



Ohio Legislative Service Commission

Bill Analysis

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S.B. 197

128th General Assembly
(As Introduced)

Sens. Jones, Faber, Schaffer, Wagoner

BILL SUMMARY

- Directs courts to establish programs of mandatory mediation for nontax foreclosure actions on occupied residential properties and requires parties to those foreclosure actions to participate in that mediation.
- Provides procedures and guidelines for courts to follow in establishing and operating the mediation programs, with the general stipulation that the mediations are to comply with the Ohio Uniform Mediation Law.
- Stays foreclosure proceedings while a mediation is ongoing and lifts the stay upon the mediator filing a report with the court.
- Requires mediation only if the homeowner answers or otherwise responds to the court's summons and complaint and provides that if there is no answer or response, the filing party may continue with the foreclosure action and may seek a default judgment; if the filing party fails to attend, the court generally is required to dismiss the foreclosure action.
- Pays the costs of mediation by imposing additional foreclosure filing fees that courts establish in amounts up to \$500 and directs the clerk to pay the foreclosure filing fees to the county treasurer for deposit in a county Residential Foreclosure Mediation Fund.

CONTENT AND OPERATION

Mandatory mediation programs

The bill requires a court of common pleas to establish a program of mandatory mediation under which a mortgagor (the property owner, generally) and mortgagee

(the lender or other person holding the mortgage) participate when a foreclosure action is filed on an occupied residential property.¹ The mediation is conducted by a court-appointed mediator. The mediation requirement applies to foreclosure actions on all occupied residential structures except the following:

- (1) A foreclosure action that is based on a lien for delinquent taxes (a tax lien);
- (2) A foreclosure action on a property that is not an occupied residential property, as defined by the bill;
- (3) A foreclosure action in which the property owner did not answer or otherwise respond to the clerk's summons and complaint within 28 days after its issuance. (R.C. 2303.24(A) and 2308.02(B).)

The mediation program the court establishes must be consistent with procedures set forth in the bill. The bill requires the court to adopt rules that establish training requirements for the mediators it appoints and requires the rules to comply with Rule 16 of the Rules of Superintendence for the Courts of Ohio.² In addition, under the bill, a court's training requirements for mediators must include all of the following as minimum requirements:

- (1) Twelve hours of basic mediation training;
- (2) Foreclosure mediation training approved by the Supreme Court;
- (3) Two hours of training on the provisions of the Ohio Uniform Mediation Law (Chapter 2710. of the Revised Code). (R.C. 2303.24 and 2308.02(B) and (C).)

Costs of mediation

The court may appoint either volunteer mediators or mediators who require a fee, so long as the mediator meets the court's training requirements. The bill requires the court to pay any costs of mediation from a Residential Foreclosure Mediation Fund the county treasurer establishes pursuant to the bill. Moneys in that fund come from residential foreclosure filing fees that the bill requires a court of common pleas to establish by rule in an amount up to \$500. The fees are charged to any person who files a petition for foreclosure on a residential property, except for filings that are based on a

¹ "Occupied residential property" is defined by the bill as "real property with a structure containing four or fewer residential units, or an individually owned condominium unit, occupied by the owner of the property or a tenant of the owner" (R.C. 2308.01(A)).

² Rule 16 of the Rules of Superintendence for the Courts of Ohio permits local courts to adopt a local rule providing for mediation and prescribes provisions that the local rule must include.

tax lien. The fee is in addition to any other filing fee or court cost that otherwise applies to the filing. The bill directs the clerk of courts to pay all moneys collected as a residential foreclosure filing fee to the county treasurer for deposit into a Residential Foreclosure Mediation Fund the county treasurer establishes.

The bill specifies that upon an order of the court, the treasurer is to disburse moneys from the fund to reimburse the court for any foreclosure mediation costs the court incurs pursuant to the foreclosure mediation program. If the amount collected is more than the amount sufficient to satisfy the purpose for which the fee is imposed, the court may declare a surplus and expend the money for other costs related to residential foreclosure actions. The filing is an expense that the filing party may recover from the sale of the property or as part of a deficiency judgment. (R.C. 2303.201(F) and 2303.24(D).)

Mediation requirements and procedures

Under the bill, no action for foreclosure on an occupied residential property may proceed unless the filing party and the homeowner participate in foreclosure mediation pursuant to the program the court establishes, with the exception of (1) tax lien filings, (2) filings on a property that is not an occupied residential property, (3) filings where the homeowner does not timely answer or otherwise respond to the summons and complaint, and (4) filings in which either the filing party or the homeowner do not attend a scheduled mediation meeting (R.C. 2308.02(A) and (B) and 2308.05(E)).

Information the clerk provides

The bill requires that, along with the summons and complaint the clerk of courts issues to parties when a nontax lien residential foreclosure action is filed, the clerk provide written notice regarding the mediation program and information about programs that assist homeowners facing foreclosure.

The written notice the clerk provides must include all of the following:

(1) That the filing party and the owner of an occupied residential property are required to participate in mediation with a court-appointed mediator as a condition of the foreclosure action proceeding;

(2) That the homeowner has 28 days to answer or respond to the summons and complaint, that in any answer or other response the homeowner should assert whether the property is an occupied residential property, and that if the homeowner does not answer or otherwise respond within 28 days after the service of the summons and complaint, the mediation will not be held and the filing party may seek a default judgment;

(3) That upon receiving an answer or other response from the homeowner, the court will schedule the mediation to be held within 60 days and will notify the filing party and the homeowner of the date, time, and place of the mediation meeting;

(4) That all further foreclosure proceedings are stayed, pending the filing of the mediation report;

(5) That the homeowner may be accompanied and represented by an attorney at the mediation;

(6) That at the discretion of the mediator, the first mediation meeting may be held by telephone. (R.C. 2308.03(A).)

Other information the bill directs the clerk to provide along with the summons and complaint includes information about programs that help homeowners who face foreclosure, including information on state programs such as the "Save the Dream Program" and any local programs organized by local task forces or other entities (R.C. 2308.03(B)).

Scheduling the mediation meeting

The bill's mediation requirement applies only if the homeowner answers or otherwise responds to the summons and complaint. The bill directs the clerk of court, upon receiving a homeowner's answer or other response to the clerk's summons and complaint, to appoint a mediator who is qualified pursuant to the rules the court has established and to schedule a mediation meeting to be held within 60 days after receiving the homeowner's response. The clerk must provide the filing party and homeowner with written notice of that meeting, which must include the name of the mediator and the date, time, and place of the mediation meeting, or information with respect to establishing the date, time, and place of the meeting. The notice also must include a statement that the homeowner has a right to be accompanied and represented by an attorney. (R.C. 2308.04(A).)

If the homeowner does not answer or otherwise respond to the clerk's summons and complaint within 28 days after its service, or if the property is not an occupied residential property, the bill's mediation requirement does not apply and the filing party may proceed pursuant to usual procedures in the foreclosure action. (R.C. 2308.04(B).)

The mediation meeting

Unless otherwise specified in the bill, foreclosure mediation meetings are to proceed according to the Ohio Uniform Mediation Law. At the discretion of the

mediator, the first mediation meeting may be conducted by telephone. The mediation must continue for as many sessions as the mediator determines is beneficial, at the discretion of the mediator.

Upon a reasonable request of either party that certain documents be provided to the mediator, or at the mediator's discretion, a mediator may require a party to provide those documents. The privileges and exceptions pertaining to mediation communications that are contained in the Ohio Uniform Mediation Law apply to mortgage foreclosure mediations. In addition, any person who represents a party attending a mediation meeting may fully negotiate on behalf of that party in negotiating a compromise. (R.C. 2308.05(A), (B), (C), and (D).)

Failure to attend

If a homeowner does not attend a scheduled mediation meeting, the bill directs the mediator to immediately report this to the court, whereupon the foreclosure will proceed as if the mediation meeting had been held. If the filing party does not attend a mediation meeting, the bill requires the court, subject to a showing of good cause, to dismiss the foreclosure action. (R.C. 2308.05(E).)

Mediation report

The bill requires a mediator to prepare a written report of the mediation and provide that report to the court within 14 days after the final mediation meeting. The mediator must include in that report the dates of all scheduled mediation meetings, whether the mediation was successful in resolving the issue, whether both parties attended scheduled mediation meetings and participated in good faith, and any other information the mediator considers appropriate. (R.C. 2308.05(F).)

Following the filing of the report, the court is required to lift the stay on the foreclosure proceedings and to serve a copy of the mediator's report to all parties. A homeowner who filed a response that is not an answer has 28 days after the filing of the mediator's report to answer, or with leave of the court, to otherwise respond to the complaint. (R.C. 2308.05(G) and (H).)

Relationship to existing mediation authority

Continuing law provides that in an action for the foreclosure of a mortgage, the court may at any stage in the action require the mortgagor and mortgagee to participate in mediation as the court considers appropriate. The bill provides that this existing authority to order mediation is in addition to the mandatory mediation that the bill requires. (R.C. 2323.06.)

HISTORY

ACTION

DATE

Introduced

10-28-09

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