosed during a mediation under this  
16 subchapter shall be deemed confidential and shall not be available for public  
17 inspection but shall be made available, as necessary, to the court, to any  
18 attorneys who have entered appearances in the action, and to the parties to the  
19 mediation.



1       (b) Any financial statement or information designated as confidential under  
2 this subsection shall be kept by the court separate from other documents in the  
3 action and shall not be used for purposes other than the mediation.

4       (c) The parties' rights in a foreclosure action are not waived by their  
5 participation in mediation under this subchapter.

6       (d) The plaintiff shall pay the required costs for any mediation under this  
7 subchapter.

8       (e) No plaintiff may shift costs of mediation to the defendant, including the  
9 mediator's fees, attorney's fees related to mediation, and travel costs related to  
10 mediation.

11       (f) The requirements of this subchapter shall not apply to a foreclosure  
12 action involving a loan for which there is no third-party servicing agent.

13       § 4709. ANNUAL REPORT

14       (a) The supreme court shall report annually to the general assembly on the  
15 following:

16               (1) The performance of the mediation program under this subchapter,  
17 including the number of defendants who are notified of mediation, referrals to  
18 mediation, and defendants who participate in mediation.

19               (2) The results of mediation, including the number of loans restructured,  
20 principal write-downs, interest rate reductions, loan term extensions,  
21 deeds-in-lieu of foreclosure, and other outcomes of mediation.

1           (3) The specific terms of all loan modifications achieved through  
2           mediation, including reductions in monthly mortgage payments, reductions in  
3           interest rate, forgiveness of principal, and extensions of loan term.

4           (b) The courts of this state shall maintain such records relating to the  
5           mediation program under this subchapter as are necessary to meet the reporting  
6           requirement of this section.

7           Sec. 4. EFFECTIVE DATES

8           This section and 12 V.S.A. § 4701 in Sec. 3 of this act shall take effect upon  
9           passage. The remainder of this act shall take effect on July 1, 2010.