

§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential property.

(a) At the commencement of the hearing, the clerk shall inquire as to whether the debtor occupies the real property at issue as his or her principal residence. If it appears that the debtor does currently occupy the property as a principal residence, the clerk shall further inquire as to the efforts the mortgagee, trustee, or loan servicer has made to communicate with the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding. The clerk's inquiry shall not be required if the mortgagee or trustee has submitted, at or before the hearing, an affidavit briefly describing any efforts that have been made to resolve the default with the debtor and the results of any such efforts.

(b) The clerk shall order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. In determining whether to continue the hearing, the clerk may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an opportunity to resolve the foreclosure through forbearance, loan modification, or other commonly accepted resolution plan appropriate under the circumstances, (ii) whether the mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the debtor, including telephone conferences or in-person meetings with the debtor or other actual two-party communications, (iii) whether the debtor has indicated that he or she has the intent and ability to resolve the delinquency by making future payments under a foreclosure resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution efforts between the parties may resolve the matter without a foreclosure sale. Where good cause exists to continue the hearing, the clerk shall order the hearing continued to a date and time certain not more than 60 days from the date scheduled for the original hearing. Nothing in this part shall limit the authority of the clerk to continue a hearing for other good cause shown. (2009-573, s. 3.)