

# 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 mediation prior to the foreclosure sale and adds a new county recording fee to record the notice of pendency and notice of lis pendens.

#### Section

- 1**      **County recorder fee.** Adds a county recording fee to record the notice of pendency under section 580.032 or notice of lis pendens under section 557.02. The fee is \$346 and provides \$300 to the mortgage foreclosure mediation fund which is created in this bill; \$10.50 to go to the state treasurer which is credited to the general fund; \$10 to go to the technology fund; and \$25.50 to go to the county general fund.
- 2**      **Mortgage foreclosure mediation fund.** Adds a new fund to the county recorder fees statute which can be used to operate the mortgage foreclosure mediation program created by this bill.
- 3**      **Requisites for foreclosure.** Adds a requirement that before or when a notice of sale is recorded for a foreclosure by advertisement a opt-out notice or affidavit of good faith in mediation be recorded as well.
- 4**      **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.

- 5 Definitions.** Creates new definitions for terms used for the mortgage foreclosure mediation, including: “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.
- 6 Applicability.**
- Subd. 1. Applicability.** Requires mediation or an opt-out form to be completed by the homeowner in a foreclosure when the foreclosing entity has recorded 150 notice of pendency or lis pendens in the year prior to the year of the notice of the default.
- Subd. 2. Additional authority.** Allows the Office of Administrative Hearings to adopt rules to carry out the home foreclosure mediation proceedings. The rules do not have to comply with the rulemaking requirements of chapter 14, the formal administrative procedure rules in Minnesota law.
- 7 Mediation notices.** Provides the requirements for the notice that is sent from the foreclosing entity to the homeowner, including when the notice can be sent and when the Office of Administrative Hearings can schedule the mediation. This section also provides what documents must be provided by the foreclosing entity to the homeowner and mediator prior to mediation. This section also provides form language that the foreclosing entity must send to the homeowner describing the right to mediation and the process, which includes the single point of contact for the foreclosing entity. It includes a requirement that the foreclosing entity to provide a notice to subsequent lienholders of the mediation.
- 8 Opt-out form.** Provides the homeowner with an option to not participate in mediation and allow the foreclosure to progress and have the mediation date cancelled. The foreclosing entity must also provide a copy of the opt-out notice to subsequent lienholders.
- 9 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 mediator is immune from civil liability related to their actions as a mediator.
- 10 Foreclosing entity good faith in mediation required.** Requires good faith participation 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.

**11 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 allow 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.

**12 Subsequent lienholders good faith in mediation required.** 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. 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.