

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1244

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2019

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 1244, with committee amendments.

As amended, this bill codifies the Judiciary's Foreclosure Mediation Program into the New Jersey Statutes, and makes various adjustments to the program. The program has existed since 2008, when it was established by the State Judiciary in response to an increase in residential foreclosures.

The bill requires that at the time a homeowner receives a notice of intention to foreclose pursuant to section 4 of P.L.1995, c.244 (C.2A:50-56), the homeowner must receive written notice of the option to participate in the Foreclosure Mediation Program. Upon the filing of a mortgage foreclosure complaint against an eligible property, the homeowner again must receive written notice of the option to participate in the Foreclosure Mediation Program. The written notice must be available in both English and Spanish.

The bill authorizes eligible homeowners to initiate mediation in accordance with court rules. When initiating mediation, the homeowner would be required to submit a certification document, signed by a foreclosure prevention and default mitigation counselor, to verify that that this professional is providing the homeowner with counseling. The homeowner would not have to pay any fees to participate in the program. The bill requires lenders to have a representative attend the mediation session, either in person or by telephone, who has authority to reach a mutually acceptable loan modification, loan workout, refinancing agreement, or other resolution. If either party fails to attend a mediation session, the courts will have the authority to penalize the party through a fine of up to \$1,000, through allowing the other party to recover reasonable attorney's fees and litigation expenses, or through any other sanction the court deems appropriate.

The bill also creates a dedicated, non-lapsing fund within the General Fund to be known as the "Foreclosure Mediation Fund." This fund would be comprised of a \$75 payment added to every foreclosure complaint filing fee, along with all fines imposed on lenders for noncompliance with obligations of the mediation program. The fund

would be used for the operation of the mediation program, including the compensation of mediators, and to enhance the integrity of the mortgage foreclosure review process. For each \$75 fee collected, \$25 is required to be used to reimburse trained foreclosure prevention and default mitigation counselors for their services pursuant to the bill.

The bill would require the Judiciary to compile information related to mediation sessions on their website in order to more effectively understand the frequency of the program's success. The bill would take effect on the first day of the seventh month following enactment.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) direct the courts to provide a homeowner with no less than 60 days to initiate mediation following receipt of a foreclosure complaint. However, the amendments remove language related to the ability to stay a sheriff's sale in association with a mediation request. The amendments also prohibit participation in foreclosure mediation unless a certification document is submitted to the court.

(2) clarify that the certification document, which primarily clarifies that the homeowner is eligible to participate in mediation, must be signed by a foreclosure prevention and default mitigation counselor to verify that that this professional is counseling the homeowner.

(3) add a definition of "certification document," and "trained foreclosure prevention and default mitigation counselor," and adjust the definition of "homeowner-borrower." Through changes to the "eligible property" definition, the amendments expand the types of property owners who may participate in the program to include owners of one- to four-dwelling unit residences, so long as one dwelling unit is occupied, or planned to be occupied, by the homeowner or a member of the homeowner's immediate family.

(4) require attendance by each party in a mediation session, but remove the requirement for good faith participation by each party.

(5) add a new section to the bill to require the Judiciary to compile information related to mediation sessions on their website in order to more effectively understand the frequency of the program's success.

(6) provide for a \$75 filing fee for the Foreclosure Mediation Fund, which is meant to be in addition to the \$250 complaint filing fee. The amendments also specify that the Foreclosure Mediation Fund shall be used to compensate mediators, in addition to its other purposes. For each \$75 fee collected, \$25 is to be used to reimburse trained foreclosure prevention and default mitigation counselors for their services pursuant to the bill.

(7) make technical changes to the bill and delay the effective date of the bill until the first day of the seventh month following enactment.