



General Assembly

February Session, 2018

Raised Bill No. 391

LCO No. 1612



Referred to Committee on BANKING

Introduced by:
(BA)

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:

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2 general statutes is repealed and the following is substituted in lieu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

4 (2) The mortgagor and mortgagee shall appear in person at each
5 mediation session and shall have the ability to mediate, except that (A)
6 if a party is represented by counsel, the party's counsel may appear in
7 lieu of the party to represent the party's interests at the mediation,
8 provided the party has the ability to mediate [, the mortgagor attends
9 the first mediation session in person] and the party is available (i)
10 during the mediation session by telephone, and (ii) to participate in the
11 mediation session by speakerphone, provided an opportunity is
12 afforded for confidential discussions between the party and party's
13 counsel, (B) following the initial mediation session, if there are two or
14 more mortgagors who are self-represented, only one mortgagor shall

15 be required to appear in person at each subsequent mediation session
16 unless good cause is shown, provided the other mortgagors are
17 available (i) during the mediation session, and (ii) to participate in the
18 mediation session by speakerphone, (C) if a party suffers from a
19 disability or other significant hardship that imposes an undue burden
20 on such party to appear in person, the mediator may grant permission
21 to such party to participate in the mediation session by telephone, and
22 (D) a mortgagor may be excused from appearing at the mediation
23 session if cause is shown that the presence of such mortgagor is not
24 needed to further the interests of mediation. Such cause may include,
25 but is not limited to, the mortgagor no longer owning the home
26 pursuant to a judgment of marital dissolution and related transfer via
27 deed or no longer residing in the home or not being a necessary party
28 to any agreement being contemplated in connection with the
29 mediation. A mortgagor's spouse, who is not a mortgagor but who
30 lives in the subject property, may appear at each mediation session,
31 provided all appearing mortgagors consent, in writing, to such
32 spouse's appearance or such spouse shows good cause for his or her
33 appearance and the mortgagors consent, in writing, to the disclosure of
34 nonpublic personal information to such spouse. If the mortgagor has
35 submitted a complete package of financial documentation in
36 connection with a request for a particular foreclosure alternative, the
37 mortgagee shall have thirty-five days from the receipt of the completed
38 package to respond with a decision and, if the decision is a denial of
39 the request, provide the reasons for such denial. If the mortgagor has,
40 in connection with a request for a foreclosure alternative, submitted a
41 financial package that is not complete, or if the mortgagee's evaluation
42 of a complete package reveals that additional information is necessary
43 to underwrite the request, the mortgagee shall request the missing or
44 additional information within a reasonable period of time of such
45 evaluation. If the mortgagee's evaluation of a complete package reveals
46 that additional information is necessary to underwrite the request, the
47 thirty-five-day deadline for a response shall be extended but only for
48 so long as is reasonable given the timing of the mortgagor's submission
49 of such additional information and the nature and context of the

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

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

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2018</i>	49-31n(c)(2)
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Statement of Purpose:

To eliminate a requirement that mortgagors represented by counsel appear in person at the first foreclosure mediation session.

[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.]