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Legislative Document

No. 64

H.P. 51

House of Representatives, January 11, 2017

**An Act To Require Mediation within 90 Days of a Homeowner's
Receipt of a Foreclosure Notice**

Reference to the Committee on Judiciary suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative PIERCE of Dresden.
Cosponsored by Representatives: DUNPHY of Old Town, HILLIARD of Belgrade,
TIMBERLAKE of Turner, WADSWORTH of Hiram, Senators: COLLINS of York,
MIRAMANT of Knox, ROSEN of Hancock, SAVIELLO of Franklin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA §6112, sub-§3**, as enacted by PL 2009, c. 402, §15, is amended
3 to read:

4 **3. Form.** The Department of Professional and Financial Regulation, Bureau of
5 Consumer Credit Protection, after consultation with interested parties, shall develop for
6 use by the Supreme Judicial Court a one-page form notice for ~~making a request for~~
7 ~~mediation and~~ making an answer to a foreclosure complaint as described in section
8 6321-A, subsection 2. The form must also explain the mandatory foreclosure mediation
9 program established under section 6321-A.

10 **Sec. 2. 14 MRSA §6321-A, sub-§1, ¶B**, as enacted by PL 2009, c. 402, §18, is
11 amended to read:

12 B. "Program" means the mandatory foreclosure mediation program established
13 pursuant to subsection 3.

14 **Sec. 3. 14 MRSA §6321-A, sub-§2, ¶B**, as enacted by PL 2009, c. 402, §18, is
15 amended to read:

16 B. A sample answer and an explanation that the defendant may fill out the form and
17 return it to the court in the envelope provided as the answer to the complaint. If the
18 debtor returns the form to the court, the defendant does not need to file a more formal
19 answer or responsive pleading and will be scheduled for mediation in accordance
20 with this section, which will commence not more than 90 days after the receipt of the
21 complaint; and

22 **Sec. 4. 14 MRSA §6321-A, sub-§3**, as enacted by PL 2009, c. 402, §18, is
23 amended to read:

24 **3. Foreclosure mediation program established.** Under the authority granted in
25 Title 4, section 18-B, the court shall adopt rules to establish a mandatory foreclosure
26 mediation program to provide mediation in actions for foreclosure of mortgages on
27 owner-occupied residential property with no more than 4 units that is the primary
28 residence of the owner-occupant. The program must address all issues of foreclosure,
29 including but not limited to reinstatement of the mortgage, modification of the loan and
30 restructuring of the mortgage debt. Mediations conducted pursuant to the program must
31 use the calculations, assumptions and forms that are established by the Federal Deposit
32 Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan
33 Modification Program Guide as set out on the Federal Deposit Insurance Corporation's
34 publicly accessible website.

35 **Sec. 5. 14 MRSA §6321-A, sub-§6**, as enacted by PL 2009, c. 402, §18, is
36 amended to read:

37 **6. Commencement of mediation.** ~~When a defendant returns the notice required~~
38 ~~under subsection 2 or otherwise requests mediation or makes an appearance in a~~
39 ~~foreclosure action~~ The plaintiff shall notify the court when the defendant has received the

1 foreclosure complaint, at which time the court shall refer the plaintiff and defendant to
2 mediation pursuant to this section. The court shall notify both parties that the referral to
3 mediation has been made. The mediation must be scheduled to commence not more than
4 90 days after the defendant has received the foreclosure complaint.

5 **Sec. 6. 14 MRSA §6321-A, sub-§7, ¶C**, as enacted by PL 2009, c. 402, §18, is
6 amended to read:

7 C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on
8 or after June 15, 2009 to support mediation services to be paid for equally by the
9 plaintiff and defendant; and

10 **Sec. 7. 14 MRSA §6321-A, sub-§11**, as amended by PL 2009, c. 476, Pt. B, §6
11 and affected by §9, is further amended to read:

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

15 A. The mortgagee, who has the authority to agree to a proposed settlement, loan
16 modification or dismissal of the action, except that the mortgagee may participate by
17 telephone or electronic means as long as that mortgagee is represented with authority
18 to agree to a proposed settlement; and

19 B. The defendant;

20 ~~C. Counsel for the plaintiff; and~~

21 ~~D. Counsel for the defendant, if represented.~~

22 Counsel for the plaintiff and counsel for the defendant, if the defendant is represented,
23 may appear in the mediation.

24 **Sec. 8. 14 MRSA §6321-A, sub-§12**, as enacted by PL 2009, c. 402, §18, is
25 amended to read:

26 **12. Good faith effort.** Each party ~~and each party's attorney, if any,~~ must be present
27 at mediation as required by this section and shall make a good faith effort to mediate all
28 issues. If any party ~~or attorney~~ fails to attend or to make a good faith effort to mediate,
29 the court may impose appropriate sanctions. An attorney who attends mediation shall
30 make a good faith effort to mediate. The court may impose appropriate sanctions on an
31 attorney who attends but fails to make a good faith effort to mediate.

32 SUMMARY

33 This bill makes several changes to the foreclosure mediation program.

34 First, it makes the mediation program mandatory for all parties when a plaintiff
35 commences an action for the foreclosure of an owner-occupied residential property of no
36 more than 4 units that is the primary residence of the owner-occupant.

1 Second, it requires the mediation to start not more than 90 days after the defendant
2 receives the foreclosure complaint. The bill requires the plaintiff to notify the Supreme
3 Judicial Court when the defendant has received the complaint, at which time the court
4 will refer the parties to mediation. The court is required to notify the parties of the
5 referral to mediation, and the mediation must then be scheduled to begin within 90 days
6 from the date the complaint was received by the defendant.

7 Third, the bill requires the cost of mediation to be paid equally by the plaintiff and the
8 defendant. Currently, the plaintiff pays for mediation services.

9 Fourth, the bill eliminates the requirement that the attorneys for the plaintiff and the
10 defendant, if the defendant is represented, attend the mediation. A party's attorney may
11 attend mediation, and an attorney in attendance is required to mediate in good faith and is
12 subject to appropriate sanctions for failing to mediate in good faith.