



General Assembly

January Session, 2015

Raised Bill No. 7032

LCO No. 5336



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

***AN ACT CONCERNING COURT AUTHORITY TO WITHHOLD
INTEREST PAYMENTS IN FORECLOSURE PROCEEDINGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (2) of subsection (b) of section 49-31n of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2015*):

4 (2) The first mediation session shall be held not later than fifteen
5 business days after the court sends notice to all parties that a
6 foreclosure mediation request form has been submitted to the court.
7 The mortgagor and mortgagee shall appear in person at each
8 mediation session and shall have the ability to mediate, except that (A)
9 if a party is represented by counsel, the party's counsel may appear in
10 lieu of the party to represent the party's interests at the mediation,
11 provided the party has the ability to mediate, the mortgagor attends
12 the first mediation session in person, and the party is available (i)
13 during the mediation session by telephone, and (ii) to participate in the
14 mediation session by speakerphone, provided an opportunity is
15 afforded for confidential discussions between the party and party's

16 counsel, (B) following the initial mediation session, if there are two or
17 more mortgagors who are self-represented, only one mortgagor shall
18 be required to appear in person at each subsequent mediation session
19 unless good cause is shown, provided the other mortgagors are
20 available (i) during the mediation session, and (ii) to participate in the
21 mediation session by speakerphone, and (C) if a party suffers from a
22 disability or other significant hardship that imposes an undue burden
23 on such party to appear in person, the mediator may grant permission
24 to such party to participate in the mediation session by telephone. A
25 mortgagor's spouse, who is not a mortgagor but who lives in the
26 subject property, may appear at each mediation session, provided all
27 appearing mortgagors consent, in writing, to such spouse's appearance
28 or such spouse shows good cause for his or her appearance and the
29 mortgagors consent in writing to the disclosure of nonpublic personal
30 information to such spouse. If the mortgagor has submitted a complete
31 package of financial documentation in connection with a request for a
32 particular foreclosure alternative, the mortgagee shall have thirty-five
33 days from the receipt of the completed package to respond with a
34 decision and, if the decision is a denial of the request, provide the
35 reasons for such denial. If the mortgagor has, in connection with a
36 request for a foreclosure alternative, submitted a financial package that
37 is not complete, or if the mortgagee's evaluation of a complete package
38 reveals that additional information is necessary to underwrite the
39 request, the mortgagee shall request the missing or additional
40 information within a reasonable period of time of such evaluation. If
41 the mortgagee's evaluation of a complete package reveals that
42 additional information is necessary to underwrite the request, the
43 thirty-five-day deadline for a response shall be extended but only for
44 so long as is reasonable given the timing of the mortgagor's submission
45 of such additional information and the nature and context of the
46 required underwriting. Not later than the third business day after each
47 mediation session held on or after June 18, 2013, the mediator shall file
48 with the court a report indicating, to the extent applicable, (i) the
49 extent to which each of the parties complied with the requirements set

50 forth in this subdivision, including the requirement to engage in
51 conduct that is consistent with the objectives of the mediation program
52 and to possess the ability to mediate, (ii) whether the mortgagor
53 submitted a complete package of financial documentation to the
54 mortgagee, (iii) a general description of the foreclosure alternative
55 being requested by the mortgagor, (iv) whether the mortgagor has
56 previously been evaluated for similar requests, whether prior to
57 mediation or in mediation, and, if so, whether there has been any
58 apparent change in circumstances since a decision was made with
59 respect to that prior evaluation, (v) whether the mortgagee has
60 responded to the mortgagor's request for a foreclosure alternative and,
61 if so, a description of the response and whether the mediator is aware
62 of any material reason not to agree with the response, (vi) whether the
63 mortgagor has responded to an offer made by the mortgagee on a
64 reasonably timely basis, and if so, an explanation of the response, (vii)
65 whether the mortgagee has requested additional information from the
66 mortgagor and, if so, the stated reasons for the request and the date by
67 which such additional information shall be submitted so that
68 information previously submitted by the mortgagor, to the extent
69 possible, may still be used by the mortgagee in conducting its review,
70 (viii) whether the mortgagor has supplied, on a reasonably timely
71 basis, any additional information that was reasonably requested by the
72 mortgagee, and, if not, the stated reason for not doing so, (ix) if
73 information provided by the mortgagor is no longer current for
74 purposes of evaluating a foreclosure alternative, a description of the
75 out-of-date information and an explanation as to how and why such
76 information is no longer current, (x) whether the mortgagee has
77 provided a reasonable explanation of the basis for a decision to deny a
78 request for a loss mitigation option or foreclosure alternative and
79 whether the mediator is aware of any material reason not to agree with
80 that decision, (xi) whether the mortgagee has complied with the time
81 frames set forth in this subdivision for responding to requests for
82 decisions, (xii) if a subsequent mediation session is expected to occur, a
83 general description of the expectations for such subsequent session

84 and for the parties prior to such subsequent session and, if not
85 otherwise addressed in the report, whether the parties satisfied the
86 expectations set forth in previous reports, and (xiii) a determination of
87 whether the parties will benefit from further mediation. The mediator
88 shall deliver a copy of such report to each party to the mediation when
89 the mediator files the report. The parties shall have the opportunity to
90 submit their own supplemental information following the filing of the
91 report, provided such supplemental information shall be submitted
92 not later than five business days following the receipt of the mediator's
93 report. Any request by the mortgagee to the mortgagor for additional
94 or updated financial documentation shall be made in writing. The
95 court may impose sanctions on any party or on counsel to a party if
96 such party or such counsel engages in intentional or a pattern or
97 practice of conduct during the mediation process that is contrary to the
98 objectives of the mediation program. Any sanction that is imposed
99 shall be proportional to the conduct and consistent with the objectives
100 of the mediation program. Available sanctions shall include, but not be
101 limited to, terminating mediation, ordering the mortgagor or
102 mortgagee to mediate in person, forbidding the mortgagee from
103 charging the mortgagor for the mortgagee's attorney's fees,
104 withholding interest payments from a mortgagee that are due and
105 owing from a mortgagor, awarding attorney's fees, and imposing fines.
106 In the case of egregious misconduct, the sanctions shall be heightened.
107 The court shall not award attorney's fees to any mortgagee for time
108 spent in any mediation session if the court finds that such mortgagee
109 has failed to comply with this subdivision, unless the court finds
110 reasonable cause for such failure.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	49-31n(b)(2)

Statement of Purpose:

To provide an incentive for mortgagees to demonstrate good faith in foreclosure mediation programs.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]