



Senate Bill No. 391

Public Act No. 18-53

AN ACT ELIMINATING THE REQUIREMENT THAT A MORTGAGOR REPRESENTED BY COUNSEL ATTEND THE FIRST FORECLOSURE MEDIATION SESSION IN PERSON.

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

Section 1. Subdivision (2) of subsection (c) of section 49-31n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2018*):

(2) The mortgagor and mortgagee shall appear in person at each mediation session and shall have the ability to mediate, except that (A) if a party is represented by counsel, the party's counsel may appear in lieu of the party to represent the party's interests at the mediation, provided the party has the ability to mediate [the mortgagor attends the first mediation session in person] and the party is available (i) during the mediation session by telephone, and (ii) to participate in the mediation session by speakerphone, provided an opportunity is afforded for confidential discussions between the party and party's counsel, (B) following the initial mediation session, if there are two or more mortgagors who are self-represented, only one mortgagor shall be required to appear in person at each subsequent mediation session unless good cause is shown, provided the other mortgagors are available (i) during the mediation session, and (ii) to participate in the

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mediation session by speakerphone, (C) if a party suffers from a disability or other significant hardship that imposes an undue burden on such party to appear in person, the mediator may grant permission to such party to participate in the mediation session by telephone, and (D) a mortgagor may be excused from appearing at the mediation session if cause is shown that the presence of such mortgagor is not needed to further the interests of mediation. Such cause may include, but is not limited to, the mortgagor no longer owning the home pursuant to a judgment of marital dissolution and related transfer via deed or no longer residing in the home or not being a necessary party to any agreement being contemplated in connection with the mediation. A mortgagor's spouse, who is not a mortgagor but who lives in the subject property, may appear at each mediation session, provided all appearing mortgagors consent, in writing, to such spouse's appearance or such spouse shows good cause for his or her appearance and the mortgagors consent, in writing, to the disclosure of nonpublic personal information to such spouse. If the mortgagor has submitted a complete package of financial documentation in connection with a request for a particular foreclosure alternative, the mortgagee shall have thirty-five days from the receipt of the completed package to respond with a decision and, if the decision is a denial of the request, provide the reasons for such denial. If the mortgagor has, in connection with a request for a foreclosure alternative, submitted a financial package that is not complete, or if the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite the request, the mortgagee shall request the missing or additional information within a reasonable period of time of such evaluation. If the mortgagee's evaluation of a complete package reveals that additional information is necessary to underwrite the request, the thirty-five-day deadline for a response shall be extended but only for so long as is reasonable given the timing of the mortgagor's submission of such additional information and the nature and context of the required underwriting. Not later than the third business day after each

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mediation session, the mediator shall file with the court a report indicating, to the extent applicable, (i) the extent to which each of the parties complied with the requirements set forth in this subdivision, including the requirement to engage in conduct that is consistent with the objectives of the mediation program and to possess the ability to mediate, (ii) whether the mortgagor submitted a complete package of financial documentation to the mortgagee, (iii) a general description of the foreclosure alternative being requested by the mortgagor, (iv) whether the mortgagor has previously been evaluated for similar requests, whether prior to mediation or in mediation, and, if so, whether there has been any apparent change in circumstances since a decision was made with respect to that prior evaluation, (v) whether the mortgagee has responded to the mortgagor's request for a foreclosure alternative and, if so, a description of the response and whether the mediator is aware of any material reason not to agree with the response, (vi) whether the mortgagor has responded to an offer made by the mortgagee on a reasonably timely basis, and if so, an explanation of the response, (vii) whether the mortgagee has requested additional information from the mortgagor and, if so, the stated reasons for the request and the date by which such additional information shall be submitted so that information previously submitted by the mortgagor, to the extent possible, may still be used by the mortgagee in conducting its review, (viii) whether the mortgagor has supplied, on a reasonably timely basis, any additional information that was reasonably requested by the mortgagee, and, if not, the stated reason for not doing so, (ix) if information provided by the mortgagor is no longer current for purposes of evaluating a foreclosure alternative, a description of the out-of-date information and an explanation as to how and why such information is no longer current, (x) whether the mortgagee has provided a reasonable explanation of the basis for a decision to deny a request for a loss mitigation option or foreclosure alternative and whether the mediator is aware of any material reason not to agree with that decision, (xi)

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whether the mortgagee has complied with the time frames set forth in this subdivision for responding to requests for decisions, (xii) if a subsequent mediation session is expected to occur, a general description of the expectations for such subsequent session and for the parties prior to such subsequent session and, if not otherwise addressed in the report, whether the parties satisfied the expectations set forth in previous reports, and (xiii) a determination of whether the parties will benefit from further mediation. The mediator shall deliver a copy of such report to each party to the mediation when the mediator files the report. The parties shall have the opportunity to submit their own supplemental information following the filing of the report, provided such supplemental information shall be submitted not later than five business days following the receipt of the mediator's report. Any request by the mortgagee to the mortgagor for additional or updated financial documentation shall be made in writing. The court may impose sanctions on any party or on counsel to a party if such party or such counsel engages in intentional or a pattern or practice of conduct during the mediation process that is contrary to the objectives of the mediation program. Any sanction that is imposed shall be proportional to the conduct and consistent with the objectives of the mediation program. Available sanctions shall include, but not be limited to, terminating mediation, ordering the mortgagor or mortgagee to mediate in person, forbidding the mortgagee from charging the mortgagor for the mortgagee's attorney's fees, awarding attorney's fees, and imposing fines. In the case of egregious misconduct, the sanctions shall be heightened. The court shall not award attorney's fees to any mortgagee for time spent in any mediation session if the court finds that such mortgagee has failed to comply with this subdivision, unless the court finds reasonable cause for such failure.

Approved June 1, 2018