

Mandatory Mediation Act

This language is adapted from Maine's LD 1418, enacted by the 124th Maine Legislature

I. Mediation involving mortgage foreclosures on owner-occupied residential property. The mandatory foreclosure mediation program is a program within the [State's Alternative Dispute Resolution System].

A. The Director of the [State's Alternative Dispute Resolution System] shall administer the mandatory foreclosure mediation program established pursuant to [this title].

B. A mandatory foreclosure mediation program fund is established as a nonlapsing, dedicated fund within the [Administrative Office of the Courts]. Fees collected for mediation services pursuant to [this title] must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under [this title].

II. Contents of notice. In any notice to a mortgager, a mortgagee shall include in the notice the following:

A. The mortgagor's right to cure the default as provided in subsection 1;

B. An itemization of all past due amounts causing the loan to be in default;

C. An itemization of any other charges that must be paid in order to satisfy the full obligations of the loan;

D. A statement that the mortgagor may have options available other than foreclosure, that the mortgagor may discuss available options with the mortgagee, the mortgage servicer or a counselor approved by the United States Department of Housing and Urban Development and that the mortgagor is encouraged to explore available options prior to the end of the right-to-cure period;

E. The address, telephone number and other contact information for persons authorized to work with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee;

F. The name, address, telephone number and other contact information for all counseling agencies approved by the United States Department of Housing and Urban Development operating to assist mortgagors in the State to avoid foreclosure; and

G. A statement that all parties are required to participate in a mandatory mediation, as set forth in section XXX, to explore options for avoiding foreclosure.

III. Information; XXX State Housing Authority. Within 3 days of providing notice to the mortgagor as required by state law, the mortgagee shall file with the XXX State Housing

Authority, in electronic format as designated by the XXX State Housing Authority, information including:

- A. The name and address of the mortgagor and the date the notice required by subsection 1-A was mailed to the mortgagor and the address to which the notice was sent;
- B. The address, telephone number and other contact information for persons authorized to work with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and
- C. Other information, as permitted by state and federal law, requested of the mortgagor by the XXX State Housing Authority.

On a quarterly basis the XXX State Housing Authority shall transmit foreclosure data to the [State Department of Financial Regulation] for the purposes of data collection and reporting to the Legislature.

IV. Letter to mortgagor. Within 7 days of receiving electronic information from the mortgagee, the XXX State Housing Authority shall send a notice to the mortgagor that includes a summary of the mortgagor's rights and available resources, including information concerning the mandatory foreclosure mediation program as established in section XXX.

V. Statewide hotline. The XXX State Housing Authority shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors certified by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.

VI. Report. The [State Department of Financial Regulation] shall report quarterly to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of foreclosure notifications received.

VII. Mandatory foreclosure mediation program.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Court" means the [State Supreme Court].
- B. "Program" means the mandatory foreclosure mediation program.

2. Notice; summons and complaint; foreclosure proceedings. When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property, the plaintiff shall give notice to the defendant of the mandatory foreclosure mediation program established in subsection 3 by attaching to the front of the foreclosure complaint that is served on the defendant a copy of the notice of the availability of foreclosure mediation, in a form as prescribed by the [State Supreme Court].

3. Mandatory foreclosure mediation program established. Under the authority granted in [this title], the [State Supreme Court] shall adopt rules to establish a mandatory foreclosure

mediation program within the [State's Alternative Dispute Resolution System] to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must utilize the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website. Communications during mediation are confidential and may not be used in subsequent legal proceedings. The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.

4. Provisions of mediation services; filing and fees. The [State's Alternative Dispute Resolution System], established in [this title], shall provide mediation services under this section. The [State's Alternative Dispute Resolution System] shall:

A. Assign mediators who:

- (1) Are trained in mediation and all relevant aspects of the law;
- (2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;
- (3) Have knowledge of mortgage assistance programs; and
- (4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets.

The court may establish a training program for mediators and require that mediators receive such training prior to being appointed;

B. Report quarterly to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

- (1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and
- (2) The outcome of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and number of homeowners who default on mortgages within a year after restructuring; and

C. Establish a fee for mediation services to be paid for by the plaintiff.

5. Stay of foreclosure process. Further action in the foreclosure proceeding may not be pursued during the mediation's pendency and the court process is stayed during the mediation process under this section. The foreclosure process may commence again only upon certification and proof of evidence to the court that requirements under the program were satisfied, as determined by the court. All fees and costs related to the foreclosure and delinquency remain fixed from the date of the scheduled mediation until the date that the mediator's report pursuant to subsection 10 is filed.

6. Application of mediation provisions to ongoing foreclosure proceedings. The requirements of this section apply to foreclosures filed after the effective date of this section and to owner-occupied residential properties in the foreclosure process but not scheduled for sale before the effective date of this section. Nothing in this section precludes the court from exercising its discretion to require mediation for other properties, including but not limited to owner-occupied residential properties already scheduled for sale or other multifamily housing properties.

7. Pre-foreclosure mediation. The court maintains the discretion to require mediation prior to the filing of the foreclosure action as long as the mediation satisfies the standards and requirements of this section. The court's discretion includes the authority to require additional notice to defendants prior to a plaintiff's filing of the foreclosure complaint.

8. Parties to mediation. A mediator shall include in the mediation process under this section any person the mediator determines is necessary for effective mediation. Mediation and appearance in person is mandatory for:

- A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the loan, except that the mortgagee may participate by telephone;
- B. The defendant;
- C. Counsel for the plaintiff and the defendant; and
- D. Counsel for the defendant, if represented.

9. Good faith effort. If the court finds that either party failed to make a good faith effort to mediate, the court may impose sanctions that include dismissal of the foreclosure action with prejudice and costs and fees.

10. Report. The mediator's report must include the certification in a manner as determined by the court that the parties completed in full and in good faith the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide. The mediator shall retain a copy of the worksheet until completion of the foreclosure proceedings. If the report is not the result of a settlement or dismissal of the case, the report must include the outcomes of the Net Present Value Worksheet.

11. Waive mediation. With the court's approval, a defendant may waive the mediation requirement under this section under the following conditions:

- A. The defendant desires foreclosure because of personal circumstances and has certification by an independent 3rd-party counselor or attorney that the defendant understands what it means to waive the mediation; and
- B. The waiver includes language that prohibits the homeowner from signing away any claim related to the mortgage origination.

Any waiver of mediation agreed to by the defendant must include an agreement by the plaintiff to waive any deficiency that may result upon sale of the property.