

HOUSE RESEARCH

Bill Summary

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Article 1: Homestead-Lender Mediation

Overview

This article creates a process for mediation of foreclosures of homesteads before they begin. It is optional for the homeowner but mandatory for the creditor if the homeowner wishes to mediate. It is administered by the attorney general's office.

Section

1 Mediation notice for homestead property.

Subd. 1. Requirement. Prohibits beginning a mortgage foreclosure against homestead real estate for a debt of more than \$5,000 unless the mediation notice required under subdivision 2 has been served on both the homeowner and the attorney general ("AG") and the mediation prescribed in sections 2 to 11 of this article has been completed, or if otherwise permitted by those sections without completion of the mediation.

Subd. 2. Contents. Provides the form required to be used for the mediation notice. The notice informs the homeowner that the lender intends to foreclose and that the homeowner can request mediation by filling out a form and turning it in to the AG. It is voluntary on the part of the homeowner.

2 Citation. Says sections 2 to 11 of this article may be cited as the "Homeowner-Lender Mediation Act."

3 Definitions. Defines the terms "homestead property," "file," and "serve."

4 Applicability.

Subd. 1. Creditors. Says this bill applies to any creditor that holds a mortgage or

other lien on homestead property and is a federal government entity, a state of Minnesota entity, a local government, a business entity, or an individual.

Subd. 2. Debtors. Says this bill applies to any debtor who owns and occupies the debtor's own home and does not qualify for farmer-lender mediation under another law.

Subd. 3. Appointment. Permits the AG to appoint and pay qualified mediators who are experienced in finance or mediation.

5 **Mandatory mediation proceedings.**

Subd. 1. Mediation notice. Requires a creditor that wants to start a foreclosure on homestead property to serve the notice shown in section 1 on the homeowner and the AG, and to file proof with the AG that the notice has been served on the homeowner. Prohibits the creditor from beginning the foreclosure until the process required under this article has been completed. Specifies what it means to start a foreclosure, which includes a foreclosure by advertisement or one by "action" (done through a court proceeding).

Subd. 2. Mediation request. Requires a debtor who wishes to engage in mediation to file a request for it with the AG within 20 days after being served with the mediation notice. Requires the debtor to disclose all creditors owed debts secured by the homestead and disclose the date the debtor received the mediation notice from the debtor. If the debtor does not file the request for mediation within the 20-day period, the creditor may proceed with the foreclosure. If the debtor does not receive from the AG a mediation proceeding notice within 40 days of serving the mediation notice on the debtor, the creditor may begin the foreclosure. If a creditor begins a foreclosure against the debtor without giving the debtor a mediation notice, the debtor may file with the AG a request for mediation to start the process.

Subd. 3. Mediation proceeding notice. Requires the AG, within ten days after receiving a mediation request, to send a mediation proceeding notice to the debtor and all known creditors that have liens on the homestead. Specifies what information must be included in that notice. Requires the first mediation meeting to be held no later than 20 days after the mediation notice. Permits the debtor and one or more creditors to agree to select and pay for a professional mediator, rather than have the AG assign a mediator. Requires AG approval of the mediator. Requires the proposed mediator to provide an affidavit disclosing biases, qualifications, and fees; and promising to comply with this article.

Subd. 4. Effect of mediation proceeding notice. If a creditor receives a mediation proceeding notice, the creditor must not begin a foreclosure proceeding until 80 days after the date of the mediation request filed by the debtor with the AG, except as permitted in this article. Permits a debtor who has received a mediation proceedings notice to start a foreclosure if the creditor receives a mediator's affidavit of bad faith on the part of the debtor, or within ten days after the debtor and creditor have signed an agreement permitting the creditor to foreclose (subject to a 5-day right of rescission for the debtor), or the creditor receives a termination notice described in subdivision 9 of this section. Specifies the information the creditor must supply to the debtor at the first mediation meeting. Provides that this subdivision is subject to

section 6 of this article.

Subd. 5. Eligibility and duties of mediator. Requires the mediator to be free of conflicts of interest that impair impartiality. Specifies what a mediator should do at mediation meetings.

Subd. 6. Mediator liability and immunity. Immunizes the mediator and AG from liability for carrying out their duties under this article. Provides that they do not have a duty to give legal advice to a debtor or creditor.

Subd. 7. Mediation period. Provides that the mediator may schedule mediation meetings during a 60-day period after the first meeting.

Subd. 8. Mediation agreement. Specifies the form and effect of a mediation agreement.

Subd. 9. End of mediation. At the end of the mediation period, requires the mediator to prepare and serve on the parties and the AG a “termination statement” of the results of the mediation process.

6 **Good faith required; court-supervised mediation.**

Subd. 1. Obligation of good faith. Requires all parties to mediation to participate in good faith. List things that indicate a lack of good faith.

Subd. 2. Party’s bad faith; mediator’s affidavit. If the mediator determines that a party is not participating in good faith, requires the mediator to prepare an affidavit describing that and provide the affidavit to the AG and the parties.

Subd. 3. Creditor’s bad faith. If the mediator finds that a creditor has acted in bad faith in the mediation, permits the debtor to file the affidavit with the district court in the county in which the debtor lives and request court supervision of the mediation. Upon receiving that request, requires the court to order the parties to mediate under supervision of the court for up to 180 days. At the end of that period, if the court finds that the creditor has still not participated in good faith, the court shall suspend the creditor’s right to foreclose for another 180 days. Requires a creditor found by the mediator to have failed to participate in good faith to pay the attorney fees of the debtor and (seems to) provide for an additional suspension of the creditor’s right to foreclose.

Subd. 4. Debtor’s lack of good faith. Permits a creditor to proceed immediately with foreclosure upon a mediator’s affidavit of bad faith by the debtor, notwithstanding anything to the contrary anywhere in this article.

Subd. 5. Review of good faith finding. Permits any party to seek court review of a mediator’s finding of bad faith or failure to find bad faith constitutes an abuse of discretion. States the remedies the court may order to remedy an abuse of discretion in that regard by the mediator.

7 **Creditor not attending mediation meetings.**

Subd. 1. Filing and effect of claim form. A creditor who is notified of an initial

mediation meeting is bound by a mediation agreement arrived at in a meeting the creditor does not attend, unless the creditor files a claim form prior to the meeting. The claim form is the creditor's agreement to be bound by a mediation agreement arrived at in the meeting, unless the creditor or (maybe) someone else files an objection within the time stated in subdivision 2.

Subd. 2. Objections to agreements. Gives a creditor who files a claim form under subdivision 1 the right to object to a mediation agreement arrived at in a meeting the creditor did not attend if the creditor does so within ten days after receiving notice of the agreement. Specifies what must happen next.

- 8 **Data practices.** Classifies the data possessed by the AG's mediators on the finances of the individual debtors and creditors as private data on individuals or as nonpublic data.
- 9 **Forms and compensation.** Requires the AG to set the compensation of mediators and to create standard forms for use in the mediation process.
- 10 **Enforcement.** Provides that a mediation agreement entered into under this process is enforceable in a state district court.
- 11 **Inconsistent laws.** Provides that this article prevails over any laws that are inconsistent with, or conflict with, this article. That includes the chapters of law dealing with foreclosure procedures and the Uniform Commercial Code.
- 12 **Expiration.** Sunsets this article December 31, 2014.
- 13 **Effective date.** Makes this article effective the day following final enactment.

Article 2: Conforming Provisions

Overview

This article provides funding for the mediation process created in article 1.

- 1 **County recorder fee.** Increases the fee for recording a deed in a county recorder's office from \$46 to \$50 dollars for the duration of the mediation program. This would apply to real estate that is "abstract property." Deposits the extra \$4 in the mediation act account created in section 4 of this article.
- 2 **Standard documents.** Same as section 1 of this article but applies to documents filed in the office of the county registrar of titles. This applies to real estate that is Torrens (registered) property.
- 3 **Standard documents.** Same as sections 1 and 2 of this article, but applies to documents filed in the office of the county registrar of titles relating to real estate registered as Torrens property under a simplified procedure.
- 4 **Homestead-Lender Mediation Act account.**

Subd. 1. Establishment. Creates the account this section is named after as a special revenue account in the general fund.

Subd. 2. Generally. Provides that the account will be administered by the AG. Provides that any income resulting from investing money in the account will accrue to the account.

Subd. 3. Expenditures. Permits the AG to use money in the account to cover the AG's costs of the mediation process. Appropriates money in the account to the AG for that purpose.

Subd. 4. Revenue sources. Requires that the revenues from real estate filings designated for this account in sections 1, 2, and 3 of this article be deposited in the state treasury and credited to this account.

Subd. 5. Appropriation and reimbursement. Appropriates the funds referenced in the preceding subdivision from the general fund to this new account. Provides that when this program terminates, any money left in this account transfers to the general fund. Says that services provided under the mediation program will be available on a first-come first-served basis, subject to the availability of funds in the account.

5 Effective date. Makes this article effective 30 days after the date of enactment.