

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill requires an entity foreclosing on a mortgage by advertisement or by action under chapters 580 and 581 to participate in mediation prior to the foreclosure sale. This bill creates a new chapter, 584, for the foreclosure mediation process. This bill requires the Office of Administrative Hearings (OAH) to operate the mediation program.

#### Section

- 1**      **Requisites for foreclosure.** Adds a requirement that before or when a notice of sale is recorded for a foreclosure by advertisement an opt-out notice or affidavit of good faith in mediation be recorded as well.
- 2**      **Judgment, transcript.** Requires that in a mortgage foreclosure by action that prior to a judgment entered by the court that the party seeking the judgment must provide the opt-out notice or affidavit of good faith in mediation.
- 3**      **Definitions.** Creates new definitions for terms used for the mortgage foreclosure mediation, including: “authorized foreclosure prevention agency” which is an agency or non-profit that provides foreclosure prevention counseling services; “foreclosing entity” which is the person who is attempting to foreclose on a residential mortgage; “loss mitigation” which includes loan modifications, repayment agreements, and other relief to help a homeowner maintain their home; “single point of contact” which is a person authorized by the foreclosing entity to resolve the foreclosure; and “subsequent lienholder” which includes any creditor having a lien on the property that is junior to the foreclosing entity.

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### 4 **Applicability.**

**Subd. 1. Applicability.** Requires mediation or an opt-out form to be completed in a foreclosure when the foreclosing entity has recorded 125 notice of pendency or lis pendens in the year prior to the year of the notice of the default and the note and mortgage are held by the originating company and have not been sold or assigned.

**Subd. 2. Additional authority.** Allows the Office of Administrative Hearings (OAH) to adopt rules to carry out the home foreclosure mediation proceedings. Until December 31, 2015, the OAH can make rules without following the formal administrative procedures for rules to begin the program.

### 5 **Mediation Notices.**

**Subd. 1. Notice of requested mediation.** Provides the requirements for the notice that is sent from the foreclosing entity to the Office of Administrative Hearings, including when the notice can be sent and what information must be provided.

**Subd. 2. Office of Administrative Hearings notice of mediation.** Requires the Office of Administrative Hearings to: provide notice to the homeowner, assign an authorized foreclosure prevention agency to the homeowner, set the date of the mediation, and provide information about how to opt-out of mediation.

**Subd. 3. Notice of mediation cancellation.** Requires the OAH to send a notice to the homeowner that mediation will be cancelled if they do not contact the OAH at least two days prior to the mediation when the authorized foreclosure prevention agency has made four attempts to reach the homeowner and is unable to reach them.

**Subd. 4. Foreclosing entity's disclosure of loss mitigation information.** Requires the foreclosing entity to provide certain information in a specific form to the OAH and the homeowner.

**Subd. 5. Notice to subsequent lienholders.** Requires the foreclosing entity to notify subsequent lienholders of the mediation, to provide them with specific information related to the foreclosure, and to notify OAH of the subsequent lienholders contacted.

**Subd. 6. Notice of mediation.** Requires OAH to notify the homeowner, the foreclosing entity, and the subsequent lienholder of the name and contact information of the mediator.

6 **Opt-Out Form.** Requires the OAH to create and provide two opt-out forms, a homeowner opt-out form to allow the homeowner to decide to cancel the mediation, and an inability to contact opt-out form which allows the OAH to cancel the mediation if the homeowner has failed to contact the OAH and the authorized foreclosure prevention agency.

7 **Mediators.** Requires the Office of Administrative Hearings to establish qualifications for mediators and prevents the mediator from having a conflicting interest with a party involved in the mediation. This section also provides the duties of the mediator and provides that the

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mediator is immune from civil liability related to their actions as a mediator.

- 8 Homeowners right to request loan modification formula.** Allows the homeowner the option of requesting the formula to determine loan modification eligibility from the foreclosing entity after the mediation request has been sent by the foreclosing entity, and requires the formula must be provided within 7 days.
- 9 Good faith in mediation required.** Requires good faith participation on the part of the homeowner and the foreclosing entity. This section identifies what can constitute good faith on the part of the foreclosing entity including: attending the mediation and providing necessary information, providing a single point of contact, and providing a reason for not agreeing to a form of loss mitigation. The section would require the mediator to provide, within one week of the mediation, an affidavit that the foreclosing entity either participated in good faith or did not participate in good faith. It also provides that if a homeowner does not opt out of mediation, and if the foreclosing entity does not have an affidavit of good faith provided by the mediator, then the foreclosure proceedings so far recorded are deemed void and the foreclosing entity is barred from taking action to initiate a new foreclosure for one year.
- 10 Mediation process.**
- Subd. 1. Appearances.** Provides that there will be one mediation and that subsequent mediations can be scheduled if the mediator determines it is necessary. This section allows the parties to appear via remote communication and allows the mediation to be rescheduled if necessary.
- Subd. 2. Documents required at mediation.** Requires the foreclosing entity to bring certain documents, including the original or certified mortgage and note, up to date balance totals, and the homeowner's payment history to the mediation.
- Subd. 3. Mediation agreement.** Provides that the parties to the mediation who enter into an agreement through the mediation are bound to the agreement as a legal contract and can enforce the agreement as a contract.
- 11 Subsequent lienholders good faith in mediation required.**
- Subd. 1. Requirement of good faith.** Requires the subsequent lienholder to participate in the mediation in good faith which includes: attending the mediation, providing a single point of contact, and providing an explanation for failing to agree to a loss mitigation.
- Subd. 2. Failure to participate in good faith.** Provides that if the mediator has determined that the subsequent lienholder has failed to participate in good faith and the homeowner records the affidavit by the mediator that the subsequent lienholder did not participate in good faith, then the lien is void.
- 12 Authorized foreclosure prevention agencies as advocates.** Requires the OAH to establish a program to evaluate the authorized foreclosure prevention agencies and allows the OAH to

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give priority to agencies that are better advocates when assigning the agencies to mediation.

**13 Mortgage foreclosure mediation program data.**

**Subd. 1. Requirement to maintain data.** Requires the OAH to create an annual report on data used in the mediation program.

**Subd. 2. Mediator reports.** Classifies the data from the OAH reports as nonpublic and private data on individuals under Minnesota data practices law.

**Subd. 3. Confidentiality of data created by the Office of Administrative Hearings in foreclosure mediation.** Classifies all data maintained by the OAH related to the mediation and documents provided as private data on individuals and nonpublic under Minnesota data practices law.

**14 Appropriation; Office of Administrative Hearings.** Appropriates money in fiscal year 2015 from the general fund to the OAH to run the foreclosure mediation program.

**15 Repealer.** Repeals Minnesota Statutes sections 580.021 and 580.022. These sections are the foreclosure prevention counseling statute and the counseling form which provides for notice of an opportunity for counseling to be sent to homeowners regarding their right to counseling and assistance in working with the lender.