

House Calendar

Thursday, March 15, 2012

73rd DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 P.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Action Postponed Until March 15, 2012

Favorable with Amendment

H. 600

An act relating to mandatory mediation in foreclosure proceedings

Rep. Koch of Barre Town, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 12 V.S.A. § 4631 is amended to read:

§ 4631. MEDIATION PROGRAM ESTABLISHED

* * *

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the state and shall be required to have taken ~~a~~ the specialized, continuing legal education training course courses on foreclosure prevention or loss mitigation approved by the Vermont Bar Association. The court administrator, in consultation with the Vermont Bar Association, shall implement a system which ensures that the mediator is chosen through a randomized selection process in all mediations conducted pursuant to this chapter.

Sec. 2. 12 V.S.A. § 4632 is amended to read:

§ 4632. OPPORTUNITY TO MEDIATE

* * *

(b) The court shall hold a status conference no later than 90 days from the date that the mortgagor requested mediation, unless the mediator's report is filed with the court prior to such time.

(c) Unless the mortgagee agrees otherwise, all mediation shall be completed prior to the expiration of the redemption period. The redemption period shall not be stayed on account of pending mediation.

~~(e)~~(d) In an action for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection ~~(e)~~(e) of this section with the summons and complaint. The supreme court may by rule consolidate this notice with other

foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.

~~(d)~~(e) The notice required by subsection ~~(e)~~(d) of this section shall:

- (1) be on a form approved by the court administrator;
- (2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;
- (3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;
- (4) provide contact information for legal services; and
- (5) incorporate a form that can be used by the homeowner to request mediation from the court.

~~(e)~~(f) The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:

- (1) include the calculations and inputs required by HAMP and employed by the mortgagee; and
- (2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.

Sec. 3. 12 V.S.A. § 4633 is amended to read:

§ 4633. MEDIATION

(a) During all mediations under this subchapter:

(1) ~~the~~ The parties shall address proof of ownership of the note and any transfers of the note; calculation of the sums due on the note for the principal, interest, and costs or fees; and all available foreclosure prevention tools.

(2) The mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related "net present value" calculations in considering a loan modification conducted under this subchapter;

~~(2)~~(3) the The mortgagee shall produce for the mortgagor and mediator

documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related “net present value” calculation; ~~and~~

~~(3)(4) where~~ Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator’s report.

* * *

Sec. 4. 12 V.S.A. § 4634(a) is amended to read:

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court ~~and, to both parties, and to the department of banking, insurance, securities, and health care administration.~~

Sec. 5. FORECLOSURE MEDIATION PROGRAM STUDY COMMITTEE

(a) Creation of committee. There is created a foreclosure mediation program study committee to consider appropriate measures for Vermont to take in response to the anticipated repeal of the state foreclosure mediation program when the federal Home Affordable Modification Program (“HAMP”) is repealed on December 3, 2013.

(b) Membership. The foreclosure mediation program study committee shall be composed of seven members. The members of the committee shall be as follows:

(1) The administrative judge or designee.

(2) The attorney general or designee.

(3) The commissioner of banking, insurance, securities, and health care administration or designee.

(4) One member appointed by the Vermont Bar Association.

(5) One member appointed by Vermont Legal Aid.

(6) One member appointed by the Vermont Bankers Association.

(7) One member with experience as a mediator in foreclosure proceedings appointed by the Vermont Bar Association.

(c) Powers and duties. The committee shall study whether changes in state law and policy should be made in response to the anticipated repeal of Vermont’s foreclosure mediation program when the federal HAMP is repealed on December 3, 2013. The committee’s study shall include consideration of:

(1) the impacts of the anticipated repeal of Vermont’s foreclosure mediation program and any measures that would be advisable for Vermont to take in response to the repeal;

(2) whether the Vermont foreclosure mediation program should be amended to be consistent with national settlements or standards, and whether a state foreclosure mediation program is necessary in light of such national settlements or standards;

(3) whether the mortgagee or the mortgagee’s attorney should be required to be physically present at the proceeding; and

(4) whether the mediation proceeding should address all issues related to the foreclosure.

(d) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before December 1, 2012.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to mediation in foreclosure proceedings”

(Committee Vote: 11-0-0)

Amendment to be offered by Rep. Wizowaty of Burlington to the recommendation of amendment of the Committee on Judiciary to H. 600

Rep. Wizowaty of Burlington moves that the recommendation of the committee on Judiciary be amended by adding a new Sec. 1 to read:

Sec. 1. INTENT

By use of the term “mediation” in the present context, the General Assembly does not intend to alter the procedures that are applicable in mediations in other contexts or to modify in any way the model standards of conduct for mediators adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution.

and by renumbering the remaining sections to be numerically correct.

NEW BUSINESS

Third Reading

H. 37

An act relating to telemedicine

H. 523

An act relating to revising the state highway condemnation law

Amendment to be offered by Rep. Krebs of South Hero to H. 523

Rep. Krebs of South Hero moves that the bill be amended as follows:

First: In Sec. 2, § 502, subsection (a), in the second sentence, by inserting “, after making reasonable efforts to provide the owner advance notice of such entry,” after “lands”.

Second: In Sec. 2, § 506, subsection (d), by inserting a new sentence to be the first sentence of that subsection to read “Upon the agency’s recording of the condemnation order or notice, the clerk with responsibility over land records shall enter the names of each property owner named in the order or notice as a grantor in the general index of transactions affecting the title to real estate.”

H. 524

An act relating to the regulation of professions and occupations

Amendment to be offered by Rep. Donahue of Northfield to H. 524

Rep. Donahue of Northfield moves that the bill be amended by adding a new section to be Sec. 62a to read:

Sec. 62a. 31 V.S.A. § 1108 is amended to read:

§ 1108. MATCHES; SPECIAL PROVISIONS

* * *

(e) A person shall not participate in a match unless he or she is 18 years of age or older.

Amendment to be offered by Rep. Fagan of Rutland City to H. 524

Rep. Fagan of Rutland City moves that the bill be amended by adding a new section to be Sec. 17a to read:

Sec. 17a. NURSING SUPERVISION LIMITATION; MEDICATION
NURSING ASSISTANTS

No provision in chapter 28 of Title 26 shall prohibit the refusal by a nurse practicing nursing in a nursing home on the effective date of this act to supervise a medication nursing assistant as that term is defined in subchapter 2 of chapter 28 of Title 26.

H. 764

An act relating to health insurance brokers’ fees

H. 765

An act relating to the mental health needs of the corrections population

J.R.H. 27

Joint resolution supporting the Vermont State Hospital employees

Favorable with Amendment

H. 272

An act relating to maintenance of private roads

Rep. Kupersmith of South Burlington, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 19 V.S.A. chapter 27 is added to read:

CHAPTER 27. PRIVATE ROADS

§ 2701. INTENT

The intent of this chapter is to state the responsibilities for the maintenance of a private road, in the absence of an express agreement or requirement governing such maintenance responsibilities, in accordance with the Vermont supreme court decision of *Hubbard v. Bolieau*, 144 Vt. 373 (1984), which draws upon established principles of Vermont law. This chapter will only apply to resolve conflicts regarding maintenance of private roads in the absence of an express agreement or requirement. The provisions of this chapter are not intended to abridge, enlarge, or modify any right provided under *Hubbard* and the common law of Vermont.

§ 2702. PRIVATE ROAD MAINTENANCE

In the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road, each person shall contribute rateably to the cost of maintaining the private road, and shall have the right to bring a civil action to enforce the requirement of this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee Vote: 11-0-0)

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 292

House concurrent resolution designating March 12–18 as Multiple Sclerosis Week in Vermont

H.C.R. 293

House concurrent resolution honoring Montpelier city clerk and treasurer Charlotte Hoyt for her outstanding public service

H.C.R. 294

House concurrent resolution honoring and thanking the individuals, institutions, and organizations who lent their assistance so generously during and after Tropical Storm Irene

H.C.R. 295

House concurrent resolution congratulating Emery Tillman of Cornwall on her kayaking accomplishments

H.C.R. 296

House concurrent resolution honoring Elizabeth Benedict for her lifelong commitment to educational excellence

H.C.R. 297

House concurrent resolution honoring Belinda H. Clegg for her outstanding public service to the town of Wolcott

H.C.R. 298

House concurrent resolution congratulating Marlboro College on its 65th anniversary

H.C.R. 299

House concurrent resolution recognizing the outstanding health care services provided by Gifford Medical Center in Randolph

H.C.R. 300

House concurrent resolution honoring Brattleboro radio station WKVT AM/FM for its outstanding Tropical Storm Irene community support effort

H.C.R. 301

House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont

H.C.R. 302

House concurrent resolution in memory of former Representative Mary Shelby Paull

H.C.R. 303

House concurrent resolution congratulating the Middlebury Union High School Tigers' 2012 Division II girls' championship Nordic skiing team

S.C.R. 39

Senate concurrent resolution honoring former Representative and Senator Robert T. Gannett on his 95th birthday

S.C.R. 40

Senate concurrent resolution congratulating Ross Connelly and Thomas F. Kearney on their induction into the New England Newspaper Hall of Fame

Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(b) of the Rules and Orders of the Vermont House of Representatives, during the second year of the biennium, except with the prior consent of the Committee on Rules, no member may introduce a bill into the House drafted in standard form after the last day of January. Bills may be introduced in Short Form until the second Friday after Town Meeting Day.

In order to meet this deadline all sign out sheets must be submitted to the Legislative Council no later than the close of business on Friday, January 27, 2012. Requests for short form bills may be made until Wednesday, February 15, 2012.

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March. The Committees on Appropriations, Ways and Means bills may be drafted in standard form at any time, and Government Operations bills, pertaining to city or town charter changes, may be drafted in standard form at any time.