

FORECLOSURE MEDIATION PROGRAMS FUNDING A Review of 24 Currently Operating Foreclosure Mediation Programs

This research is up-to-date as of January 26, 2011. Researched items include:

- Summary: whether the program is court-sponsored or outside the court, what geographic area the program addresses, and how the program is funded
- Program size, scope, and mandatory/voluntary
- How mediators are gathered and compensated
- Whether attorneys are provided for the borrowers and, if so, how they are gathered and compensated
- Whether any other personnel in the program are compensated
- How the program is funded and how much funding is available

COLORADO — DOUGLAS COUNTY

Summary: This optional non-judicial county program is funded by a federal grant and Colorado Division of Housing and Urban Development allocation to a non-profit housing organization.

Program Size: This program is limited to Douglas County residents.¹ Douglas County had an estimated 2500 foreclosures in 2008.² The program receives 200-400 calls per week. Some of these homeowners are screened out as not being eligible for a loan modification. Others are given information on how to talk to their lender directly. Between 20-30 families a month receive one-on-one housing counseling and mediation with their lender.³

Mediators: Douglas County Housing Partnership (DCHP) staff members conduct the mediations. DCHP is paid from the Colorado Division of Housing and Urban Development (see “Funding” below).

Attorneys: none offered

Other Personnel: DCHP staff members are housing counselors. They educate homeowners about their rights and are paid as part of their normal job. DCHP employs an Administrator for the program through a federal grant and hired a full-time housing counselor for the program from the Colorado Division of Housing and Urban Development allocation (see “Funding” below).

Funding: The borrowers do not pay anything. DCHP and Douglas County Public Trustee’s Office established the program as part of an \$800,000 Colorado Division of Housing and Urban Development budget allocation to help with the foreclosure crisis. The administrator of the program and the workshops are funded through a \$75,000 federal grant.⁴

¹ <http://www.douglascountyhousingpartnership.org/foreclosure.htm>

² <http://www.douglascountyhousingpartnership.org/news.htm>

³ Statistics from interview with Travis Anderson, Program Administrator, Jan. 18, 2011.

⁴ <http://www.douglascountyhousingpartnership.org/news.htm>



CONNECTICUT

Summary: This mandatory state-wide judicial program is funded by a State Banking Fund appropriation to the Judiciary.

Program Size: Statewide, there were 26,510 foreclosure cases filed between July 1, 2009, and June 30, 2010. Certificates recognizing the completion of mediation have been filed in 47% (9,865) of the 21,174 eligible cases.⁵

Mediators: The mediators are judicial employees, so are paid as part of their job.⁶

Attorneys: none offered

Other Personnel: The Program Manager is a court employee who also administers all other court-connected ADR programs. She is paid by the court. No housing counselors are offered, however, the mediators are allowed and encouraged to suggest community-based resources to the homeowners.⁷

Funding: The borrowers pay no fees.⁸ The Judicial Branch's Superior Court Operations Unit manages the program. In the first year, Connecticut's State Banking Fund appropriated \$2 million to the Judicial Department to establish the program.⁹

DELAWARE

Summary: This voluntary state-wide judicial program does not receive funding.

Program Size: Delaware had 4706 foreclosures in 2010.¹⁰ Community Legal Aid Society, Inc. (CLASI), is supposed to be keeping statistics, but the Court has not reported these yet.

Mediators: All mediators are attorneys from CLASI providing mediation services pro bono.¹¹

Attorneys: Delaware Volunteer Legal Services (DVLS) helps homeowners prepare a motion to request mediation and schedules the mediations, but does not represent the homeowner in the mediation process.¹²

Other Personnel: Homeowners are required to meet with housing counselors prior to proceeding with mediation. The HUD-approved housing counselor evaluates the homeowner for program eligibility (the homeowner only qualifies if she can afford mortgage payments that are 38% of income or if the lender agrees), helps the homeowner fill out the Universal Intake Form, assists the homeowner in writing a foreclosure alternative proposal, and sends the Intake Form and the proposal to the lender's attorney and DVLS.¹³ The housing counselor also assists the homeowner in the initial meeting with the lender and in

⁵ http://www.jud.ct.gov/statistics/FMP/FMP_graph_2010.pdf

⁶ <http://www.jud.ct.gov/external/news/press270.htm>

⁷ Connecticut Public Act No. 08-176 Sec. 17 (2008).

⁸ <http://www.jud2.ct.gov/webforms/forms/cv094.pdf>

⁹ Connecticut Public Act No. 08-176 Sec. 20 (2008).

¹⁰ http://deforeclosurehelp.org/media/2010_mort_complaints.pdf

¹¹ <http://declasi.org/index.php/foreclosure-mediation>;
<http://declasi.org/index.php/component/content/article/31>

¹² <http://declasi.org/index.php/foreclosure-mediation>

¹³ http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2009-3.pdf



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the mediation itself.¹⁴

Funding: unknown

DISTRICT OF COLUMBIA

Summary: This non-judicial District-wide program is funded by fees from both the borrower (to participate in mediation) and lender (to file a foreclosure case).

Program Size: The program has not yet begun, but as of November 2010, there were 3000 foreclosures in process in the District.¹⁵

Mediators: The Mediation Administrator contracts with mediators to provide mediation services. The Mayor determines what mediator specifications and qualifications will be.¹⁶ Mediators may charge no more than \$1000 for the mediation process.

Attorneys: none offered

Other Personnel: The Mediation Administrator appointed by the Commissioner of the Department of Insurance, Securities, and Banking receives an Election to Mediate form from the borrower and arranges the mediation and all other communications between the parties.¹⁷ No housing counselors are provided, although the Mediation Administrator recommends that borrowers speak with one prior to mediation.

Funding: The program is managed by the District's Department of Insurance, Securities and Banking.¹⁸ The borrower pays a \$50 fee to the Department for the mediation administration. The lender pays \$300 for each foreclosure filed, which the lender can recover from the sale of the home. The lender can also recover the mediation fee from the borrower. All fees, including penalties for lenders not participating in good faith (\$500) or defaulting on the agreement (\$500), go into a Foreclosure Mediation Fund that pays for the program.¹⁹

FLORIDA

Summary: This voluntary state-wide judicial program is funded by lender fees for filing and for mediation.

Program Size: Florida had 456,000 foreclosures in 2009. Between March and June of 2010, 13,417 files were referred for mediation, 3,341 mediations were scheduled, 2,250 mediations were conducted, 218 ended because one party did not show up, and 768 ended with an agreement by both parties.²⁰

Mediators: Only Florida Supreme Court-certified civil mediators specially trained in residential mortgage foreclosure matters may be assigned to mediate cases referred to a managed mediation program.²¹

Attorneys: not offered

¹⁴ <http://declasi.org/index.php/foreclosure-mediation/faq>

¹⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>

¹⁶ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209.

¹⁷ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209.

¹⁸ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>

¹⁹ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209.

²⁰ http://www.floridasupremecourt.org/pub_info/documents/Foreclosure/12-28-2010_Foreclosure_Mediation_Report_1.pdf

²¹ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>



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Other Personnel: The mediation managers must be from non-profit organizations independent of the judicial branch²² which can sustain operations without any payment from the courts, politically and professionally neutral, and have demonstrated the ability to efficiently manage a high volume of mediations. All providers are responsible for receiving referrals to mediation, reaching out to borrowers, assigning mediators, facilitating the exchange of documents between parties, scheduling mediation conferences within designated time frames, and developing procedures for verifying compliance with the managed mediation administrative order issued by the circuit chief judge.²³ Housing counselors are suggested, but not paid for by the program.

Funding: The lender pays in stages: part paid at the time the complaint is filed, then the balance paid after mediation is scheduled. Lenders may recover costs if the final judgment is foreclosure, if the case settles prior to mediation, or if the borrowers decline to participate in the program before mediation. Mediation organizations may not charge more than \$750 for program participation.²⁴

HAWAII — 3RD CIRCUIT

Summary: This optional non-judicial circuit program is funded through the normal court ADR allocation.

Program Size: From November 2009-June 2010 in the Third Circuit, 31 cases qualified for the Foreclosure Mediation Pilot Program, 27 requests for mediation were received, and 18 judicial conferences were held. Of those cases, 12 were ordered to mediation, seven mediations were held and four cases reached agreement. Additionally, five cases were pending.²⁵

Mediators: The Mediation Center of the Pacific receives case referrals from judges after the judges hold judicial conferences with both parties. The judges collect normal salary and the Court funds the Centers.²⁶

Attorneys: none offered

Other Personnel: none offered

Funding: The Hawaii State Legislature ordered the Judiciary to conduct a feasibility study on future program funding. The Legislature may fund a program attached to the Court's Center for Dispute Resolution or may fund a separate program.²⁷

ILLINOIS— COOK COUNTY

Summary: This optional judicial circuit program is funded through an appropriation from the Cook County Board.

²² Local mediation centers existed prior to the foreclosure mediation program to serve the state's other court-connected mediation programs. However, many centers have expanded in response to the foreclosure program's volume. See, e.g., <http://www.collinscenter.org/?page=FMMediatorFAQ>.

²³ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>

²⁴ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>

²⁵ <http://www.karlbayer.com/blog/?p=10748>

²⁶ http://www.courts.state.hi.us/services/alternative_dispute/about_the_center.html

²⁷ http://www.capitol.hawaii.gov/session2010/Bills/SCR170_.HTM



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Program Size: The Mortgage Foreclosure Mediation Program handles a large caseload, as lenders filed 51,900 foreclosures in Cook County in 2010.²⁸

Mediators: The Center for Conflict Resolution trains the mediators, who are volunteers that have mediation experience, real estate/finance experience, or both. The mediators need not be attorneys.²⁹

Attorneys: All borrowers are offered pro bono attorneys from Chicago Volunteer Legal Services.³⁰

Other Personnel: All borrowers must meet with housing counselors as the first step in the mediation program.³¹

Funding: The Cook County Board of Commissioners approved \$3.4 million for the first year of the program.³²

ILLINOIS — WILL COUNTY

Summary: This mandatory county-wide judicial program is funded by a lender filing fee increase of \$150.

Program Size: This program is mandatory, that is, mediation is scheduled when a foreclosure is filed. At a pre-mediation session with the mediator, the mediator determines if the case should go to mediation.³³ If either party does not appear at the initial pre-mediation meeting, the mediation is terminated.³⁴ As of December 2010, 11,098 homes were in foreclosure.³⁵

Mediators: Mediators, who are former judges or lawyers with seven years of experience, are paid \$150 for each file.

Attorneys: none offered

Other Personnel: No housing counseling is offered, though housing counseling is encouraged prior to the pre-mediation session.³⁶ The Circuit Clerk and the Arbitration Center administer the program as part of normal duties.³⁷

Funding: Defendants do not pay anything. To finance the program, the Supreme Court has authorized an increase in the filing fees paid by a plaintiff for all foreclosures in the 12th Judicial Circuit from \$276 to \$426. The County Treasurer holds the fee in a fund and disburses it at the order of the Chief Judge.³⁸

²⁸ <http://www.suntimes.com/3085556-417/arreola-cook-county-foreclosure-2010.html>

²⁹ <http://cookcountyforeclosurehelp.org/partners/>

³⁰ <http://www.commissionergoslin.com/2010/08/foreclosure-mediation/>

³¹ <http://www.commissionergoslin.com/2010/08/foreclosure-mediation/>

³² <http://www.woodstockinst.org/press-clips/mortgage-lending-and-foreclosures/help-for-struggling-homeowners-cook-county-launches-foreclosure-mediation-program/>

³³ <http://willcountycourts.com/mediationadminorder.PDF>

³⁴ <http://willcountycourts.com/Residential%20Mortgage%20Foreclosure%20Mediation%20Program.htm>

³⁵

<http://www.realtytrac.com/trendcenter/default.aspx?address=Will%20county%2C%20IL&parsed=1&cn=will%20county&stc=il>

³⁶ <http://willcountycourts.com/Residential%20Mortgage%20Foreclosure%20Mediation%20Program.htm>

³⁷ <http://willcountycourts.com/mediationschedule.PDF>

³⁸ <http://willcountycourts.com/mediationadminorder.PDF>



Summary: This mandatory judicial state-wide program is funded by a \$50 lender filing fee on each foreclosure.

Program Size: This mandatory program, that is, participants have to opt out rather than opt in for the program to receive funding from the state court pilot grant, is supposed to launch state-wide by the end of 2011. In March 2010, Allen County, the first county in which the program operated, had 289 foreclosure filings. Of potential mediation cases, 17 went to a settlement conference and five ended in agreements or dismissals.³⁹ Between March and November 2010, the primary program counties reported that 1,491 orders for phone conferences were mailed, 737 phone conferences occurred, and 681 borrowers from those conferences were found to be eligible for in-person settlement conference. From there, 623 conferences were requested, and 541 conferences had taken place so far. About 40% conclude with the homeowner remaining in the home, while 9% end in another type of workout.⁴⁰

Mediators: Facilitators are lawyers or judges. They are contracted with and paid by the Supreme Court. Facilitators help the parties come to an agreement and/or know what they need to come to an agreement. The facilitator also makes a determination about whether the homeowner needs to be represented by pro bono counsel.⁴¹

Attorneys: Pro bono attorneys are called if the facilitator believes it will be beneficial for the homeowner to have one. A list of pro bono attorney organizations is available on the mortgage foreclosure website.⁴² However, an estimated 97% of borrowers are unrepresented at the settlement conference.⁴³

Other Personnel: A court-employed Project Manager oversees the creation of local programs. Local logistical coordinators (LCs) are contracted with the court and are paid \$20 per session scheduled. Duties include scheduling settlement conferences; ensuring that the logistical requirements of the conference area are met (e.g. telephone and fax services); checking that the homeowner has completed the necessary paperwork and gathered the required documents, including all reasonably required financial information; ensuring that the lender has submitted all relevant loan documentation, including any regulations limiting or otherwise dictating the lender's ability to negotiate and any programs generally available to qualified borrowers; and collecting data dating back to July 1, 2009 that tracks the number of settlement conferences and identifies the resolution rate of each coordinator/facilitator. LCs are encouraged to work with the District Pro Bono Plan Administrator, who has access to all the attorneys and mediators in the area.⁴⁴ The Program recommends borrowers meet with a state-certified "mortgage foreclosure prevention counselor" who will assist with the financials, but this is not required.⁴⁵

Funding: There is a \$50 lender filing fee for new mortgage foreclosure actions filed after

³⁹ <http://www.journalgazette.net/article/20100421/BIZ/304219939/1031/BIZ>

⁴⁰ <http://www.theindianalawyer.com/court-programs-economy-among-focuses-of-foreclosure-conference/PARAMS/article/25214>

⁴¹ <http://www.in.gov/judiciary/admin/mortgage/resources.html#step3>

⁴² <http://www.in.gov/judiciary/home/>

⁴³ <http://www.theindianalawyer.com/court-programs-economy-among-focuses-of-foreclosure-conference/PARAMS/article/25214>

⁴⁴ <http://www.in.gov/judiciary/admin/mortgage/resources.html#step3>

⁴⁵ <http://www.in.gov/judiciary/home/>



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July 1, 2009. This fee is collected by the Indiana Housing and Community Development Authority and submitted to the Supreme Court for payment of facilitator, logistical coordinator and project manager salaries, as well as reimbursement for pro bono attorneys, data collection expenses, administrative costs and other costs and supplies. After the settlement conference, a data collection form detailing the events and results of the settlement conference is filed with the Court and remitted to the Project Manager for data collection and payment invoicing.⁴⁶

IOWA

Summary: This optional state-wide non-judicial program is funded through a variety of sources included mediation fees, federal stimulus money, state Finance Authority Fund allocations, and other legislative action.

Program Size: This state-wide program is optional. Between March 2008 and January 2009, the program averaged 69 applicants per week. Through July 2009, it averaged 87 applicants. From July 2009 to January 2010, it averaged 99 applicants.⁴⁷ Of homeowner participants interviewed, 29% had a modification or other loss-mitigation solution that saved their home, 32% are still in negotiations, 23% received mortgage counseling only, and 15% had a negative outcome, such as loss of home or bankruptcy, or they withdrew from counseling.⁴⁸

Mediators: Iowa Mediation Services schedules and conducts the mediations.⁴⁹ Each lender is charged \$50 for each hour of the mediation.⁵⁰

Attorneys: The borrowers are referred to Iowa Legal Aid, which offers services pro bono.⁵¹ The borrowers do not have to be represented in the mediations.

Other Personnel: Housing counselors from Iowa Mortgage Help who attend the hotline are paid out of the federal stimulus money.⁵² The Attorney General's Office deploys a staff person to assist the Hotline and coordinate Hotline work with the A.G.

Funding: The A.G. initially gave Iowa Mediation Services \$4500, won in a fraud settlement against mortgagor Ameriquest, to start the project.⁵³ In 2008, the AG received a \$1.5 million federal stimulus grant to grow the program through 2009. In 2010, Iowa estimated that about \$750,000 to \$1 million was needed to sustain the program through the end of the year. The A.G. is exploring state legislative action to authorize funding from the Iowa Finance

⁴⁶ <http://www.in.gov/judiciary/admin/mortgage/docs/faq.pdf>

⁴⁷ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Mortgage_Help_trends.pdf

⁴⁸

http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

⁴⁹ <http://iowamediationservice.com/>

⁵⁰ <http://iowamediationservice.com/forms/RVM.pdf>

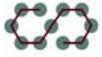
⁵¹

http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

⁵² http://www.iowamortgagehelp.com/pdfs/IMH_Mediation_Notice.pdf;

http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

⁵³ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html



Authority Housing Trust Fund (project-based housing program); state funds from the Governor and Legislature; federal funds; and any other sources to fund the program.⁵⁴

KENTUCKY — JEFFERSON COUNTY

Summary: This voluntary judicial county program is funded by a state grant for housing counselors and the Annie E. Casey Foundation.

Program Size: This program covers Jefferson County. It requires homeowners request conciliation.⁵⁵ Jefferson County scheduled 5,229 court-ordered foreclosure sales in 2010, a 19 percent increase from 2009.⁵⁶

Mediators: It is unclear whether the Commissioner serves as a mediator or simply as the host for the discussion. No one is paid to mediate.⁵⁷

Attorneys: Homeowners can request a pro bono attorney if they cannot afford one, though an attorney is not required for the conciliation conference.⁵⁸ If an attorney does represent the borrower, the attorney will only meet with them on the day of the conference, review paperwork, and provide representation in the conference.⁵⁹

Other Personnel: Housing counselors meet with borrowers to discuss finances and file a Request for Mediation.⁶⁰ The Master Commissioner of property auctions in the County schedules and hosts the conciliation conferences.⁶¹

Funding: A state grant funds outreach and housing counselors.⁶² The Annie E. Casey Foundation funds the remainder of program expenses.⁶³

MAINE

Summary: The mandatory state-wide judicial program is funded by lender filing fees, lender mediation fees, and money from the Maine Revenue Service.

Program Size: The mandatory program mediated 300 foreclosures through June 2010. Of those cases, 39 were resolved and 65 were not. Most of the rest needed more time or forged a temporary agreement.⁶⁴ Participants can get waivers from participating after showing the court the party understands the consequences of waiving.⁶⁵

Mediators: The Foreclosure Diversion Program trains the mediators. Mediators are compensated at the rate of \$175 per half day and \$300 for a full day.⁶⁶ Lenders pay \$200 for

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http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

⁵⁵ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

⁵⁶ <http://www.courier-journal.com/article/20110113/BUSINESS/301140019/1003/rss03>

⁵⁷ <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>

⁵⁸ http://www.martindale.com/real-estate-law/article_Frost-Brown-Todd-LLC_696478.htm

⁵⁹ <http://www.kyequaljustice.org/file/view/FCP--pro+bono+overview.doc>

⁶⁰ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

⁶¹ http://www.martindale.com/real-estate-law/article_Frost-Brown-Todd-LLC_696478.htm

⁶² <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

⁶³ <http://www.louisvilleky.gov/Housing/News/2009/>

⁶⁴ <http://www.kjonline.com/news/Maine-Foreclosure-crisis-impact-attorneys-banks-freeze.html>

⁶⁵ http://www.courts.state.me.us/court_info/fdp/home_faqs.html

⁶⁶ http://www.courts.state.me.us/court_info/fdp/mediators.html



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each mediation session.

Attorneys: none provided

Other Personnel: The Director, who is an officer of the Court, three clerks, and one administrative assistant are paid. Housing counselors are contracted.⁶⁷

Funding: The Administrative Office of the Court maintains a fund to support the program.⁶⁸ The fund receives money from the Maine Revenue Service and from court filing fees (\$150) and mediation fees (\$200) that the lenders pay.⁶⁹

MARYLAND

Summary: This optional state-wide judicial program is funded by lender and borrower filing fees.

Program Size: Homeowners who file a loan modification information form with the lender, file a Request for Mediation with the Court, and receive approval from the Court qualify for mediation.⁷⁰ There were 55,629 total foreclosures filed in 2010.⁷¹ Of foreclosure filings from July 2010 to December 2010, 130 mediations were requested.⁷² About half resulted in foreclosure avoidance.⁷³

Mediators: The Office of Administrative Hearings receives the requests for mediation, schedules the mediations, and mediates the cases.

Attorneys: none offered

Other Personnel: The Office of Administrative Hearings manages the program. No housing counselors are required, though a list is included on the program website.⁷⁴

Funding: Lenders pay \$300 for every foreclosure notice. Homeowners must pay a non-refundable \$50 fee when they formally file the request for mediation.⁷⁵ The Court intended this to cover the costs of the mediation, but they do not have the volume expected.⁷⁶

MASSACHUSETTS — BOSTON

Summary: This mandatory city-based non-judicial program is funded by program fees from both the lender and homeowner.

Program Size: This Boston program has not yet begun. It requires a lender to obtain a certificate recognizing completion of mediation with the homeowner before the lender forecloses.⁷⁷ Boston had 776 foreclosures filed between January and October 2010.⁷⁸

Mediators: Mediators must be credentialed as if they were applying with the Supreme Court

⁶⁷ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

⁶⁸ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

⁶⁹ http://www.courts.state.me.us/court_info/rules/fees.shtml

⁷⁰ <http://www.mdhope.org/Foreclosure%20Mediation%20FAQ.aspx>

⁷¹ <http://www.realtytrac.com/states/Maryland.html>

⁷² <http://washingtonexaminer.com/local/maryland/md-foreclosure-mediation-low-demand>

⁷³ <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/03/AR2010120302323.html>

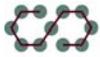
⁷⁴ <http://www.mdhope.org/Foreclosure%20Mediation%20FAQ.aspx>

⁷⁵ <http://www.mdhope.org/ForeclosureMediation.aspx>

⁷⁶ <http://washingtonexaminer.com/local/maryland/md-foreclosure-mediation-low-demand>

⁷⁷ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

⁷⁸ <http://goarticles.com/article/Boston-Mayor-Wants-Mediation-Prior-to-Foreclosure/4003400/>



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of Massachusetts. They are paid through the lender’s fee.

Attorneys: Homeowner can be represented by the person of their choosing, though the representative does not have to be an attorney.⁷⁹

Other Personnel: The city refers foreclosures to a mediation manager from a non-profit organization to schedule and oversee the process.⁸⁰ The homeowner is required to see a housing counselor before mediation.

Funding: Banks pay an indeterminate amount for the mediation program. Banks may not pass on their payment to the homeowner after the mediation. Homeowner pays \$75 to enter the program, but may apply for a hardship waiver.⁸¹

NEVADA

Summary: This optional state-wide judicial program is funded by the regular court budget. Mediators are paid by mediation fees from both parties.

Program Size: Nevada’s program is not mandatory. One source says that from July 2009 to January 2010, 3,890 of the 38,277 Nevada homes in foreclosure requested mediation and of those, 1,821 were assigned mediators and 877 mediations were completed.⁸² Another source says that from September 2009 through September 2010, 6,021 mediations have taken place and 66% of them resulted in an agreement.⁸³

Mediators: Senior Judges, Supreme Court Settlement Judges, hearing masters, or other attorneys conduct the mediations. The pool of mediators may also include non-attorneys with extensive mediation experience. The mediators schedule the mediations.⁸⁴ Mediators are paid \$400 per session.⁸⁵

Attorneys: Homeowners can have an attorney or housing counselor with them, but this is not required.⁸⁶

Other Personnel: The Administrative Office of the Court administers the program with 12 staff members.⁸⁷ Housing counselors are available and are funded through the Court’s program.⁸⁸

Funding: Both parties have to pay \$200 to participate in the mediation, which goes directly to the mediator.⁸⁹ The Court keeps funds and allocates them for housing counseling, program administrators, etc.

⁷⁹ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

⁸⁰ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

⁸¹ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

⁸² <http://www.lvrj.com/news/few-take-part-in-foreclosure-mediation-82038592.html>

⁸³ <http://abcnews.go.com/Business/wireStory?id=12597429&page=1>

⁸⁴ <http://www.nevadajudiciary.us/index.php/foreclosure-faqs>

⁸⁵ http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf

⁸⁶ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/function/download/1937/chk,a6d803ebac40623bc5981f0bb7056f04/no_html,1/

⁸⁷ <http://www.nevadajudiciary.us/index.php/adminoverview>

⁸⁸ <http://www.nevadajudiciary.us/index.php/foreclosuremediation/846-nevada-foreclosure-mediation-grants-extend-help-to-homeowners-nearly-300000-in-program-funding-awarded-for-education-projects>

⁸⁹ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/function/download/1937/chk,a6d803ebac40623bc5981f0bb7056f04/no_html,1/



Summary: The optional state-wide judicial program is funded by public and private grants.

Program Size: The voluntary program is state-wide. In December 2010, 4,861 New Hampshire homes were in foreclosure.⁹⁰ No statistics were found about how many homeowners entered foreclosure mediation.

Mediators: The mediators are judicial branch contract mediators.⁹¹ They are paid by the Office of Mediation and Arbitration (OMA).⁹²

Attorneys: None are offered, though it is “strongly suggested” that borrowers obtain counsel. Legal aid websites are included on the Foreclosure Mediation Program page.⁹³

Other Personnel: The New Hampshire Judicial Branch OMA established the program and added it to the job description of the OMA Director. The OMA is self-funded.⁹⁴ Lenders evaluate borrowers for program eligibility. The OMA schedules the mediations.⁹⁵

Funding: There is no cost to either party for the mediation. The program is funded by the New Hampshire Housing Finance Authority, the New Hampshire Charitable Foundation and the Oleander Jameson Trust.⁹⁶

NEW JERSEY

Summary: This optional state-wide judicial program is funded through a New Jersey Legislature appropriation.

Program Size: The voluntary mediation program is state-wide. In 2009, New Jersey had 62,775 foreclosure filings. The program began in early 2009. As of January 2010, the program had mediated 1,300 cases. About half resulted in homeowners staying in their homes.⁹⁷

Mediators: Mediators must take a free, day long course in relevant foreclosure law and complete 18 hours of mediation training. They may be paid if funds are appropriated but so far, they are volunteers.⁹⁸

Attorneys: Pro bono representation for the borrowers is considered part of the program if borrowers qualify for free legal aid under current income guidelines.⁹⁹

Other Personnel: Once a homeowner contacts the hotline and learns they are eligible, they are referred to a housing counselor.¹⁰⁰ The program has funded and trained 21 housing

⁹⁰ <http://www.realtytrac.com/trendcenter/default.aspx?address=NH>

⁹¹ <http://www.courts.state.nh.us/adrp/foreclosure/faq.htm>

⁹² <http://www.courts.state.nh.us/adrp/foreclosure/structure.htm>

⁹³ <http://www.courts.state.nh.us/adrp/foreclosure/faq.htm>

⁹⁴ <http://www.nhbar.org/publications/archives/display-news-issue.asp?id=5484>

⁹⁵ <http://www.courts.state.nh.us/adrp/foreclosure/index.htm>

⁹⁶

http://www.boston.com/news/local/new_hampshire/articles/2010/01/12/nh_launches_foreclosure_mediation_program/

⁹⁷ http://www.nj.com/business/index.ssf/2010/01/nj_sees_29_percent_year-end_ju.html

⁹⁸ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

⁹⁹ <http://www.nj.gov/foreclosuremediation/right-for-you.html>

¹⁰⁰ <http://www.nj.gov/foreclosuremediation/steps.html>



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counseling agencies around the state.¹⁰¹ A Civil Complimentary Dispute Resolution coordinator at the Civil Practice Division schedules the mediations.¹⁰²

Funding: The program is free for parties.¹⁰³ It was created through a \$12.5 million appropriation from the state legislature.¹⁰⁴

NEW MEXICO — 1ST & 3RD CIRCUITS

Summary: This optional judicial district program is funded by mediation fees from both the lender and the borrower.

Program Size: The pilot program is active in the 1st and 3rd judicial circuits.

Mediators: Mediators are attorneys with foreclosure experience or training who are on the court's ADR settlement facilitator list, which pre-dated this program.¹⁰⁵ Mediators are paid \$500 for a four-hour session; parties pay equal shares, but parties who can't afford it may request free or reduced-cost mediation.¹⁰⁶

Attorneys: None are offered and few appear with a borrower.¹⁰⁷

Other Personnel: Borrowers are required to see a HUD-approved housing counselor before proceeding with mediation.¹⁰⁸ The court's Constituent Services Director in the ADR office administers the program.¹⁰⁹

Funding: The pilot program is part of a broader ADR pilot initiative in the court and as such, administrative costs are part of the court's regular budget. Parties pay for mediation.¹¹⁰

NEW YORK

Summary: This mandatory state-wide judicial program is funded by the Division of Housing and Community Renewal.

Program Size: The state-wide program is required for all foreclosures. From June 1 to July 31, 2009, there were 795 settlement conferences. Settlements occurred in 21 of these conferences. Of these, six were loan modifications, six were temporary forbearances, five were continued, and four outcomes could not be determined.¹¹¹

Mediators: Judicial Hearing Officers or Referee Attorneys hold the settlement conferences. Judges are available if needed.¹¹²

Attorneys: Free legal services are available for those who qualify. If the homeowner appears

¹⁰¹ http://www.state.nj.us/dca/hmfa/home/foreclosure/pdf/foreclosure_prevention_in_nj.pdf

¹⁰² http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

¹⁰³ http://www.judiciary.state.nj.us/civil/forms/11284_fm_available.pdf

¹⁰⁴ http://www.state.nj.us/dca/hmfa/home/foreclosure/pdf/foreclosure_prevention_in_nj.pdf

¹⁰⁵ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

¹⁰⁶ <http://firstdistrictcourt.com/Forms/pdf/Motion%20for%20Free%20or%20Reduced-Cost%20Settlement%20Facilitation.pdf>

¹⁰⁷ LinkedIn exchange with Pilar, a mediator in the New Mexico program.

¹⁰⁸ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

¹⁰⁹ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

¹¹⁰ <http://firstdistrictcourt.com/Forms/doc/How%20to%20use%20the%20Court%20ADR%20Program.doc>

¹¹¹ <http://ezinearticles.com/?Report-Reveals-Foreclosure-Settlement-Conference-Program-a-Failure-in-New-York-City&id=3589415>

¹¹² <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>



without counsel, the judge is required to inform the homeowner of his/her rights and postpone the conference until the homeowner has an opportunity to speak with an attorney.¹¹³

Other Personnel: Borrowers are highly encouraged to see a housing counselor prior to mediation.¹¹⁴ A case manager in the court schedules all conferences.

Funding: The Division of Housing and Community Renewal provides extensive funding for housing counselors, attorney training, and court programs. The budget was increased by \$25 million for 2010 (no data found for what it was prior to this increase).¹¹⁵

OHIO

Summary: This optional state-wide judicial program is funded by filing fees and/or local Board of Commissions allocations.

Program Size: The optional mediation program is state-wide, with some local variance. Ohio had 130,879 foreclosure cases in 2009.¹¹⁶ As a local example, Stark County had over 3000 foreclosures filed in 2009, with 367 going to mediation and half of those ending in settlement.¹¹⁷

Mediators: The mediators are contractors with the court and do not have to be lawyers or judges. They must be trained in basic mediation (a minimum of 12 hours), foreclosure mediation (offered by the Supreme Court of Ohio), and the Uniform Mediation Act (a minimum of two hours).¹¹⁸

Attorneys: The borrower can bring whomever the borrower wants to the mediation.¹¹⁹

Other Personnel: The Ohio Supreme Court recommends, but does not mandate, the use of housing counselors prior to mediation.¹²⁰ Some counties (e.g., Franklin) require borrowers meet with housing counselor.¹²¹

Funding: In some counties, the Board of Commissioners has provided funding for the program, including Franklin County (9,107 homes in foreclosure in 2010¹²²), where \$2.7 million dollars from delinquent tax and assessment collection money from the Treasurer and Prosecutor, and community partner grant funds and Community Development Block Grants were given for the hotline, housing counselors, and mediations (\$540,000 allocated for the mediations).¹²³ Ohio authorized courts to charge a filing fee of up to \$500 for

¹¹³ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

¹¹⁴ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

¹¹⁵ <http://newyork.realestaterama.com/2009/12/15/governor-paterson-signs-comprehensive-foreclosure-legislation-into-law-ID0941.html>

¹¹⁶ <http://www.supremecourt.ohio.gov/publications/annrep/09OCS/2009OCS.pdf>

¹¹⁷ <http://www.cantonrep.com/news/x2081096350/Foreclosures-keep-Stark-County-courts-sheriff-busy>

¹¹⁸ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

¹¹⁹ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

¹²⁰ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

¹²¹ <http://www.franklincountyohio.gov/commissioners/homeowner-helpline/assets/pdf/request-for-mediation.pdf>

¹²² http://www.dispatch.com/live/content/local_news/stories/2011/01/19/foreclosures-fall-in-franklin-county.html?sid=101

¹²³ <http://www.franklincountyohio.gov/fc/content/press/boc10-28-08.cfm>



foreclosure filings. The Residential Foreclosure Mediation Fund in those counties manages the money and directs it to foreclosure mediations.¹²⁴

PENNSYLVANIA — PHILADELPHIA

Summary: At least the hotline and pro bono attorney portion of this mandatory city-based judicial program is funded through the City budget; it is unclear whether other portions are funded.

Program Size: This program, concentrated in Philadelphia, requires lenders to meet with borrowers before completing the sheriff's sale. The program began in April 2008. As of December 2008, outreach workers made more than 3,000 visits to 2,400 properties. Homeowners who had direct contact with an outreach team had 73% involvement in the program, compared to 48% participation for homeowners who did not have direct contact. Of the 2,331 households who participated in a conciliation conference, 2,270 avoided foreclosure, 603 resolved with the lender (stayed or had a graceful exit), 244 averted by bankruptcy, and 1,423 postponed mediation to talk with a housing counseling.¹²⁵ As of July 2009, 5,000 homeowners participated, 1,400 foreclosures were averted, and 700 sheriff's sales were postponed.¹²⁶ As of December 16, 2010, unofficial court reports show there have been more than 13,000 conferences, resulting in homeowners maintaining 2,500 and 3,000 homes outright. About 3,500 to 4,000 homes were under temporary modifications. Conciliators have 110 cases once a week, hearing cases in both the morning and afternoon.¹²⁷

Mediators: The conciliators are Judges Pro Tem, Civil Case Managers (officers of the court paid a salary), or other judges (paid normal salary) and may offer a recommendation at the end of the session.¹²⁸ For the original pilot program of 700 cases, six judges were trained.¹²⁹

Attorneys: The conciliator identifies whether the borrower is represented and, if not, appoints an attorney to represent the borrower.¹³⁰ Over 360 pro bono lawyers trained to represent parties in mediation.

Other Personnel: Borrowers are required to see a housing counselor prior to the conference.

Funding: The City of Philadelphia, through a Community Development Block Grant, funds \$340,000 for the hotline that schedules people for free housing counseling.¹³¹ It also provides Community Legal Services with \$350,000 to consult with homeowners.¹³²

RHODE ISLAND — PROVIDENCE

Summary: This optional-with-teeth (basically, mandatory) city-wide non-judicial program is funded by lenders paying for any fees incurred.

¹²⁴ Ohio Revised Code Chapter 2303.201(E)(1).

¹²⁵ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

¹²⁶ <http://debtorsadvocate.wordpress.com/2009/07/01/philadelphia-floreclosure-diversion-programs-success-story/>

¹²⁷ http://articles.philly.com/2010-12-16/news/25292682_1_stu-bykofsky-walruses-philadelphia-lawyers

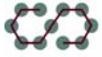
¹²⁸ <http://fjd.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>

¹²⁹ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

¹³⁰ <http://fjd.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>

¹³¹ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

¹³² http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3594&wit_id=7481



Program Size: This program is available in Providence. Originally, it was mandatory — no deed from a lender could be recorded until the lender and borrower went through the conciliation conference.¹³³ However, this provision was overturned in court. Now, if lenders do not complete the conference, they must pay a \$2000 fine.¹³⁴ In Providence, foreclosures doubled from 303 in 2006 to 718 in 2007. In 2008, Providence had 1158 foreclosures.¹³⁵

Mediators: The Conciliation Coordinator is in a HUD-approved housing agency, but cannot be the same person as the housing counselor. If this person charges a fee, the lender must pay it and not pass the cost on to the borrower at any time.¹³⁶

Attorneys: none offered

Other Personnel: A HUD-approved housing counselor must provide the homeowner counseling before the conference. If this person charges a fee, the lender must pay it and not pass the cost on to the borrower at any time. The Recorder of Deeds is the government point person for any questions.¹³⁷

Funding: Any costs for the counseling and conciliation conference are borne by the lender. The lender must also pay a \$2000 fine if they do not comply with the conference requirements.¹³⁸

VERMONT

Summary: The optional non-judicial program is state-wide and is funded by lender fees for mediation.

Program Size: In 2009, Vermont had 1924 foreclosures.¹³⁹ No data was found reflecting how many homeowners are taking advantage of the optional program. Homeowners are only referred to the program if they qualify for HAMP, unless the homeowner specifically requests mediation.¹⁴⁰

Mediators: Mediators must be licensed attorneys and have gone through a Vermont Bar-approved training.¹⁴¹ Both parties agree on the mediator.¹⁴² They are paid through the lender, but the lender can shift half of the cost to the borrower if there is a surplus sale.¹⁴³

Attorneys: Representation in mediation is not required but is recommended. Vermont Legal Aid and the Vermont Volunteer Law Project offer assistance.¹⁴⁴

Other Personnel: Though housing counselors are not supplied, they are recommended.¹⁴⁵

¹³³ http://www.unitedtrustees.com/enews/pdf/Foreclosure_Ordinance.pdf

¹³⁴ Lanphear, *Deutsche Bank v. City of Providence* (Providence Superior Court 2010).

¹³⁵ http://www.unitedtrustees.com/enews/pdf/Foreclosure_Ordinance.pdf

¹³⁶ <http://cityof.providenceri.com/efile/230>

¹³⁷ <http://cityof.providenceri.com/efile/230>

¹³⁸ http://www.unitedtrustees.com/enews/pdf/Foreclosure_Ordinance.pdf

¹³⁹ <http://www.businessweek.com/ap/financialnews/D9EHMV2G0.htm>

¹⁴⁰ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

¹⁴¹ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

¹⁴² <http://www.vtlawhelp.org/node/210#55>

¹⁴³ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

¹⁴⁴ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

¹⁴⁵ <http://www.uvm.edu/consumer/?Page=foreclosure.html>



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Funding: The servicer pays for the mediation, except for those costs associated with the homeowner (homeowner's attorney, travel, etc.).¹⁴⁶

WISCONSIN — MILWAUKEE

Summary: This optional non-judicial program is city-wide and is funded through a state Department of Justice grant and filing fees from both the lender and homeowner.

Program Size: Milwaukee (a few other counties have programs, but Milwaukee is the largest) had 5,800 foreclosure filings in 2009. From program beginning in September 2009 through November 2009, the program managed 320 cases. Of those, 172 were scheduled for mediation.¹⁴⁷

Mediators: Mediators are community members who go through a special training and volunteer to mediate.

Attorneys: none offered

Other Personnel: The program coordinator is at Marquette Law School and is paid.

Funding: Marquette University Law School received \$310,000 in 2009 from the Wisconsin Department of Justice to start a foreclosure mediation program. The homeowner and the lender each pay a \$100 processing fee to Marquette University.

¹⁴⁶ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

¹⁴⁷ <http://www.jsonline.com/news/milwaukee/82567662.html>