Foreclosure, Alternatives - By Jurisdiction

Executive Summary

FORECLOSURE ALTERNATIVES

ANNUAL REPORT EXECUTIVE SUMMARY

February 2016

Of the 54 jurisdictions surveyed, 31 have currently effective foreclosure-alternative laws that were enacted in response to the mortgage foreclosure crisis. These laws generally apply to foreclosures of owner-occupied property secured by a first mortgage. Owner-occupied property typically includes property with up to four dwelling units. Two strategies are common: (1) requiring mediation pursuant to rules set up by state courts; or (2) mandating work-out or settlement negotiations between the homeowner, the mortgagee, and, in some states, a counselor. Foreclosure proceedings are frequently delayed or stayed while the mediation or settlement discussion is being conducted. A few states have special provisions for high-cost,high-risk, or agricultural loans.

Many states are revising their foreclosure-alternative laws. Between July 2014 and February 2016, 17 jurisdictions revised their relevant laws, many adding new programs or extending or expanding existing ones.

Note that states that merely require the lender to give the debtor an opportunity to cure the default by bringing the loan current before the lender commences a foreclosure proceeding are *not* included in this survey.

Mandatory Mediation

In 2009, only three states—Connecticut, Maine, and Nevada—had enacted statutes requiring mediation of certain non-agricultural loans pursuant to court rules. New Jersey required that "high-risk" loans be mediated, and carefully defined which loans were deemed "high-risk." In Ohio, a statute simply provided that a court had discretion to order mediation. Since 2009, several jurisdictions, including Washington, the District of Columbia, Vermont, and Hawaii, have added mandatory mediation requirements.

For example, during the past 18 months, the following states significantly revised their laws requiring mediation:

- Connecticut extended its mediation program's term by three months;

- Maine added provisions permitting expedited final hearings if mediation does not result in settlement and all parties consent;

- Minnesota extended, on a contingent basis, its Farmer-Lender Mediation Act to June 30, 2017;

- Nevada enacted mortgagor-initiated mediation provisions;

- Rhode Island revised its mediation forms and procedures; and

- South Dakota distinguished mandatory mediation for agricultural loans of at least $50,000 and voluntary loans of over $50,000.

Foreclosure Counseling, Modification, and Other Loss Mitigation Programs

Legislation in several states requires the mortgagee, servicer, or a designated agent to meet with the homeowner or his or her foreclosure counselor to try to agree to a modification, settlement, or work-out of the default before commencing foreclosure proceedings. The approach varies. For example, in Colorado and Indiana, the parties in a foreclosure action must meet after the foreclosure proceeding has begun to attempt to work out the default and modify the loan's terms. In Indiana, the settlement conference occurs pursuant to a court order. Recently, Maryland added a lost mitigation program, Arizona required a trustee to explore options to avoid foreclosure, Massachusetts added provisions that shorten the right-to-cure period if the lender has engaged in a good-faith effort to negotiate an alternative to foreclosure, and Utah added provisions related to foreclosure relief.

Most states with relevant statutes require the mortgagee, servicer, or authorized agent to inform the homeowner that foreclosure counseling is available through a state-sponsored entity or by contacting the referral service provided by the U.S. Department of Housing and Urban Development. In some states, such as Iowa, the statute requires the mortgagee only to give notice that counseling is available, and the mortgagee is not specifically required to participate in mediation or renegotiation discussions.

During the past 18 months, the most significant revisions related to counseling, modification, or loss mitigation were as follows:

- Oregon excluded the Department of Veterans Affairs, in its capacity as beneficiary of certain loans, from the state's requirement to request or participate in a resolution conference; and

- Hawaii added provisions related to residential mortgage loan delinquencies and loss mitigation efforts.

Other Solutions for Qualified Homeowners

In addition to its required mediation, Connecticut has established an *Emergency Mortgage Assistance Program* for homeowners facing financial difficulties. If a homeowner qualifies, the parties try to renegotiate the loan, and program funds are used to make the mortgage payments for up to 60 months. Pennsylvania has a similar program, but its funds generally may be used for only up to 24 months.

Connecticut also allows a court to restructure mortgage debt for qualified unemployed and underemployed homeowners. Illinois has added a provision requiring a lender to respond to short sale offers within a specified time, and Rhode Island and Illinois have enacted statutes that provide relief for military personnel and extend other programs.

A few states have laws that require mediation for defaults on loans affecting agricultural property. These statutes were typically passed during the farm crisis in the mid-1980s and may apply to land that includes the homestead. Included among these states are Iowa, Minnesota, South Dakota, and

Wyoming. Oklahoma enacted a statute requiring mediation of agricultural loans, but the Oklahoma Supreme Court declared it unconstitutional in 1988, and it is not included in this survey.

Penalties

Recent legislation has also addressed penalties related to foreclosure alternative requirements. Between July 2014 and February 2016, 10 jurisdictions revised or added provisions related to penalties. The most significant changes were as follows:

- Hawaii added penalties related to residential mortgage loan delinquencies and loss mitigation efforts; and

- Rhode Island revised its penalty provisions related to the failure to follow mediation requirements.

Alabama

Alabama, Penalties

No relevant statutes were found.

Alabama, Required Alternatives or Preconditions

No specifically relevant statutes were found.

Effective January 1, 2016, a mortgagee who forecloses residential property on which a homestead exemption was claimed in the tax year during which the sale occurred must give notice to the mortgagor. That notice must include, among other items, the following statement: "Programs may also exist that help persons avoid or delay the foreclosure process."

Section amended 2015.

Ala. Code § 6-5-248 (2015)

Alaska

Alaska, Penalties

No relevant statutes were found.

Alaska, Required Alternatives or Preconditions

No relevant statutes were found.

Arizona

Arizona, Penalties

No relevant statutes were found.

Arizona, Required Alternatives or Preconditions

Arizona Rev. Stat. § 33-807.01 previously required that for residential property with a first deed of trust recorded on or after January 1, 2003, through December 31, 2008, before a trustee could give notice of a trustee's sale, the lender must have attempted to contact the borrower in writing "to explore options to avoid foreclosure" at least 30 days before recording the notice. However, that provision was repealed as of January 1, 2014.

Arkansas

Arkansas, Penalties

No relevant statutes were found.

Arkansas, Required Alternatives or Preconditions

A beneficiary or mortgagee must mail to the borrower, at least 10 days before initiating a foreclosure, a letter that contains the following:

- a copy of the note and endorsements;
- the note holder's name and the note's physical location;
- specified information regarding loan modification or forbearance assistance; and
- if the default results from failure to make payment, a payment history showing the default date.

The information regarding loan modification or forbearance assistance must include the "applicable telephone number and Internet address, regarding the availability to the grantor, mortgagor, or obligor" of each loan modification or forbearance assistance program offered:

- solely by the beneficiary or the mortgagee; or

- by a government agency, if the beneficiary or mortgagee participates in the agency's program.

A beneficiary or mortgagee may not sell trust property unless the beneficiary or mortgagee has certified that each borrower who "applied for loan modification or forbearance assistance has been notified" that he or she does not meet the criteria for loan modification or forbearance assistance under an offered program. The notice must be mailed by certified and first-class mail to the borrower at least 10 business days before the sale.

The beneficiary or mortgagee may not delegate these requirements to its attorney or trustee.

Sections amended 2011.

Ark. Code §§ 18-50-103, -104 (LexisNexis 2016)

California

California, Penalties

Violation of Foreclosure Prevention Provisions

If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a violation of numerous foreclosure prevention laws, including Cal. Civ. Code §§ 2923.6, 2923.7, 2924.9, 2924.10, and 2924.11, among others.

After a trustee's deed upon sale has been recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent is liable to a borrower for actual economic damages resulting from a material violation of many foreclosure prevention laws, including sections 2923.6, 2923.7, 2924.9, 2924.10, or 2924.11 (among others), if the violation was not corrected and remedied before the trustee's deed upon sale was recorded. If the court finds that a "material violation was intentional or reckless, or resulted from willful misconduct by a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent," the court may award the borrower the greater of:

- treble actual damages; or

- $50,000 in statutory damages.

A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent is not be liable for any violation that it (or a third party working on its behalf) has corrected and remedied before recording a trustee's deed upon sale.

The above rights, remedies, and procedures are in addition to any other rights, remedies, or procedures available under other laws.

A court may also award a prevailing borrower reasonable attorney's fees and costs. A borrower is deemed to have "prevailed" if the borrower obtained injunctive relief or was awarded damages.

This provision is effective until January 1, 2018.

Also effective until January 1, 2018, a licensed title company or underwritten title company, except when acting as a trustee, is exempt from liability for a violation of §§ 2923.5, 2923.55, 2923.6, 2924.11, 2924.18, or 2924.19, if it records a notice of default or notice of sale at a trustee's or a beneficiary's request and in good faith and in the normal course of business.

Section 2924.25 enacted 2013; § 2924.12 amended 2014.

Cal. Civ. Code §§ 2924.12, .25 (2015)

California, Required Alternatives or Preconditions

Pre-default Workout of Delinquencies (§ 2923.5)

Cal. Civ. Code § 2923.5 requires mortgagees and homeowners to try to work out delinquencies before the mortgagee begins foreclosure. Section 2923.5 applies to mortgages or deeds of trust recorded between January 1, 2003, and December 31, 2007, that are secured by owner-occupied residential property containing up to four dwelling units.

Before sending a notice of default, a mortgage servicer must contact the homeowner in person or by telephone to "assess the borrower's financial situation and explore options" for avoiding foreclosure. The mortgage servicer must tell the homeowner that he or she may request a subsequent meeting, which must occur within 14 days, and must give the borrower HUD's toll-free number for finding a housing counselor.

The homeowner may designate, in writing, a HUD-certified housing counselor, an attorney, or other advisor to discuss with the mortgage servicer the homeowner's options for avoiding foreclosure. Any loan modification or workout plan is subject to the borrower's approval.

The notice of default cannot be recorded until 30 days after the mortgage servicer makes contact with the homeowner, and it must include a declaration that the mortgage servicer contacted the borrower or acted with due diligence to contact the borrower, or that no contact was required because the individual did not meet the code's definition of "borrower." Effective January 1, 2013, the mortgage servicer must also comply with Cal. Civ. Code § 2924.18(1)(a) (if the borrower has provided a complete application) before a notice of default is recorded. "Due diligence" means:

- the mortgage servicer sent the homeowner a letter by first-class mail, and the letter included HUD's toll-free number for finding a certified housing counselor;

- the mortgage servicer tried to contact the homeowner by telephone at least three times, using the primary telephone number on file, at different hours and on different days;

- the homeowner did not respond within two weeks after the telephone calls were made, and the mortgage servicer sent a second letter by certified mail, return receipt requested;

- the mortgage servicer provided the homeowner with information that would allow the homeowner to contact the mortgage servicer during business hours and reach a live person; and

- the mortgage servicer has a prominent link on its website's homepage that would direct a borrower to information about foreclosure-avoidance options, a list of financial documents the homeowner should gather to help determine what options might be feasible, the toll-free number for contacting the mortgage servicer, and the toll-free number for HUD's referral line.

(Note that before January 1, 2013, the above references to "mortgage servicer" refer more generally to a mortgagee or its representative.)

Section 2923.5 does not apply if the homeowner has surrendered the property or files for bankruptcy protection, and the bankruptcy court has not lifted the bankruptcy stay. It also does not apply if the homeowner "has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or [deed of trust] beneficiaries." Additional restrictions apply.

Section 2923.5 is effective until January 1, 2018.

First-lien Loan Modification or Workout Plans (§ 2923.6)

The Legislature has explicitly found that a mortgage servicer acts in the best interests of all parties to the loan pool or investors in a pooling and servicing agreement if "it agrees to or implements a loan modification or workout plan" for which both:

- the loan "is in payment default, or payment default is reasonably foreseeable"; and

- "anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis."

If a borrower submits an application for an offered first lien loan modification, the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default or notice of sale, or conduct a trustee's sale, while the modification application is pending. A mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default or a notice of sale or conduct a trustee's sale until:

- the mortgage servicer "makes a written determination that the borrower is not eligible for a first lien loan modification" and any appeal period has expired;

- the borrower does not accept a loan modification offer within 14 days; or

- the borrower accepts a loan modification, but defaults on or breaches his or her obligations under the loan modification.

If the borrower's loan modification application is denied, the borrower has at least 30 days from the denial date to appeal the denial. The mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default, record a notice of sale, or conduct a trustee's sale until the later of:

- thirty-one days after the borrower is notified in writing of the denial;

- if the borrower appeals the denial, "the later of 15 days after the denial of the appeal or 14 days after a first lien loan modification is offered after appeal but declined by the borrower"; or

- if a first lien loan modification is offered and accepted after appeal, the date on which the borrower fails to submit the first payment in a timely manner or otherwise breaches the offer's terms.

Following a denial of a modification application, the mortgage servicer must send a written notice to the borrower identifying the reasons for denial. The notice must include additional information required by statute.

A mortgage servicer is not obligated to evaluate applications from borrowers who have already been evaluated for a first lien loan modification before January 1, 2013, or who have been evaluated or afforded a "fair opportunity to be evaluated" pursuant to § 2923.6, unless there has been a material change in the borrower's financial circumstances.

This requirement, which applies only to mortgages or deeds of trust described in § 2924.15, is effective until January 1, 2018.

Single Point of Contact (§ 2923.7)

Upon receipt of a borrower's foreclosure prevention alternative request, a mortgage servicer must establish a single point of contact and provide the borrower with a direct means of communication. The single point of contact is responsible for:

- "communicating the process by which a borrower may apply for an available foreclosure prevention alternative and the deadline for any required submissions";
- coordinating receipt of all documents;
- notifying the borrower of any missing documents;
- having access to current information and personnel sufficient to inform the borrower of the alternative's current status;

- ensuring that a borrower is considered for all foreclosure prevention alternatives the mortgage servicer offers; and

- having access to individuals that can stop foreclosure proceedings when necessary.

This requirement applies only to mortgages or deeds of trust described in § 2924.15. It does not apply to certain depository institutions or specified licensed personnel.

Other Foreclosure Prevention Alternatives (§ 2924.9)

Unless a borrower has previously exhausted the first lien loan modification process offered by his or her mortgage servicer (as described above in § 2923.6), within five business days after recording a notice of default, a mortgage servicer that offers foreclosure prevention alternatives must send a written notice to the borrower that includes a statement:

- that the borrower may be evaluated for a foreclosure prevention alternative(s);

- detailing whether a borrower must submit an application in order to be considered for a foreclosure prevention alternative; and

- describing the means and process by which a borrower may obtain a foreclosure prevention alternative application.

This requirement does not apply to the entities set forth § 2924.18(b) and applies only to mortgages or deeds of trust described in § 2924.15. The requirement is effective until January 1, 2018. Those entities must follow a similar procedure set forth in § 2924.18.

Post-modification Application Procedures (§§ 2924.10, .11)

When a borrower submits a complete first lien modification application, the mortgage servicer must provide written acknowledgment of its receipt within five business days. The acknowledgment must include information specified by statute.

If a foreclosure prevention alternative is approved *before* a notice of default is recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default if:

- the borrower complies with the terms of a written trial or permanent loan modification, forbearance, or repayment plan; or

- all parties have approved a foreclosure prevention alternative, and "proof of funds or financing has been provided to the servicer."

If a foreclosure prevention alternative is approved *after* a notice of default is recorded, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale or conduct a trustee's sale if:

- the borrower complies with the terms of a "written trial or permanent loan modification, forbearance, or repayment plan"; or

- all parties have approved a foreclosure prevention alternative, and "proof of funds or financing has been provided to the servicer."

The mortgage servicer may not:

- charge any application, processing, or other fee for a loan modification or other foreclosure prevention alternative; or

- collect late fees for "periods during which a complete first lien loan modification application is under consideration or a denial is being appealed, the borrower is making timely

modification payments, or a foreclosure prevention alternative is being evaluated or exercised."

These provisions do not apply to the entities described in § 2924.18(b) and apply only to mortgages or deeds of trust described in § 2924.15. The requirements are effective until January 1, 2018.

Applicability of Above Provisions (§ 2924.15)

Cal. Civ. Code §§ 2923.5, 2923.55, 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 generally apply only to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units.

Provisions Applicable to Depository Institutions and Certain Licensees (§ 2924.18)

If a borrower submits an application for a first lien loan modification, a mortgage servicer, trustee, mortgagee, beneficiary, or authorized agent may not record a notice of default, notice of sale, or conduct a trustee's sale while the application is pending.

If a mortgagee has approved a foreclosure prevention *before* recording a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of default if:

- the borrower is complying with the terms of a "written trial or permanent loan modification, forbearance, or repayment plan"; or

- all parties have approved, in writing, a foreclosure prevention alternative and "proof of funds or financing has been provided to the servicer."

If a mortgagee approves a foreclosure prevention alternative *after* recording a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent may not record a notice of sale or conduct a trustee's sale if:

- the borrower is complying with the terms of a "written trial or permanent loan modification, forbearance, or repayment plan"; or

- all parties have approved, in writing, a foreclosure prevention alternative, and "proof of funds or financing has been provided to the servicer."

This requirement applies only to a chartered depository institution or specified licensees and only to those mortgages or deeds of trust described in § 2924.15. It remains in effect until January 1, 2018.

Sections 2923.5 and 2923.6 amended 2012; §§ 2923.7, 2924.9, 2924.10, 2924.15 and 2924.18 enacted 2012.

Cal. Civ. Code §§ 2923.5, .6, .7; 2924.9, .10, .15, .18 (2015)

Colorado

Colorado, Penalties

The Colorado statutes that previously provided that if a holder did not post a deferment notice on time, the eligible borrower was entitled to an additional 20 days after the date the notice was actually posted in which to contact a foreclosure counselor, was repealed effective June 30, 2015.

Previously applicable sections 38-38-806, 38-38-807, and 38-38-808 repealed 2015.

Colorado, Required Alternatives or Preconditions

Deferment of a Qualifying Eligible Buyer's Foreclosure (Repealed as of June 30, 2015)

Previously, an eligible borrower could seek a foreclosure sale deferment. The foreclosure deferment could last up to 90 days, during which a scheduled sale of property subject to a notice of election and demand to sell was continued, while the mortgage holder and borrower attempted to renegotiate the debt. This chapter was repealed, as scheduled, effective June 30, 2015.

Foreclosure Hotline (§ 38-38-102.5)

Colorado requires the "holder of an evidence of debt constituting a residential mortgage loan," or the holder's servicer or person acting on the holder's behalf to give a debtor in default notice containing:

- the telephone number for the state's foreclosure hotline;
- the direct telephone number for the holder's loss-mitigation representative or department; and
- effective January 1, 2015, a statement that "under section 6-1-1107, C.R.S., it is illegal for any person acting as a foreclosure consultant to charge an up-front fee or deposit to the borrower for services related to the foreclosure."

The notice must be provided at least 30 days after the event of default and at least 30 days before the holder begins foreclosure proceedings by filing notice of election and demand. The notice must be sent to the debtor at the address shown in the holder's records. Only one kind of default triggers the statute: a debtor's failure to make one or more required payments. If a default in payment has already occurred, no additional notice of the foreclosure hotline need be provided for 12 months and the holder may foreclose.

Single Point of Contact (§ 38-38-103.1)

Effective January 1, 2015, Colo. Rev. Stat. § 38-38-103.1 provides that no later than the 45th day that a borrower is delinquent, a servicer must establish a single point of contact for communications with the borrower. The servicer must also provide the borrower, in writing, with direct means of communicating with his or her single point of contact. The single point of contact must, among other things, provide the borrower with accurate information about:

- available loss mitigation options;

- actions the borrower must take to be evaluated for loss mitigation options, including actions required to submit a completed loss mitigation application and, if applicable, actions to appeal a servicer's denial of a loss mitigation application;

- the status of any loss mitigation application;

- the circumstances under which the servicer may refer a loan to foreclosure; and

- applicable loss mitigation deadlines.

A servicer is exempt from these requirements if it services 5,000 or fewer mortgage loans "for all of which the servicer, or an affiliate of the servicer, is the creditor or assignee." Also, a servicer who complies with, or is exempt from, 12 C.F.R. 1024.40 is deemed to be in compliance with § 38-38-103.1.

Dual Tracking (§ 38-38-103.2)

Effective January 1, 2015, a servicer must:

- notify a borrower in writing when it receives the borrower's complete loss mitigation application; and

- exercise "reasonable diligence" in obtaining documents and information to complete a loss mitigation application.

Dual tracking is prohibited as of January 1, 2015. Generally, if a borrower has received confirmation that he or she submitted a complete loss mitigation application or has been offered and accepted a loss mitigation option and is acting in compliance with its provisions, but a notice of election and demand has been filed or an action is being taken against the borrower, then the borrower may act to stop the foreclosure sale. The borrower may do so by presenting the officer with the borrower's written notification indicating either the servicer's receipt of a complete loss mitigation application

dated at least 37 days before the sale date or the borrower's acceptance of a loss mitigation option. That notice starts a procedure to determine the next action, as set forth in detail in § 38-38-103.2.

Section 38-38-102.5 amended 2014; §§ 38-38-103.1 and 38-38-103.2 enacted 2014; previously applicable sections 38-38-801 through 38-38-808 repealed effective 2015.

Colo. Rev. Stat. §§ 38-38-102.5(2), (3), -103.1, -103.2 (LexisNexis 2015)

Connecticut

Connecticut, Penalties

Unemployed or Underemployed Homeowner's Stay (§ 49-31e)

If an unemployed or underemployed homeowner in a foreclosure action was not given notice of the availability of the protections set forth in §§ 49-31d to 49-31i, and if the homeowner was eligible to apply for protection from foreclosure at that time, the court may issue an order staying the foreclosure action for 15 days. During that time the homeowner may apply to the court for protection from foreclosure by submitting the required application.

Mediation (§ 49-31l)

If any time on or after July 1, 2008, but before July 1, 2019, the court determines that the notice requirement of § 49-31*l*(b)(1) has not been met, the court may issue an order that "no judgment may enter for fifteen days." During that period, the mortgagor may submit a foreclosure mediation request form to the court.

Section 49-31e amended 1997; 49-31*l* amended 2015.

Conn. Gen. Stat. §§ 49-31e, 49-31*l* (2015 and Supp. 2016)

Connecticut, Required Alternatives or Preconditions

Overview

Connecticut has three distinct statutory protections for homeowners facing foreclosure:

(1) the court-operated mediation program;

(2) the emergency mortgage assistance program; and

(3) court restructuring of mortgage debt for unemployed or underemployed homeowners.

The mortgagee has notice obligations in each situation.

Foreclosure Mediation Program (§§ 49-31k through -31v)

Connecticut has established a mediation program for certain mortgage foreclosure actions involving a one- to four-family property occupied by the owner/borrower as his or her primary residence. The program is operated by the Chief Court Administrator and is available in each judicial district. The mediation must address all issues of foreclosure, including mortgage reinstatement, mortgage debt restructuring, foreclosure hearings and sale dates scheduling.

Before July 1, 2019, in any action for foreclosure with a return date between July 1, 2009, and June 30, 2019, the mortgagee must give the homeowner notice of a mandatory mediation. This requirement also applies to real property owned by a religious organization with a return date during the period beginning October 1, 2011, and ending June 30, 2016. Before July 1, 2019, no judgment of strict foreclosure or judgment ordering a foreclosure sale may be entered to foreclose a mortgage on residential real property until the earlier of the date:

- the mortgagee has given the required notice to the mortgagor, the time for submitting a foreclosure mediation request form has expired, and no foreclosure mediation request form has been submitted;

- if such notice has not been given, the time for submitting a foreclosure mediation request form has expired, and no request form has been submitted; or

- the mediation period has expired or otherwise terminated.

The mortgagee must give this mediation notice by delivering (1) a notice of foreclosure mediation form, (2) a copy of a "mediation certificate form," and (3) a blank appearance form. For an action for the foreclosure of a mortgage on residential real property with a return date on or after October 1, 2011, to September 30, 2013, the mortgagee must also provide a mediation information form and a notice containing contact information for authority-approved consumer credit counseling agencies. The mediation information form must elicit current financial information and other nonfinancial information from the mortgagor as the Chief Court Administrator deems to further the mediation program's objectives. The Chief Court Administrator must develop a "premediation review protocol" that provides that the mediator must request that any submitted documents that are "incomplete, contain errors or are likely to be found unacceptable by the mortgagee" be completed or corrected and resubmitted for review.

For an action to foreclose a mortgage on residential real property with a return date on or after October 1, 2013, the mediation information form must:

- instruct the mortgagor as to the mediation program's objectives;

- explain the preliminary process of meeting with the mediator;

- instruct the mortgagor to begin gathering financial documentation; and

- include a notice containing contact information for authority-approved consumer counseling agencies.

The Chief Court Administrator prescribes format and content of the mediation information form.

The notice of foreclosure mediation form must instruct the homeowner to file the mediation certificate form and appearance form with the court no later than 15 days after the return date for the foreclosure action and provide other specified instructions. The mediation certificate form

requires the homeowner to provide sufficient information for the court to determine whether the defendant is, in fact, the mortgagor. The homeowner also must certify that he or she has sent a copy of the certificate form to the mortgagee/plaintiff.

Effective July 1, 2015, for actions with a return date on or after October 1, 2015, "in order to ensure that all necessary consents to the disclosure of nonpublic personal financial information have been provided to the mortgagee, such that a spouse may be considered a permitted successor-in-interest," the court must confirm that the foreclosure mediation certificate:

- if submitted by the spouse or former spouse, provides consent to the mortgagee's full disclosure of the spouse's or former spouse's nonpublic personal financial information to any other person who is obligated as a borrower on the note (to the extent the mortgagee has such information); and

- if submitted by any other mortgagor, provides consent to the full disclosure by the mortgagee of such person's nonpublic personal financial information to A spouse or former spouse (to the extent the mortgagee has such information).

When the court receives the forms from the homeowner, including the certification that the homeowner has sent a copy of the mediation certification form to the mortgagee/plaintiff, the court must assign the case to mediation and issue notice to all appearing parties no earlier than "the date five business days after the return date or by the date three business days after the date on which the court receives the mortgagor's appearance and foreclosure mediation certificate forms, whichever is later." If the appearance form and mediation certificate form are not received within 15 days after the foreclosure action's return date, no mediation may be scheduled.

Upon receipt of the assignment notice, but no later than 35 days after the return date, the mortgagee must deliver to the mediator the information required by statute. After the mediator receives that information, the court must assign a mediator and schedule a meeting with the mediator and the mortgagor on or before the 49th day following the return date, if possible. At that meeting, the mediator reviews the forms, documentation, and information he or she received, in order to discuss the options available to the mortgagor. As soon as practicable, but no later than the 84th day following the return date (or extended deadline), the mediator must facilitate and confirm the mortgagor's submission of the forms and documentation to the mortgagee's counsel via electronic means and file a report with the court, among other things. As of July 1, 2015, the mediator may file for an extension of the premeditation period, which a court may grant for good cause. If the mediator determines that the mortgagee should participate in mediation, the court must promptly issue notice to all parties and schedule a mediation session to

be held no later than five weeks following the submission of the relevant forms and documentation. If the mediator determines that no sessions between the mortgagee and mortgagor should be scheduled, the court must promptly issue notice to all parties and mediation must be terminated. Any mortgagor wishing to contest a determination must petition the court and show good cause for inclusion back into the mediation program.

The court may refer a foreclosure action to the mediation program at any time for good cause, as long as the homeowner has filed an appearance in the action.

In an action for the foreclosure of a mortgage on residential real property with a return date from July 1, 2009, through June 30, 2019 (or a religious organization's property with a return date from October 1, 2011, through June 30, 2019), the mediation period begins when the court sends the notice of the mediation date to the parties appearing in the foreclosure action. The mediation period generally must conclude "not later than the conclusion of the third mediation session between the mortgagor and mortgagee or seven months after the return date, whichever is earlier . . . ." The court may, however, extend or shorten the mediation period if good cause is shown, subject to other statutory requirements.

Generally, both the mortgagee and the homeowner must appear in person at the session and have the ability to mediate. However, in some circumstances, a party may appear through an attorney, but the attorney must have the ability to mediate, the mortgagor must attend the first session in person, and the party must be available during the session by telephone to participate by speakerphone.

During the first meeting, the mediator must notify the homeowner that (1) the mediation does not suspend the homeowner's obligation to respond to the foreclosure action; and (2) the foreclosure action may end in a judgment of strict foreclosure or foreclosure by sale, causing the homeowner to lose the property.

If the mediator reports to the court that further mediation will not benefit the parties, the mediation period automatically terminates. If the mediator decides after the first or second session that further mediation may benefit the parties, the mediation period continues. If issues remain unresolved after the mediation concludes, the mediator may refer the homeowner to appropriate community-based services, but the referral will not delay the foreclosure.

Mediators may refer a homeowner who is the owner-occupant of one- to four-family residential real property to community-based resources and to mortgage assistance programs at any time, but the referral will not prevent the mortgagee from obtaining a judgment.

A homeowner does not waive any rights in the foreclosure action by mediating foreclosure issues. A mortgagee cannot be required to modify the mortgage or the terms of payment.

Before July 1, 2019:

- for up to eight months from the return date, no mortgagee or mortgagor may make a motion, request, or demand of the other, except as it relates to the mediation program and the mediation sessions (except that (i) the mortgagor seeking to contest the court's jurisdiction may file a motion to dismiss and the mortgagee may object to such motion, and (ii) if the mortgagor elects to make any other motion, request, or demand, the eight-month limit no longer applies to either party); and

- no judgment of strict foreclosure or judgment ordering a foreclosure sale may be entered and instituted to foreclose a mortgage on residential real property or real property owned by a religious organization unless: (i) the mediation period has expired or has otherwise terminated and, if fewer than eight months has elapsed from the return date at the time of termination, 15 days have elapsed since the termination and the court has heard and denied any pending motion or request to extend the mediation period, or (ii) the mediation program is not otherwise required or available. (These provisions do not affect any motion made or any default or judgment entered on or before June 30, 2011.)

For foreclosure actions with a return date on or after July 1, 2011, through June 30, 2019, the mortgagee may, following the applicable eight-month or 15-day period described above, simultaneously file:

- a motion for default; and

- a motion for judgment of strict foreclosure or a motion for judgment of foreclosure by sale.

The mediation program will be funded through June 30, 2019.

A mortgagee must include, with any notice of intent to accelerate, a notice of community-based resources. The mortgagee must send this notice to all parties involved in a foreclosure mediation.

For additional detailed provisions relating to Connecticut's mediation procedures, see Conn. Gen. Stat. §§ 49-31k to -31v.

Emergency Mortgage Assistance (§§ 8-265cc through -265kk)

Connecticut also provides emergency mortgage assistance and a stay of foreclosure proceedings and to certain homeowners who have suffered financial hardship due to events beyond their control, but who expect to be able to resume making regular payments within 60 months. Participation in the program will delay foreclosure. The homeowner may exercise his or her rights under the foreclosure mediation program concurrently with his or her participation in the emergency mortgage assistance program. The mortgagee also must agree to the homeowner's participation in the program.

No judgment of strict foreclosure or judgment ordering a foreclosure sale may be entered in a foreclosure of an eligible mortgage unless:

- the mortgagee has given the mortgagor notice in accordance with § 8-265ee and the time for response has expired; and

- a determination has been made on the mortgagor's application for emergency mortgage assistance payments or the applicable time periods set forth in sections 8-265cc to 8-265kk, inclusive, have expired, whichever is earlier.

The program is available for "eligible mortgages"—those that (1) secure a one-to-four family, owner-occupied residence that is the homeowner's principal residence, and (2) have delinquent payments, including delinquent payments for taxes, insurance, and other certain amounts, and the mortgagee has indicated its intention to foreclosure. The homeowner must be a resident of Connecticut and must be "suffering financial hardship which renders [him or her] unable to correct

the delinquency within a reasonable time and make full mortgage payments" There also must be a reasonable prospect that the homeowner will be able to resume full payments on the original *or modified or refinanced* mortgage within 60 months. The full list of requirements for an "eligible mortgage" may be found in Conn. Gen. Stat. § 8-265ff(e).

Before commencing foreclosure on an eligible mortgage, the mortgagee must give the homeowner notice of delinquency by registered or certified mail and must state in the notice that the homeowner has 60 days in which to (1) meet with the mortgagee or a consumer credit counseling agency to attempt to resolve the delinquency by restructuring the loan, and (2) contact the Connecticut Housing Finance Authority to obtain information about, and apply for, emergency mortgage assistance payments if the parties are unable to resolve the delinquency or default.

The foreclosure may proceed if (1) the homeowner does not meet with the mortgagee or comply with the time limitations, (2) the application for assistance is not timely filed, (3) the application for assistance is not approved within 30 days. The mortgagee must file a notice with the court stating that the notice provisions have been complied with and describe how the homeowner became ineligible for emergency assistance.

If the parties reach an agreement to resolve the delinquency or default, but the homeowner's financial hardship, due to circumstances beyond his or her control, prevents the homeowner from fulfilling the obligations of the agreement, the homeowner may apply for emergency mortgage assistance payments. The homeowner will be obligated to repay the state authority.

For more details related to the Emergency Mortgage Assistance Program, *see* Conn. Gen. Stat. §§ 8-265cc to -265kk.

<u>Stay of Proceedings and Court Restructuring of Mortgage Debt (§§ 49-31d through -31i)</u>

Certain unemployed or underemployed homeowners may apply for protection from foreclosure proceedings and ask the court to restructure the debt. If the home is jointly owned, however, the homeowner's annual income is aggregated to determine whether they are underemployed or unemployed. The aggregated income must be less than $50,000 and less than 75 percent of their average aggregated income for the previous two years.

Before commencing the foreclosure action, the lender must give a homeowner notice that he or she may apply for protection from the foreclosure action and perhaps qualify for a stay of the proceedings. The homeowner must apply for the protection within 25 days of the return day. The application consists of the application form and a financial affidavit. The homeowner must show that (1) the mortgage encumbers residential real property which has been the homeowner's principal residence for at least two years, (2) the homeowner has not been a defendant in a foreclosure action during the previous seven years, and (3) the homeowner has not received emergency assistance from the Emergency Mortgage Assistance Program.

In deciding whether the homeowner is eligible for protection from foreclosure, the court must consider the following factors: (1) the likelihood that the homeowner will be able to make timely payments at the end of the restructuring period, (2) whether the lender or a junior lienor will be substantially prejudiced by restructuring the debt, and (3) any other relevant facts.

If the court restructures the debt, the foreclosure action will be stayed during the restructuring period. The restructuring period may last up to six months. Restructuring for an underemployed person may include elimination of arrearages; restructuring for an unemployed person must include elimination of arrearages. The court also may order the homeowner to make monthly payments to the lender of up to 25 percent of his or her monthly net income. These payments are intended to allow the homeowner to demonstrate a good-faith effort to reduce the mortgage debt. If no further proceedings in the foreclosure action occur within three months after the end of the restructuring period, the foreclosure action will be dismissed. The mortgagee does not lose its lien priority position.

No judgment of foreclosure may be entered until the court is satisfied from the pleadings and affidavits on file that the homeowner was given notice of the availability of the protection from foreclosure. If notice is not provided the court may issue an order staying the foreclosure for 15 days, during which time the homeowner may apply for protection and file the financial affidavit.

For statutes relating to the Stay of Foreclosure Proceedings, see Conn. Gen. Stat. §§ 49-31d to -31i.

Foreclosure by Market Sale (§ 49-24f)

Effective January 1, 2015, a mortgagor who consents to a foreclosure by market sale is generally not eligible for the state's foreclosure mediation program. However, if a court denies a mortgagee's motion for a foreclosure judgment by market sale or if circumstances develop that make it

"reasonably likely that a sale will not be consummated in accordance with the judgment of foreclosure by market sale," then, subject to the provisions of §§ 49-31k to 49-31o, an eligible mortgagor may petition to be included in the foreclosure mediation program if the mortgagor "did not substantially contribute to the events leading to such denial or circumstances." In order to grant the petition, the court must:

- consider any testimony or affidavits the parties submitted; and

- find that the petition is "not motivated primarily by a desire to delay the entry of a judgment of a foreclosure" and that it is "highly probable the parties will reach an agreement through mediation."

The mortgagee also has the right to request the entry of a foreclosure judgment in accordance with other provisions of law, including those governing strict foreclosure.

Sections 49-31g and 49-31h amended 1983; § 49-31d amended 1984; § 49-31i amended 1985; § 49-31e amended 1997; § 49-31f amended 2007; §§ 8-265cc and 49-31o amended 2009; §§ 8-265dd, 8-265ee, 8-265ff, and 8-265gg amended 2012; § 49-31r amended 2013; § 49-24f enacted and amended 2014; §§ 49-31k, 49-31*l*, 49-31n and 49-31v amended 2015.

Conn. Gen. Stat. §§ 8-265cc, -265dd, -265ee, -265ff, -265gg; 49-24f, -31d, -31e, -31f, -31g, -31h, -31i, -31k, -31*l*, -31n, -31o, -31r, -31v (2015 and Supp. 2016)

Delaware

Delaware, Penalties

No judgment may be entered in a mortgage foreclosure action brought under § 5061 on an owner-occupied one- to four-family primary residential property, and no such property that is the subject of a foreclosure judgment that has not gone to sheriff's sale as of January 19, 2012, may be sold at a sheriff's sale, unless the plaintiff has filed a fully executed affidavit asserting that:

- the defendant has been provided with the opportunity to apply for relief under any loss mitigation program for which the defendant may be eligible; and

- the loan secured by the mortgage:
    - is not subject to a loss mitigation program;
    - is ineligible for any applicable loss mitigation program because of the defendant's failure to apply, to provide required information, or to complete the program's requirements; or
    - is determined to be otherwise ineligible for an applicable loss mitigation program.

If the affidavit is false with respect to the accuracy of certain required statements, the court must dismiss the action without prejudice, and the plaintiff may refile a complaint.

Section enacted 2011.

Del. Code tit. 10, § 5062A (2015)

Delaware, Required Alternatives or Preconditions

Loss Mitigation Affidavits (§ 5062A)

In a mortgage foreclosure action brought under § 5061 on an owner-occupied one- to four-family primary residential property, the defendant must have an opportunity to apply for relief under a federal loss mitigation program. This requirement does not apply if the mortgage is held by the property's seller who does not hold more than five mortgages.

A mortgage foreclosure plaintiff may establish that it provided a defendant with the opportunity to apply for mitigation relief if, "for example, the plaintiff provides the defendant with a list of the applicable loss mitigation programs in which the plaintiff participates and instructions for how to initiate an application for each such program, which list and instructions may be included in the notice of intent to foreclose required by § 5062B."

Required Notices (§ 5062B)

The notice of intent to foreclose must contain, among other things:

- a statement that "The Delaware Emergency Mortgage Assistance Program (DEMAP) may be able to help to save your home"; and

- a list of approved DEMAP housing counseling agencies and the contact information for each listed agency.

If the mortgagor may be eligible for assistance through any loss mitigation program offered by the mortgagee or under any federal loss mitigation program in which the plaintiff participates, the mortgagee must include:

- a list of the potentially applicable loss mitigation programs;

- instructions for how to complete an application for each program; and

- a telephone number to call to confirm receipt of an application.

Residential Mortgage Foreclosure Mediation Program (§ 5062C)

Effective January 19, 2012, Delaware established an "Automatic Residential Mortgage Foreclosure Mediation Program." The program applies to mortgage foreclosure actions under § 5061 on owner-occupied one- to four-family primary residential properties, unless the mortgage is held by the property's seller who does not hold more than five mortgages.

A notice of foreclosure mediation must:

- accompany the complaint filed in a mortgage foreclosure action subject to § 5062C;

- notify the mortgagor of the Automatic Residential Mortgage Foreclosure Mediation Program;

- accompany the posted and mailed Notice to Lienholders and Tenants;

- contain the heading and contents required by § 5062C(c)(2)(a) and (b);

- contain a list of HUD-approved housing counseling agencies, along with the contact information for each;

- be accompanied by a Certificate of Participation form; and

- if a date for mediation has already been scheduled, notify the defendant that the mediation conference is scheduled for that date and attach the mediation scheduling notice.

The Superior Court may require that the notice include other documents.

The Superior Court must schedule a mediation conference and issue a mediation scheduling notice to all necessary parties to the action. The mediation conference must be scheduled for a date that is not less than 45, nor more than 75, days from the date the notice of foreclosure mediation was served. The mediation scheduling notice must:

- inform the parties of the mediation's date, time, and place;

- contain the mediator's contact information; and

- state that all necessary parties, other than the plaintiff and the defendant, must file an appearance in order to be provided with additional mediation notices.

The mortgagor must meet with a HUD-approved housing counselor and file a certificate of participation no more than 30 days from the date the notice of foreclosure mediation was served.

Upon receipt of a certificate of participation from the borrower, the lender owes a mediation fee to the Superior Court, which must be paid within 30 days after the E-filing of a completed Certificate of Participation. At least 14 days before the mediation conference, the borrower must provide a completed financial proposal worksheet to the lender, the mediator, and any other entities the court requires. At least seven days before the mediation conference (or other date agreeable to the mediator), the lender must provide the borrower and his or her housing counselor a checklist of documents the lender requires the defendant to bring to the mediation conference. Each party must also make itself available at least three days before the mediation conference to discuss the document list.

The lender and the borrower must appear in person at the mediation conference and must have authority to agree to a proposed settlement, except that the lender's counsel may appear on behalf of the lender if (a) he or she has the authority to agree to a proposed settlement and (b) a representative of the lender who has decision making and settlement authority is available by telephone. The borrower may be accompanied by a housing counselor and may have legal representation.

At the mediation conference, the parties must address:

- loss mitigation programs offered by the lender for which the defendant could be eligible; and

- other potential resolutions that may allow the defendant to continue to own the property or otherwise avoid a foreclosure judgment or sheriff's sale.

The mediator will have no authority to bind the parties to a resolution unless the parties mutually agree, except that the mediator may recommend to the Superior Court that the foreclosure action be dismissed due to the plaintiff's failure to appear for two successive mediation conferences.

The parties to a foreclosure action may agree in a mediation conference to schedule an additional mediation conference.

At the conclusion of a mediation conference, the mediator and all parties present must sign a mediation record. The mediation record must allow the mediator to make recommendations and must state the current state of the mediation process.

No judgment may be entered in any action subject to § 5062C for which a mediation conference has been scheduled until the day after the date the mediation conference was scheduled.

None of the plaintiff's or defendant's rights in a foreclosure action are waived by participation in the Automatic Residential Mortgage Foreclosure Mediation Program.

Effective May 28, 2013, if a bankruptcy petition has been filed, mediation may not continue unless:

- the automatic stay has been lifted or modified with respect to the borrower's mortgage obligation; or

- a bankruptcy court orders or directs mediation to proceed.

Complaints and Answers (§ 5062D)

A complaint to foreclose a mortgage subject to chapter 49 must contain a statement as to whether the mortgage foreclosure action is subject to the Automatic Residential Mortgage Foreclosure Mediation Program. If the mortgage is not subject to the program, the complaint must state the reason.

In an action subject to the program, a complaint to foreclose the mortgage must include the following:

- if applicable, an affidavit stating that a notice of intent to foreclose was sent to the borrowers in accordance with § 5062B(a)(3) and the notice's date;

- a statement of the debt remaining due and payable supported by an affidavit; and

- the notice of foreclosure mediation, which must be attached to the front of the complaint served on the defendant.

An answer to a complaint in a mortgage foreclosure action subject to the Automatic Residential Mortgage Foreclosure Mediation Program is *not* deemed untimely if it is filed on or before the date of a scheduled mediation conference.

Section 5062A enacted 2011; §§ 5062B, 5062C, and 5062D amended 2013.

Del. Code tit. 10, §§ 5062A, 5062B, 5062C, 5062D (2015)

District of Columbia

District Of Columbia, Penalties

Mediation

The District's foreclosure mediation laws provide that a lender is subject to the following civil penalties, payable to the District:

- if the lender fails to attend the mediation, a $500 penalty;

- if the lender fails to bring to the mediation each required document, a $500 penalty; or

- if the lender fails to participate in the mediation in good faith, a $500 penalty.

A foreclosure sale secured by a residential mortgage is void if the lender files a notice of intention to foreclose without a final recorded mediation certificate. A borrower has the same rights to assert claims for a defective notice of default on a residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage. The relevant statutes should not be construed to limit a borrower's right to assert a claim for fraud or monetary damages against a lender.

If the parties enter a settlement agreement and the lender breaches the agreement's terms, the lender must pay a penalty of $1000 and must perform the agreement's terms.

The above penalties are enforceable by action in the District of Columbia Superior Court.

Section 42-815.02 amended 2013.

D.C. Code § 42-815.02 (2016)

District Of Columbia, Required Alternatives or Preconditions

The District of Columbia provides homeowners the right to engage in mediation before foreclosure. After a lender has given a borrower a notice of default of a residential mortgage, the lender must engage in mediation if the borrower so elects.

Before foreclosing a residential mortgage or deed of trust, a lender must include with the notice of default the following:

- contact information that the borrower may use to reach an agent or representative of the lender with authority to explain the mediation process;
- a statement recommending that the borrower seek housing counseling services;
- contact information for at least one local housing counseling agency approved by H.U.D.;

- a description of all loss mitigation programs available from the lender and applicable to the subject residential mortgage, and a description of their eligibility requirements;

- an application form for the available loss mitigation programs;

- instructions for completing and mailing the loss mitigation application;

- an envelope addressed to the lender; and

- a mediation election form.

No later than seven days after the date the lender mails the form, the Mediation Administrator must mail to the borrower the following, among other things:

- a statement that the borrower is subject to foreclosure and must take immediate action to avoid foreclosure;

- a statement that the borrower is eligible to participate in foreclosure mediation;

- contact information for the Mediation Administrator and a statement instructing the borrower to contact the Mediation Administrator to obtain additional information;

- a statement recommending that the borrower seek housing counseling services;

- contact information for at least one H.U.D.-approved local housing counseling agency;

- a statement recommending that the borrower review the mediation election form and the loss mitigation application the lender provided;

- a request for the borrower immediately to contact the Mediation Administrator and the lender if the borrower has not received a loss mitigation application and mediation election form from the lender;

- a request for the borrower to return the mediation election form to the Mediation Administrator and the lender no later than 30 days from the date the lender mailed the form; and

- a request for the borrower to return the loss mitigation application to the lender no later than 30 days after the date the lender mailed the form.

No later than 20 days after the form's mailing date, the Mediation Administrator must mail to the borrower:

- the information specified above; and

- a statement that the mailing is a second notice and that the borrower must take immediate action to avoid foreclosure.

To participate in mediation the borrower must return within 30 days (after the mailing) the mediation election form and the required fee to the Mediation Administrator, and the loss mitigation application to the lender. The borrower forfeits the right to mediation if he or she does not return the mediation election form and the fee to the Mediation Administrator, and the loss mitigation application to the lender, within that 30-day period. *See* D.C. Mun. Regs. tit. 26-C, § 2708 (2012) for additional details regarding the election to participate in mediation. The Mediation Administrator may, for cause, waive the requirements described in this paragraph.

The Mediation Administrator must schedule a mediation session to begin no later than 90 days after the date the lender mailed the notice of default on a residential mortgage. If the borrower elects to waive mediation by not paying the required fee or by not returning the mediation election form or the loss mitigation application within 30 days, the Mediation Administrator will issue a

mediation certificate to the lender within no fewer than 45 days, but no more than 60 days. The lender may not exercise a power of sale until the Mediation Administrator has issued a mediation certificate.

The mediation is conducted by an appointed mediator. The lender and the borrower (or a representative for either or both) must attend the mediation. The lender must bring to the mediation the results of its loss mitigation analysis, a copy of the mortgage, every mortgage assignment, evidence proving the lender has standing to foreclose, and any other information required by rule. If a representative attends the mediation, the representative must:

- have authority to address available loss mitigation programs, renegotiate the mortgage's terms, and negotiate any other options that may be available in lieu of foreclosure; or

- have access at all times during the mediation to a person with such authority.

If the borrower fails to attend a scheduled mediation session without good cause, no later than 10 days after the missed scheduled mediation session, the Mediation Administrator must issue a mediation certificate to the lender.

If the mediator determines that the parties are not able to agree to a loan modification or to any other foreclosure alternatives, the mediator must prepare and submit to the Mediation Administrator a recommendation that the matter be concluded. After reviewing and considering the mediator's report, the Mediation Administrator, within ten days, may:

- issue a mediation certificate to a lender that acted in good faith;

- issue a determination that the lender did not act in good faith; or

- refer the matter to another mediator.

The borrower may appeal within 30 days from the date of the preliminary mediation certificate, all foreclosure proceedings are stayed until the appeal is resolved.

If the parties enter a settlement agreement and the borrower breaches its terms, the lender may apply to the Mediation Administrator for a mediation certificate. Within 10 days after receipt of the application, the Mediation Administrator may issue a mediation certificate to the lender.

Mediation must be concluded within 180 days of the mailing of the initial form, unless extended for an additional 30 days by both parties' mutual consent.

Participation in mediation does not waive any other legal claims that the lender or borrower may have against each other.

Statutory section 42-815 amended 2011; § 42-815.02 amended 2013; regulation amended 2014.

D.C. Code §§ 42-815, -815.02 (2016); D.C. Mun. Regs. tit. 26-C, § 2708 (2015)

Florida

Florida, Penalties

No relevant statutes were found.

Florida, Required Alternatives or Preconditions

No relevant statutes were found.

Georgia

Georgia, Penalties

No relevant statutes were found.

Georgia, Required Alternatives or Preconditions

No relevant provisions were located.

Ga. Code Ann. § 44-14-162.2 requires a secured creditor to provide a debtor with a notice of the initiation of proceedings to exercise a power of sale in a mortgage no later than 30 days before the proposed foreclosure date. That written notice must include contact information for the individual or entity with "full authority to negotiate, amend, and modify

all terms of the mortgage with the debtor." However, the statute explicitly provides that this notice must *not* be "construed to require a secured creditor to negotiate, amend, or modify the terms of a mortgage instrument."

Section amended 2008.

Ga. Code Ann. § 44-14-162.2 (LexisNexis 2015)

Guam

Guam, Penalties

No relevant statutes were found.

Guam, Required Alternatives or Preconditions

No relevant statutes were found.

Hawaii

Hawaii, Penalties

Dispute Resolution in Nonjudicial Foreclosures

A foreclosing mortgagee who acts as follows has committed an "unfair or deceptive act or practice" under Haw. Rev. Stat. § 480-2:

- fails to provide a "notice of the availability of dispute resolution";
- participates in a dispute resolution without the authority to negotiate a loan modification or without access to an authorized person;
- fails to provide required information or documents required by § 667-80(c);
- completes a nonjudicial foreclosure while a stay is in effect;

- completes a nonjudicial foreclosure if a neutral's closing report indicates that the foreclosing mortgagee failed to comply with mortgage foreclosure dispute resolution program requirements; and

- fails to file a foreclosure notice as required by § 667-76(a).

If the neutral in a dispute resolution determines that any noncompliance with the program was not justified "as a result of circumstances within a party's control," the following sanctions may be imposed on the noncompliant party:

- sanctions against a mortgagee for unjustified noncompliance include a stay of the foreclosure pursuant to § 667-83 and a fine of up to $1500 payable to the owner-occupant; or

- sanctions against an owner-occupant for unjustified noncompliance include a removal of the foreclosure stay pursuant to § 667-83(b) and a fine of up to $1500 payable to the mortgagee.

The mortgage foreclosure dispute resolution program was required to be operative no later than October 1, 2011.

Residential Mortgage Loan Delinquencies and Loss Mitigation Efforts (§ 454M-6)

It is a violation of chapter 454M for a mortgage servicer to:

- fail to comply with the chapter's loss mitigation option requirements;

- if the mortgage servicer is participating in the Home Affordable Modification Program, fail to offer loan modifications in compliance with the program's guidelines or directives;

- fail to comply with the requirements of chapter 667;

- fail to ensure that the mortgage servicer's attorneys and agents comply with chapter 667; or

- refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, except that the mortgage servicer may adopt procedures to verify that the representative is authorized to act on the borrower's behalf.

Sections 667-60, 667-76, and 667-82 amended 2012; § 454M-6 amended 2015.

Haw. Rev. Stat. §§ 454M-6; 667-60, -76, -82 (2015); 2012 Haw. Sess. Laws ch. 182, § 49 (regarding effective dates)

Hawaii, Required Alternatives or Preconditions

Dispute Resolution in Nonjudicial Foreclosures (§§ 667-1, -71 to -83)

Hawaii's dispute resolution provisions apply to specified nonjudicial foreclosures conducted by power of sale of residential real property that is occupied by mortgagors who are owner-occupants. A "dispute resolution" is a "facilitated negotiation . . . between a mortgagor and mortgagee" for the purpose of reaching a mortgage loan modification agreement or another agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure is not avoidable. An "owner-occupant" is a person who, at the time that a notice of default and intention to foreclose is served under the power of sale, meets the following requirements:

- he or she owns an interest in the residential property that is encumbered by the mortgage being foreclosed; and

- he or she has used the residential property as his or her primary residence for a continuous period of not less than 200 days immediately preceding the date on which the notice is served.

Before a mortgagee conducts a public sale for an owner-occupied residential property, the foreclosing mortgagee, at the owner-occupant's election, must participate in a mortgage foreclosure dispute resolution program to attempt to negotiate an agreement that avoids foreclosure or mitigates damages if foreclosure is not avoidable.

The served foreclosure notice must include notice that the mortgagee is required, at the owner-occupant's election, to participate in the mortgage foreclosure dispute resolution program. The notice must be printed in not less than a 14-point font and include the provisions set forth Haw. Rev. Stat. § 667-75(b).

Within three days after a mortgagee serves a foreclosure notice on an owner-occupant, the mortgagee must file the foreclosure notice with the state's Department of Commerce and Consumer Affairs and pay a $250 filing fee. A mortgagee who elects to publish a public notice of public sale electronically must file the notice with the department and pay a $300 filing fee, which must be deposited into the mortgage foreclosure dispute resolution special fund.

Within 10 days after the mortgagee files a notice of default and intention to foreclose with the department, the department must mail a written notification by registered or certified mail to the mortgagor that a notice of default and intention to foreclose has been filed. The notification must inform the mortgagor of an owner-occupant's right to elect to participate in the foreclosure dispute resolution program and must include the provisions set forth in § 667-77.

An owner-occupant may elect to participate in the mortgage foreclosure dispute resolution program by returning the following to the department:

- a completed program election form;
- a certification under penalty of perjury that the mortgagor is an owner-occupant, accompanied with supporting documentation; and
- a $300 program fee.

The department must receive the completed form and fee no later than 30 days after the department mails the notification. If the completed form and fee are not received within that time period, the owner-occupant is deemed to have waived any right to participate in the mortgage foreclosure dispute resolution program. If the owner-occupant does not elect to participate in dispute resolution, the department must notify the mortgagee within 10 days, and the mortgagee may proceed with the nonjudicial foreclosure process.

The parties generally must be present in person at the dispute resolution session. However, a party may submit a written request at least 14 days before a scheduled session to participate through telephone, videoconference, or other "contemporaneous telecommunications medium," which request will be granted only for good cause and upon the agreement of the neutral and the other party. For additional provisions related to the dispute resolution proceedings, see §§ 667-82 through -86.

Within 10 days from the dispute resolution's conclusion, the neutral must file a closing report with the department. The report must:

- verify the parties' presence at the session;
- verify compliance with the statutory requirements;
- report whether the parties reached an agreement; and
- include the date of the dispute resolution's conclusion.

The written notification of a dispute resolution case opening generally operates as a stay of the foreclosure proceeding.

Hawaii's mortgage foreclosure dispute resolution program was required to be operative no later than October 1, 2011. The state's temporary moratorium on all new nonjudicial foreclosure actions ended on July 1, 2012.

Residential Mortgage Loan Delinquencies and Loss Mitigation Efforts (§ 454M-5.5)

As of June 1, 2015, a mortgage servicer must make reasonable and good faith efforts to engage in appropriate loss mitigation options, including loan modifications, to assist borrowers in avoiding foreclosure. A mortgage servicer must:

- provide "timely and appropriate responses to borrower inquiries and complaints regarding available loss mitigation options"; and

- ensure that borrowers are not required to submit multiple copies of required documents when being considered for a loss mitigation option.

If a borrower who is delinquent, in default, or in imminent risk of default, contacts a mortgage servicer with respect to a loan modification or other loss mitigation option, the mortgage servicer must:

- inform the borrower of facts concerning the loan, the nature and extent of the delinquency or default, the mortgage servicer's loss mitigation option protocols, and the loss mitigation options and services the mortgage servicer offers; and

- pursue loss mitigation options with the borrower, and, if the borrower replies, negotiate with the borrower to attempt a resolution or workout or to prevent the borrower's default.

Mortgage servicers must consider a loan modification as an alternative to foreclosure if:

- the borrower demonstrates that he or she has experienced a financial hardship and is either unable to maintain the current payment schedule or is unable to make up delinquent payments; and

- the "net present value of the income stream expected of the modified loan is greater than the net present value of the income stream that is expected to be recovered through the disposition of the property through a foreclosure sale."

Mortgage servicers that are participating in the Home Affordable Modification Program must offer loan modifications in compliance with the program's guidance and directives.

Unless a longer time is permitted under the Home Affordable Modification Program, within 10 business days of receiving a request from a borrower for one or more loss mitigation options, the mortgage servicer must transmit a written acknowledgment of the request to the borrower or its authorized representative. The acknowledgment must identify information needed from the borrower for the mortgage servicer to review the borrower's loss mitigation option request. The acknowledgment must also include an explanation of the loss mitigation option process, including specific provisions required by statute.

Generally, within 30 days of receiving the required documentation from the borrower and third parties, a mortgage servicer must complete its evaluation of the borrower's eligibility for a loan modification or any other loss mitigation option requested by the borrower and advise the borrower in writing of the mortgage servicer's determination.

If the mortgage servicer approves the borrower for a loan modification, the written notice must provide the borrower with clear and understandable written information explaining the material terms, costs, and risks of the loss mitigation option offered.

If the mortgage servicer determines that the borrower cannot be approved for a loan modification or other requested loss mitigation option, the written notice must state with specificity:

- the reasons for the determination;
- procedures, deadlines, and contact information for any reconsideration, dispute, or appeal of the determination; and
- any other loss mitigation option for which the borrower may be considered.

The written notice must also include specified statutory statements.

A mortgage servicer also must:

- make available to borrowers who are at least 60 days delinquent (or who the mortgage servicer has reason to believe are experiencing a financial hardship and are in imminent risk of default) a list of government approved not-for-profit housing counselors in the borrower's geographic area;

- maintain and make available to borrowers current contact information to communicate and negotiate with the mortgage servicer's designated loss mitigation option staff; and

- establish and maintain a process through which borrowers may bring disagreements to a supervisory level for a separate review of the borrower's eligibility or qualification for a loss mitigation option.

A mortgage servicer may not require a borrower to waive legal claims and defenses as a condition of a loan modification, forbearance, or repayment plan.

The requirements of Haw. Rev. Stat. § 454M-5.5 do *not* prevent a mortgage servicer from offering or accepting alternative loss mitigation options, a short sale, a deed-in-lieu of foreclosure, or forbearance, if the borrower:

- requests such an alternative;

- is not eligible for or does not qualify for a loan modification under the Home Affordable Modification Program; or

- rejects the mortgage servicer's loss mitigation option proposal.

Sections 667-1, 667-71, 667-74, 667-75, 667-76, 667-77, 667-78, 667-80, and 667-81 amended 2012; § 667-83 amended 2013; § 454M-5.5 enacted 2015.

Haw. Rev. Stat. §§ 454M-5.5; 667-1, -71, -74, -75, -76, -77, -78, -80, -81, -83 (2015); 2011 Haw. Sess. Laws ch. 48 § 45; 2012 Haw. Sess. Laws ch. 182, § 49 (regarding dispute resolution effective dates)

Idaho

Idaho, Penalties

If an attorney general believes that a person has failed to comply with the requirements of § 45-1506C (relating to a borrower's opportunity to request loan modification) and that "proceedings would be in the public interest," he or she may bring an action to enforce the provisions. All penalties, costs, and fees that the attorney general receives or recovers are remitted to the state's consumer protection account.

Section enacted 2011.

Idaho Code § 45-1506C (2015)

Idaho, Required Alternatives or Preconditions

In the case of a noncommercial loan that is made by a state or federally regulated beneficiary and secured by a deed of trust on a borrower's primary residential property, a notice of the borrower's opportunity to request loan modification must accompany the lender's notice of default. The notice must be printed in at least 14-point type and substantially conform to the form set forth in § 45-1506C(1). This notice must be accompanied by a form to request a loan modification. If the trust deed or any assignments are in Spanish, this notice must also be in Spanish.

If a grantor returns the form by the specified date, the beneficiary must evaluate the grantor's request. As soon as reasonably practicable, but not later than 45 days after receiving the form, the beneficiary must notify the grantor in writing whether it approves or denies the request or requires additional information. A trustee's sale for the property may not occur until after the beneficiary responds to the grantor.

Generally, if the grantor requests a meeting with the beneficiary, the beneficiary (or its agent) must meet with the grantor in person or speak to the grantor by telephone before the beneficiary

responds to the grantor's request to modify the loan. If the grantor requests a meeting, the beneficiary must schedule a meeting. However, a beneficiary complies with this requirement even if it does not speak to or meet with the grantor if, within seven business days after the beneficiary attempts to contact the grantor, the grantor does not schedule a meeting or fails to attend a scheduled meeting or telephone call.

At least 20 days before the sale date, the trustee must record an affidavit, substantially in the form set forth in § 45-1506C(5), stating that the beneficiary has complied with § 45-1506C.

Section enacted 2011.

Idaho Code § 45-1506C (2015)

Illinois

Illinois, Penalties

Making Home Affordable Program (§ 5/15-1508)

Upon the borrower's motion any time before confirmation of a foreclosure sale, the court must set aside a sale if the borrower proves that:

- the mortgagor applied for assistance under the federal Making Home Affordable Program; and

- the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale.

This provision was no longer operative on January 1, 2016, for all actions filed after December 31, 2015, in which the mortgagor did not apply for assistance under the Making Home Affordable Program on or before December 31, 2015.

Military Personnel Stay (§ 5/15-1501.6)

A violation of the state's military stay provisions constitutes a civil rights violation under the Illinois Human Rights Act.

Section 1508 amended 2013; 1501.6 enacted 2012.

735 Ill. Comp. Stat. 5/15-1501.6, -1508 (2015)

Illinois, Required Alternatives or Preconditions

Counseling (§§ 5/15-1502.5, -1504.5)

If a mortgage is more than 30 days delinquent, the mortgagee must send the homeowner a notice—unless the homeowner has filed a bankruptcy petition—suggesting that he or she seek "approved housing counseling." The term "approved housing counseling" is defined as "in-person counseling provided by a counselor employed by an approved counseling agency . . . or documented telephone counseling where a hardship would be imposed on one or more borrowers." The notice must be sent before the mortgagee begins foreclosure proceedings, and must state, in 14-point type:

> **GRACE PERIOD NOTICE**
>
> YOUR LOAN IS MORE THAN 30 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING. YOU HAVE A GRACE PERIOD OF 30 DAYS FROM THE DATE OF THIS NOTICE TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD, THE LAW PROHIBITS US FROM TAKING ANY LEGAL ACTION AGAINST YOU. YOU MAY BE ENTITLED TO AN ADDITIONAL 30 DAY GRACE PERIOD IF YOU OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING COUNSELING AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY BE OBTAINED FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION.

The notice also must provide (1) the Department's current consumer hotline, (2) the Department's website address, and (3) contact information for the mortgagee.

No legal action to foreclose may be commenced for 30 days after mailing the notice. Then, if an approved counseling agency sends written notice to the mortgagee that the homeowner is seeking

approved counseling services, no legal action may be taken for 30 days from the date of the counseling agency's notice. During that 30-day period, the homeowner or approved counselor, or both, may offer a proposed "sustainable workout plan," which the mortgagee can accept or reject. If the mortgagee accepts the plan, no legal action may be commenced as long as the homeowner complies with the plan.

A "sustainable workout plan" is one that "the mortgagor and approved counseling agency believe shall enable the mortgagor to stay current on his or her mortgage payments for the foreseeable future when taking into account the mortgagor['s] income and existing and foreseeable debts." The plan "may include, but is not limited to (1) a temporary suspension of payments, (2) a lengthened loan term, (3) a lowered or frozen interest rate, (4) a principal write down, (5) a repayment plan to pay the existing loan in full, (6) deferred payments, or (7) refinancing into a new affordable loan."

The grace period and work-out procedure, set forth in 735 ILCS 5/15–1502.5, may be resorted to only once per mortgage. If the homeowner no longer uses the property as his or her principal residence, the grace period and work-out procedure will no longer apply. The provisions requiring the grace period and work-out procedure are effective until July 1, 2016.

If a foreclosure action is, in fact, filed, a different homeowner notice must be attached to the summons. The notice must be in 12-point type, in both English and Spanish, and must state, among other things:

> **6. WORKOUT OPTIONS**: The mortgage company does not want to foreclose on your home if there is any way to avoid it. Call your mortgage company [insert name of the homeowner's current mortgage servicer in bold and 14 point type] or its attorneys to find out the alternatives to foreclosure.
>
> . . .
>
> **8. GET ADVICE**: This information is not exhaustive and does not replace the advice of a professional. You may have other options. Get professional advice from a lawyer or certified housing counselor about your rights and options to avoid foreclosure.

<u>Return from Combat Stay (§ 5/15-1501.5)</u>

If a mortgagor defendant in a foreclosure action was deployed to a combat or combat support posting while on active military duty and serving overseas during the prior 12 months, the court must stay the foreclosure proceedings for 90 days, upon the borrower's application to the court.

Military Personnel (§ 5/15-1501.6)

A borrower who is a service member who has entered military service for more than 29 consecutive days (or any member of the borrower's family who resides with the service member at the mortgaged premises) may file for relief if the mortgagor entered into the mortgage agreement before he or she received orders for military service.

If the mortgagor's ability to pay the agreed mortgage payments or to defend foreclosure proceedings is "materially affected by the mortgagor's military service," the court must:

- stay the proceedings for "a period of 90 days after the mortgagor returns from military service," unless the court determines that justice and equity require a longer or shorter stay; or

- reduce the monthly payments for a period "lasting up to 90 days after the mortgagor returns from military service" and extend the mortgage's term.

If the court grants a stay, it may grant the mortgagee "such relief as equity may require." The above relief continues to be available up to 90 days after the service member completes his or her military service.

Short Sales (§ 5/15-1401.1)

In a residential real estate foreclosure, the mortgagee must respond to the mortgagor within 90 days after receipt of a written offer and request, if:

- the mortgagor presents a bona fide written offer from a third party to purchase the subject property;

- the written offer is for an amount that "constitutes a short sale"; and

- the mortgagor requests the mortgagee in writing to approve the sale on the offer's terms.

The mortgagee's failure to accept an offer does not impair the mortgagee's rights or affect the foreclosure proceeding's status. The 90-day response period does not operate as a stay.

In this context, "short sale" means the "sale of real estate that is subject to a mortgage for an amount that is less than the amount owed to the mortgagee on the outstanding mortgage note."

Foreclosure Prevention Programs (§ 3805/7.30)

The Illinois Housing Development Authority must administer a Foreclosure Prevention Program, using specified funds to make grants to:

- approved counseling agencies for housing counseling; and

- approved community-based organizations for foreclosure prevention outreach programs.

Subject to appropriation and the annual receipt of funds, the Authority makes grants from the Foreclosure Prevention Program Fund as follows:

- 25 percent to approved counseling agencies that provide services in Illinois outside of the City of Chicago, based on the number of foreclosures filed in a counseling agency's service area, the agency's capacity to provide foreclosure counseling services, and any other factors the Authority deems appropriate;

- 25 percent to the City of Chicago to make grants to approved counseling agencies located within the city for housing counseling or to support foreclosure prevention counseling programs administered by the city;

- 25 percent to approved community-based organizations located outside of the City of Chicago for foreclosure prevention outreach programs; and

- 25 percent to approved community-based organizations located within the City of Chicago for foreclosure prevention outreach programs, with priority given to programs that provide "door-to-door outreach."

Subject to appropriation and the annual receipt of funds, the Authority also makes grants from the Foreclosure Prevention Program Graduated Fund as follows:

- 30 percent for approved housing counseling in Cook County outside of the City of Chicago;

- 25 percent for approved housing counseling in the City of Chicago;

- 30 percent for approved housing counseling in DuPage, Kane, Lake, McHenry, and Will Counties; and

- 15 percent for approved housing counseling in other Illinois counties provided that grants to provide housing counseling to borrowers in these counties must be based, "to the extent practicable, (i) proportionately on the amount of fees paid to the respective clerks of the courts within these counties and (ii) on any other factors that the Authority deems appropriate."

Section 1504.5 enacted 2008; § 1502.5 amended 2013; § 1501.5 amended 2011; §§ 1401.1 and 1501.6 enacted 2012; § 3805/7.30 amended 2013.

20 Ill. Comp. Stat. 3805/7.30; 735 Ill. Comp. Stat. 5/15-1401.1, -1501.5, -1501.6, -1502.5, -1504.5 (2015)

Indiana

Indiana, Penalties

No specifically relevant statutes were found. However, Indiana's foreclosure prevention agreement statutes explicitly provide that a creditor may not collect from a debtor any civil penalty a court imposes on the creditor in connection with a violation of a court order issued in a foreclosure case.

Section amended 2011.

Ind. Code § 32-30-10.5-10(b)(2) (2015)

Indiana, Required Alternatives or Preconditions

Indiana law distinguishes between mortgage-foreclosure actions filed after June 30, 2009, and those filed before July 1, 2009. If a foreclosure action is filed before July 1, 2009, and the court has not yet entered judgment, the court must serve notice on the parties that they must meet for a settlement conference, as described below for foreclosure actions filed after June 30, 2009.

For foreclosure actions filed after June 30, 2009, a creditor must first send a notice of default to the debtor, at least 30 days before filing the foreclosure action, using a form prescribed by the Indiana Housing and Community Development Agency. The notice must state that the debtor is in default and should obtain assistance from a mortgage foreclosure counselor. The notice also must provide contact information for the Indiana Foreclosure Prevention Network. The notice must be sent to the address of the property subject to foreclosure and the debtor’s last known address if it is different than the subject property.

Generally, a creditor that files an action to foreclose a mortgage must include a notice that informs the debtor of the debtor's right to participate in a settlement conference as follows:

- with the complaint served on the debtor, in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011; and

- on the first page of the summons, in the case of a foreclosure action filed after June 30, 2011.

The notice must inform the debtor that he or she may schedule a settlement conference by notifying the court, no later than 30 days after the complaint is served, of the debtor's intent to participate in a settlement conference.

If a creditor files an action to foreclose a mortgage, the creditor must include with the complaint filed with the court the specified information set forth in § 32-30-10.5-8(d)(1). The creditor must also send a copy of the complaint to the subject property's insurance company.

In the case of a foreclosure action filed after June 30, 2011, the court must send the debtor a notice that informs the debtor of his or her right to participate in a settlement conference. The court's notice must:

- inform the debtor that he or she may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference; and

- specify a date by which the debtor must request a settlement conference, which date must be 30 days after the date the creditor served the complaint.

The required notices from the creditor need not be sent if:

- the debtor does not use the subject property as his or her primary residence;

- the loan already has been the subject of a foreclosure prevention agreement or the debtor has defaulted on the terms of that prior foreclosure prevention agreement; or

- bankruptcy law prohibits the mortgagee from participating in a settlement conference with respect to the loan.

Generally, if the debtor has scheduled a settlement conference, the court will stay the granting of any dispositive motion until the court receives notice that:

- the debtor and the creditor have agreed to enter into a foreclosure prevention agreement, and the creditor has elected to dismiss the foreclosure action for as long as the debtor complies with the agreement's terms; or

- the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.

For mortgage foreclosure actions filed after June 30, 2011, while the action is pending and if the debtor continues to occupy the dwelling, the court may issue a provisional order that requires the debtor to continue to make monthly payments. The payment amount:

- is determined by the court, which may base its determination on the debtor's ability to pay; and

- may not exceed the debtor's monthly obligation under the mortgage at the time the action was filed.

The court generally must issue notice of a settlement conference that:

- orders the parties to conduct the conference, with the purpose of negotiating a foreclosure prevention agreement, on or before a stated date between 25 and 60 days (in the case of a foreclosure action filed after June 30, 2009, but before July 1, 2011) or 40 to 60 days (in the case of a foreclosure action filed after June 30, 2011) after the notice date;

- encourages the debtor to contact a mortgage foreclosure counselor before the settlement conference and provide contact information for the Indiana Foreclosure Prevention Network;

- requires the debtor to bring to the conference other specified documents, as set forth in § 32-30-10.5-10(a), which, in the case of a foreclosure action filed after June 30, 2011, must include a debtor's loss mitigation package delivered to the creditor's attorney and the court; and

- requires the creditor to bring the mortgage's transaction history. In the case of a foreclosure action filed after June 30, 2011, the creditor must send the transaction history to the debtor by certified mail no later than 30 days before the settlement conference date.

The notice also must inform the parties that the conference will be conducted at the county courthouse or other place the court designates. If the date, time, or place needs to be changed, the parties must so stipulate. (The parties can stipulate to a telephone conference.) The court may order the creditor and debtor to meet again at any time before the judgment of foreclosure is entered.

A settlement conference is generally required before a court can enter a foreclosure judgment. A judgment may be entered without the conference, however, if, although the creditor sent the proper notice, the debtor did not contact the court within 30 days to schedule the conference, or the conference occurred but the parties could not agree on foreclosure prevention agreement terms. A foreclosure judgment also may be entered if the court finds that the settlement conference would have limited value because of prior loss-mitigation efforts. In a foreclosure action filed after June 30, 2011, the debtor must contact the court within the 30-day period to schedule a settlement conference.

The creditor's attorney must attend the conference and an authorized representative for the creditor must be available by telephone. The authorized representative must have authority to negotiate and agree to a foreclosure-prevention agreement with the debtor.

If the parties come to terms, the foreclosure-prevention agreement must be reduced to writing and signed by both parties. Each party must keep a copy of the signed agreement. Within seven business days after it is signed, the creditor must file a copy of the agreement with the court. The creditor may elect to have the action dismissed or stayed for as long as the debtor complies with the agreement’s terms. If the action is dismissed and the debtor defaults on the foreclosure-prevention agreement, the creditor may file a new foreclosure action without having to send the pre-foreclosure notices that otherwise would be required, as described above.

If the parties cannot agree on terms for a foreclosure-prevention agreement, the creditor must file notice of that fact within seven business days and the foreclosure action may proceed.

Forms for the two pre-foreclosure notices may be found at http://www.in.gov/myihcda/2358.htm. For information about the Indiana Foreclosure Prevention Network, see http://www.877gethope.org/.

Sections 32-30-10.5-10, and 32-30-10.5-11 amended 2011; §§ 32-30-10.5-8.5 and 32-30-10.5-8.6 enacted 2011; §§ 32-30-10.5-8 and 32-30-10.5-9 amended 2012.

Ind. Code §§ 32-30-10.5-8. -8.5, -8.6, -9, -10, -11 (2015)

Iowa

Iowa, Penalties

No penalty provision was located. Nevertheless, if the court determines that the mediation notice was not served on the borrower and the borrower wishes to work with a foreclosure counselor or mediate the issues, the court must delay the sheriff's sale up to 60 days. If the sale has already occurred, the court must order that recording of the sheriff's deed be delayed.

Note that S.F. 447 struck the repeal of subsection 654.4B(2), which was scheduled for July 1, 2013.

Section amended 2013.

Iowa Code § 654.4B (2015)

Iowa, Required Alternatives or Preconditions

Iowa does not require a lender to engage in mediation or discussions to modify a mortgage loan. It does, however, require the lender to inform a borrower in default on the mortgage for his or her principal residence that he or she can seek foreclosure counseling or mediation. Thus, before commencing a foreclosure action on a one- or two-family dwelling that is the borrower's principal residence, the creditor must inform the borrower that foreclosure counseling and mediation is available, using a form prescribed by the state attorney general. The notice must be sent to the borrower by first-class mail, along with the notice of acceleration or other initial communication from the creditor's attorney. It also must be served on the borrower with the original notice and petition for foreclosure. If the certificate of service indicates that the mediation notice was served, a rebuttable presumption arises that it was served as provided by the statute. (Note that S.F. 447 struck the repeal of subsection 654.4B(2), which was scheduled for July 1, 2013.)

Iowa Code § 654.15 permits mortgagors with agricultural loans to apply for a continuance of a foreclosure action if the inability to pay is due to adverse weather conditions or the infestation of pests. The same statute permits the governor, due to "a state of economic emergency," to declare a moratorium on foreclosure on certain kinds of real property including (1) farm property, (2) real estate used for small business, or (3) all real estate. If a moratorium is declared, a borrower may apply for a continuance of foreclosure proceedings for one year following the governor's declaration.

Sections amended 2013.

Iowa Code §§ 654.4B, .15 (2015)

Kansas

Kansas, Penalties

No relevant statutes were found.

Kansas, Required Alternatives or Preconditions

No relevant statutes were found.

Kentucky

Kentucky, Penalties

No relevant provisions were located.

Kentucky, Required Alternatives or Preconditions

No relevant provisions were located.

Louisiana

Louisiana, Penalties

No relevant statutes were found.

Louisiana, Required Alternatives or Preconditions

Louisiana Home Protection Act

Louisiana enacted a Louisiana Home Protection Act, effective August 1, 2013. Pursuant to this Act, the sheriff's notice of seizure must include, among other things, information concerning the availability of housing counseling services. The initial sheriff's sale date may not be earlier than 60 days after the date of the signed court order that required the writ to be issued. The required notice must include the following text:

> If the seized property is residential property, you may be afforded the opportunity to bring your account in good standing by entering into a loss mitigation agreement with your lender, or by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. You are strongly encouraged to seek legal counsel. If you cannot afford to pay an attorney, you may be able to qualify for free legal services. Foreclosure prevention counseling services through a housing counselor, including loss mitigation, are provided free of charge. To find a local housing counseling agency approved by the U.S. Department of Housing and Urban Development, you may contact the U.S. Department of Housing and Urban Development or the Louisiana Housing Corporation.

Mortgage Recovery Plan Resolution

In 2009, the Louisiana House passed a resolution urging the Louisiana Housing Finance Agency to develop a "mortgage recovery plan" to assist homeowners facing foreclosure. One suggested option was a "recovery mortgage," under which the homeowner would pay 25 percent of the principal over five years and then renegotiate the mortgage. Effective July 5, 2011, Louisiana laws provide that the Louisiana Housing Finance Corporation *may* establish a program for free mortgage foreclosure counseling and education to homeowners who have defaulted or are in danger of defaulting on their home mortgages. The corporation may enter into an agreement with any public, private, or nonprofit entity to carry out any part of the mortgage foreclosure counseling and education program. Also, the program may include a toll-free number that homeowners may call to receive mortgage foreclosure counseling and education.

Section 40:600.111 enacted 2011; § 13:3852 amended 2013.

La. Rev. Stat. §§ 13:3852; 40:600.111 (2015)

Maine

Maine, Penalties

If the court concludes that either party to the mediation failed to make a good-faith effort to mediate, the court may impose "appropriate sanctions."

Section amended 2014.

Me. Rev. Stat. tit. 14, § 6321-A (2015)

Maine, Required Alternatives or Preconditions

Foreclosure Mediation Program

Maine has a foreclosure mediation program for owner-occupied residential property, operated by the Court Alternative Dispute Resolution Service. The program is mandatory for foreclosures commenced after June 15, 2009. For foreclosures commenced before that date, a court may, in its discretion, require the parties to mediate the foreclosure-related issues.

A mortgagee may not pursue foreclosure for at least 90 days after sending a notice of default to the debtor. The notice of default must state that the debtor has a right to cure the default and itemize (1) all past due amounts causing the default and the total amount due to cure the default, and (2) any other charges that must be paid in order to cure the default. The notice must also state that debtor may have options other than foreclosure and can discuss those options with the mortgagee, the mortgage servicer or a HUD-approved counselor, and that the debtor "is encouraged to explore available options" up until the end of the right-to-cure period. The notice must provide contact information for (1) persons authorized to work with the debtor, including the mortgagee, the servicer, and an agent of the mortgagee; and (2) all HUD-approved mortgage counseling agencies in Maine. Finally, the notice of default must state that "all parties are required to participate in a mandatory mediation . . . to explore options for avoiding foreclosure" and that the total amount due does not include any amounts that become due after the notice date.

Within three days after sending the notice of default, the mortgagee also must provide information to the Maine State Housing Authority, in an electronic format, including (1) the mortgage's name and address; (2) the date the notice of default was sent; (3) contact information for persons authorized to work with the mortgagor, including the mortgagee, the servicer and an agent of the mortgagee; (4) other information requested of the mortgagor by the Maine State Housing Authority.

Within seven days of receiving the electronic information from the mortgagee, the Maine State Housing Authority must send a letter to the mortgagor that summarizes the mortgage's rights and available resources, and provides information about the mandatory foreclosure mediation program.

Then, when the lender or servicer commences an action to foreclose on owner-occupied residential property, the lender or servicer must attach a form to the front of the foreclosure complaint which provides notice of the mandatory foreclosure mediation program. The form is prescribed by the Maine Supreme Judicial Court.

Mediation is conducted pursuant to rules adopted by the Supreme Judicial Court, and must address all issues relating to foreclosure, including reinstatement of the mortgage, or modification or restructuring of the loan. The mediation program must use "the calculations, assumptions and forms that are established by the [FDIC] and published in the [FDIC] Loan Modification Program Guide." Communications in the mediation are confidential and may not be used in subsequent foreclosure proceedings. Participating in the mediation will not result in a waiver of rights for either party.

Required participants for the mediation include (1) the mortgagee, with the authority to agree to a proposed settlement, loan modification, or other resolution; (2) the debtor; (3) attorneys for each party. The mortgagee may participate by telephone.

While the mediation is pending, the foreclosure action must be stayed. The foreclosure action can only recommence after the mediator certifies that the mediation program's requirements were satisfied. The required certification is to be provided in a written report to the court, and must include the mediator's certification that "the parties completed in full and in good faith the Net Present Value Worksheet in the [FDIC] Loan Modification Program Guide."

A debtor may waive the mediation requirement, with court approval, if (1) the debtor "desires foreclosure because of personal circumstances"; (2) an independent third-party counselor or attorney certifies that the debtor understands the consequences of waiving mediation; and (3) the waiver is in writing, and includes language prohibiting the homeowner "from signing away any claim related to the mortgage origination." If the debtor waives mediation, the lender must agree to waive its right to pursue any deficiency that may result when the property is sold.

A mediator must complete a report for each mediation. The mediator's report must indicate that the parties completed a Net Present Value Worksheet from the Federal Deposit Insurance Corporation Loan Modification Program Guide or another reasonable determination of net present value. If the mediation did not result in the action's settlement or dismissal, the report must include the outcomes of the Net Present Value Worksheet or other net present value determination. The report may include a statement if either party failed to negotiate in good faith and must include a statement of all agreements reached at mediation.

Expedited Final Hearings (§ 6321-B)

The court will schedule an expedited final hearing if a plaintiff in an action brought pursuant to § 6321 files a request for an expedited final hearing indicating:

- that mediation conducted pursuant to § 6321-A did not result in the settlement or dismissal of the action and that all of the defendants and parties in interest who have appeared in the action have consented to an expedited final hearing; or

- that the defendant has not filed an answer to the complaint as provided by the Maine Rules of Civil Procedure and § 6321-A and that all of the parties who have filed an answer in the action have consented to an expedited final hearing.

This request must be accompanied by a consent form that informs defendants that they may consult with an attorney or a housing counselor before consenting to an expedited hearing.

Section 18-B amended 2009; § 6321-A amended 2014; § 6111 amended 2015; § 6321-B enacted 2015.

Me. Rev. Stat. tit. 4, § 18-B; tit. 14, §§ 6111, 6321-A, 6321-B (2015)

Maryland

Maryland, Penalties

No relevant statutes were found.

Maryland, Required Alternatives or Preconditions

General Notice Requirements

Foreclosure service of process documents must be accompanied by a separate, clearly marked notice in the required form that states:

- the significance of the docket order or foreclosure complaint;

- the borrower's options, including housing counseling services and financial assistance resources; and

- if the mortgagor or grantor has participated in prefile mediation a statement that the mortgagor or grantor "is not entitled to postfile mediation except as otherwise provided in the prefile mediation agreement."

Loss Mitigation

An order to docket or a complaint to foreclose a mortgage or deed of trust on residential property generally must be accompanied by, among other things, the following:

- if the loss mitigation analysis has been completed, a *final* loss mitigation affidavit in the proper form; and

- if the loss mitigation analysis has not been completed, a *preliminary* loss mitigation affidavit in the proper form, among other things.

In this context, a "loss mitigation program" is an option in connection with a loan secured by owner-occupied residential property that avoids foreclosure through certain means, such as loan modification or a short sale, or that lessens a foreclosure's harmful impact. "Residential property" means real property improved by four or fewer single family dwelling units.

For purposes of a final loss mitigation affidavit that is filed with an order to docket or complaint to foreclose, a loss mitigation analysis is not complete if the reason for the denial or determination of ineligibility is the secured party's inability to:

- communicate with the borrower; or

- obtain all documentation and information necessary to conduct the loss mitigation analysis.

A final loss mitigation affidavit must be filed no earlier than 28 days after the order to docket or complaint to foreclose is served on the borrower.

Foreclosure Mediation (Postfile Mediation)

In a foreclosure action on owner-occupied residential property, the borrower may file with the court a completed request for postfile mediation no later than:

- if the final loss mitigation affidavit was delivered with service of the order to docket or complaint to foreclose, 25 days after that service; or

- if the final loss mitigation affidavit was mailed, 25 days after that mailing.

A request for postfile mediation must be accompanied by a $50 filing fee. The court may reduce or waive the filing fee if the borrower is eligible for a reduction or waiver under the Maryland Legal Services guidelines. The borrower must mail a copy of the request for postfile mediation to the secured party's foreclosure attorney.

The secured party may file a motion to strike the request for foreclosure mediation, but there is a presumption that a borrower is entitled to postfile mediation with respect to owner-occupied residential property unless:

- good cause is shown that postfile mediation is not appropriate; or

- the parties participated in prefile mediation and that agreement does not give the mortgagor or grantor the right to participate in postfile mediation.

Generally, within 60 days after the foreclosure-mediation request is transmitted, the Office of Administrative Hearings must conduct a foreclosure mediation. For good cause, the office extend the period by up to 30 days, or, if all parties agree, for a longer time.

At the foreclosure mediation:

- the borrower must be present;

- the borrower may be accompanied by a housing counselor and may have legal representation;

- the secured party (or its representative) must be present; and

- a secured party's representative must have the authority to settle or be able to readily contact a person with that authority.

The parties and the mediator must address loss mitigation programs that may be applicable to the loan. If the parties do not reach an agreement at the foreclosure mediation or if the 60-day mediation period expires without an extension, the foreclosure attorney may schedule the foreclosure sale. The borrower generally may file a motion to stay within 15 days after:

- the date the postfile mediation is held; or

- if no postfile mediation is held, the date the Office of Administrative Hearings files its report with the court.

The motion to stay must "allege specific reasons why loss mitigation should have been granted."

A foreclosure sale of residential property may not occur until:

- if the residential property is *not* owner-occupied residential property, at least 45 days after service of process is made;

- if the residential property is owner-occupied residential property and foreclosure mediation is not held, the later of 45 days after service of process that includes a final loss mitigation affidavit or 30 days after a final loss mitigation affidavit is mailed;

- if the residential property is owner-occupied residential property and foreclosure mediation is requested, at least 15 days after the date the postfile mediation is held; or

- if no postfile mediation is held, the date the Office of Administrative Hearings files its report with the court.

Prefile Mediation

For owner-occupied residential property, a secured party may offer prefile mediation to a borrower to whom the secured party has delivered a notice of intent to foreclose. If a secured party offers prefile mediation, a borrower may elect to participate in prefile mediation by notifying the secured party by submitting an application no more than 25 days after the date the secured party mailed the notice of intent to foreclose. As a precondition to prefile mediation, a borrower must participate in housing counseling services. If a borrower submits an application to participate in prefile mediation, the secured party must notify the Office of Administrative Hearings no more than five business days after the date the secured party receives the application. The Office of Administrative Hearings must schedule the prefile mediation for a date no more than 60 days after the date it receives the notice.

If the parties elect to participate in prefile mediation, the lender may not file an order to docket or complaint to foreclose until the prefile mediation is complete. If the prefile mediation results in an agreement, the parties must execute a prefile mediation agreement that must describe the agreement's terms and contain the provisions set forth in § 7-105.1(d)(13).

The order to docket or complaint to foreclose may exclude a request for postfile mediation if:

- the borrower has participated in prefile mediation and the parties' agreement does not give the borrower the right to participate in postfile mediation; or

- the property is not owner-occupied.

Section amended 2015.

Md. Code Real Prop. § 7-105.1 (2015)

Massachusetts

Massachusetts, Penalties

No specifically relevant provisions were located. However, a creditor violates chapter 244 if the creditor makes statements to a state or federal court related to foreclosure or compliance with the chapter that it knows or should know are false, including, among others, statements about offering loan modifications.

Section enacted 2012.

Mass. Gen. Laws ch. 244, § 35C (2015)

Massachusetts, Required Alternatives or Preconditions

Negotiation of Foreclosure Alternatives (§ 35A)

Overview

The statutory provision creating a 150-day cure period and shortening that period if the lender had engaged in a good faith effort to negotiate an alternative to foreclosure expired on January 1, 2016.

Definition

In this context, "residential property'' is Massachusetts real property containing a dwelling house with accommodations for four or fewer households and occupied, at least in part, by the mortgagor as his or her principal residence. It does not include investment property or residential property used as collateral for a commercial loan.

Cure period

A residential property mortgagor has a 90-day period during which he or she has the right to cure a default by full payment of all amounts that are due without accelerating the maturity of the mortgage's unpaid balance. This right to cure may be granted once during any five-year period.

Notice requirements

A mortgagee may not accelerate the maturity of the unpaid balance of a mortgage obligation or otherwise enforce a mortgage because of a default consisting of the mortgagor's failure to make any payment in § 35A(a) until at least 90 days after the date the mortgagee gives the mortgagor written notice. That notice must contain the information and terms required by § 35A(c).

Reasonable Steps and Good Faith Effort to Avoid Foreclosure (§ 35B)

Overview

Massachusetts law requires lenders of "certain mortgage loans" to take "reasonable steps" and make a "good faith effort" to avoid foreclosure, to give notice of the right to pursue a modified mortgage, and to record a compliance affidavit.

Definitions

In this context, "affordable monthly payment'' means the monthly mortgage payment that, taking into account the borrower's current circumstances, enables a borrower to make the payments.

"Certain mortgage loan'' means a loan to "a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on an owner-occupied residential property." The loan must also have one or more of several loan features set forth in § 35B, such as certain introductory interest rates, interest-only payments for any period of time, and a payment-option feature in which any option is less than principal and interest fully amortized over the life of the loan, among numerous others.

"Residential property'' is real property located in the commonwealth, on which there is a dwelling with accommodations for four or fewer separate households and that is occupied by the obligor. Residential property is limited to a person's principal residence and does not include investment property, residential property that is collateral for a commercial loan, or property subject to condemnation or receivership.

Requirements

A creditor may not publish a notice of a foreclosure sale on certain mortgage loans unless it has first taken reasonable steps and made a good faith effort to avoid foreclosure. A creditor is deemed to have taken reasonable steps and made a good faith effort to avoid foreclosure if the creditor has considered:

- the borrower's ability to make an affordable monthly payment;
- the "net present value of receiving payments under a modified mortgage loan as compared to the anticipated net recovery following foreclosure"; and
- the creditor's interests.

A creditor is presumed to have acted in good faith if, before publishing notice of a foreclosure sale, the creditor:

- determines the borrower's "current ability to make an affordable monthly payment";

- identifies a modified mortgage loan that achieves the borrower's affordable monthly payment, provided that the amortization period may not increase by more than 15 years and that no modified mortgage loan may have an amortization period that exceeds 45 years;

- conducts a qualified "compliant analysis comparing the net present value of the modified mortgage loan and the creditor's anticipated net recovery that would result from foreclosure"; and

- either (a) if the modified loan's net present value *exceeds* the anticipated net recovery at foreclosure, agrees to modify the loan in a manner that provides an affordable monthly payment; or (b) if the modified loan's net present value is *less than* the anticipated net recovery at foreclosure, or does not meet the borrower's affordable monthly payment, notifies the borrower that no modified mortgage loan will be offered. In the latter case, the creditor must provide a written summary of the creditor's net present value analysis and the borrower's current ability to make monthly payments.

Procedure

For certain mortgage loans, the creditor must send notice, concurrently with the notice required by § 35A(g), of the borrower's rights to pursue a modified mortgage loan. The creditor must also file that notice with the attorney general. The process for determining whether a creditor will offer a modified mortgage loan must take no longer than 150 days.

No more than 30 days following delivery of this notice, the borrower must notify the creditor of the borrower's intent:

- to pursue a modified mortgage loan, which must include a statement of the borrower's income and a complete list of total debts and obligations;

- to pursue an alternative to foreclosure, including a short sale or a deed-in-lieu of foreclosure;

- not to pursue a modified mortgage loan and pursue the right-to-cure period described in § 35A; or

- to waive the right-to-cure period and proceed to foreclosure.

A borrower who fails to respond to the creditor within 30 days of delivery of the notice is considered to have "forfeited the right to cure period" and is subject to a 90-day right-to-cure period. No more than 30 days following receipt of the borrower's notification that the borrower intends to pursue a modified mortgage loan, the creditor must provide the borrower with its written assessment. If the creditor offers a modified mortgage loan, the offer must include the creditor's representative's name and contact phone number.

A borrower who receives a modified mortgage loan offer from a creditor must respond in writing within 30 days. The borrower may:

- accept the loan-modification offer;

- make a reasonable counteroffer; or

- state that the borrower wishes to waive his or her rights provided in § 35B and proceed to foreclosure.

A borrower who fails to respond within 30 days is considered to have forfeited the 150-day right-to-cure period and is subject to a 90-day period. If the borrower proposed a counteroffer, the creditor must accept, reject, or propose a counteroffer within 30 days.

A creditor and a borrower may negotiate the terms of a modified mortgage loan by telephone or in person following the creditor's initial offer of a modified mortgage loan, but all offers must be in writing and signed by the offeror.

A creditor may offer or accept an alternative to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower requests such alternative or rejects or does not qualify for a modified mortgage loan offer.

Compliance certification

Before publishing a foreclosure-sale notice, the creditor must certify compliance with § 35B in an affidavit based on a review of the creditor's business records. The creditor must record the affidavit with the registry of deeds for the county or district in which the property is located.

Task force

Legislation approved on April 23, 2014, revived and continued a task force on the prevention of unlawful and unnecessary foreclosures and required the task force to submit findings and recommendations no later than July 21, 2014.

Section 35A amended 2010; § 35B enacted 2012; task force legislation enacted 2014.

Mass. Gen. Laws ch. 244, §§ 35A, 35B (2015); 2014 Mass. Acts ch. 85

Michigan

Michigan, Penalties

Mich. Comp. Laws §§ 600.3205a through 600.3205d, which previously addressed foreclosure notice requirements, loan modification programs and processes, and the development of a housing counselor list, have been repealed. (Note that sections 3205a through 3205d have been repealed twice, with two different repeal effective dates. 2012 Mich. Pub. Acts ch. 521 repealed the

sections as of June 30, 2013, and 2013 Mich. Pub. Acts ch. 105 repealed the same sections as of June 30, 2014.)

Sections 600.3205a and 600.3205c repealed 2012 and 2013; § 600.3205e repealed 2014.

See Mich. Comp. Laws §§ 600.3205a, .3205c, .3205e (2016)

Michigan, Required Alternatives or Preconditions

No currently applicable provisions were located.

Mich. Comp. Laws §§ 600.3205a through 600.3205d, which previously addressed foreclosure notice requirements, loan modification programs and processes, and the development of a housing counselor list, have been repealed. (Note that sections 3205a through 3205d have been repealed twice, with two different repeal effective dates. 2012 Mich. Pub. Acts ch. 521 repealed the sections as of June 30, 2013, and 2013 Mich. Pub. Acts ch. 105 repealed the same sections as of June 30, 2014.)

In Michigan, mortgages are typically foreclosed by advertisement. The first step in such a foreclosure is publication of a notice of the sale, pursuant to Mich. Stat. § 600.3208. For foreclosures for which the first notice under § 600.3208 was published after July 5, 2009, but before January 10, 2014, the creditor was required to first attempt to negotiate a workout with the debtor before beginning a foreclosure by advertisement. Michigan statutes previously provided that after January 9, 2014, a party to which § 3206 applied could not begin foreclosure proceedings on a mortgage of property claimed as a principal residence, unless the party had complied with § 3206, which required specific loss mitigation procedures. However, that section has also been repealed, effective June 19, 2014.

Section 600.3208 amended 1971; previously applicable §§ 600.3205a, 600.3205b, and 600.3205c repealed 2012 and 2013; § 600.3204 amended 2014; previously applicable §§ 600.3205, 600.3205e, and 600.3206 repealed 2014.

Mich. Stat. §§ 600.3204, .3205, .3205a, .3205b, .3205c, .3205e, .3206, .3208 (2016)

Minnesota

Minnesota, Penalties

A servicer may not conduct a foreclosure sale unless it has complied with the state's applicable loss mitigation, dual tracking, and related relief provisions. A mortgagor may enjoin or set aside a sale if a servicer does not comply with the requirements set forth in § 582.043. If the mortgagor prevails in an action to set aside or enjoin a sale or successfully defends a foreclosure by action based on a violation of § 582.043, he or she is entitled to reasonable attorney fees and costs. A lis pendens must be recorded before the mortgagor's applicable redemption period expires. Failure to record a lis pendens creates a "conclusive presumption" that the servicer has complied with § 582.043.

Section amended 2014.

Minn. Stat. § 582.043 (2015)

Minnesota, Required Alternatives or Preconditions

Farmer-Lender Mediation

Minnesota's Farmer-Lender Mediation Act requires pre-foreclosure mediation for certain agricultural property, including property being acquired on a contract for deed. (The Farmer-Lender Mediation Act does not apply to a debtor who owns and leases less than 60 acres if the debtor had less than $20,000 in gross sales of agricultural products during the preceding year.) The lender must send the borrower a mediation notice and, if the borrower requests mediation within 14 days of receiving the notice, the borrower and lender must complete mediation before foreclosure can proceed. The debtor may receive help from a financial analyst to prepare financial information. The Farmer-Lender Mediation Act, which also provides for voluntary mediation proceedings, is set forth in Minn. Stat. §§ 583.20–.32.

Minnesota's legislature had extended the expiration date for these mediation statutes to June 30, 2016. However, the legislature later extended the expiration date to June 30, 2017, "effective May 23, 2016, if the legislature does not meet in regular session in calendar year 2016 before May 23, 2016." If the legislature meets in regular session in calendar year 2016 before May 23, 2016, that extension is void.

Foreclosure Advice Notice

A lender must send a foreclosure advice notice when foreclosing a mortgage by advertisement or by action on property consisting of one- to four-family dwelling units, one of which the owner occupies as his or her principal residence. The foreclosure advice notice must:

- be in 14-point boldface type; and
- be printed on colored paper that is other than the color of the foreclosure notice and the notice of redemption rights.

The notice's title must be in 20-point boldface type, and the notice must be on its own page.

The foreclosure advice notice must be delivered with the required foreclosure notice and with each subsequent written communication regarding the foreclosure the foreclosing party mails to the borrower up to the foreclosure sale date. A foreclosing mortgagee will be deemed to have complied with this requirement if it sends the foreclosure advice notice at least once every 60 days up to the foreclosure sale date.

The notice of redemption rights must be substantially in the form set forth in § 580.041.

Foreclosure Prevention Counseling

Minn. Stat. § 580.021, which addresses foreclosure prevention counseling, applies to the foreclosure of mortgages by advertisement and the foreclosure of mortgages by action on property consisting of one- to four-family dwelling units, one of which the owner occupies as the owner's principal residence. Before the notice of pendency or the lis pendens for a foreclosure is recorded, the party foreclosing a mortgage must provide the mortgagor with information that:

- foreclosure prevention counseling services by an authorized counseling agency are available; and

- the party will transmit the homeowner's name, address, and telephone number to an approved foreclosure prevention agency.

The foreclosing party may provide the above notices concurrently with a written default notice.

An authorized foreclosure prevention agency that agrees to provide foreclosure prevention assistance services must give the mortgagee a prescribed form that serves as notice that the mortgagor is receiving foreclosure prevention counseling assistance. The mortgagee must return the form to the authorized foreclosure prevention agency within 15 days with the name and telephone number of the mortgagee's agent, who must be authorized to:

- discuss the mortgage's terms; and

- negotiate any resolution.

Loss Mitigation

Minnesota statutes require loss mitigation. In this context,

- a "loss mitigation option" means "a temporary or permanent loan modification, a forbearance agreement, a repayment agreement, a principal reduction, capitalizing arrears, or any other relief, intended to allow a mortgagor to retain ownership of the property;" and

- a "small servicer" means a servicer that is either a "small servicer," as defined in Federal Regulations, or "a servicer that has conducted 125 or fewer foreclosure sales during the preceding 12 months."

The statutory loss mitigation provisions apply only to first lien mortgages:

- that are subject to foreclosure under chapters 580 or 581;

- that are secured by owner-occupied residential real property with no more than four dwelling units; and

- where the subject mortgage does not secure a loan for business, commercial, or agricultural purposes.

The property must be the owner's principal residence. The loss mitigation provisions explicitly do not impose a duty on a servicer to "provide any mortgagor with any specific loan modification option." A servicer may not conduct a foreclosure sale unless it has complied with the applicable requirements. A small servicer is not subject to the loss mitigation requirements, except that a small servicer may not "refer a mortgage loan to an attorney for foreclosure, record the notice of pendency or lis pendens, or conduct a foreclosure sale if a mortgagor is performing pursuant to the terms of a loan modification or other loss mitigation agreement."

The state's loss mitigation provisions require a servicer:

- to notify a mortgagor in writing of available loss mitigation options that the servicer offers and that apply to the mortgagor's loan before referring the mortgage loan to an attorney for foreclosure;

- after receiving a request for a loan modification or other loss mitigation option, to exercise reasonable diligence in obtaining documents and information in order "to complete a loss mitigation application, facilitate the submission and review of loss mitigation applications, and give the mortgagor a reasonable amount of time to provide the required documents";

- upon the timely receipt of a loss mitigation application, to evaluate the mortgagor for all available loss mitigation options before referring a mortgage loan to an attorney for foreclosure;

- after review of the loss mitigation application, to "timely offer the mortgagor a loan modification if the mortgagor is eligible or, if not, timely offer the mortgagor any other loss mitigation option for which the mortgagor is eligible"; and

- to "comply with any applicable appeal period and procedures applicable to the specific loss mitigation option."

"Dual Tracking" Prohibited

If the servicer has received a loss mitigation application and the mortgage loan has not been referred to an attorney for foreclosure, a servicer may not refer the mortgage loan to an attorney for foreclosure while the application is pending, unless:

- the servicer determines that the mortgagor is not eligible for any loss mitigation option and so informs the mortgagor in writing, and the applicable appeal period has expired without an appeal (or the appeal has been denied);

- the mortgagor fails to accept the loss mitigation offer within the longer of the time frame specified in the offer or 14 days after the offer date; or

- the mortgagor declines the loss mitigation offer.

See Minn. Stat. § 582.043 for additional provisions that apply to loss mitigation and dual tracking at various stages of the foreclosure process.

Section 580.021 amended 2009; §§ 580.041, 583.24, 583.25, and 583.26 amended 2013; § 582.043 amended 2014; § 583.215 amended 2015.

Minn. Stat. §§ 580.021, .041; 582.043; 583.215, .24, .25, .26 (2015)

Mississippi

Mississippi, Penalties

No relevant statutes were found.

Mississippi, Required Alternatives or Preconditions

A mortgage lender in the course of a residential mortgage loan transaction must mail the borrower, at least 45 days before initiating a foreclosure, a notice including:

- an itemization of all past-due amounts that cause the subject loan to be in default and any other charges that must be paid to make the loan current;
- a statement that the borrower may have options available other than foreclosure and that he or she may discuss those options with the mortgage lender or a HUD-approved counselor;
- contact information for the mortgage lender or its agent who is authorized to work with the borrower to avoid foreclosure;
- contact information for one or more HUD-approved counseling agencies operating to assist Mississippi borrowers to avoid foreclosure; and
- contact information for the consumer complaint section of the Mississippi Department of Banking and Consumer Finance.

Section enacted 2012.

Miss. Code § 81-18-55 (LexisNexis 2015)

Missouri

Missouri, Penalties

No relevant statutes were found.

Missouri, Required Alternatives or Preconditions

No relevant statutes were found.

Montana

Montana, Penalties

No relevant statutes were found.

Montana, Required Alternatives or Preconditions

No relevant statutes were found.

Nebraska

Nebraska, Penalties

No relevant statutes were found.

Nebraska, Required Alternatives or Preconditions

Generally, the order of sale on a decree for the sale of mortgaged property must be stayed for nine months after the entry of the decree, if the defendant files a written request for a stay within 20 days after the entry of the decree. For a mortgage with an original maturity of more than 20 years after the foreclosure complaint's filing date and the mortgage covers a lot or lots in a regularly platted subdivision, or a parcel of residential property not exceeding three acres, the stay period is three months. If the original maturity is more than 10 years but not more than 20 years from and after the foreclosure complaint's filing date, the stay period is six months.

Section amended 2002.

Neb. Rev. Stat. § 25-1506 (2015)

Nevada

Nevada, Penalties

Mediation (§§ 107.080, .086)

If a trust beneficiary or a representative fails to attend a mediation, fails to participate in good faith, does not bring the required documentation, or does not have authority to negotiate (or have access to a person with that authority), the mediator must submit to the Mediation Administrator a

petition and recommendation for sanctions against the beneficiary. The court may impose sanctions, including requiring modification of the loan in a manner the court determines is proper.

If the grantor of the deed of trust is enrolled to participate in mediation but fails to attend, the Mediation Administrator must, within 30 days after the scheduled mediation, provide a certificate to the trustee stating that no mediation is required.

If the trustee does not comply with applicable mediation requirements set forth in Nev. Rev. Stat. § 107.087, a court must void the property's sale.

Recording Notice of Default (§ 107.510)

A mortgage servicer, mortgagee, trustee, or beneficiary of a deed of trust may not record a notice of default and election to sell or bring a civil action for foreclosure involving a failure to make a payment required by a residential mortgage loan until:

- the mortgage servicer, mortgagee, or beneficiary has satisfied the foreclosure prevention alternative requirements;

- 30 calendar days after initial contact with the borrower or 30 calendar days after satisfying the foreclosure prevention alternative requirements set forth in Nev. Rev. Stat. § 107.510(5); and

- the mortgage servicer, mortgagee, or beneficiary complies with § 107.520 and § 107.530, if the borrower submits an application for a foreclosure prevention alternative offered by, or through, the mortgage servicer, mortgagee, or beneficiary.

Injunctive Relief (§ 107.560)

If a trustee's deed upon sale has not been recorded, a borrower may bring an action for injunctive relief to enjoin a material violation of the state's foreclosure prevention alternative requirements. If

a sheriff has not recorded a certificate of the sale, a borrower may obtain an injunction to enjoin a material violation of the state's foreclosure prevention alternative requirements.

After a trustee's deed upon sale or a certificate of sale has been recorded, a borrower may bring a civil action to recover his or her actual economic damages resulting from a material violation of the foreclosure prevention alternative requirements, if the material violation was not corrected and remedied before the recording. If the court finds that the material violation was intentional or reckless, or resulted from willful misconduct, the court may award the borrower the greater of treble actual damages or statutory damages of $50,000.

A court may award a prevailing borrower costs and reasonable attorney's fees.

A mortgage servicer, mortgagee, or beneficiary of a deed of trust is not liable for violations that it has corrected and remedied before recording the trustee's deed upon sale or the certificate of sale.

Sections 107.510 and 106.560 enacted 2013; §§ 107.080 and 107.086 amended 2015.

Nev. Rev. Stat. §§ 107.080 (as amended by 2015 Nev. Stat. chs. 316 (S.B. 239) and 517 (S.B. 512)), .086 (as amended by 2015 Nev. Stat. chs. 266 (S.B. 306) and 517 (S.B. 512)), .510, .560 (2015)

Nevada, Required Alternatives or Preconditions

Mediation (§ 107.086)

Generally, before the trustee of a deed of trust can exercise its power to sell owner-occupied housing, the trustee must give the trust's grantor (the borrower) an opportunity to mediate the default and possibly renegotiate the loan's terms.

Except as otherwise provided, the exercise of the power of sale pursuant to § 107.080 with respect to any trust agreement that concerns owner-occupied housing and for which a notice of default and election to sell is mailed on or before December 1, 2016, is subject to the provisions of § 107.086. However, § 107.086 does not apply to the exercise of the power of sale if the notice of default and election to sell recorded pursuant to § 107.080(2) includes an affidavit and a

certification indicating that an election has been made to use the expedited procedure to exercise of the power of sale for abandoned residential property.

This mediation requirement does not apply if:

- the debtor or record title holder has already surrendered the property to the trustee, the lender, or an authorized agent of the lender, as proven by a letter confirming the surrender or delivery of the keys; or

- the debtor or record title holder has filed a bankruptcy petition, and the bankruptcy court has not closed or dismissed the case or lifted the automatic stay to allow the foreclosure to proceed.

The mediation requirement explicitly does not apply to time shares, vacant land, or (effective July 1, 2013, and expiring June 30, 2017), abandoned residential property. The owner must occupy the property as his or her primary residence.

Except as otherwise provided, when the trustee sends out a notice of default and election to sell pursuant to Nev. Rev. Stat. § 107.080, the trustee also must include:

- contact information for a person with authority to negotiate a modification of the loan on behalf of the trust beneficiary;

- contact information for at least one HUD-approved, local housing-counseling agency;

- a notice provided by the Mediation Administrator indicating that the grantor or person who holds the record title has the right to seek mediation; and

- a form for the owner to complete and return, on which the owner may elect to enter into mediation with the lender or waive mediation, along with an envelope, preaddressed to the Mediation Administrator.

The owner must return the form the earlier of within 30 days or December 31, 2016, by certified mail, return-receipt requested. If the owner elects mediation, the trustee will notify the lender and all other persons with an interest. The Mediation Administrator will assign the matter to a senior justice, judge, hearing master, or other person and schedule the matter for mediation.

Until mediation is completed, no further action under the power of sale may be taken.

The mediation must be conducted pursuant to rules adopted by the Nevada Supreme Court. Those rules must (1) designate an entity to serve as the Mediation Administrator; (2) ensure that mediations occur in an orderly and timely fashion; (3) require the parties to provide whatever documentation the mediator thinks is necessary; (4) establish procedures to ensure that the mediation process is not abused and that the parties act in good faith; and (5) establish a fee, not to exceed $400, for which each party is responsible for an equal share.

The lender and the borrower must both attend the mediation. The lender must bring the original, or certified copies of, the deed of trust, the mortgage note, and each assignment of the deed of trust or mortgage note. If the lender sends a representative, that person must have authority to negotiate a modification of the loan's terms on the lender's behalf or have access to a person with that authority at all times during the mediation.

If the mediator determines that the parties, though acting in good faith, cannot agree to a modification of the loan's terms, the mediator must prepare a recommendation that the mediation be terminated and submit the recommendation to the Mediation Administrator. The Mediation Administrator will provide a certificate to the trustee stating that mediation has been completed.

If the owner elects to waive mediation, or fails to return the form on time, the trustee must execute an affidavit attesting to that fact and serve a copy, along with a copy of the waiver or proof of service, on the Mediation Administrator. When the Mediation Administrator receives such an affidavit and waiver or proof of service, it must certify to the trustee that no mediation is required.

<u>Mortgagor-initiated Mediation (2015 Nev. Stat. ch. 517 (S.B. 512))</u>

Effective June 10, 2015, through June 30, 2017, a mortgagor under a mortgage secured by owner-occupied housing, or a grantor or the person who holds the title of record with respect to a deed of trust concerning owner-occupied housing, may initiate the mediation process if, on or before December 31, 2016:

- a local housing counseling agency approved by H.U.D certifies that the mortgagor, grantor, or person who holds the title of record has a documented financial hardship and is in imminent risk of default;

- the mortgagor, grantor, or other person files a form with the mediation administrator indicating an election to mediate; and

- the mortgagor, grantor, or other person pays his or her share of the mediation fee.

If the parties participate in mediation in good faith, the requirement to participate in mediation before a nonjudicial foreclosure sale of the owner-occupied housing is satisfied.

The mediation must be conducted in conformity with the requirements of § 107.086(5) and (6). A noncommercial lender must also comply with this requirement.

In this context, "financial hardship" means a "documented event that would prevent the long-term payment of any debt relating to a mortgage or deed of trust secured by owner-occupied housing," including death of the borrower or co-borrower, serious illness, divorce or separation, or job loss or a pay reduction. "Imminent risk of default" means the "inability of a grantor or the person who holds the title of record to make his or her mortgage payment within the next 90 days."

<u>Foreclosure-prevention Alternatives</u>

Overview

Nevada added extensive foreclosure-prevention alternative requirements during its 2013 session. These requirements apply only with respect to a trust agreement for which a notice of default is recorded on or after October 1, 2013, and to a judicial foreclosure action brought on or after October 1, 2013. Generally, the provisions require a mortgage servicer, mortgagee, or trust beneficiary to provide the borrower certain information concerning the borrower's account, the foreclosure prevention alternatives offered, and a statement of the facts supporting the mortgagee's or beneficiary's right to foreclose.

Definitions (§§ 107.420, .450)

In this context, a "foreclosure prevention alternative" is a "modification of a loan secured by the most senior residential mortgage loan on the property or any other loss mitigation option." The term includes a sale in lieu of foreclosure. A "residential mortgage loan" is a loan that is primarily for personal, family, or household use and that is secured by a mortgage or deed of trust on owner-occupied housing.

Application (§§ 107.460, .480)

The state's "foreclosure prevention alternative" requirements do not apply to a financial institution that, during its immediately preceding annual reporting period, has foreclosed on 100 or fewer real properties that are located in Nevada and that constitute owner-occupied housing. Both a trustee's exercise of a power of sale with respect to a deed of trust securing a residential mortgage loan and a civil foreclosure action involving the failure to make a payment required by a residential mortgage loan are subject to the foreclosure prevention alternative requirements.

Borrower's right to pursue more than one foreclosure alternatives (§ 107.470)

A mortgage servicer, mortgagee, or beneficiary of a deed of trust may not restrict a borrower from concurrently pursuing more than one foreclosure prevention alternative.

Required notice procedure (§ 107.500)

At least 30 days before recording a notice of default and election to sell or bringing a civil action for a foreclosure sale, and at least 30 days after the borrower's default, the mortgage servicer, mortgagee, or trust beneficiary must mail a notice containing statutory requirements regarding foreclosure alternatives. Unless a borrower has exhausted the foreclosure-prevention alternative process, the mortgage servicer, mortgagee, or trust beneficiary that offers one or more foreclosure prevention alternatives must send to the borrower a written statement within five days after the notice of default and election to sell or of the civil action to recover the debt. The notice must state:

- that the borrower may be evaluated for one or more foreclosure prevention alternatives;
- whether the borrower must submit a complete application; and
- the "means and process by which a borrower may obtain an application for a foreclosure prevention alternative."

Mortgage servicer required to contact borrower (§ 107.510)

A mortgage servicer must contact the borrower in person or by telephone to assess the borrower's financial situation and to explore options to avoid a foreclosure sale. During the initial contact, the mortgage servicer must advise the borrower that he or she has the right to request a subsequent meeting. If the borrower requests such a meeting, the mortgage servicer must schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and the discussion of the options to avoid a foreclosure sale may occur during the initial contact or at the subsequent meeting. The borrower must also be provided with the toll-free telephone number made available by HUD to find a certified housing counseling agency. The required meetings may occur by telephone. A mortgage servicer's loss mitigation personnel may participate by telephone during any required contact with a borrower.

A borrower may designate, with written consent, a HUD-certified housing counseling agency, an attorney, or another adviser to discuss the borrower's financial situation and foreclosure-avoidance options with the mortgage servicer. In certain specified situations, a mortgage servicer may record a notice of default and election to sell, even if it has not been able to contact the borrower.

Receipt of foreclosure prevention alternative application (§ 107.520)

No later than five business days after receiving an application for a foreclosure prevention alternative, a mortgage servicer, mortgagee, or trust beneficiary must send to the borrower written acknowledgment of its receipt of the document. The acknowledgment must include the information and statements required by statute.

Offer, acceptance, and rejection of foreclosure prevention alternative application (§ 107.530)

If a borrower submits an application for a foreclosure prevention alternative, then the mortgage servicer, mortgagee, trustee, or beneficiary may not commence a civil action for a foreclosure sale involving a failure to make a payment required by a residential mortgage loan, record a notice of default and election to sell or a notice of sale, or conduct a foreclosure sale until one of the following has occurred:

- the borrower fails to submit all the documents or information required to complete the application within 30 calendar days after the date of the initial acknowledgment of the application's receipt;

- the mortgage servicer, mortgagee, or beneficiary makes a written determination that the borrower is not eligible for a foreclosure prevention alternative, and any appeal period has expired;

- the borrower does not accept a written offer for a foreclosure prevention alternative within 14 calendar days after the date the borrower received the offer; or

- the borrower accepts a written offer for a foreclosure prevention alternative, but defaults or breaches his or her obligations under the alternative.

No later than 30 days after the borrower submits a complete application for a foreclosure prevention alternative, the mortgage servicer must submit to the borrower a written offer for a foreclosure prevention alternative or a written statement of denial of the application. The borrower must accept or reject the offer within 14 calendar days after he or she receives the offer. If a

borrower does not accept a written offer within 14 calendar days, he or she is deemed to have rejected the offer.

If a borrower accepts an offer for a foreclosure prevention alternative, the mortgage servicer must provide the borrower with a copy of the complete agreement evidencing the foreclosure prevention alternative. If the borrower's application is denied, the mortgage servicer must send the borrower a written statement of the reasons for the denial and information regarding when and how to appeal the decision.

Single point of contact required (§ 107.540)

If a borrower requests a foreclosure prevention alternative, the mortgage servicer must:

- promptly establish a single point of contact; and
- provide the borrower one or more direct means of communication with the single point of contact.

The single point of contact must remain assigned to the borrower's account until the mortgage servicer determines that all foreclosure prevention alternatives have been exhausted or the borrower's account becomes current.

Sections 107.470, 107.500, 107.510, 107.520, 107.530, and 107.540 enacted 2013; §§ 107.086, 107.420, 107.450, 107.460, and 107.480 amended 2015; new section enacted 2015.

Nev. Rev. Stat. §§ 107.086 (as amended by 2015 Nev. Stat. chs. 517 (S.B. 512), 266 (S.B. 306)) .420 (as amended by 2015 Nev. Stat. ch. 518 (S.B. 453)), .450 (as amended by 2015 Nev. Stat. ch. 517 (S.B. 512)), .460 (as amended by 2015 Nev. Stat. ch. 517 (S.B. 512)), .470, .480 (as amended by 2015 Nev. Stat. ch. 517 (S.B. 512)), .500, .510, .520, .530, .540 (2015); 2013 Nev. Stat. ch. 403 (S.B. 321), § 30 (regarding effective dates); 2015 Nev. Stat. ch. 517, § 1 (S.B. 512) (enacting mortgagor-initiated mediation provisions)

New Hampshire

New Hampshire, Penalties

No relevant statutes were found.

New Hampshire, Required Alternatives or Preconditions

No relevant statutes were found.

New Jersey

New Jersey, Penalties

Any person who willfully violates any provision of the Save New Jersey Homes Act of 2008 will be liable for a penalty of up to $10,000 for the first violation, and up to $20,000 for any subsequent violation. Immaterial errors in any required creditor notice will not trigger the penalty provisions. If a creditor violates any provision of the Act, a borrower or the state Attorney General may bring an action to require compliance using the summary proceeding mechanism provided in the Penalty Enforcement Law of 1999, N.J. Stat. § 2A:58-10 to -12.

Section enacted 2008.

N.J. Stat. § 46:10B-43 (2015)

New Jersey, Required Alternatives or Preconditions

The Save New Jersey Homes Act of 2008 (§§ 46:10B-36 to -48, -53 to -68)

The Save New Jersey Homes Act of 2008, N.J. Stat. §§ 46:10B-36 to -48, has detailed provisions relating to foreclosure of certain loans that were underwritten with a low introductory rate, with a rate increase built in. Generally, if the loan goes into default, the borrower may be able to suspend foreclosure for three years by continuing payments in accordance with the original terms of the loan. The loan also may have to be renegotiated and modified. Another statute, N.J. Stat. § 46:10B-50, gives borrowers with "high risk" mortgages a six-month forbearance period, upon the borrowers' request, and an opportunity for mediation before the mortgage can be foreclosed.

The Save New Jersey Homes Act of 2008 (the Act) protects "eligible foreclosed borrowers" with "introductory rate mortgages." An "eligible foreclosed borrower" is "a borrower who is obligated to repay a loan secured by an introductory rate mortgage and who receives a notice of intention to foreclose . . . pursuant to the 'Fair Foreclosure Act,' [N.J. Stat. §§ 2A:50-53 to -68]," unless that

borrower has previously exercised his or her right to obtain a three-year extension of introductory rate as provided in N.J. Stat. § 46:10B–40. For a definition of "introductory rate mortgage" and related terms, *see* N.J. Stat. § 46:10B–38. Loans that are not eligible for the protection of the Act include those that (1) have a fixed rate for five years or longer, or (2) have an introductory rate below the "fully indexed rate"—another defined term—because the borrower paid bona fide discount points at the time the loan was originated.

A creditor who intends to foreclose the loan of an "eligible foreclosed borrower" must mail the borrower written notices, distinct from all other correspondence. The notices must be sent (1) within 10 days of issuing the notice of intent to foreclose, and (2) at the time the creditor applies for entry of final judgment of foreclosure under N.J. Stat. §2A:50–58. The notices must be sent in an envelope with the following language printed on the front:

> The New Jersey Legislature has enacted the Save New Jersey Homes Act of 2008, which may help you save your home from foreclosure. Details as to the rights you may have to obtain a period of extension of foreclosure under this new law are contained within. Please read the contents carefully. You may wish to consult with an attorney to understand your rights under this new law.

The notices must be plain language and in at least 14-point bold type. They must include the following items: (1) a statement that the notice is being provided pursuant to the Act, which provides certain rights to borrowers whose mortgages are subject to foreclosure; (2) a list of alternatives to foreclosure the borrower might pursue, including refinancing or renegotiating the loan; (3) an explanation of the borrower's right to obtain a three-year extension, along with an explanation of what the borrower must do to obtain the extension; (4) a statement that the borrower should read the notice carefully and might want to consult with an attorney to understand his or her rights; and (5) a "certification of extension form" for the borrower to complete in order to obtain the three-year extension.

The three-year extension referred to in the notice is described in § 46:10B–42, and different than the three-year extension of the introductory rate described in § 46:10B-40. The three-year extension described in § 46:10B–42 suspends foreclosure proceedings for three years during which the borrower must continue to make the monthly payments of principal and interest, calculated at the introductory rate, as well as amounts designated as taxes, insurance and similar items, as provided before the mortgage rate was reset.

To obtain the extension—and the suspension of the foreclosure proceeding—the borrower must return the "certification of extension form" to the creditor within 90 days. The form requires the borrower to agree to (1) keep making the monthly payments; (2) pay the creditor any deferred interest, fees and costs incurred in connection with the foreclosure, and arrearages; (3) accept the creditor's placement of a modified mortgage on the property to secure the payments of deferred

interest, fees, costs and arrearages; and (4) sign a modification of the mortgage that contains the terms of the period of extension and any documentation needed to establish or record the modification.

Once the creditor receives the certification of extension form, it must (1) grant a three-year extension to the borrower, to commence no later than 30 days after the creditor receives the form, and (2) suspend the foreclosure proceedings. If the borrower does not return the form on time, the creditor has discretion as to whether to grant the extension and suspend the foreclosure proceedings.

The creditor also must send the borrower an acknowledgment that it has received the form. The acknowledgment must (1) state that the foreclosure proceeding will be suspended; (2) state the amount of the monthly payment the borrower must make; (3) provide a schedule of payments, including the date the first payment is due; (4) the address payments should be sent to; and (5) a proposal for modifying the loan. The modification proposal must inform the borrower that a modification of mortgage will be placed on the property to secure repayment of arrearages, deferred interest, and the fees and costs associated with the foreclosure proceedings. The proposal also must explain how the creditor will calculate those amounts.

The modification will be effective from the date it is executed, and the modification of mortgage will have the same priority as the original mortgage.

The creditor cannot require the borrower to limit or waive his or her right to bring any claims, causes of action, defenses, or proceedings against the creditor as a condition of modifying the mortgage.

A court cannot approve entry of a final judgment of foreclosure involving an "introductory rate mortgage" unless the court is satisfied that the borrower received notice of the three-year extension available under § 46:10B-42.

Forbearance and Mediation for High-Risk Mortgages (Expired January 9, 2011)

Prior law required borrowers with "high risk" mortgages to be given a six-month forbearance period before the creditor can foreclose. That forbearance period was intended to give the borrower time

to pursue a loan workout, modification, refinancing, or other alternative through mediation. However, foreclosure forbearance and mediation for high risk mortgages was available for two years, ending January 9, 2011. (A forbearance period continues for its entire six-month period, even though the relevant law expired.)

Mortgage Stabilization and Relief Act

New Jersey also established a "Mortgage Stabilization Program" to help homeowners facing foreclosure. The "Mortgage Stabilization and Relief Act," N.J. Stat. §§ 55:14K-82 to -92 (2008), establishes an agency and fund to provide foreclosure-prevention counseling and refinancing. The Mortgage Stabilization and Relief Act also established the six-month forbearance period for high risk mortgages.

Right of Rescission of a Distressed Property Sale (§ 46:10B-61)

New Jersey's Foreclosure Rescue Fraud Prevention Act provides that in addition to any other rescission right provided by law, an owner "has the right to cancel a distressed property conditional conveyance contract or a distressed property conveyance contract with a distressed property purchaser until midnight of the 10th business day following the day on which the owner signs the contract, or until the conclusion of a sheriff's sale . . ., whichever occurs first." During this time, the owner may have an attorney review the contract. In this context, "distressed property" means residential real property that:

- consists of one to four dwelling units, at least one of which is occupied by the owner as a primary residence; and

- is the subject of a mortgage foreclosure proceeding or whose owner is more than 90 days delinquent on any loan secured by the property.

Sections 46:10B-40, 46:10B-41, and 46:10B-42 enacted 2008; §§ 46:10B-38, 46:10B-50 and 55:14K-86 amended 2009; §§ 46:10B-54 and 46:10B-61 enacted 2011; § 46:10B-51 amended 2014.

N.J. Stat. §§ 46:10B-38, -40, -41, -42, -50, -51, -54, -61; 55:14K-86 (2015)

New Mexico

New Mexico, Penalties

No relevant statutes were found.

New Mexico, Required Alternatives or Preconditions

No relevant statutes were found.

However, House and Senate Memorials requested that the United South Broadway Corporation, a nonprofit that provides housing counseling and foreclosure legal defense in New Mexico, convene a task force to study New Mexico's foreclosure process and to make recommendations:

- to "improve the foreclosure process in order to prevent unnecessary and improper foreclosures, promote community stability and protect the due process rights of financially strapped families threatened with foreclosure"; and

- to create a plan to educate and train "homeowners, lenders, loan servicers and the judiciary on methods of removing impediments to meaningful loss mitigation and preventing improper or unnecessary foreclosures."

The task force was scheduled to report its findings and recommendations to interim committees by November 1, 2014, and to the house and senate judiciary committees by January 21, 2015.

Also note the state has allocated funds to a "residential mortgage foreclosure settlement facilitation pilot project."

Memorials signed 2014.

2014 House Memorial 15; 2014 Senate Memorial 11; *see* 2014 N.M. Laws ch. 63 (appropriating funds to a foreclosure settlement facilitation pilot project)

New York

New York, Penalties

No penalty provisions specifically relating to foreclosure alternatives were located. However, penalties for violating the applicable Banking Law sections are set forth in those sections, and they provide, among other things, that "[i]n any action by a lender or assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert as a defense, any violation of" § 6-m.

Section 595-a amended 2011; 6-*l* amended 2012; 6-m amended 2014.

See N.Y. Banking Law §§ 6-l, 6-m, 595-a (2015)

New York, Required Alternatives or Preconditions

Notice of Foreclosure Assistance

Generally, a plaintiff in a foreclosure action related to residential dwellings must provide a "Help for Homeowners in Foreclosure" notice when the plaintiff serves the summons and complaint. The notice, which must be given if the action involves an owner-occupied, one-to-four family dwelling, must contain information about the foreclosure process and the availability of foreclosure assistance. The notice must be delivered with the summons and complaint and must be on paper of a color different than the paper used for the summons and complaint. The title, "Help for Homeowners in Foreclosure," must be in 20-point font, and the body of the notice must be in bold, 14-point font. The notice must:

- state that the debtor is in danger of losing his or her home in a foreclosure action;
- state that government agencies and non-profit organizations may be able to help avoid losing the home in foreclosure;
- provide contact information for the New York Department of Financial Services, to help locate agencies and organizations providing foreclosure-prevention assistance; and
- warn about foreclosure rescue scams.

As of January 14, 2010, notice requirements that previously applied only to "high-cost home loans" or "subprime home loans," now apply to all "home loans." Effective until January 14, 2020, at least 90 days before filing a foreclosure action with respect to a "home loan," the lender or mortgage loan servicer must send a notice to the borrower setting forth the fact and consequences of the default on the loan and information about what the borrower should do to avoid foreclosure. In this context, a "home loan" is a loan, "including an open-end credit plan, other than a reverse mortgage transaction or a loan made or fully or partially guaranteed by the state of New York mortgage agency, in which":

- the principal amount at origination does not exceed the conforming loan size limit for a comparable dwelling;

- the borrower is a natural person;

- the debt is incurred primarily for personal, family, or household purposes;

- the loan is secured by a mortgage or deed of trust on real estate improved by a one- to four-family dwelling, or by a condominium unit, or certain evidence of ownership in, and a proprietary lease from, an entity formed for the purpose of cooperative ownership of real estate, which property must be used as the borrower's principal dwelling; and

- the property is located in New York.

The notice must be in at least 14-point type and must state:

> YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING NOTICE CAREFULLY
>
> As of _____, your home loan is ___ days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of _____ dollars by _____.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at _____ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence)."

If you need further information, please call the New York Department of Financial Services' toll-free helpline at (show number) or visit the Department's website at (show web address).

The notice must be mailed in a separate envelope by registered or certified mail and by first-class mail to the borrower's last known address and, if different, to the residence subject to the mortgage. The notice must contain a list of at least five designated housing counseling agencies in the area where the borrower lives.

The 90-day period for resolving the default before foreclosure does not apply if the borrower files an application to adjust his or her debts, or seeks an order for relief from the payment of debts, or if the borrower no longer occupies the home as his or her principal dwelling.

<u>Mandatory Settlement Conference in Residential Foreclosure Actions</u>

Effective until February 13, 2020, within 60 days after proof of service of the summons and complaint is filed, the parties must attend a mandatory settlement conference, pursuant to court rule N.Y.C.P.L.R. 3408, which applies to foreclosure actions involving home loans. The court must conduct the conference with the objective of settling the parties' rights and obligations under the

mortgage and loan documents. The conference may cover, among other things, "determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to . . . ."

Upon the filing of a request for judicial intervention, the court must send either a copy of the request or the defendant's name, address, and telephone number to a housing counseling agency. The designated housing counseling agency must use the information exclusively for the purpose of making the homeowner aware of available housing counseling and foreclosure prevention services.

The court must promptly send a notice to parties advising them of the settlement conference's time, place, and purpose, and the relevant statutory requirements. The notice must be in the prescribed form and must advise the parties of the documents they should bring to the conference.

Both the plaintiff and defendant must "negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible." The plaintiff must file a notice of discontinuance and vacatur of the lis pendens within 150 days after any settlement agreement or loan modification is executed.

<u>High-cost Home Loans</u>

Banking Law §§ 6-*l* and 6-m set forth requirements for underwriting high-cost home loans and subprime loans, respectively. A "high-cost home loan" is one whose terms exceed certain statutory "thresholds" for the interest rate. Section 6-*l* prohibits certain lender practices with respect to high-cost loans, including (1) some acceleration clauses, (2) balloon payments, (3) negative amortization, (4) post-default interest-rate hikes, (5) fees for modifying the terms of the mortgage or deferring payment, (6) oppressive mandatory arbitration clauses, (7) tied products such as mortgage insurance or credit life insurance, (8) "loan flipping," (9) lending without regard to the debtor's ability to repay, (10) lending without providing information about receiving financial counseling before signing the loan documents, (11) financing points and fees, (12) encouraging default, (13) making prohibited payments—kickbacks—to mortgage brokers, (14) charging prepayment penalties, and (15) offering "teaser" rates.

Section 6-m contains similar provisions for subprime home loans. The definition of a "subprime home loan" is based on the difference between the interest rate charged for the loan and the rate published by the Federal Home Loan Mortgage Corporation (Freddie Mac). Section 6-m prohibits

most of the same lender practices that are prohibited under § 6-*l*. If a subprime loan violates any of the prohibitions, it is void.

Also, pursuant to § 1302, a complaint served in a proceeding to foreclose a high-cost home loan or a subprime home loan must contain an "affirmative allegation" that at the time the proceeding is started, the plaintiff:

- is the owner and holder of the mortgage and note, or has been delegated the authority to foreclose;

- has complied with all of the provisions of §§ 595-a, 6-*l*, 6-m, and 1304.

Note that § 595-a of the Banking Law regulates the conduct of mortgage brokers, mortgage bankers, and "exempt organizations," including conduct relating to the origination of a loan, advertising, required disclosures with respect to a loan transaction, and tying of products and services.

Section 1302 amended 2008; r. 3408 amended 2009 and extended 2014; § 595-a amended 2011; §§ 1303 and 1304 amended 2012 and extended 2014; § 6-*l* amended 2012; § 6-m amended 2014.

N.Y. Real Prop. Acts. Law §§ 1302, 1303, 1304; N.Y.C.P.L.R. 3408; N.Y. Banking Law §§ 6-l, 6-m, 595-a (2015)

North Carolina

North Carolina, Penalties

In the course of a residential mortgage loan transaction, it is unlawful for a person acting as a mortgage servicer to fail to mail, at least 45 days before initiating foreclosure, a notice containing the following information:

- an itemization of all past due amounts;

- an itemization of other charges that must be paid in order to bring the loan current;

- a statement that the borrower may have options other than foreclosure available and that the borrower may discuss those options with the lender, the mortgage servicer, or a HUD-approved counselor;

- contact information for "the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure"; and

- contact information for one or more HUD-approved counseling agencies operating in North Carolina and for the State Home Foreclosure Prevention Project of the Housing Finance Agency.

Section amended 2014.

N.C. Gen. Stat. § 53-244.111 (2014)

North Carolina, Required Alternatives or Preconditions

Emergency Program to Reduce Home Foreclosures

North Carolina's "Emergency Program to Reduce Home Foreclosures" has been expanded to include all "home loans." The servicer of a home loan must send a notice to a borrower in default that informs the borrower about resources to help him or her avoid foreclosure. The notice must be sent at least 45 days before the servicer files a notice of hearing in a foreclosure proceeding. It does not require either the lender or the borrower to do anything that would prevent a foreclosure, however. Instead, the lender must file certain information with Administrative Office of the Courts, in an electronic format set up by the Administrative Office. The information is reviewed by the State Home Foreclosure Prevention Project, which will then reach "borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable."

In this context, a "home loan" has all of the following characteristics:

- the loan is not an equity line of credit, a construction loan, a reverse mortgage transaction, or a bridge loan with a term of no more than 12 months;

- the borrower is a natural person who incurred the debt primarily for personal, family, or household purposes;

- the principal amount does not exceed the conforming loan size limit for a single-family dwelling;

- the loan is secured by (a) a security interest in a manufactured home that is the borrower's principal dwelling, (b) a mortgage or deed of trust on real property containing a structure designed principally for occupancy of one to four families that is occupied by the borrower as his or her principal dwelling, or (c) a mortgage or deed of trust on real property upon which there is to be constructed a structure designed principally for occupancy by one to four families that the borrower will occupy as his or her principal dwelling; and

- the loan's purpose is to purchase a dwelling, construct or improve a dwelling, satisfy and replace an existing obligation secured by the property, or consolidate existing consumer debts into a new home loan.

For cases in which foreclosure may be avoidable, the Executive Director of the Housing Finance Agency has the authority to extend the allowable filing date for a foreclosure proceeding by up to 30 days beyond the earliest filing date established by pre-foreclosure notice, and must notify the borrower, the servicer, the Administrative Office of the Courts, and, if applicable, the Credit Union Division Administrator.

The North Carolina Housing Finance Agency administers the State Home Foreclosure Prevention Project and its trust fund.

For additional information about the State Home Foreclosure Prevention Project, see http://www.ncforeclosurehelp.org/shfpp.aspx.

Power of Sale Barred During Military Service

A lender may not exercise a power of sale during, or within 90 days after, a borrower's period of military service with the Armed Forces of the United States.

Opportunity for Parties to Resolve Foreclosure of Owner-Occupied Residential Property

At the beginning of the hearing, the clerk must determine whether the debtor occupies the real property as his or her principal residence. If so, the clerk must inquire as to the efforts the lender or loan servicer has made to communicate with the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding. This inquiry is not required if the mortgagee or trustee has submitted an affidavit briefly describing any efforts that have been made to resolve the default and the results of those efforts.

The clerk must order the hearing continued for up to 60 days if he or she finds good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure.

Mortgage Servicers

At least 45 days before foreclosure is initiated, a mortgage servicer must mail the borrower a notice with the following information:

- an itemization of all past due amounts causing the default;
- an itemization of any other charges that must be paid in order to bring the loan current;
- a statement that the borrower may have options available other than foreclosure and that the borrower may discuss the options with the mortgage lender, the mortgage servicer, or a HUD counselor;

- contact information for the person authorized to work with the borrower to avoid foreclosure and for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure; and

- contact information for the State Home Foreclosure Prevention Project of the Housing Finance Agency.

Mitigation Requests

North Carolina regulations provide that a mortgage servicer may not initiate or further a foreclosure proceeding or impose a charge arising out of a foreclosure proceeding when a loss mitigation request is pending. However, this requirement does *not* apply if:

- the borrower has failed to comply with the terms of a loss mitigation plan during the previous 12 months, provided the loss mitigation plan (a) was implemented pursuant to a federal or state foreclosure prevention program or (b) reduced the monthly loan payment by six percent and resulted in a monthly payment of principal, interest, taxes, and insurance equal to less than 31 percent of the borrower's household income;

- the mortgage servicer has provided a final response regarding a loss mitigation request within the last 12 months and reasonably believes that the current loss mitigation request was not made in good faith;

- the borrower has failed to comply with a Chapter 13 bankruptcy repayment plan or has any bankruptcy proceedings dismissed for abuse of process during the past 12 months;

- the servicer receives the loss mitigation request after the time for appealing an order granting foreclosure of the secured residential real estate has passed; or

- either a servicing contract or the terms of a mortgage loan entered into before October 1, 2009, prohibits such a delay.

A mortgage servicer, in order to avoid dismissal or any other adverse order in a foreclosure proceeding initiated before receiving the loss mitigation request, may file a required pleading or notice to continue or delay further proceedings.

A mortgage servicer must:

- acknowledge, in writing, a borrower's loss mitigation request no later than 10 business days after the request; and

- respond to a loss mitigation request from a borrower no later than 30 business days after receiving all information necessary to assess whether or not a borrower qualifies for any loss mitigation programs the mortgage servicer offers.

A mortgage servicer must include in its final response denying a loss mitigation request the reason for the denial and contact information for a person at the mortgage servicer with authority to reconsider the denial. The denial must also include the following statement, in a boldface type and in a print no smaller than the largest print used elsewhere in the main body of the denial: "If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks website, www.nccob.gov."

Section 45-21.12A amended 2011; § 45-21.16C enacted 2009; §§ 45-101, 45-102, 45-103, 45-104, 45-105, and 45-107 amended 2012; § 53-244.111 amended 2014. Regulations adopted 2010.

N.C. Gen. Stat. §§ 45-21.12A, -21.16C, -101, -102, -103, -104, -105, -107; 53-244.111 (2014); 4 N.C. Admin. Code 3M.0702, .0703 (2015)

North Dakota

North Dakota, Penalties

No relevant statutes were found.

North Dakota, Required Alternatives or Preconditions

No relevant statutes were found.

Ohio

Ohio, Penalties

No relevant statutes were found.

Ohio, Required Alternatives or Preconditions

A court hearing an action to foreclose a mortgage has discretion to order the debtor and creditor to mediate the issues "as the court considers appropriate and [the court] may include a stipulation that requires the mortgagor and mortgagee to appear at the mediation in person."

No other relevant provisions were found.

Section enacted 2008.

Ohio Rev. Code § 2323.06 (2015)

Oklahoma

Oklahoma, Penalties

No relevant statutes were found.

Oklahoma, Required Alternatives or Preconditions

No relevant statutes were found.

Oregon

Oregon, Penalties

A beneficiary that fails to comply with specified provisions of Or. Rev. Stat. § 86.748 (regarding notice to a grantor who is not eligible for foreclosure avoidance measures) is liable to the grantor for:

- $500; plus
- the grantor's actual damages for each failure to comply.

A grantor may bring an action against a beneficiary in an Oregon circuit court to recover these amounts. The grantor must bring the action within one year after the date on which the beneficiary should have complied with the § 4a provisions.

A court may award reasonable attorneys' fees, costs, and disbursements to a grantor that obtains a final judgment in his or her favor.

Section amended 2013.

Or. Rev. Stat. § 86.748 (2015)

Oregon, Required Alternatives or Preconditions

Default Notice

Oregon home purchases are typically financed with a deed of trust. Before foreclosing a trust deed on residential property after a debtor's default, the trustee must record a notice of default and a notice of sale. On or before the notice of sale is served or mailed to the borrower, the trustee must send the debtor a notice stating in plain language that the borrower is in danger of losing his or her home and describing what the borrower can do to prevent that from happening. The notice must follow the form prescribed by the legislature and must:

- advise the borrower that there are government agencies and nonprofit organizations that can assist him or her in deciding what to do;
- provide a telephone number for obtaining information about those agencies and organizations; and
- include the contact number and website address for the Oregon state bar's lawyer referral service.

Foreclosure Avoidance Overview

A "foreclosure avoidance measure" is "an agreement between a beneficiary and a grantor that uses one or more of the following methods to modify an obligation" secured by a residential trust deed:

- the beneficiary defers or forbears from collecting one or more payments;
- the beneficiary modifies the obligation's terms;
- the beneficiary accepts a deed in lieu of foreclosure;
- the grantor conducts a short sale; or
- the beneficiary provides the grantor with other assistance that enables the grantor to avoid a foreclosure.

Mediation Requirement

The Oregon legislature repealed or deleted in 2013 extensive provisions it enacted in 2012 that required mandatory mediation. The legislature replaced those mediation requirements with "resolution conference" requirements.

Resolution Conferences

Overview

Generally, a beneficiary that intends to foreclose a residential trust deed must first request a resolution conference before the beneficiary or the trustee files a notice of default or brings suit to foreclose.

The requirement to request or participate in a resolution conference does *not* apply to:

- certain lenders that during the preceding calendar year did not bring (or cause its affiliates or agents to bring) more than 175 actions to foreclose residential trust deeds by advertisement or residential mortgages by suit; or

- effective January 1, 2016, the Department of Veterans Affairs in its capacity as a beneficiary of loans made under Or. Rev. Stat. § 407.125.

Resolution conference request

The beneficiary must request a resolution conference through the service provider. The beneficiary's request must identify the residential trust deed the beneficiary intends to foreclose and list contact information for:

- the beneficiary;

- any agent of the beneficiary that will attend the resolution conference;

- any other person that will receive communications related to the resolution conference; and

- the grantor.

If a beneficiary does not so request a resolution conference, a grantor may request a resolution conference if:

- the beneficiary or the trustee has not filed a notice of default or the beneficiary has not brought a foreclosure suit; and

- the grantor first obtains from a housing counselor a written certification that the grantor is more than 30 days in default on the obligation, or, if the grantor is not in default, that the grantor has a financial hardship that the housing counselor believes may qualify the grantor for a foreclosure avoidance measure.

The grantor must request a resolution conference through the service provider.

Resolution conference notice

Within 10 days after a service provider receives a request for a resolution conference, the service provider must schedule the conference and mail a notice to the beneficiary and the grantor. The service provider must schedule the resolution conference to occur within 75 days after the date the service provider sends the notice. The notice must:

- "specify a range of dates within which and a location at which the resolution conference will occur";

- state that the beneficiary and the grantor each must pay the facilitator's fees;

- list and describe the documents the parties must submit to the service provider;

- state that the grantor must consult a housing counselor before attending the resolution conference, unless the grantor notifies the service provider that the grantor could not obtain an appointment before the resolution conference;

- state that the grantor may have an attorney or housing counselor present, and that the attorney or housing counselor must attend the resolution conference in person unless there are "compelling circumstances that prevent attendance in person"; and

- include any other information the Attorney General requires by rule.

Within 25 days after the date on which the service provider sends the above notice, the grantor must pay to the service provider a fee that may not exceed $200.

The grantor must submit to the service provider:

- information about the grantor's income, expenses, debts, and other obligations;

- a description of the grantor's financial hardship, if any;

- verification of the grantor's income; and

- any other information the Attorney General requires by rule.

The grantor must consult a housing counselor before attending the resolution conference unless the grantor cannot obtain an appointment before the conference date.

Within 25 days after the service provider makes the above information available to the beneficiary, the beneficiary must pay a fee to the service provider in an amount of no more than $600. It must also submit certain documents to the service provider, including copies of the residential trust deed and the promissory note, among other items.

Postponed conferences

The service provider may postpone or reschedule a resolution conference if:

- the beneficiary and the grantor agree to a new date;

- the beneficiary or the grantor requests in writing a new date that is no more than 30 days after the original date and can show good cause for the request; or

- the beneficiary does not pay the required fee by its due date, in which case the service provider may wait until the beneficiary has paid the fee before rescheduling the conference.

Resolution conference sessions

Generally, a beneficiary that is required to request a resolution conference with a grantor must attend the resolution conference in person. However, a beneficiary may send an agent if the agent attends the resolution conference in person and has complete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure avoidance measure. If the agent does not have complete authority, a person with complete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure avoidance measure must participate remotely.

A grantor may have an attorney or a housing counselor, or both, present at the resolution conference. The grantor, or an individual that a court appoints to act on the grantor's behalf, must attend the resolution conference in person "unless there are compelling circumstances that prevent attendance in person."

If the beneficiary agrees to a foreclosure avoidance measure, the beneficiary and the grantor must sign a written document that sets forth the measure's terms.

A facilitator may suspend or postpone a resolution conference after the resolution conference has begun:

- one time on the facilitator's initiative or in response to a request from the beneficiary or the grantor;

- after a requested suspension or postponement, only if the beneficiary and the grantor agree to the additional suspension or postponement; or

- if the beneficiary or the grantor needs additional time to write or sign a document that sets forth a foreclosure avoidance measure's terms.

After the resolution conference concludes, the facilitator must submit a written report to the service provider.

Certificate of compliance

The service provider must issue, within five days after receiving a facilitator's report, a certificate of compliance to the beneficiary. A certificate of compliance expires one year after the date on which it was issued.

The service provider must notify a beneficiary that failed to meet a conference requirement that the service provider will not issue a certificate of compliance, explaining why the service provider will not issue the certificate of compliance. The service provider must provide a copy of this notice to the grantor and the Attorney General.

Ineligible grantors

Whether or not a beneficiary participates in a resolution conference, if the beneficiary determines that a grantor of a residential trust deed is not eligible for a foreclosure avoidance measure or has not complied with the terms of a foreclosure avoidance measure, the beneficiary must mail a written notice to the grantor within 10 days. The beneficiary must also mail a copy of the notice to the Department of Justice. At least five days before the trustee sells the property, the beneficiary must record an affidavit that states that the beneficiary has complied with the above requirements.

Section 86.756 amended 2009 and renumbered 2013; § 86.729, and 86.736 enacted 2013; §§ 86.707 and 86.748 amended 2013; § 86.732 amended and renumbered 2013; § 86.726 amended 2015.

Or. Rev. Stat. § 86.707, .726, .729, .732, .736, .748, .756 (2015); *see* 2013 Or. Laws ch. 304, § 15 (S.B. 558)) (repeals previously applicable provisions)

Pennsylvania

Pennsylvania, Penalties

As of June 22, 2012, and effective retroactively to June 5, 1999, Pennsylvania law provides consequences for a mortgagee's noncompliance with the Homeowner's Emergency Mortgage Assistance Program's notice requirements.

If a lender has failed to comply with the notice requirements of sections 402-C and 403-C of the act of December 3, 1959 (P.L.1688, No. 621) (known as the Housing Finance Agency Law), and that failure "has been properly raised in a legal action, including an action in foreclosure, for money due under the mortgage obligation or to take possession of the mortgagor's security," the court may:

- dismiss the action without prejudice;
- order the service of a corrected notice;
- impose a stay; or
- impose other appropriate remedies.

The action must be brought before the earlier of the delivery of a sheriff's or marshal's deed in the foreclosure action or the delivery of a deed by the mortgagor.

Section enacted 2012.

35 Pa. Stat. § 1681.5 (West 2016)

Pennsylvania, Required Alternatives or Preconditions

Mortgage Loan Assistance Eligibility

To be eligible for mortgage loan assistance under Pennsylvania's emergency mortgage assistance program, the property must be:

- a one- or two-family owner-occupied residence;
- secured by a mortgage (or other security interest if a cooperative or condominium);
- the mortgagor's principal residence; and
- located in Pennsylvania.

A mortgage that is insured under the National Housing Act, among other specified mortgages, are not eligible for assistance. A mortgagor is not eligible for a mortgage assistance loan if:

- the mortgage is more than 24 months delinquent or in default for more than 24 months;
- the assistance amount needed to bring the mortgage current is more than $60,000;
- the property is encumbered by more than two mortgages, other than one filed by the agency to secure repayment of the mortgage assistance loans, or by other liens or encumbrances that would unreasonably impair the security of the Agency’s mortgage.

The mortgagee must have indicated to the homeowner, using the notice set forth in Appendix A or the program regulations, its intention to foreclose or initiate other legal action to take possession of

the property. The mortgagee need not sent this notice to homeowners who do not qualify for assistance.

A homeowner who has been sent this notice may apply to the agency for a mortgage assistance loan while protected by a bankruptcy's automatic stay.

To qualify for assistance, the homeowner must:

- be a permanent resident of Pennsylvania;
- have had a favorable residential mortgage credit history for the previous five years;
- be suffering financial hardship due to circumstances beyond his or her control;
- have a reasonable prospect of resuming full mortgage payments within 24 months after the beginning of the period for which assistance payments are provided; and
- be capable of making any payments then remaining due on the mortgage by the maturity date or a later date agreed upon by the mortgagee.

Notice Requirements and Application Procedures

A mortgagee must give the mortgage debtor the notice set forth in Appendix A of the relevant regulations before the mortgagee:

- accelerates the obligation's maturity;
- brings a legal action, including mortgage foreclosure; or

- takes possession of a security.

The notice must be sent by first class mail to the homeowner's last known address and to the residence that is the subject of the mortgage, if different. The notice must also be sent by registered or certified mail. The notice "should be sent at the point the homeowner is at least 60 days contractually delinquent in his mortgage payments or is in violation of other provisions of the mortgage."

A mortgagee is not required to send the notice to homeowners:

- who do not qualify for mortgage assistance;

- who are more than 24 months delinquent or in default for more than 24 months;

- who owe, without regard to any acceleration, more than $60,000; or

- (a) who has already been sent a notice but did not apply for a mortgage assistance loan; (b) who applied for a mortgage assistance loan but was denied; or (c) whose mortgage assistance disbursements were terminated for any reason.

After the homeowner has been sent the notice, he or she must arrange for and attend a face-to-face meeting with a consumer credit counseling agency listed in the notice within 33 days of the notice's postmark date. If the homeowner meets with a consumer credit counseling agency, a notice of the meeting must be given within five business days to known mortgagees. A mortgagee may not pursue legal action against the homeowner’s property if the homeowner meets with the consumer credit counseling agency within 33 days of the postmark date of the notice and for an additional period of 30 days after the meeting. A mortgagee may not proceed with legal action once the agency approves an application.

If after a face-to-face meeting, the mortgagor and mortgagee reach an agreement to resolve the delinquency and if, because of circumstances beyond the homeowner’s control, the homeowner is

unable to fulfill that agreement, the homeowner may apply for homeowner's emergency mortgage assistance payments within 30 days of that default.

A mortgagor may obtain an application for assistance only from a consumer credit counseling agency.

The agency must determine an applicant's eligibility within 60 days of receipt of the application, during which time no mortgagee may pursue legal action to foreclose the mortgage on the homeowner's principal residence. Within five business days of making the eligibility determination, the agency will notify known mortgagees as to whether the application has been approved or disapproved or if funds are not available.

If the agency determines that the applicant does not qualify for assistance:

- the applicant may not reapply for assistance for 24 months unless there is a material change in the applicant's financial circumstances; and

- the applicant may request an administrative hearing.

Agency Determinations

An applicant who intentionally misrepresents his or her financial information may be denied assistance or be required to repay the assistance amount, and the mortgagee may take legal action to enforce the mortgage without further restrictions or requirements.

The Agency must determine an applicant's eligibility within 60 days of its receipt of the application.

Appeals

An applicant who is denied a mortgage assistance loan or otherwise aggrieved by an agency decision related to the Homeowners' Emergency Mortgage Assistance Program may request an administrative hearing on the grievance. A request for a hearing must be made in writing and submitted within 15 days of the decision's postmark date.

Periods of High Unemployment

The 24-month limit on mortgage assistance increases to 36 months if the agency determines that a period of high unemployment existed during the month the homeowner submits an application for assistance.

Local Rules

Note that some local courts, including the First Judicial District (Philadelphia) and Allegheny County (Pittsburgh) have implemented rules staying scheduled foreclosure sales and requiring conciliation conferences. *See, e.g.,* Order of July 17, 2008 (1st Judicial Dist.); Administrative Office of the Pennsylvania Courts, *Newsletter* (Winter 2009), at 1, 9.

Regulations 31.202 and 31.210 amended 1999; regulations 31.203, 31.204, and 31.209 amended 2008.

12 Pa. Code §§ 31.202, .203, .204, .210 (2015)

Puerto Rico

Puerto Rico, Penalties

No relevant statutes were found.

Puerto Rico, Required Alternatives or Preconditions

Compulsory Mediation

2012 P.R. Laws ch. 184, which requires compulsory mediation in foreclosure of properties dedicated to housing, is not readily available on-line in English. Generally, the law provides that a compulsory

mediation must occur to address all alternatives available to avoid the mortgage execution or judicial sale of residential property that constitutes the borrower's main dwelling.

As part of the process for granting a mortgage loan on a residence or main dwelling, a lender must provide the debtor the following information:

- information about the compulsory mediation process;
- the suggestion that the debtor procure legal assistance and answer upon receiving the claim;
- a warning that the debtor may lose the property;
- contact information for individuals or divisions that handle cases related to the mitigation or loss of properties by foreclosure; and
- remedies or existing benefits available to the debtor that allow the debtor to benefit from programs or services aimed at preserving their residence or main dwelling.

Mortgage Relief Aid

Effective March 9, 2009, Puerto Rico law allocates specified funds for mortgage relief aid. The Puerto Rico Housing Financing Authority must use those funds to establish "a program to restructure mortgages over eligible homes, whereby the Authority shall provide a surety equal to twenty-five percent (25%) of the principal of the mortgage for any of the following relief aids...":

- allowing a moratorium on principal payments;
- allowing an extension on the maturity date;

- lowering monthly payments;
- lowering the interest rate; or
- partially or totally eliminating late fees.

The Authority must establish eligibility criteria and procedures for the program.

Relief-aid act passed 2009; compulsory mediation act passed 2012.

2009 P.R. Laws ch. 9; 2012 P.R. Laws ch. 184 (available in Spanish)

Rhode Island

Rhode Island, Penalties

Military Servicemembers (§ 34-27-4)

If a mortgagee proceeds with foreclosure during or within nine months after a servicemember's active duty or deployment period, the servicemember may file a petition against the mortgagee seeking a stay. After a hearing on the petition, and on its own motion, the court may:

- stay the proceedings "for a period of time as justice and equity require"; or
- "adjust the obligation as permitted by federal law" to preserve all parties' interests.

A sale, foreclosure, or seizure of property for a breach by a qualified servicemember who provided the mortgagee with the required written notice is not valid if made during, or within nine months after, the servicemember's military service period except:

- upon a court order granted before the sale, foreclosure, or seizure after hearing on a petition filed by the mortgagee; or

- if made pursuant to all parties' agreement.

A mortgagee who knowingly makes or causes a foreclosure or seizure of property that is prohibited by R. I. Gen. Laws § 34-27-4(d)(3) is subject to:

- a fine of $1000;

- imprisonment for no more than one year; or

- both.

Mediation Conferences (§ 34-27-3.2)

If a mortgagee fails to mail a mortgagor the notice required by R.I. Gen. Laws § 34-27-3.2(d) within 120 days after the default date, it must pay a penalty equal to $1,000 per month for each month or part thereof, with the first month beginning on the 121st day after the default date. A new month begins on the same day (or if there is no such day, then on the last day) of each succeeding calendar month until the mortgagee sends the required written notice. However, this penalty for any failure of any mortgagee to provide notice during the period "from September 13, 2013, through the effective date of this section" may not exceed $125,000.

The penalty must be paid to the mediation coordinator before the completion of the mediation process.

A mortgagee does *not* accrue any penalty if it mails the required notice to the borrower:

- within (a) 60 days after the date upon which the loan is released from the protection of the automatic stay in a bankruptcy proceeding or any similar injunctive order issued by a state or federal court, (b) within 60 days after a loan is no longer afforded protection under the Servicemember's Civil Relief Act or the provisions of § 34-27-4(d), or (c) within 120 days of the date on which the mortgagor initially failed to comply with the terms of an eligible workout agreement; and

- the mortgagee otherwise complies with the requirements of § 34-27-4(d).

No deed offered by a mortgagee as a result of a mortgage foreclosure action under a power of sale may be submitted for recording until and unless the requirements of § 34-27-4 are met. Failure of the mortgagee to comply with the requirements of § 34-27-4 renders the foreclosure voidable.

Section 34-27-4 amended 2012; § 34-27-3.1 repealed 2014; § 34-27-3.2 amended 2015.

R.I. Gen. Laws §§ 34-27-3.2, -4 (2015)

Rhode Island, Required Alternatives or Preconditions

Military Servicemembers (§ 34-27-4)

Upon receipt of written notice from a mortgagor that he or she is participating in active duty or deployment or of such notice received within nine months of completion of active duty or deployment, the mortgagee is barred from proceeding with the execution sale of property until:

- the nine-month period has lapsed; or

- the mortgagee obtains court approval.

Mediation Conferences (§ 34-27-3.2)

A mortgagee must, before initiating a real estate foreclosure pursuant to R.I. Gen. Laws § 34-27-4(b), provide written notice to the mortgagor stating that the mortgagee may not foreclose on the mortgaged property without first participating in a mediation conference.

The mediation conference must take place in person or over the phone at a time and place mutually convenient for the parties no later than 60 days after the mortgagee mailed the notice. The mortgagee must select an individual employed by a HUD-approved independent counseling agency to serve as a mediation coordinator. The mortgagor must cooperate with the mediation coordinator. The mediation conference must be provided at no cost to the mortgagor.

If, after two attempts to contact the mortgagor, the mortgagor fails to respond to the mediation coordinator's request to appear at a mediation conference, or if the mortgagor fails to cooperate with the statutory mediation requirements, the mediation requirements are deemed satisfied upon the mediation coordinator's verification that the mortgagee sent the required notice and any accrued penalties are paid.

If the mediation coordinator determines that the parties cannot come to an agreement to renegotiate the terms of the loan to avoid foreclosure, a mortgagee's good faith effort is deemed to satisfy the mediation requirements. If the mortgagee and mortgagor agree to renegotiate the loan's terms to avoid foreclosure, the agreement must be reduced to writing and signed by both parties.

If the mortgagee and mortgagor reach agreement after a notice of mediation conference is sent to the mortgagor, but without the mediation coordinator's assistance, the mortgagee must provide a copy of the written agreement to the mediation coordinator. Upon receipt of a written agreement, the mediation coordinator must issue a certificate of eligible workout agreement if the workout agreement would result in a net financial benefit to the mortgagor as compared to the terms of the mortgage. In this context, evidence of an agreement includes, but is not limited to, evidence of agreement to the terms of a short sale or a deed in lieu of foreclosure.

The state's mandatory mediation requirement applies only to foreclosure of mortgages on owner-occupied, residential real property that has no more than four dwelling units and that is the mortgagor's primary dwelling.

These provisions do *not* apply if:

- the mortgage is a reverse mortgage; or

- the default date under the mortgage is on or before May 16, 2013.

The "Notice of Mediation Conference Pursuant to R.I. Gen. Laws § 34-27-3.2" and other forms related to the mediation procedure are available at 11-2 R.I. Code R. § 5, Apps. B through E.

Section 34-27-4 amended 2012; previously applicable § 34-27-3.1 repealed 2014; § 34-27-3.2 amended 2015; regulation amended 2015.

R.I. Gen. Laws §§ 34-27-3.2, -4 (2015); 11-2 R.I. Code R. § 5, Apps. B–E (LexisNexis 2015)

South Carolina

South Carolina, Penalties

No relevant statutes were found.

South Carolina, Required Alternatives or Preconditions

No relevant statutes were found.

South Dakota

South Dakota, Penalties

No relevant provisions were found.

South Dakota, Required Alternatives or Preconditions

No generally relevant provisions were found.

Agricultural Mediation

Overview (§ 54-13-1)

South Dakota law provides for mandatory mediation of disputes affecting "agricultural lands," which means a parcel of land larger than 40 acres used for farming or ranching. The statute is not specific as to whether it includes land on which a farmer or rancher has his or her principal residence.

Mandatory and voluntary mediation (§ 54-13-10)

If a creditor wishes to bring an action or proceeding against agricultural land to enforce a debt totaling at least $50,000, it must file a request for mandatory mediation with the director of the state agricultural mediation program. No creditor may bring a legal action until the creditor has received a mediation release or the debtor waives mediation, unless a court determines that delaying the proceeding to mediate the issues would cause irreparable harm to the creditor, such as through waste to or deterioration of the property. Effective July 1, 2015, any debt that is less than $50,000 may be mediated through a voluntary mediation if a request is made and accepted by both the borrower and the creditor.

Assistance to borrower or creditor (§ 54-13-7)

Any borrower or creditor that is involved in mediation "may be provided resources to assist in the analysis of the borrower's business and personal financial situation, which analysis shall be conducted in a manner that assists the borrower, the borrower's family, and the creditor to prepare for mediation."

Mediation requested by borrower (§ 54-13-13)

A borrower may request mediation of any type or amount of debt by applying to the director of the agricultural mediation program. The director may make the appropriate mediation request forms available and may follow the same procedure as for mandatory mediation. Neither the borrower nor the creditor may be required to attend these mediation meetings. Failure to attend mediation meetings or to participate in this mediation does not affect either party's rights in any manner. Participation in this mediation is not a prerequisite or bar to bringing an action of legal proceedings by the borrower or the creditor.

No mediation release may be issued unless the borrower and creditor agree in writing.

Sections amended 2015.

S.D. Codified Laws §§ 54-13-1, -7, -10, -13 (2015)

Tennessee

Tennessee, Penalties

No relevant provisions were located. The statutory section that previously provided that if a trustee determined that the lender did not send a notice of the right to foreclose, the borrower could request in writing and consent to postponing the sale for 30 to 60 days, was repealed as of January 1, 2013.

Previously applicable section repealed 2013.

See Tenn. Code § 35-5-117(k) (LexisNexis 2015)

Tennessee, Required Alternatives or Preconditions

No relevant provisions were located. The statutory section that previously required a lender or trustee to send the borrower a notice of the right to foreclose no fewer than 60 days before the first publication was repealed as of January 1, 2013, for any foreclosure notice for which the first publication occurred on or after January 1, 2013.

Previously effective section repealed effective 2013.

See Tenn. Code § 35-5-117(k) (LexisNexis 2015)

Texas

Texas, Penalties

No relevant statutes were found.

Texas, Required Alternatives or Preconditions

No generally relevant statutes were found.

After a response to an expedited foreclosure proceeding application has been filed, a court may, in its discretion, conduct a hearing to determine whether to order mediation. A court may not order mediation without a hearing. The petitioner or respondent may also request a hearing to determine whether mediation is necessary or whether the application is defective. The parties may agree to waive the mediation process.

Section enacted 2013.

Tex. Civ. Prac. & Rev. § 154.028 (Tex. 2015)

Utah

Utah, Penalties

Effective March 31, 2014, a beneficiary's or servicer's failure to comply with Utah Code § 57-1-24.3, which addresses notices to a default trustor and the opportunity to negotiate foreclosure relief, does not affect the validity of a trustee's sale of the trust property to:

- a bona fide purchaser; or
- the trust deed's beneficiary after the trust property is sold to a bona fide purchaser.

The provision described above does not affect:

- a "beneficiary's or a servicer's liability under applicable law"; or
- a default trustor's right to pursue money damages or other available remedies against a beneficiary or a servicer.

Section amended 2014.

Utah Code § 57-1-24.3 (2015)

Utah, Required Alternatives or Preconditions

Reduced-payment Notice

A beneficiary (or its agent) must deliver or send a notice to a trustor if:

- the trust property is residential;
- a notice of default is filed with respect to the trust property;
- during the three-month period between the time the trustee files a notice of default and the time it gives a notice of sale, the beneficiary agrees to accept reduced payments from the trustor on a temporary basis; and
- notwithstanding the reduced payment arrangement, the beneficiary does not intend to instruct the trustee to defer giving notice of sale later than the earliest time allowed under subsection 57-1-24(3).

Opportunity to Negotiate Foreclosure Relief

Before filing a notice of default, a beneficiary or servicer must:

- designate a "single point of contact"; and
- send a written notice regarding foreclosure relief to the default trustor at the trustor's current address or, if a current address is not provided, at the property's address.

A "single point of contact" means a person who is authorized, as the beneficiary's or servicer's designated representative, to act as follows:

- to coordinate and "ensure effective communication" with a default trustor concerning foreclosure proceedings and any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

- to represent the beneficiary or servicer with respect to all foreclosure proceedings the beneficiary or servicer initiates relating to the trust property.

The notice must, among other things, "direct the default trustor to contact the single point of contact regarding foreclosure relief available through the beneficiary or servicer for which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief." Before the expiration of the three-month notice period described in § 57-1-24(2), a default trustor may apply directly with the single point of contact for any available foreclosure relief. The default trustor must provide all financial and other information that the single point of contact requested to be able to determine whether the default trustor qualifies for the requested foreclosure relief. The single point of contact must:

- "inform the default trustor about and make available to the default trustor any available foreclosure relief";

- undertake "reasonable and good faith efforts" to consider the default trustor for "foreclosure relief for which the default trustor is eligible";

- ensure timely and appropriate communication with the default trustor concerning the requested foreclosure relief; and

- notify the default trustor by written notice of the beneficiary's or servicer's decision regarding the requested foreclosure relief.

A beneficiary or servicer may give notice of a trustee's sale for the trust property of a default trustor who has applied for foreclosure relief if the beneficiary or servicer:

- determines that the default trustor does not qualify for the requested foreclosure relief; or

- elects not to enter into a written agreement with the default trustor to implement the foreclosure relief.

A beneficiary or servicer may postpone a trustee's sale in order to allow additional time for foreclosure relief negotiations.

These provisions do not require a beneficiary or servicer to establish foreclosure relief or approve a default trustor's application for foreclosure relief.

A beneficiary or servicer complies with the above requirements if it designates and uses assigned personnel in compliance with federal law or guidelines.

Section 57-1-24.5 enacted 2011; § 57-1-24.3 amended 2014.

Utah Code §§ 57-1-24.3, -24.5 (2015)

Vermont

Vermont, Penalties

If a mediator's report includes a statement that a party failed to participate or if the court determines noncompliance with mediation requirements, the court may impose "appropriate sanctions," including prohibiting the mortgagee from selling or taking possession of the property. Those sanctions may include:

- tolling of interest, fees, and costs;

- reasonable attorney's fees;

- monetary sanctions; and

- dismissal without prejudice.

Section 4635 amended 2013; § 4634 amended 2015.

Vt. Stat. tit. 12, §§ 4634, 4635 (2015)

Vermont, Required Alternatives or Preconditions

Required Mediation (§§ 4631, 4632, 4633, 4634, 4635, 4637)

Vermont law requires mediation and the application of government loss mitigation program requirements in foreclosures of a mortgage on any dwelling of four or fewer units that the owner occupies as a principal residence. The mediation requirements apply to all foreclosure actions on a dwelling of four or fewer units that the owner occupies as a principal residence, unless:

- the loan is not subject to any government loss mitigation program requirements;

- before starting the foreclosure action, the mortgagee "met with or made reasonable efforts to meet with the mortgagor in person in Vermont to discuss any applicable loss mitigation options"; and

- the plaintiff certifies in a separate document filed with its complaint that the above requirements "have been satisfied and describes its efforts to meet with the mortgagor in person to discuss applicable loss mitigation efforts."

Whenever the mortgagor requests mediation "prior to four months after judgment is entered and before the end of the redemption period," the court generally must refer the case to mediation. However, the court may:

- for good cause, shorten the four-month period or "thereafter decline to order mediation";

- decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case; or

- for good cause, decline to order mediation if the mortgagor requests mediation after judgment has been entered.

Generally, all mediation must be completed before the redemption period expires and within 120 days of the mediator's appointment. The redemption period is not stayed during pending mediation.

The mortgagee must serve the mortgagor with two copies of the notice described in § 4632(d) with the summons and complaint. The Supreme Court may, by rule, consolidate this notice with other foreclosure-related notices. The notice must:

- be on an approved form;

- advise the homeowner of his or her mediation rights;

- state the importance of participating in mediation even if the homeowner is communicating with the mortgagee or servicer;

- provide contact information for legal services; and

- incorporate a form the homeowner can use to request mediation from the court.

During the mediations, the parties must address the available foreclosure prevention tools and the amount due, if disputed. The mortgagee must:

- use and consider available foreclosure prevention tools and the applicable government loss mitigation programs when considering a loan modification;

- produce the following for the mortgagor and mediator: (a) if a modification or other agreement is not offered, an explanation of why not; and (b) for any applicable government loss mitigation program, the program's criteria and the inputs and calculations used to determine the homeowner's eligibility; and

- if the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, produce a copy of that agreement.

The borrower must make a good faith effort to provide to the mediator the following information within the time period determined by the court or the mediator:

- information regarding his or her household income; and

- any other information required by any applicable government loss mitigation program.

Within 45 days of his or her appointment, the mediator must hold a premediation telephone conference.

The mortgagee (or an agent with authority to settle), the mortgagee's counsel, the mortgagor, and the mortgagor's counsel, if represented, must participate in the mediation. The mediator may permit a party to participate by telephone or videoconferencing, but the mortgagor and the mortgagee must each have at least one person present in person, unless all parties agree otherwise in writing.

Within seven days of the mediation's conclusion, the mediator must provide a written report of the mediation results to the court, both parties, and the Office of the Attorney General. The report must contain the items required by § 4634(b). The court determines whether the mortgagee or servicer has complied with its mediation obligations.

The parties' rights in a foreclosure action are not waived by participation in mediation. The mortgagee pays the required costs for any mediation, except the borrower is responsible for his or her own costs, including his or her attorney's costs and travel costs. If the foreclosure action results in a sale with a surplus, the lender may recover the mediation cost from the surplus. The lender may shift to the borrower up to one-half of the mediator's costs.

Foreclosure Notice Provisions (§ 4933)

When a mortgage holder files an action to foreclose a mortgage on an owner-occupied dwelling house, the foreclosure notice must include, among other things, the address and telephone number of the person or entity responsible for workout negotiations.

Modification Agreements (§ 4948)

Upon a mortgagor's and mortgagee's agreement, the mortgagor *may* reinstate or modify the loan after the redemption period expires, but before the public sale. Upon the loan's reinstatement or modification, the mortgagee must execute and, after receiving court approval, record a foreclosure waiver.

Section 4637 enacted 2009; § 4933 enacted and amended 2012; § 4948 enacted 2012; §§ 4631, 4632, 4633, and 4635 amended 2013; § 4634 amended 2015.

Vt. Stat. tit. 12, §§ 4631, 4632, 4633, 4634, 4635, 4637, 4933, 4948 (2015)

Virgin Islands

Virgin Islands, Penalties

No relevant statutes were found.

Virgin Islands, Required Alternatives or Preconditions

Before the entry of a foreclosure judgment, the parties must provide the court with evidence that a good faith effort was made to settle the matter through mediation. The type and form of the mediation report is prescribed by the Virgin Islands' Superior Court.

Section amended 2012.

V.I. Code Ann. tit. 28, § 531 (LexisNexis 2015)

Virginia

Virginia, Penalties

No relevant statutes were located.

Virginia, Required Alternatives or Preconditions

Virginia's temporary protections against foreclosure for borrowers with "high-risk mortgage loans" expired on July 1, 2010.

Effective July 1, 2013, the Department of Housing and Community Development may use up to 20 percent of the Virginia Housing Trust Fund to provide grants through eligible organizations for targeted efforts to reduce homelessness, including, among other things, mortgage foreclosure counseling targeted at localities with the highest incidence of foreclosure activity.

Section 55-59.1:1 expired 2010; 36-142 amended 2013.

Va. Code § 36-142 (2016)

Washington

Washington, Penalties

General Penalties

A borrower may bring a claim for money damages after a foreclosure sale—with some restrictions—if the trustee fails to comply materially with the requirements of chapter 24, title 61, Revised Code of Washington. The borrower may bring the same claim under the state consumer-protection statute, which allows for treble damages, costs, and a reasonable attorney's fee.

For the civil-action provision of the state consumer protection statute, *see* Wash. Rev. Code § 19.86.090.

Mediation-related Penalties

A mediator's certification that a beneficiary failed to act in good faith in mediation constitutes a defense to a nonjudicial foreclosure action. In an action to enjoin the foreclosure, the beneficiary may rebut the allegation that it failed to act in good faith. A mediator's certification that a beneficiary failed to act in good faith during mediation is not a defense to a judicial foreclosure or to a future nonjudicial foreclosure action if the borrower agrees on a loan modification and the borrower subsequently defaults.

The mediator's certification also constitutes a basis for a borrower to enjoin the foreclosure if the parties did not reach an agreement and the modified loan's net present value exceeds the anticipated net recovery at foreclosure.

Section 19.86.090 amended 2009; § 61.24.127 amended 2011; § 61.24.163 amended 2014.

Wash. Rev. Code §§ 19.86.090; 61.24.127, .163 (2015)

Washington, Required Alternatives or Preconditions

Notice Regarding Counseling and Meetings (§ 61.24.031)

Washington home loans are typically secured using a deed of trust. For owner-occupied residential real property, before the beneficiary records, transmits, or services the notice of the trustee's sale, the beneficiary must comply with Wash. Rev. Code § 61.24.031 and, if applicable, the foreclosure mediation program.

A beneficiary may not send a notice of default until:

- 30 days after the due diligence requirement was satisfied; or

- if the borrower responds to the initial contact, 90 days after the initial contact with the borrower was initiated.

A beneficiary must make initial contact with the borrower by letter and by telephone to provide required information. The letter must be sent by both first-class and either registered or certified mail, return-receipt requested, to the address used for sending account statements and to the property address. It must include the following information:

- a bolded statement that the borrower must respond within 30 days of the letter's date, and that if he or she does not respond, a notice of default may be issued, using the language set forth in § 61.24.031(1)(c);

- HUD's toll-free telephone number for finding HUD-certified housing counseling agencies;

- a statement that the borrower "may contact the Department of Financial Institutions, the Washington State Bar Association, or the statewide civil legal aid hotline for possible assistance or referrals";

- a paragraph explaining how the borrower may respond to the letter and stating that, after responding, the borrower will have an opportunity to meet with his or her beneficiary to try to work out an alternative to the foreclosure, and that after 90 days from the date of the letter, a notice of default may be issued.

The beneficiary must also provide:

- the lender's website address listing options for borrowers who cannot afford their mortgage payments and wish to avoid foreclosure;

- a list of financial documents the borrowers should collect to help prepare for discussions with the lender; and

- a toll-free number for the lender for borrowers to call to discuss foreclosure-avoidance options, among other things.

If the beneficiary has exercised due diligence as required by § 61.24.031(5) and the borrower does not respond within 30 days of the initial contact, the beneficiary may issue a notice of default. If the borrower requests a meeting, the beneficiary must schedule the meeting to occur before the notice of default is issued. An assessment of the borrower's financial ability to modify or restructure the loan obligation and a discussion of options must occur during the meeting. The meeting may be held by telephone, unless the borrower requests in writing that a meeting be held in person.

If the borrower does not respond within 14 days of the telephone calls, the lender or designated agent must send a certified letter, return receipt requested, to the borrower. The letter must contain the same information as was provided in the initial letter sent by first-class mail. The letter must also include the following statement: "Your failure to contact a housing counselor or attorney may result in your losing certain opportunities, such as meeting with your lender or participating in mediation in front of a neutral third party."

If the borrower decides to designate a HUD-certified housing counseling agency, housing counselor, or attorney to discuss the borrower’s options to avoid foreclosure, the borrower must inform the lender or its agent within 14 days of that decision and provide contact information for the designated person. The lender or its agent must contact that designated person to meet. The beneficiary and the borrower must attempt to reach a resolution within the 90 days from the time the initial contact is sent and the notice of default is issued. The borrower must agree to any workout arrangement the borrower’s designee makes with the lender or its agent.

When the notice of default is issued, it must include a declaration from the lender or its authorized agent that it contacted the borrower, that it tried with due diligence to contact the borrower, or that the borrower surrendered the property to the trustee, lender or its authorized agent. The statute provides a form for the declaration, entitled Foreclosure Loss Mitigation Form.

A notice of default may be issued under § 61.24.030(8) if a beneficiary has initiated contact with the borrower and the failure to meet with the borrower occurred despite the due diligence of the beneficiary or authorized agent.

These pre-default-notice procedures do not need to be followed if the borrower has already surrendered the property to the trustee, the lender, or its agent.

Mediation (§§ 61.24.163, .165, .166)

Washington has enacted statutes that address mediation during foreclosure procedures. Washington's foreclosure mediation program applies only to borrowers who have been referred to mediation by a housing counselor or an attorney. The mediation referral may be made any time after a notice of default has been issued, but no later than 20 days after the date a notice of sale has been recorded. If the borrower has not elected in a timely manner to mediate, the borrower and the beneficiary may, but are under no duty to, agree in writing to enter the foreclosure mediation program. The mediation program is not governed by chapter 7.07 and does not preclude mediation required by a court or other provisions of law.

A housing counselor or attorney referring a borrower to mediation must send a notice to the borrower and the department of commerce, stating that mediation is appropriate. Within 10 days of receiving that notice, the department must select a mediator and send a notice to the parties stating that they have been referred to mediation. Within 23 days of the department's notice that the parties have been referred to mediation, the borrower must transmit the required documents to the mediator and the beneficiary. The parties may agree in writing to extend the time in which to schedule the mediation session. *See* § 61.24.163, as amended in 2014, for additional details regarding the foreclosure mediation process.

The mediator must send written notice of the time, date, and location of the mediation session at least 30 days before the scheduled session. The borrower, the beneficiary (or its authorized agent), and the mediator must meet in person for the mediation session. A person with authority to agree to a resolution on behalf of the beneficiary may be present over the telephone or video conference during the session. The participants must address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution.

If the parties are unable to reach an agreement, the beneficiary may proceed with the foreclosure after receiving the mediator's written certification. The mediator's certification that the borrower failed to act in good faith in mediation authorizes the beneficiary to proceed with the foreclosure.

A trustee may not record the notice of sale until the trustee receives the mediator's certification stating that the mediation has been completed. If the trustee does not receive the mediator's

certification, the trustee may record a notice of sale after 10 days from the date the certification was due.

The mediation provisions apply only to deeds of trust that are recorded against owner-occupied residential real property of up to four units. A borrower under a deed of trust on owner-occupied residential real property who has received a notice of default on or before July 22, 2011, may be referred to mediation by a housing counselor or attorney.

The above mediation provisions do not apply to:

- deeds of trust securing a commercial loan, the obligation of a grantor who is not the borrower or a guarantor, or a purchaser's obligations under a seller-financed sale;
- certain association beneficiaries; or
- a federally insured depository institution that certifies that it was not a beneficiary of deeds of trust in more than 250 trustee sales of owner-occupied residential real property that occurred during the preceding calendar year.

Section 61.24.166 enacted 2011; § 61.24.030 amended 2012; §§ 61.24.031, 61.24.163, and 61.24.165 amended 2014.

Wash. Rev. Code §§ 61.24.030, .031, .163, .165, .166 (2015)

West Virginia

West Virginia, Penalties

No relevant statutes were found.

West Virginia, Required Alternatives or Preconditions

No relevant statutes were found.

Wisconsin

Wisconsin, Penalties

No relevant statutes were found.

Wisconsin, Required Alternatives or Preconditions

No relevant statutes were found.

Wyoming

Wyoming, Penalties

No relevant statutes were found.

Wyoming, Required Alternatives or Preconditions

No generally relevant statutes were found.

Wyoming has a statute providing for *voluntary* mediation of disputes affecting "agricultural lands," which is land principally used for farming or ranching, a farmer's principal residence and land contiguous to the residence. It authorizes a court or agency, upon a written stipulation of all parties, to enter an order suspending a legal action while the parties mediate the dispute. It covers situations in which "[a] farmer or creditor wish[es] to resolve a dispute . . . involving the farmer's agricultural property and the creditor's interest in a mortgage, land contract, lien, security interest or judgment affecting the agricultural property, either before an action has been initiated . . . or after entry of a suspension order." *See* Wyo. Stat. §§ 11-41-101 to -110 for details regarding agricultural mediation.

Sections amended 1998.

Wyo. Stat. §§ 11-41-102, -107, -108 (LexisNexis 2015)