

CHAPTER 27  
FORMERLY  
HOUSE BILL NO. 40  
AS AMENDED BY  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 10 AND 29 OF THE DELAWARE CODE AND CHAPTERS 198, 199 AND 200, VOLUME 78 OF THE LAWS OF DELAWARE RELATING TO FORECLOSURES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 5062B(a)(3)a., Title 10 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

(3)a. The notice of intent to foreclose required under paragraph (a)(1) of this section shall be sent:

1. To the ~~potential defendant~~ borrower[s] by certified mail, postage prepaid, return receipt requested, bearing postmark from the United States Postal Service; and

2. To the ~~potential defendant~~ borrower[s] by first class mail.

Section 2. Amend § 5062B(a)(4), Title 10 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

(4) If the ~~potential defendant~~ borrower[s] may be eligible to apply for assistance through any proprietary loss mitigation program offered by the plaintiff or under any federal loss mitigation program in which the plaintiff participates, including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program, the potential plaintiff shall include a list of the potentially applicable loss mitigation programs, instructions for how to initiate a completed application for each such program, and a telephone number to call to confirm receipt of an application.

Section 3. Amend § 5062B(a)(5), Title 10 of the Delaware Code, by making insertions as shown by underlining as follows:

(5) The potential plaintiff (or the servicer sending notice on their behalf) shall include with the notice of intent to foreclose an accounting of the mortgage obligation covering the twelve-month period prior to the date of the alleged default. The accounting shall include, at a minimum, a history of all payments made during the 12-month period prior to the date of the alleged default and the potential plaintiff's allocation of those payments to principal, interest, attorney fees, other applicable fees, and the allocation of such payments to the payment installments required by the mortgage. The accounting shall also include:

a. The due date for the mortgage;

b. Any other information as the potential plaintiff may be relying upon as the basis for the claim of default; and

c. A certification by the potential plaintiff (or the servicer sending notice on their behalf) that the information contained in the accounting is true and accurate to the best of its knowledge as of the date provided and that the information provided has been relied upon as the basis for the claim of default. Where a servicer provides the certification instead of the potential plaintiff, the servicer shall also identify itself as such and recite in such certification its authority to act on behalf of the potential plaintiff.

Section 4. Amend § 5062C(d)(2), Title 10 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~(2) The Superior Court or its delegate may create procedures to allow plaintiffs to pre-schedule mediation conferences in connection with the filing of a complaint, in which case the mediation scheduling notice shall be attached to the notice of foreclosure mediation.~~

Section 5. Amend § 5062C(e)(3), Title 10 of the Delaware Code, by insertions as shown by underlining and deletions as shown by strike through as follows:

(3) Upon receipt of a duly completed Certificate of Participation from the defendant, the plaintiff shall owe ~~pay~~ a mediation fee to the Superior Court or its delegatee in the amount set by the Superior Court pursuant to subsection (q) of this Section. Notwithstanding the preceding sentence, if the mediation conference has been cancelled as a result of the defendant checking "NO" on the Certificate of Participation under paragraph (e)(1) of this section above, no mediation fee will be required. The mediation fee required, whether under this section or paragraph (i)(8) of this section above, shall be due and must be paid by plaintiff within thirty days after the E-filing of a completed Certificate of Participation, and shall be in addition to any other filing fees required by law. The mediation fee required under this section must be paid by the plaintiff before the date for which the initial mediation conference has been scheduled. The Superior Court or its delegatee may in its discretion reschedule any scheduled mediation conference where the mediation fee is overdue pursuant to this paragraph until such time as the mediation fee has been paid.

Section 6. Amend § 5062C(i)(9)g.2., Title 10 of the Delaware Code, by making as shown by insertions underlining and deletions as shown by strike through as follows:

2. A bankruptcy petition has been filed, mediation is not permitted to continue in accordance with 10 Del. C. § 5062C(i)(12), and upon termination of the automatic stay, plaintiff shall request that a mediation conference be scheduled and no judgment may be entered in the foreclosure action until the day after such date of such new mediation conference; or"

Section 7. Amend § 5062C(i), Title 10 of the Delaware Code, by making the insertions as shown by underlining as follows:

(12). Where a bankruptcy petition has been filed, mediation shall not be permitted to continue unless either:

(a). The automatic stay has been lifted or modified with respect to the defendant's mortgage obligation to the plaintiff; or

(b). Mediation is permitted to proceed pursuant to an order or directive of a Bankruptcy Court. Where the mediation process has previously been cancelled as the result of the filing of a bankruptcy petition but is subsequently permitted to proceed under this sub-paragraph, plaintiff shall request that a mediation conference be scheduled and no judgment may be entered in the foreclosure action until the day after such date of such new mediation conference.

Section 8. Amend § 5062C(i)(8), Title 10 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by striking through as follows:

(8) The parties to a foreclosure action may agree in a mediation conference to schedule an additional mediation conference, which fact shall be recorded in the mediation record at the end of the present mediation conference. If the plaintiff has not yet been required to pay a mediation fee under paragraph (e)(3) of this section because the defendant did not file a completed Certificate of Participation in a timely manner, upon the scheduling of the first additional mediation conference after the initial mediation conference, the plaintiff shall be required to pay a mediation fee to the Superior Court or its delegatee in the amount set by the Superior Court pursuant to paragraph (q) of this section. The mediation fee required under this paragraph must be paid by the plaintiff within thirty days of the E-filing of a completed Certificate of Participation, and shall be in addition to any other filing fees required by law. The mediation fee required under this paragraph must be paid by the plaintiff before the date for which the first additional mediation conference has been scheduled. The Superior Court or its delegatee may in its discretion reschedule any subsequently scheduled mediation conference where the mediation fee is overdue until such time as the mediation fee has been paid.

Section 9. Amend § 5062D(b)(1) Title 10 of the Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

(1) If applicable, an affidavit stating that the notice of intent to foreclose was sent to the ~~defendant~~ borrower[s] in accordance with § 5062B(a)(3) of this title and the date ~~on which the notice was sent~~ of said notice.

Section 10. Amend 78 Del. Laws, c. 199 § 3(b) (House Substitute No. 1 for House Bill No. 57, as amended by House Amendment No. 1, 146<sup>th</sup> General Assembly) by making insertions as shown by underlining and deletions as shown by strike through as follows:

(b). Section 5062A of Title 10 shall apply to: (i) mortgage foreclosure actions commenced from the effective date of this Act to the date that is six years ~~two years~~ after such date; and (ii) mortgage foreclosure actions commenced prior to the effective date of this Act that are pending in the Superior Court on such date and not yet gone to judgment or sale.

Section 11. Amend 78 Del. Laws, c. 200 § 4 (House Substitute No. 1 for House Bill No. 58, 146<sup>th</sup> General Assembly) by making insertions as shown by underlining and deletions as shown by strike through as follows:

This Act shall take effect 120 days after its enactment into law its enactment to law and shall only apply to mortgage foreclosure actions commenced from the effective date of this Act to the date that is six years ~~two years~~ after such date.

Section 12. Amend 78 Del. Laws, c. 198 § 2 (House Bill No. 59, as amended by House Amendment No. 1, 146<sup>th</sup> General Assembly) by making insertions as shown by underlining and deletions as shown by strike through as follows:

This Act shall be effective immediately upon its enactment into law and shall continue to have effect until the date that is six years ~~two years~~ after such date.

Approved May 28, 2013