

Act 8: 12 V.S.A. §§ 4631-4637  
Changes to the Vermont Foreclosure  
Mediation Statute



# Background

- Current statute took effect 7/1/10. It is tied to the Home Affordable Modification Program (“HAMP”). The statute is set to be repealed when HAMP expires.
  - Originally, HAMP was to expire on 12/31/12.
- 2011-2012 leg. session – H.600 – introduced to extend foreclosure mediation beyond the expiration of HAMP. However, during leg. session HAMP extended to 12/31/13 and efforts to amend the current statute ceased.
  - H.600 included the creation of a foreclosure mediation study committee made up of different stakeholders
- From late summer 2012 through January 2013, a study committee comprised of the various stakeholder convened to review the current mediation program and develop a post HAMP model.
- H.431 – introduced 3/1/13, signed by Gov. 4/26/13
- Statutory changes take effect December 1, 2013. Applies to all foreclosure actions filed after that date.
- HAMP extended: initial financial package submitted on or before 12/31/15, modification effective on or before 9/30/16

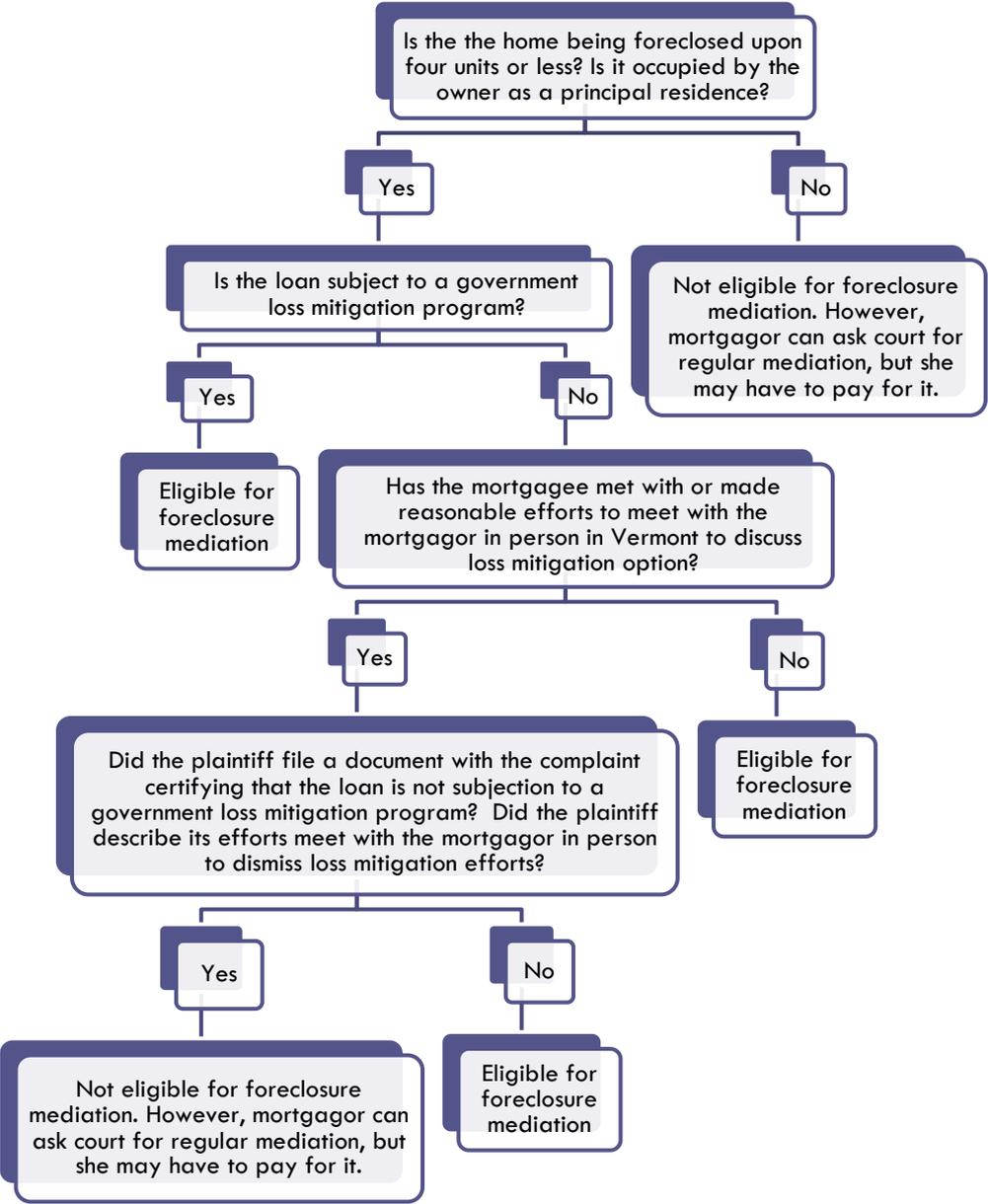
# Major Changes

- **Foreclosure mediation is here to stay!** – no longer tied to HAMP
- Expands the availability of mediation to virtually all residential foreclosure actions
- VBA establishes selection process
- Premediation telephone conference
- Physical presence required
- Specific sanctions
- Data collection

## 12 V.S.A. § 4631 (a), (b), and (d)

- Still only applies to foreclosure of dwelling house of four units or less that is occupied by the owner as a principal residence. Does not apply to commercial loans.
- Mediation applies to all foreclosure actions of mortgages that are subject to government loss mitigation programs – not just HAMP.
- Exemption: Mediation available in all foreclosure actions, unless:
  - Loan not subject to a government loss mitigation program
  - Mortgagee met with or made reasonable efforts to meet with mortgagor in person in Vermont to discuss options
  - Plaintiff files a certification with the complaint that no govt. program and describes prior in person loss mitigation efforts

# Foreclosure Mediation Eligibility Chart



# 12 V.S.A. § 4631(e): Definitions

- Commercial Loan – 9 V.S.A. § 46(1), (2), or (3)
- Government loss mitigation program
  - HAMP
  - Fannie Mae
  - Freddie Mac
  - FHA
  - VA
  - USDA Guaranteed – not owned by an instrumentality of the U.S. or State of Vermont
  - Loans covered under a government settlement agreement
  - Loans covered under any law or regulation re: loss mitigation

## 12 V.S.A. §§ 4631(c) and 4632(e): Mediator qualifications and selection

- Mediator must take periodic CLE courses on foreclosure prevention/loss mitigation approved by the Vermont Bar Association
- The VBA has established a fair and neutral mediator selection process.
- If the parties are unable to select a mediator through the VBA's process, the court shall select a mediator.

# 12 V.S.A. § 4632: Opportunity to Mediate

- Homeowner must specifically request mediation.  
Request must be made:
  - Prior to four months after judgment is entered and
  - Before the end of the redemption period in the decree
    - Typically the redemption period is six months, but it is sometimes shorter
- Court can still decline to order mediation after judgment is entered if it determines that homeowner is attempting to delay the case or for other good cause.
- Mediation shall be complete:
  - Before the redemption date in the decree and
  - Within 120 days of mediator's appointment
    - Unless the parties agree on another date or for good cause the court orders a different date

## 12 V.S.A. § 4633(d) and (e): Physical Presence at Mediation

- Participation still required from: Plaintiff or mortgage servicer, counsel for Plaintiff, homeowner, and homeowner's counsel (if represented). Those parties may participate by phone or videoconferencing, except:
  - **At least one person on behalf of Plaintiff and one person on behalf of homeowner must be physically present at the mediation**
- If the mediator, Plaintiff and homeowner agree in writing, physical presence shall not be required.

# 12 V.S.A. § 4633(b)

## Premediation Phone Conference

- Occurs within 45 days of mediator's appointment
- The mediator must document and maintain records of the progress the parties are making on:
  - financial document production,
  - any review of information that occurs during the conference,
  - any request for additional information,
  - the anticipated time frame for submission of any additional information
  - the anticipated time frame for lender's review of the information, and
  - the scheduling of the mediation session
- Mediator shall document who will be present in person at the mediation and any agreement from the Plaintiff and homeowner that physical presence is not required.
- Within a timeframe determine by the mediator or the court, homeowner must make a good faith effort to provide to the mediator information on household income and any information required by any govt. loss mitigation program.

# 12 V.S.A. § 4633: Mediation Requirements

- During foreclosure mediation, the mortgage servicer must address:
  - If disputed, the amount due on the note for the principal, interest, and costs or fees
  - Available foreclosure prevention tools
    - Reinstatement, loan modification, forbearance and short sale, and
    - The applicable government loss mitigation program requirements, and
    - Any related “net present value” calculations used in considering a loan modification

## 12 V.S.A. § 4633 Cont'd

- The Plaintiff/mortgage servicer must produce for the homeowner and mediator, the criteria for any applicable govt. loss mitigation programs and the inputs and calculations used in determining the homeowner's eligibility for the programs.
- If a loan modification or other agreement is not offered, the Plaintiff or mortgage servicer must produce an explanation why the homeowner was not offered a modification or other workout agreement.

## 12 V.S.A. § 4633 Cont'd

- During the mediation, the mediator must document:
  - Agreements about information submitted to the mediator
  - Whether a modification or other workout agreement is available and, if it is, the terms
  - If a modification or other workout agreement is not available, the reasons why
  - The steps necessary to finalize the mediation

# 12 V.S.A. § 4634: Mediation Report

- Within seven days of the conclusion of mediation, mediator submits report to court, parties and the Office of the Attorney General.
  - Report must include a statement as to whether any party failed to:
    - Attend mediation
    - Make a good faith effort to mediate
    - Supply documents, information or data
  - Report submitted to AG for data collection. It shall be confidential, except that the information may be used in aggregate form for reporting.
  - AG created a form
    - In addition to existing information to be provided to the court, AG form includes govt. program criteria, inputs and calculations, NPV (if applicable), all information re: use and consideration of foreclosure prevention tools, explanation of why homeowner not offered modification or other workout, and, if disputed, amount due.

# 12 V.S.A. § 4635: Compliance

- Upon receipt of report, Court shall determine whether mortgage servicer complied with:
  - All of its obligations under § 4633(a); and
  - Any applicable govt. loss mitigation program requirements
- If court determines that a party failed to mediate in good faith or failed to comply with the statute, it can impose sanctions against noncomplying party. Sanctions include, but are not limited to:
  - Tolling of interest, fees and, costs
  - Reasonable attorney's fees
  - Monetary sanctions
  - Dismissal without prejudice
  - Prohibiting foreclosure sale

## 12 V.S.A. § 4636

- Repealed

## 12 V.S.A. § 4637:

### Waiver of Rights/Costs of Mediation

- No change to current statute