

# 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 administered by the attorney general's office.

#### Section

#### 1 Mediation notice for homestead property.

**Subd. 1. Applicability.** Changes language used to describe mortgage foreclosure by action.

**Subd. 2. Requirement to provide notice of opportunity for counseling and mediation.** Adds to an existing pre-foreclosure notice that lenders are required to give, information that if mortgage counseling does not resolve the possibility of foreclosure, mediation by a mediator appointed by the attorney general ("AG") is a back-up option for the borrower. Sunsets this subdivision of the bill (but not as it appears in existing law) on July 1, 2012.

**Subd. 3. Notification to authorized counseling agency.** Requires that a lender include the AG as a recipient of the currently-required pre-foreclosure counseling notice, as changed in section 2 of this article.

**Subd. 4. Notice of provision of counseling; request for contract information.** Makes technical changes. Adds a requirement, that upon receipt of a notice that the borrower is receiving counseling, permits the lender to proceed with foreclosure up to but not including the initial published notice, except if later allowed under section 5 to 13 of this article.

**Subd. 5. Mediation referral.** (a) Requires foreclosure prevention counseling

agencies, if the counseling has not resulted in an agreement between the borrower and lender, to give the borrower a mediation request affidavit shown in section 11 of this article, which the borrower may use to request mediation described in sections 5 to 12 of this article.

(b) Sunsets paragraph (a) July 1, 2012.

- 2 Counseling form.** Amends an existing required notice form involving foreclosure counseling to also provide information about the availability of foreclosure mediation created in this article.
- 3 Five-month redemption period.** (a) Reduces the borrower’s redemption period after a foreclosure sale from six months to five months if mediation under this article occurred.
- (b) If the borrower uses a 2009 law that provides the right to delay the foreclosure sale by five months, the delay must instead be four months if the borrower requested mediation under this article.
- 4 No deficiency judgment.** Makes a change to conform to the preceding section.
- 5 Definitions.** Defines the terms “commence a foreclosure proceeding,” “send,” and “serve” for purposes of section 5 to 13 of this article.
- 6 Applicability.**

**Subd. 1. Creditors.** Says this bill applies to any person who holds a mortgage to which section 1 of this article applies, unless the holder sold it to the current owner after occupying it as the mortgage-holder’s homestead.

**Subd. 2. Debtors.** Says this bill applies to any debtor who has received foreclosure prevention counseling and is eligible for mediation or who has filed a mediation request and did not receive counseling and the mediation notice.

**Subd. 3. Applicability.** Says sections 5 to 12 do not apply to mortgage loans refinanced or modified under certain federal programs.

**Subd. 4. Eligibility.** Specifies requirements for a debtor to be eligible for mediation under this article.

**Subd. 5. Exemption.** Exempts mortgage loans made, serviced, and held by credit unions, savings associations, and banks that have a physical location in Minnesota, that have had few foreclosures, and made only prudent mortgage loans.

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**Mandatory mediation proceedings.**

**Subd. 1. Mediation request.** Prescribes process by which a debtor can request mediation under this article, and certain procedural matters.

**Subd. 2. Mediation proceeding notice.** Describes what must happen after the AG receives a request for mediation from a debtor, including how the mediator is selected.

**Subd. 3. Effect of mediation proceeding notice.** (a) If a creditor receives a mediation proceeding notice, the creditor may continue a foreclosure proceeding up to, but not including, the initial published notice of sale, except and until otherwise permitted in this article.

(b) 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 unrevoked agreement permitting the creditor to foreclose, or the creditor receives a termination notice described in subdivision 8 of this section.

(c) Specifies the information the creditor must supply to the debtor at the first mediation meeting.

(d) Provides that this subdivision is subject to section 8 of this article.

**Subd. 4. Eligibility and duties of mediator.** Authorizes the AG to appoint and arrange for payment of qualified mediators. Requires the mediator to be free of conflicts of interest that impair impartiality. Specifies what a mediator should do at mediation meetings.

**Subd. 5. Mediator liability and immunity.** Immunizes the mediator and AG and their employees 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. This is in addition to other immunity and not a limitation.

**Subd. 6. Mediation period.** Provides that the mediator may schedule mediation meetings during a 60-day period after the debtor sends a mediation request to the AG.

**Subd. 7. Mediation agreement.** Specifies the form and effect of a mediation agreement.

**Subd. 8. Termination of mediation.** At the end of the mediation period, requires the mediator to prepare and serve on the parties and the AG an affidavit stating the results of the mediation process. The mediator must record the affidavit with the county real estate records, and it is prima facie evidence of the facts stated in it.

**8 Good faith required.**

**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 not participated in the mediation in good faith, and the creditor continues with the foreclosure, the debtor is allowed a six-month redemption period from the foreclosure.

**Subd. 4. Debtor's lack of good faith.** If the mediator finds that the debtor has not participated in the mediation in good faith, and the creditor continues the foreclosure, requires the debtor to sign a deed-in-lieu of foreclosure within 90 days.

**9 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. Requires the mediator to notify all creditors who have filed claim forms of the terms of any agreement.

**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.

**10 Data practices.** Classifies the data possessed by the AG or by mediators appointed under this act on the finances of the individual debtors and creditors as private data on individuals or as nonpublic data.

**11 Forms and compensation.** Requires the AG to set the compensation of mediators and creates a mediation request affidavit form.

**12 Enforcement.** Provides that a mediation agreement is enforceable in a state district court.

**13 Inconsistent laws.** Provides that this article prevails over any other laws that are inconsistent with, or conflict with, this article. That includes the chapters of law dealing with foreclosure procedures.

**14 Expiration.** Sunsets this article July 1, 2012.

**15 Effective date.** Makes this article effective July 1, 2010, and apply to foreclosures started on or after that date.

## Article 2: Fees and Appropriations

### Overview

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

- 1        **County recorder fee.** Increases the fee for recording a notice of pendency of a foreclosure by advertisement or a notice of lis pendens for a foreclosure by action in a county recorder's office by \$125 (from \$46) for the duration of the mediation program. This would apply to real estate that is "abstract property." Deposits the extra \$125 per document 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 the same types of documents filed in the office of the county registrar of titles. This applies to real estate that is Torrens (registered) property, and applies as a charge for entering a memorial of the document on the Torrens certificate of title.
  
- 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 an account in the state treasury.
  
  - Subd. 2. **Generally.** Provides that the account will be administered by the Minnesota Housing Finance Agency (MHFA). Provides that any income resulting from investing money in the account will accrue to the account.
  
  - Subd. 3. **Expenditures.** Permits the MHFA to use money in the account to cover the AG's costs of the mediation process. Appropriates money in the account to the MHFA for that purpose..
  
  - Subd. 4. **Appropriation and reimbursement.** 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 July 1, 2010.