

1.1 moves to amend H.F. No. 83, the second engrossment, as follows:

1.2 Page 8, delete section 8 and insert:

1.3 "Sec. 8. **[580.0431] MANDATORY MEDIATION.**

1.4 Subdivision 1. **Definitions.** (a) The definitions in this section apply to section
1.5 580.0431.

1.6 (b) "Creditor" means the holder of a mortgage on residential property that consists
1.7 of one to four family dwelling units, one of which the owner occupies as the owner's
1.8 principal place of residence.

1.9 (c) "Debtor" means the owner of a property consisting of one to four family dwelling
1.10 units, one of which the owner occupies as the owner's principal place of residence who has
1.11 pledged real property as a security interest for the mortgage loan.

1.12 (d) "Mediator" means a mediator appointed by the Office of Administrative Hearings.

1.13 (e) "Notice of mediation" means a notice that is sent by the Office of Administrative
1.14 hearings to the debtor to provide the information required under subdivision 4.

1.15 Subd. 2. **Applicability.** (a) The mandatory mediation required in this section applies
1.16 to all foreclosures under chapters 580 and 581 on property consisting of one to four
1.17 dwelling units, one of which the owner occupies as the owner's principal place of residency.

1.18 (b) The mandatory mediation required in this section does not apply to:

1.19 (1) a debt for which a proof of claim form has been filed in a bankruptcy by a
1.20 creditor or that was listed as a scheduled debt, of a debtor who has filed a petition for
1.21 bankruptcy under United States Code, title 11, chapters 7, 11, 12 or 13;

1.22 (2) a debtor who was provided a a notice for mediation and has not contacted the
1.23 Office of Administrative Hearings to confirm participation in the mediation and who
1.24 has not made a request for mediation to the Office of Administrative hearings within 30
1.25 days of the notice for mediation; or

1.26 (3) a debtor who previously mediated with a creditor under this section and reached
1.27 a successful mediation agreement that was signed by both parties.

2.1 Subd. 3. **Mandatory mediation proceedings.** (a) Prior to beginning a mortgage
2.2 foreclosure and before notice of the pendency under section 580.032, subdivision 3, or the
2.3 lis pendens for a foreclosure under chapter 581 is recorded, a creditor must provide to
2.4 the debtor information contained in a form prescribed in section 580.022, subdivision 1,
2.5 about mediation and request mandatory mediation through the Office of Administrative
2.6 Hearings. The Office of Administrative Hearings shall provide mediation to parties,
2.7 creditors, and debtors as required in this section. The creditor must provide all the relevant
2.8 contact information for the creditor or any representative of the creditor who will attend
2.9 the mediation and the contact information for the debtor to the Office of Administrative
2.10 Hearings. The debtor must contact the Office of Administrative Hearings to confirm
2.11 participation in the mediation within ten days of the scheduled mediation. The debtor must
2.12 contact the Office of Administrative Hearings no later than 30 days after receiving the
2.13 notice of mediation to participate in the mediation with the creditor, if they have not done
2.14 so, the debtor waives the right to mediation for that debt.

2.15 (b) Prior to attending the mandatory mediation, the debtor must contact the
2.16 foreclosure prevention counseling agency described in section 580.041, subdivisions 2
2.17 and 2a, to learn about the foreclosure prevention services available to the debtor.

2.18 (c) The debtor may have representation at the mediation conference. The
2.19 representation may be an attorney, advocate, or other individual trained in housing
2.20 counseling. The creditor must send a representative with authority to negotiate a resolution.

2.21 Subd. 4. **Mediation notice.** The Office of Administrative Hearings shall provide
2.22 a written notice to the debtor and creditor within 20 days of receipt of a request for
2.23 mediation from a creditor pursuant to clause (3) of this section. Within ten business days
2.24 of receiving a request for mediation, the Office of Administrative Hearings shall assign
2.25 a mediator which may be a judge, an attorney, or other staff trained in mediation. The
2.26 mediation notice must provide the following information to the debtor, the creditor, and
2.27 any subordinate mortgage lienholder within 20 days of receipt of the request:

2.28 (1) the name and address of the debtor, creditor, and any subordinate lienholders;

2.29 (2) the time and place for the mediation;

2.30 (3) the parties rights and responsibilities to representation;

2.31 (3) the name of the mediator assigned to do the mediation; and

2.32 (4) the documents that must be provided to the Office of Administrative Hearings

2.33 prior to or at the mediation, including the following from the creditors: copies of the notes,

2.34 contracts for debts, statements of interest rates, delinquent payments, unpaid principal and

2.35 interest balances, the creditor's value of the collateral, and debt restructuring programs

3.1 available to the debtor. The mediation must occur no later than 45 days after receiving
3.2 information from the creditor requesting the mediation pursuant to subdivision 2.

3.3 Subd. 5. **Effect of mediation on proceeding notice.** (a) If a creditor receives a
3.4 mediation proceeding notice under subdivision 3, the creditor and the creditor's successors
3.5 in interest may not begin or continue proceedings to enforce a foreclosure pursuant to
3.6 chapters 580 and 581 until 90 days after the date the debtor sends a request for mediation
3.7 to the Office of Administrative Hearings.

3.8 (b) Notwithstanding paragraph (a), a creditor receiving a mediation notice may
3.9 begin to enforce a debt against a debtor under this section if:

3.10 (1) the creditor receives a mediator's affidavit of the debtor's lack of good faith
3.11 under section 583.27; or

3.12 (2) five days after the date the debtor and creditor sign an agreement allowing the
3.13 creditor to proceed to enforce the debt against the property if the debtor has not rescinded
3.14 the agreement within the five days.

3.15 Subd. 6. **Eligibility and duties of mediator.** (a) A person is not eligible to be
3.16 a mediator if the person has a conflict of interest that does not allow the person to be
3.17 impartial. A conflict of interest includes being a current officer or board member or officer
3.18 of the initiating creditor.

3.19 (b) At the initial mediation meeting and subsequent meetings, the mediator shall:

3.20 (1) listen to the debtor and creditor;

3.21 (2) attempt to mediate between the debtor and creditor;

3.22 (3) advise the debtor and creditor of assistance programs available;

3.23 (4) attempt to arrive at an agreement to fairly adjust, refinance, or pay the debts; and

3.24 (5) advise, counsel, and assist the debtor and creditors in an attempt to arrive at an
3.25 agreement for the future conduct of financial relations among them.

3.26 Subd. 7. **Mediator liability and immunity.** The Office of Administrative Hearings
3.27 and the mediators working for the office are immune from civil liability for actions within
3.28 the scope of its position under this chapter. The mediators assigned do not have a duty
3.29 to advise the parties of their legal rights. Nothing in this chapter is a limitation to the
3.30 immunity that otherwise extends to the Office of Administrative Hearings that otherwise
3.31 exists under the law. A mediator cannot be examined about a communication or document,
3.32 including work notes, made or used in the course of or because of mediation under this
3.33 section. This paragraph does not apply to the parties in the dispute in an application to
3.34 a court by a party to have a mediated settlement agreement set aside or reformed. A
3.35 communication or document otherwise not privileged does not become privileged because

4.1 it is used in the cause of mediation. This paragraph is not intended to limit the privilege
4.2 accorded to communication during mediation by the common law.

4.3 Subd. 8. **Mediation agreement.** (a) If an agreement is reached among the debtor
4.4 and creditors the mediator shall witness and sign a written mediation agreement, have it
4.5 signed by the debtor and creditor, and if applicable, submit the agreement to any court that
4.6 has jurisdiction over the mortgage foreclosure or redemption proceedings regarding the
4.7 real estate at issue.

4.8 (b) The debtor and creditors who are parties to the approved mediation agreement and
4.9 creditors who have filed claim forms and have not objected to the mediation agreement:

4.10 (1) are bound by the terms of the agreement;

4.11 (2) may enforce the mediation agreement as a legal contract; and

4.12 (3) may use the mediation agreement as a defense against an action contrary to
4.13 the mediation agreement.

4.14 Subd. 9. **Mediation termination.** The mediator shall sign and serve to the parties a
4.15 termination statement within seven days of the mediation to acknowledge that the mediation
4.16 has ended and describe any agreement reached between the creditor and the debtor.

4.17 Subd. 10. **Private data.** All data regarding the finances of individual debtors
4.18 and creditors is created, collected, and maintained by the mediators or the Office of
4.19 Administrative Hearings are classified as private data on individuals under section 13.02,
4.20 subdivision 12, or non public data under section 13.02, subdivision 9.

4.21 Subd. 11. **Forms and compensation.** The Office of Administrative Hearings shall
4.22 set the compensation of mediators and shall adopt mediation forms to be used in the
4.23 mediation process.

4.24 Subd. 12. **Prohibited Waivers.** A waiver of mediation under this section is void
4.25 except as allowed in this section.

4.26 Subd. 13. **Enforcement.** The mediation agreement must be enforced by the district
4.27 court. A mediation agreement signed by both parties may be submitted to any court
4.28 having jurisdiction over the parties.

4.29 Subd. 14. **Fees.** (a) The creditor shall submit a mediation fee of \$160 to the Office
4.30 of Administrative Hearings at or before the initial mediation meeting.

4.31 (b) The debtor shall submit a mediation fee of \$40 to the Office of Administrative
4.32 Hearings at or before the initial mediation meeting.

4.33 (c) Mediation fees collected by the Office of Administrative hearings under this
4.34 section must be deposited in the administrative hearings account in the state treasury and
4.35 are appropriated to the office for the purposes of this section.

5.1 Subd. 15. **Good faith required.** (a) The parties must engage in mediation in good
5.2 faith. Not participating in good faith includes:

5.3 (1) failure to attend and participate in mediation sessions without cause;

5.4 (2) failure to provide full information regarding the financial obligations of the
5.5 parties and other creditors including: a promissory note, contracts for debt, statement of
5.6 interest rates on the debts, delinquent payments, unpaid principal balance, a list of all
5.7 collateral securing debts, a creditor's estimate of the value of the collateral, and debt
5.8 restructuring programs available from the creditor;

5.9 (3) failure of the creditor to designate a representative to participate in the mediation
5.10 with authority to make binding commitments;

5.11 (4) lack of a written statement of debt restructuring alternatives and a statement of
5.12 reasons why alternatives are unacceptable to one of the parties; and

5.13 (5) other similar behavior that evidences lack of good faith by a party.

5.14 A failure to agree to reduce, restructure, refinance, or forgive debt is not, in itself, evidence
5.15 of lack of good faith by the creditor.

5.16 (b) If the mediator determines that either party is not participating in good faith the
5.17 mediator must file an affidavit indicating the reasons for the finding with the attorney
5.18 general and with parties to the mediation.

5.19 Subd. 16. **Creditor; bad faith; court supervision.** If the mediator finds the creditor
5.20 has not participated in mediation in good faith, the debtor may require court-supervised
5.21 mandatory mediation by filing the affidavit with the district court of the county of the
5.22 debtor's residence with a request for court supervision of mediation and serving a copy of
5.23 the request on the creditor. Upon request, the court shall require both parties to mediate
5.24 under the supervision of the court in good faith for a period of not more than 60 days. All
5.25 mortgage foreclosure proceedings must be suspended during this period. The court may
5.26 issue orders necessary to effect good faith mediation. Following the mediation period,
5.27 if the court finds the creditor has not participated in mediation in good faith, the court
5.28 shall by order suspend the mortgage foreclosure proceeding for an additional period of
5.29 180 days. A creditor found by the mediator not to have participated in good faith shall
5.30 pay the attorney fees and costs of the debtor requesting court supervision, in addition to
5.31 further suspension of the mortgage foreclosure proceeding.

5.32 Subd. 17. **Debtor's lack of good faith.** A creditor may immediately proceed with
5.33 the mortgage foreclosure proceedings upon receipt of a mediator's affidavit of a debtor's
5.34 lack of good faith.

5.35 Subd. 18. **Review of good faith finding.** (a) Upon petition by a debtor or the creditor,
5.36 a court may review a mediator's affidavit of lack of good faith or a mediator's failure to file

6.1 an affidavit of lack of good faith. The review is limited to whether the mediator committed
6.2 an abuse of discretion in filing or failing to file an affidavit of lack of good faith. The
6.3 petition must be reviewed by the court within ten days after the petition is filed.

6.4 (b) If the court finds that the mediator committed an abuse of discretion in filing, or
6.5 failing to file, an affidavit of lack of good faith, the court may:

6.6 (1) reinstate mediation and the stay of mortgage foreclosure proceeding;

6.7 (2) order court supervised mediation; or

6.8 (3) allow the creditor to proceed immediately with a mortgage foreclosure proceeding.

6.9 (c) A mediator may offer testimony but is not required to testify as part of the
6.10 court's review.

6.11 Subd. 19. **Creditor not attending mediation meeting.** (a) A creditor that is notified
6.12 of the initial mediation meeting is subject to and bound by a mediation agreement if the
6.13 creditor does not attend mediation meetings, unless the creditor files a claim form. In lieu
6.14 of attending a mediation meeting, a creditor may file a claim form with the mediator
6.15 before the scheduled meeting. By filing a claim form, the creditor agrees to be bound
6.16 by a mediation agreement reached at the mediation meeting unless an objection is filed
6.17 within ten days. The mediator must notify the creditor who has filed claim forms of the
6.18 terms of any agreement.

6.19 (b) A creditor who has filed a claim form may serve a written objection to the
6.20 terms of the mediation agreement on the mediator and the debtor within ten days of
6.21 receiving notice of the mediation agreement. If a creditor files an objection to the terms of
6.22 a mediation agreement, the mediator shall meet with the debtor and creditor within ten
6.23 days of receiving the objection. If an objection is served, the mediator shall schedule a
6.24 mediation meeting during the ten-day period following receipt of the objection.

6.25 Subd. 20. **Inconsistent laws.** The provisions of this section have precedence over
6.26 any inconsistent or conflicting laws and statutes, including chapters 336, 580, and 581.

6.27 **EFFECTIVE DATE.** This section is effective for foreclosures in which the notice
6.28 of pendency under section 580.032 or the lis pendens for a foreclosure under chapter 581
6.29 is recorded on or after August 1, 2013."