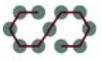


FORECLOSURE DISPUTE RESOLUTION PROGRAM MODELS STATE-BY-STATE

COMPILED BY HEATHER SCHEIWE KULP
Updated as of September 19, 2012
Amended December 3, 2012



RESOLUTION SYSTEMS INSTITUTE

The mission of Resolution Systems Institute (RSI) is to strengthen justice by enhancing court alternative dispute resolution (ADR) systems through expertise in program development, research and resources. To accomplish this mission, RSI provides a range of information-gathering, clearinghouse, program development, evaluation, analysis and training services. RSI serves as a developer, researcher, and a resource clearinghouse and archive for information about ADR systems, particularly those that are court-annexed, -related, or -associated.

PURPOSE

This is a state-by-state guide to alternative dispute resolution mechanisms used to manage recent growth in residential foreclosures. With the proliferation of such programs, RSI believes it is necessary to provide a reliable, comprehensive, well-researched resource for government, court, media, and others to use. We hope the extensive information here will be used to design, improve, discuss, and evaluate foreclosure ADR programs to better strengthen justice. The programs outlined here are constantly changing, and RSI works to keep the document updated.

DEFINITIONS

Wherever possible, standardized terms like “mediation” and “mediator” are used, although the terminology used to describe a jurisdiction’s process may vary. Many programs use the term “mediation,” defined as a negotiation process facilitated by a third-person neutral, to describe their ADR processes. There is much debate about whether foreclosure mediation should be considered mediation at all. RSI recognizes the value of the debate, especially as these new so-called “mediation” programs that may not follow standard mediation principles—confidentiality, self-determination, a neutral facilitator—impact traditional court and non-court mediators and mediation processes. But, for simplicity’s sake, this report defines mediation broadly, as a process that involves a negotiation between a lender representative and a borrower, with a third-party facilitator present. This does not imply that the neutral is a mediator, nor that the program complies with all mediation rules/laws/standards in the jurisdiction. The neutral’s role and ethics are major issues that programs must address, but they are beyond the scope of this document.

Throughout the document, “lender” connotes any person who, at mediation, represents the party who originated or holds the mortgage, though the original lender may no longer hold the mortgage note, those who hold the note may not be banks and the representative at the table may only be a servicer for back-end investors. “Borrower” is used to connote the person who took out the original mortgage.

RSI found many foreclosure ADR programs called “mitigation” programs. Loss mitigation is an umbrella term for any activity that seeks to limit losses for the lender. While loss mitigation may be an outcome of an ADR process, most loss mitigation—a lender’s attempt to reach a borrower and discuss how the borrower may cure a default—happens outside the ADR context. Thus, it is a fallacy



RSI

to equate mediation with mitigation. Instead, mediation is a process in which borrower and lender discuss foreclosure alternatives, some of which may be loss mitigation options for the lender.

Some of the ADR programs use processes that do not involve a third-person neutral, but do involve required contact between borrower and lender. Though some may argue that this is not ADR, such programs are included here as valuable examples of how jurisdictions with limited resources use alternative processes.

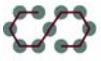
THANK YOU

Special thanks to the RSI Executive Committee and to volunteer Jennifer LaDuke. Also, many thanks to the American Bar Association's Section of Dispute Resolution for sharing this resource.



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ARIZONA

Foreclosure Mediation Unit Pilot Program (FMU)¹

INCEPTION

Initiation Date: Spring 2012

Location: Municipality

The program takes cases in the Phoenix area.

Originally Created by: Law School, Court Rule

The Arizona State University Sandra Day O'Connor College of Law created the FMU through its Lodestar Dispute Resolution Program.² The FMU pilot program rules³ and the Local Bankruptcy Court Rules 9072-1 through 9072-9 controls.

Sponsorship: The Arizona State University Sandra Day O'Connor College of Law Lodestar Dispute Resolution Program started the program.⁴ Referrals come from the United States Bankruptcy Court for the District of Arizona.⁵

IMPACT

Judicial/Non-Judicial: Judicial

The cases are referred from bankruptcy court.

Number of Foreclosures: The Phoenix area had 35,855 foreclosures completed in 2011.⁶

Funding: State Grant

The FMU program is funded by a grant from the Attorney General expected to last three years.⁷ The program would be eligible for monies from the 2012 49-state Attorneys General settlement with the five major financial institutions over mortgage foreclosure abuses (hereinafter, "Attorney General settlement"), but the state diverted the money for other non-foreclosure purposes. A few citizens have sued to enjoin the diversion.⁸

Costs: The program is free to participants.

¹ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit.aspx>

² <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit.aspx>

³ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit/FMUPilotProgramInformation.aspx>

⁴ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit.aspx>

⁵ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit.aspx>

⁶ <http://www.housingwire.com/news/phoenix-foreclosures-drop-16-2011-home-prices-also-decline>

⁷ <http://www.azcentral.com/arizonarepublic/news/articles/2011/12/06/20111206asu-homeowner-advocacy-unit-mortgage-battle.html>

⁸ <http://www.yumasun.com/news/hogan-79254-horne-state.html>



Statistics: As of June 2012, the program completed its first 25 cases. The pilot program will accept at least 75 more.⁹

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: The bankruptcy debtor must be living in the property, it must be the debtor's primary residence, and the debtor must be the borrower on the property.

Participants and Participation Requirements: The parties appearing at mediation must appear in person, unless pre-approved in writing and for good cause shown, and must be persons with "full and complete" settlement authority.¹⁰

Timeline: After the court appoints a mediator, the mediator has 14 days to hold a telephone conference with the parties. The parties have ten days from the time of the telephone conference to provide the mediator with additional required information. The parties have ten additional days to provide the opposing party anything requested in the first ten day period. The court sets the date of mediation after that ten day period.

Procedure: The goal of the program is to provide impartial mediation services between lenders and residential borrowers, educate the public on housing issues, and help ease court congestion. The court selects cases for the FMU program at its discretion. Minimum requirements include that the property is an owner-occupied property, the property is the primary residence of the borrower, and the debtor is the borrower on the mortgage.¹¹ The court then issues an order directing the parties to participate with the time, date and location of the mediation.¹² No later than 14 days after being appointed, the mediator will hold an initial telephonic conference (ITC) with the attorneys for the parties (or the parties themselves if *pro se*).¹³ The parties must fill out information and exchange forms and provide copies to the mediator within ten days of the ITC.¹⁴ If the parties comply, the mediation will be held on the date provided in the court order. If a voluntary agreement is reached, the mediator will help the parties memorialize the terms in a Memorandum of Understanding, but the parties will be responsible for preparing any additional documentation to put the agreement into effect.¹⁵ Once the mediation conference is finished, the mediator will prepare a Report of ADR Conference stating the outcome to be filed with the court. If no agreement is reached, the matter will be referred back to the court.¹⁶

⁹ <http://www.indisputably.org/?p=3689>

¹⁰ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit/FMUPilotProgramInformation.aspx>

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ <https://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit/PilotProgramForms.aspx>

¹⁵ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit/FMUPilotProgramInformation.aspx>

¹⁶ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit/FMUPilotProgramInformation.aspx>



PERSONNEL

Mediators: Volunteers and law students

The FMU mediation panel provides experienced mediators (attorneys with five years' practice and two years' experience as mediators) to serve alongside students from the Arizona State University Sandra Day O'Connor College of Law. Mediators must apply to the FMU program directly.¹⁷

Attorneys: Law students

Law students in Arizona State University's Homeowner Advocacy Unit assist borrowers in foreclosure, including borrowers who go through mediation.¹⁸

Housing Counselors: None

Outreach: Phone Calls

Arizona State University's Homeowner Advocacy Unit provides outreach to community organizations and attorneys regarding foreclosure and the availability of assistance, including mediation.¹⁹

Other Personnel: Timothy Burr is Director of the FMU.²⁰

¹⁷ <http://www.law.asu.edu/programs/Programs/LodestarDisputeResolutionProgram/ForeclosureMediationUnit/InformationforMediators.aspx>

¹⁸ <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/CivilJusticeClinicHome/HomeownerAdvocacyUnit.aspx>

¹⁹ <http://www.law.asu.edu/justiceclinic/CivilJusticeClinic/CivilJusticeClinicHome/HomeownerAdvocacyUnit.aspx>

²⁰ http://apps.law.asu.edu/Apps/Faculty/Faculty.aspx?individual_id=9597



CALIFORNIA²¹

Perata Mortgage Relief

INCEPTION

Initiation Date: July 8, 2008²²

Location: Statewide

Originally Created by: Legislation

Perata Mortgage Relief Act SB 1137,²³ now California Civil Code Secs. 2923.5 and 2923.6²⁴

Sponsorship: SB 1137 was supported by now-defunct ACORN, California Association of Counties, Consumers Union, Center for Responsible Lending, California Reinvestment Committee, California Labor Federation AFL-CIO, and the Western Center on Law and Poverty.²⁵

IMPACT

Judicial/Non-Judicial Foreclosures: Non-Judicial

Number of Foreclosures: In 2010, California experienced 338,999 foreclosure initiations and 189,810 foreclosure sales.²⁶ In the month of March 2011, California had 28,032 Notice of Default filings and 24,397 Notice of Sale filings.²⁷

Funding: None

Costs: The program is free to participants.

Statistics: None

PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: The borrower of a loan made between January 1, 2003, and December 31, 2007, unless the lender applies for an exemption from the law (if the lender can demonstrate it has a loss mitigation and loan modification program that it already offers borrowers).²⁸

²¹ <http://ssl.csg.org/dockets/2010cycle/30Abills/0630a04caforeclosure.pdf>

²² <http://www.sfgate.com/cgi-bin/article/article?f=c/a/2008/07/08/BA3411LL25.DTL>

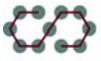
²³ http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1101-1150/sb_1137_cfa_20080402_090259_sen_comm.html

²⁴ <http://law.onecle.com/california/civil/2923.5.html>

²⁵ <http://democrats.assembly.ca.gov/issues/mortgagecrisis/pdf/SB1137factsheet.pdf>

²⁶ <http://www.foreclosureradar.com/foreclosure-report/foreclosure-report-2010>

²⁷ <http://www.foreclosureradar.com/california-foreclosures>



Participants and Participation Requirements: The lender must send a person to an in-person meeting who can make and sign an offer.

Timeline: After the lender contacts the borrower, the borrower has 14 days to request an in-person meeting.

Procedure: At least 30 days prior to filing a notice of default on a residential property, the lender must contact the borrower of a loan made between January 1, 2003, and December 31, 2007, in person or by telephone to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure.²⁹ The lender must also advise the borrower of the right to request another meeting, which must be scheduled within 14 days. Lenders may apply for an exemption from the law if the lender can demonstrate it has a loss mitigation and loan modification program that it already offers borrowers.³⁰ If lenders are not exempt, the California Court of Appeals held that Perata Mortgage Relief does not require lenders to offer loan modifications or actually reach the borrowers; the lender must show merely that it pursued contact with due diligence.³¹ If the borrower believes the lender has not complied with Perata Mortgage Relief, the borrower has a right of action up until the sale. They may request a delay of the sale, but not any other relief.³² Some federal district courts have ruled that federal law actually pre-empts Perata and therefore, Perata's requirements are null.³³

PERSONNEL

Mediators: None

Attorneys: None

Housing Counselors: None

Outreach: None

Other Personnel: None

Notes: In 2010, a foreclosure mediation bill was introduced in the California legislature. It failed to pass.³⁴ Some borrowers have filed cases in state court to access the state court-annexed mediation programs. Orange County courts have had foreclosure cases mediated in this way.³⁵

²⁸ http://www.corp.ca.gov/forms/pdf/CFP_Application_Package.pdf

²⁹ <http://www.news10.net/news/local/article/179031/2/Foreclosure-mediation-could-save-billions>

³⁰ http://www.corp.ca.gov/forms/pdf/CFP_Application_Package.pdf

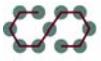
³¹ *Mabry v. Superior Court*, 110 Cal.Rptr.3d 201, 232 (Cal. Ct. App. 2010).

³² *Id.* at 233.

³³ *Ngoc Nguyen v. Wells Fargo Bank, N.A.*, 749 F.Supp.2d 1022, 1033 (N.D. Cal. 2010); *Taguinod v. World Sav. Bank, FSB*, 755 F.Supp.2d 1064, 1073-74 (C.D. Cal. 2010); *Giordano v. Wachovia Mortg., FSB*, 2010 WL 5148428 *4-5 (N.D. Cal. Dec 14, 2010).

³⁴ <http://www.kennytanlawblog.com/tp-100721231658/post-110122071446.shtml>

³⁵ <http://la.indymedia.org/news/2011/07/246871.php>

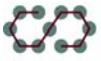


The Alliance of Californians for Community Empowerment have advocated for foreclosure mediation legislation at the state level.³⁶ The Los Angeles City Council ordered a foreclosure mediation plan be created for the city in February 2012.³⁷ A non-profit housing advocacy group argued that Santa Cruz city should create a similar plan.³⁸

³⁶ http://www.huffingtonpost.com/peter-dreier/california-foreclosures- b_986244.html

³⁷ http://www.hispanicbusiness.com/2012/2/16/la_weights_creating_foreclosure_mediation_plan.htm

³⁸ http://www.santacruz.com/news/2012/03/13/copa_plans_to_fight_foreclosures



COLORADO³⁹

Douglas County Housing Partnership Foreclosure Mediation Program

INCEPTION

Initiation Date: Spring 2008

Location: Douglas County

Originally Created by: Agreement

A partnership between Douglas County and the Douglas County Housing Partnership

Sponsorship: Douglas County Housing Partnership and Douglas County Public Trustee’s Office developed the program.⁴⁰

IMPACT

Judicial/Non-Judicial Foreclosures: Non-Judicial and Judicial⁴¹

A public trustee is in charge of the foreclosure process, but any sale has to be approved by a judge in a Rule 120 hearing. The hearing deals with two issues: whether the borrower is a veteran and whether the borrower is actually delinquent.

Number of Foreclosures: This program is limited to Douglas County residents.⁴² Douglas County had an estimated 2,500 foreclosures in 2008.⁴³ In April 2011, Douglas County had 216 foreclosure filings.⁴⁴

Funding: State Appropriation, Federal Grant, Attorney General
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 from NeighborWorks.⁴⁵ In 2011, the Colorado Foreclosure Hotline, which refers some borrowers to Douglas County’s program, received \$600,000 from the Attorney General.⁴⁶

Costs: Neither party pays for the service.

³⁹ <http://www.douglascountyhousingpartnership.org/foreclosure.htm>

⁴⁰ http://www.douglas.co.us/news/DCHP_Foreclosure_Counseling_Expands.html

⁴¹ http://www.denverpost.com/business/frontpage/cj_16539427

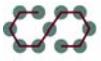
⁴² <http://www.douglascountyhousingpartnership.org/foreclosure.htm>

⁴³ <http://www.douglascountyhousingpartnership.org/news.htm>

⁴⁴ <http://www.realtytrac.com/states/Colorado/Douglas-County.html>

⁴⁵ <http://www.douglascountyhousingpartnership.org/news.htm>

⁴⁶ <http://www.credit.com/blog/2011/03/colorado-foreclosure-assistance-program-receives-state-grant/>



Statistics: The program receives 200 - 400 calls per week. Some of the borrowers 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 and 30 families a month receive one-on-one housing counseling and mediation with their lender.⁴⁷

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: The home must be owner occupied and be located in Douglas County.

Participants and Participation Requirements: Colorado requires those initiating a foreclosure to certify they are the "qualified holder" of the note and the deed of trust.

Timeline: Requesting counseling must occur within 50 days of receiving a notice of default. If the borrower cannot negotiate a loan modification within 120 days of receiving a notice of default, the trustee can proceed with foreclosure.

Procedure: The goal of the program is to decrease the number of foreclosures in Douglas County by providing borrowers with tools and resources to use during the foreclosure process. The borrower's attorney files a Notice of Election and Demand to the Public Trustee. Within 50 days, the borrower must begin working with a counselor; then, the borrower qualifies for a short deferment of the foreclosure process.⁴⁸ Then, the public trustee has authority to sell in 120 days if the borrower cannot work out a loan modification. Douglas County Housing Partnership counsels the borrower and helps them work with their lender by mediating a loan modification, if possible. If the borrower cannot get a modification, the trustee sells the house for the borrower.

PERSONNEL

Mediators: Housing Counselor

Douglas County Housing Partnership staff members serve as negotiators with the lender.

Attorneys: Private

Housing Counselors: Douglas County Housing Partnership staff counsel the borrower during the negotiations.

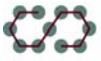
Outreach: Events, Hotline

Workshops and a Colorado Foreclosure Hotline refer people to the program.

Other Personnel: Douglas County Housing Partnership provides an administrator for the program.

⁴⁷ Statistics from interview with Travis Anderson, Program Administrator, Jan. 18, 2011.

⁴⁸ <http://www.douglas.co.us/publictrustee/documents/ForeclosureTimeline.pdf>



Notes: In the 2011 legislative session, Senator Angela Giron sponsored SB71, a foreclosure mediation bill.⁴⁹ It did not pass.

⁴⁹ http://www.chieftain.com/news/local/giron-aims-for-fewer-foreclosures/article_0a9c1adc-4715-11e1-857f-001871e3ce6c.html



CONNECTICUT⁵⁰

Foreclosure Mediation Program (FMP)

INCEPTION

Initiation Date: 2008

Location: Statewide

Originally Created by: Legislation
Public Act 08-176⁵¹

Modified by: Legislation

In 2011, the Act was modified by Public Act 09-209: An Act Concerning Implementation of the S.A.F.E. Mortgage Licensing Act,⁵² then revised by House Bill 6351 to extend to July 2014. It was signed by Governor Dannel P. Malloy on July 13, 2011, as Public Act 11-201.⁵³

Sponsorship: The Connecticut Department of Banking Supported the bill. The Judiciary agreed to manage the program.

IMPACT

Judicial/Non-Judicial Foreclosures: Judicial

Number of Foreclosures: Statewide, 62,118 eligible foreclosure cases were filed between July 1, 2008 and June 30, 2012.

Funding: State Appropriation, Lawsuit Settlement

In the first year, Connecticut's State Banking Fund appropriated \$2 million to the Judicial Department to establish and manage the program.⁵⁴ In 2010, Connecticut's Banking Fund gave the program \$3.3 million.⁵⁵ Under the terms of the mortgage and foreclosure abuses settlement, Connecticut will receive \$27 million to help finance housing counselors approved by the United States Department of Housing and Urban Development (HUD), non-profit legal aid groups assisting borrowers, CHFA loan modification programs, and foreclosure prevention programs,

⁵⁰ <http://www.jud.state.ct.us/external/news/press270.htm>; http://www.jud.state.ct.us/foreclosure/homeowner_qs.htm

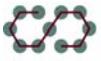
⁵¹ <http://www.cga.ct.gov/2008/rpt/2008-R-0516.htm>

⁵² <http://www.cga.ct.gov/2009/act/Pa/pdf/2009PA-00209-R00SB-00948-PA.PDF>

⁵³ <http://cga.ct.gov/2011/fc/2011HB-06351-R000893-FC.htm> and <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00201-R00HB-06351-PA.htm>

⁵⁴ Connecticut Public Act No. 08-176 Sec. 20 (2008).

⁵⁵ http://articles.courant.com/2011-03-21/business/hc-foreclosure-mediation-0322-20110321_1_foreclosure-cases-banks-committee-mediation-program



including the Foreclosure Mediation Program.⁵⁶ The Attorney General settlement money will be used in part to fund administrative support for the program.⁵⁷

Costs: Neither the borrowers nor the lenders pay a fee.⁵⁸

Statistics: The Connecticut Judicial Branch provides current statistics on its website.⁵⁹ The program reported that as of May 31, 2012:

- 13,844 cases completed mediation.
 - 9,313 (67%) of participating borrowers stayed in their homes. Of those, most received a loan modification.
 - 2,049 (15%) of participating borrowers obtained an agreement to gracefully leave their homes.
 - 2,482 (18%) of participating borrowers did not reach an agreement.⁶⁰

PROCESS

Opt-in or Opt-out: Opt-in

The mediation is mandatory if both parties have filed an appearance, but the borrower must opt-in by filing that appearance.

Eligibility: In order to qualify for this program, the borrower must be an owner-occupant of a one- to four-family residential property and had foreclosure pursued against them on or after July 1, 2008, or be a religious organization and have a foreclosure return date of October 2011 or later.

Participants and Participation Requirements: The lender may be represented by counsel and, if so, must be within telephonic contact during the mediation. The borrower must attend in person.

Timeline: The borrower must request mediation within 15 days of receiving the summons. The mediation is to occur within 35 days of the request. Documents must be exchanged at least 15 days before mediation.

Procedure: The lender sends a notice of the possibility of mediation, a certificate of mediation form, and an appearance form to the borrower. The lender must also include contact information for “authority-approved consumer credit counseling agencies” in the notice and instructions in the mediation form regarding financial documentation deemed beneficial for the mediation.⁶¹ The notice will also include information from the Department of Banking on community-based resources available to the borrower.⁶² If the borrower files a certificate of mediation and an

⁵⁶ <http://olreporter.blogspot.com/2012/02/connecticut-to-receive-190-million-in.html>

⁵⁷ <http://www.courant.com/business/real-estate/hc-mortgage-settlement-connecticut-20120521.0.4899111.story>

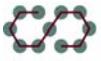
⁵⁸ <http://www.jud2.ct.gov/webforms/forms/cv094.pdf>

⁵⁹ <http://www.jud.ct.gov/statistics/FMP/default.htm>

⁶⁰ http://www.jud.ct.gov/statistics/FMP/FMP_pie.pdf

⁶¹ <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00201-R00HB-06351-PA.htm>

⁶² <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00201-R00HB-06351-PA.htm>



appearance within 15 days of receiving the summons, a mediation with a court-supplied mediator is scheduled. The court can also refer a foreclosure case to mediation if the borrower has filed an appearance, and if the court within three business days of making the referral sends notice to the parties with a scheduled date for the foreclosure mediation (that date being within 35 days of the referral).⁶³ Documents must be exchanged at least 15 days before mediation. The borrower does not need to bring an attorney. The mediation explores modifications and graceful exits and may be extended by the mediator to more than one session. There is no cost to the program.⁶⁴ Following the mediation, the mediator will issue a report to the court describing the proceedings and indicating which any issues which were and were not resolved by the mediation; the filing of this report will terminate the mediation period.⁶⁵ For up to eight months from the return date, the parties shall not make any motions, requests or demands of each other except for those relating to the foreclosure mediation program. If the borrower makes a motion, request or demand of the lender, the eight month limit no longer applies and the lender can seek other action against the borrower.⁶⁶

PERSONNEL

Mediators: Court Employees

The 25 mediators⁶⁷ are judicial employees, so they are paid as part of their job.⁶⁸ They are trained in foreclosure law, mediation and community services, but are not required to be lawyers. Mediators must also have knowledge regarding the Connecticut Housing Finance Authority's (CHFA) mortgage assistance programs; during the mediation period, the mediator can refer the borrower to the CHFA.⁶⁹

Attorneys: Pro Bono

Some private attorneys specialize in representing people in foreclosure mediation, but no attorneys are part of the program.⁷⁰ In May 2011, a Volunteer Attorney Program was started in New Haven for foreclosures by the New Haven County Bar and the New Haven Legal Assistance Foundation.⁷¹

Housing Counselors: A list of housing counseling services is attached to the summons and borrowers are highly encouraged to access these services.⁷²

⁶³ <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00201-R00HB-06351-PA.htm>

⁶⁴ <http://cga.ct.gov/2011/fc/2011HB-06351-R000893-FC.htm>

⁶⁵ <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00201-R00HB-06351-PA.htm>

⁶⁶ <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00201-R00HB-06351-PA.htm>

⁶⁷ <http://monroe.patch.com/articles/foreclosures-78f62b61>

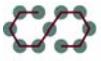
⁶⁸ <http://www.jud.ct.gov/external/news/press270.htm>

⁶⁹ <http://www.cga.ct.gov/2011/rpt/2011-R-0331.htm>

⁷⁰ <http://www.law.com/jsp/article.jsp?id=1202489201400&slreturn=1&hbxlogin=1>

⁷¹ <http://www.ctlawtribune.com/getarticle.aspx?ID=40697>

⁷² <http://cga.ct.gov/2011/fc/2011HB-06351-R000893-FC.htm>



Outreach: Events

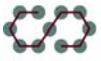
State-sponsored foreclosure forums are conducted to provide borrowers with an opportunity to meet with lenders and work out a payment plan to keep the borrowers in their homes.⁷³

Other Personnel: The Program Manager is a court employee who also administers all other court-connected ADR programs. She is paid by the court.

Notes: The FMP program has been cited as “the most successful [foreclosure assistance] program in Connecticut.”⁷⁴

⁷³ http://articles.courant.com/2011-11-10/business/hc-foreclosure-prevention-20111110_1_robo-signing-scandal-bank-repossessions-foreclosure-filings ; <http://www.ctpostchronicle.com/articles/2012/03/21/news/doc4f6a2cf438ddd692759662.txt> ; and http://www.norwalkplus.com/nwk/information/nwsnwk/publish/realestate/DoB-State-officials-offer-help-to-distressed-homeowners_np_16217.shtml

⁷⁴ <http://www.ctpost.com/local/article/There-s-new-help-for-some-facing-foreclosure-2409571.php#page-1>



DELAWARE⁷⁵

Automatic Residential Mortgage Foreclosure Mediation Program⁷⁶

INCEPTION

Initiation Date: September 2009

Location: Statewide

Originally Created/Governed by: Administrative Order

Administrative Order No. 2009-3 from Governor Jack Markell, rescinded and replaced by the Administrative Directive of the President Judge of the Superior Court of the State of Delaware No. 2011-2⁷⁷

Modified by: Legislation

House Substitute Bill No. 1 to House Bill 58 were signed by Governor on September 21, 2011, and codified in 10 Del. C. §5062C (the “Mediation Act”) establishing the Automatic Residential Mortgage Foreclosure Mediation Program (the “Mediation Program”).⁷⁸ Administrative Directive of the President Judge of the Superior Court of the State of Delaware No. 2012-2 issued January 13, 2012, to implement the Mediation Program for foreclosures filed on or after January 19, 2012.⁷⁹ The new law is modeled after the Pennsylvania and Connecticut programs.⁸⁰

Sponsorship: Governor Jack Markell issued an administrative directive to create the program in partnership with organizations including the Superior Court of Delaware; the Delaware State Housing Authority; the Delaware State Bar Association; the Attorney General; state legislators, including Representative John Kowalko; the Bank Commissioner's Office; County representatives; Community Legal Aid Society, Inc.; the Delaware Bankers Association and mortgage lenders; Delaware Volunteer Legal Services; Legal Services Corporation of Delaware; now-defunct ACORN; attorneys; and HUD-certified housing counseling agencies.⁸¹ House Bill sponsors include State Representative Mike Ramone (R-Middle Run Valley) and House Speaker Rep. Robert F. Gilligan (D-Sherwood Park).⁸²

⁷⁵ <http://www.deforeclosurehelp.org/mediation.html>; http://www.deforeclosurehelp.org/media/mediation_press_release.pdf

⁷⁶ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁷⁷ http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2011_2.pdf

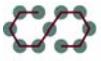
⁷⁸ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁷⁹ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁸⁰ <http://www.sussexcountian.com/features/x2127214123/Foreclosures-taper-as-banks-catch-up-sheriff-sales-on-rise>

⁸¹ http://deforeclosurehelp.org/media/mediation_press_release.pdf

⁸² <http://attorneygeneral.delaware.gov/media/releases/2012/program1-18.pdf>



IMPACT

Judicial/Non-Judicial Foreclosures: Judicial

Number of Foreclosures: Delaware had 4,706 foreclosures in 2010.⁸³ More than 3,700 were filed in 2011 by mid-November.⁸⁴ New Castle and Sussex counties saw an increase of over 400 sheriff's sales in 2011 versus 2010; the sheriff sales for Kent County had more than quadrupled since 2010.⁸⁵

Funding: Mediation Fee, Attorney General Settlement

The lender pays a \$500 Mediation Fee to defray the costs and expenses of the Mediation Program.⁸⁶ The state designated \$500,000 of the Attorney General settlement to the Mediation Program.⁸⁷

Costs: The lender pays a \$500 Mediation Fee to defray the costs and expenses of the Mediation Program.⁸⁸

Statistics: As Program Administrator, the Department of Justice, Consumer Protection Division, is responsible for keeping statistics for the Mandatory Mediation Program.⁸⁹

PROCESS

Opt-in or Opt-out: Opt-out

In the wake of legislation, the income restriction was eliminated and mediation became mandatory upon the filing of a foreclosure complaint by a lender.⁹⁰

Eligibility: In order to be eligible for the mandatory mediation program, a borrower must own a one- to four-unit house that is their primary residence and the foreclosure must have been filed on or after January 19, 2012.⁹¹ If the borrower files for bankruptcy, the mediation conference is cancelled.⁹² If the automatic stay is lifted, the lender must contact the Program Administrator to schedule a new mediation conference.

⁸³ http://deforeclosurehelp.org/media/2010_mort_complaints.pdf

⁸⁴ <http://www.wgmd.com/?p=40445>

⁸⁵ <http://www.sussexcountian.com/features/x2127214123/Foreclosures-taper-as-banks-catch-up-sheriff-sales-on-rise>

⁸⁶ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁸⁷ <http://www.wgmd.com/?p=60585>

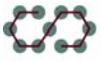
⁸⁸ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁸⁹ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁹⁰ http://bethanybeachnews.com/content/homeowners_foreclosure_now_get_mandatory_mediation

⁹¹ http://bethanybeachnews.com/content/homeowners_foreclosure_now_get_mandatory_mediation

⁹² <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>



Participants and Participation Requirements: The borrower and the lender or its counsel must appear in person at the mediation conference. If the lender appears by counsel, a representative with full settlement authority must be available by telephone.⁹³

Timeline: The Program Administrator schedules an initial mediation conference for a date between 45 days and 75 days from the date the complaint and Notice of Foreclosure Mediation were served on the borrower.⁹⁴

Procedure: Along with the notice of foreclosure, the lender must send the borrower a notice of mediation and a list of HUD-approved housing counseling agencies.⁹⁵ The lender must file notice with both the Program Administrator and the Mediation Coordinator within one business day of filing the foreclosure complaint.⁹⁶ The lender can later E-file a cancellation request if the borrower does not meet the statutory requirements.⁹⁷ The Mediation Coordinator schedules the session, which puts the foreclosure on hold.⁹⁸ Within 30 days of service, the borrower must meet with a housing representative and complete and E-file a Certificate of Participation.⁹⁹ The borrower can designate this housing representative to receive documents on his or her behalf.¹⁰⁰ At least 14 days prior to the initial mediation conference the borrower must give a completed financial information packet to both the mediator and opposing counsel; at least seven days prior the lender must give the borrower a list of documents to provide.¹⁰¹ The mediator can schedule a pre-mediation teleconference to discuss the documents requested and provided and request the submission of position statements.¹⁰² Once the mediation conference is concluded, the mediator and/or the parties must write a report indicating the outcome; the parties and the mediator must all sign the report. The mediator’s recommendations are included in the report, which the mediator must e-file with the court.¹⁰³ If the borrower fails to appear at the mediation conference, a final report will be filed, and the lender will be able to move forward with the foreclosure.¹⁰⁴

PERSONNEL

Mediators: Volunteers

All mediators should be volunteers; be either a Delaware attorney certified as a mediator after

⁹³ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ http://bethanybeachnews.com/content/homeowners_foreclosure_now_get_mandatory_mediation

⁹⁹ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

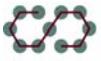
¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.



completion of Superior Court mediation training or any other mediator approved by the court; and be responsible for E-filing the mediation report.¹⁰⁵

Attorneys: Legal Aid

Delaware Volunteer Legal Services (DVLS) helps borrowers prepare a motion to request mediation and schedules the mediations, but does not represent the borrower in the mediation process.¹⁰⁶ DVLS also coordinates some mediations, if designated to do so by the Program Administrator.¹⁰⁷

Housing Counselors: Borrowers are required to meet with housing counselors prior to proceeding with mediation. For foreclosures filed prior to January 19, 2012, the HUD-approved housing counselor evaluates the borrower for program eligibility (the borrower only qualifies if she can afford mortgage payments if they are reasonably lowered to 38% of her income or if the lender agrees), helps the borrower fill out the Universal Intake Form, assists the borrower in writing a foreclosure alternative proposal, and sends the Intake Form and the proposal to the lender's attorney and DVLS.¹⁰⁸ The housing counselor can also assist the borrower in the initial meeting with the lender and in the mediation itself.¹⁰⁹ For foreclosures filed after January 19, 2012, housing counselors help borrowers prepare materials for the foreclosure mediation and may represent the borrower at the mediation.

Outreach: Events, Hotline

The Attorney General hosts a foreclosure helpline that links people to the program and provides information on the Attorney General website and in brochure form.¹¹⁰ The Attorney General also held Foreclosure Prevention workshops for consumers.¹¹¹

Other Personnel: The Department of Justice, Consumer Protection Division, serves as Program Administrator.¹¹² The Program Administrator is responsible for scheduling mediation conferences, sending mediation notices, ensuring collection of the Mediation Fee, ensuring the maintenance of Mediation Program Funds, disbursing certain expenses of the Mediation Program, and compiling program statistics.¹¹³ They can delegate some of these tasks to DVLS.

¹⁰⁵ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

¹⁰⁶ <http://declasi.org/index.php/foreclosure-mediation>

¹⁰⁷ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>

¹⁰⁸ http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2009-3.pdf

¹⁰⁹ <http://declasi.org/index.php/foreclosure-mediation/faq>

¹¹⁰ http://deforeclosurehelp.org/media/mediation_press_release.pdf;

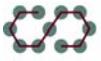
<http://www.attorneygeneral.delaware.gov/consumers/protection/automediation.shtml> ; and

<http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/brochurepdf.pdf>

¹¹¹ <http://www.wgmd.com/?p=39345>

¹¹² <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>; <http://www.dsba.org/cle/pdfs/FairHousing2012.pdf>

¹¹³ <http://www.attorneygeneral.delaware.gov/consumers/protection/mediation/Administrative%20Directive%202012-2%20-%20Final%20and%20Signed.pdf>; <http://www.dsba.org/cle/pdfs/FairHousing2012.pdf>



DISTRICT OF COLUMBIA

Saving D.C. Homes from Foreclosure; District of Columbia's Foreclosure Mediation Program¹¹⁴

INCEPTION

Initiation Date: November 2010¹¹⁵

Location: District-wide

Originally Created/Governed by: City Ordinance

City Council Bill 18-691, Saving D.C. Homes from Foreclosure Act of 2010, codified as DC ST Sec. 42-815¹¹⁶

Modified by: Due to ambiguous language in the original law, 80% of title companies in D.C. stopped insuring mortgages for fear that a lack of participation in mediation by lenders would cloud title for title companies.¹¹⁷ To remedy the ambiguity, the City Council temporarily amended its foreclosure mediation law by emergency motion on July 12, 2011.¹¹⁸ D.C. Act 19-156, Saving D.C. Homes from Foreclosure Temporary Amendment Act of 2011, signed into law on November 26, 2011, codified this language.¹¹⁹ The D.C. Department of Insurance, Securities and Banking (DISB) adopted rules to comply with the new law on December 20, 2011.¹²⁰

Sponsorship: The Act was proposed by Ward 4 Council Member Muriel Bowser,¹²¹ Chair of the Committee on Public Services and Consumer Affairs,¹²² and Council Members Mendelson, Alexander, Thomas and Gray.¹²³

IMPACT

Judicial/Non-Judicial Foreclosures: Non-Judicial

Number of Foreclosures: The District of Columbia had 2,451 homes in foreclosure in 2010. In 2011, there were 270.¹²⁴

¹¹⁴ <http://disb.dc.gov/disr/cwp/view.a.1299.q.645508.asp>

¹¹⁵ <http://www.housingwire.com/news/washington-dc-creates-quasi-judicial-foreclosure-process>

¹¹⁶ http://disb.dc.gov/disr/frames.asp?doc=/disr/lib/disr/pdf/dc_code_42-815.pdf

¹¹⁷ http://www.washingtonpost.com/business/economy/dc-council-fixes-foreclosure-law/2011/07/13/gIQAT6SEDI_story.html

¹¹⁸ http://www.washingtonpost.com/business/economy/dc-council-fixes-foreclosure-law/2011/07/13/gIQAT6SEDI_story.html

¹¹⁹ http://disb.dc.gov/disr/frames.asp?doc=/disr/lib/disr/pdf/Saving_DC_Temporary_Amendment_Act_2011.pdf

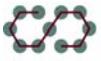
¹²⁰ http://disr.dc.gov/disr/lib/disr/pdf/Final_Rulemaking.pdf

¹²¹ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>

¹²² <http://dcclims1.dccouncil.us/media/2010%20COW%20agendas/11-09-10addmtgrevision%203.pdf>

¹²³ <http://dcclims1.dccouncil.us/bowser/issues.html>

¹²⁴ <http://www.urban.org/UploadedPDF/901506-Public-Roundtable-on-National-Homeownership-Month.pdf>



Funding: Filing Fees, Mediation Fees

The borrower pays a \$50 administration fee to the District Department of Insurance, Securities, and Banking (DISB). 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 if the foreclosure proceeds. All fees, including the filing fee, and 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.¹²⁵

Costs: The borrower pays \$50 for mediation and the lender pays \$300 for each foreclosure filed.

Statistics: Lenders are required to send a copy of each Notice of Default to DISB, which tracks the cases.¹²⁶ The program director reported that between May 25, 2011, and August 31, 2012:¹²⁷

- 95 Notices of Default were sent to borrowers.
 - 32 Notices of Default did not meet requirements of the program and were rejected.
 - 63 Notices of Default met the requirements and were accepted.
 - 25 borrowers did not complete requirements to elect mediation.
 - 2 borrowers were still within the statutory period to request mediation.
 - 36 borrowers elected mediation.
 - 11 loans were reinstated or put on a repayment plan.
 - 10 borrowers received loan modifications.
 - 1 borrower negotiated a short sale.
 - 5 borrowers had no agreement.
 - 2 owner cancelled mediation.
 - 7 cases were in the mediation process.

PROCESS

Opt-in or Opt-out: All lenders must inform borrowers of their option to mediate, but borrowers must request mediation to have it scheduled.¹²⁸

Eligibility: Foreclosure mediation is available to owners of residential properties in D.C. with four or less single family dwellings, including condominiums or cooperative units, who receive a Notice of Default on Residential Mortgage and elect to participate within 30 days of receipt of the Notice.¹²⁹

¹²⁵ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209;

http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS-18-691-Saving-DC-Homes-from-Foreclosure-Act-of-2010.pdf

¹²⁶ <http://www.housingwire.com/news/washington-dc-creates-quasi-judicial-foreclosure-process>

¹²⁷ Interview with Department of Insurance, Securities, and Banking Foreclosure Mediation Administrator Ben Arnold, September 14, 2012.

¹²⁸ http://disb.dc.gov/dsr/lib/dsr/pdf/Final_Rulemaking.pdf

¹²⁹ <http://disr.dc.gov/dsr/cwp/view,A.1299.Q.645508.asp>



Participants and Participation Requirements: Both borrower and lender are required to participate or send a representative that has been authorized in writing to act as an agent for the party. The agent must have authority to negotiate alternatives to foreclosure or be in touch via phone with someone who has such authority. Parties are required to mediate in good faith, which is defined as attending, providing correct documents in a timely manner, and coming to mediation ready to mediate “all issues.”¹³⁰ Penalties, including the continuation of the foreclosure process and financial penalties, will be issued for failure to comply.¹³¹

Timeline: The borrower has 30 days after receiving Notice of Default to elect to mediate. The first mediation session must occur within 45 days of the borrower receiving the Notice. Mediation must conclude within 90 days of the borrower receiving the Notice, but may be extended by consent of both parties another 30 days.

Procedure: Prior to foreclosing, all lenders must send the borrower the Notice of Default (Notice) and a Mediation Election Form, which includes a Loss Mitigation Application. The borrower must send the Form and Application to the lender and to the Mediation Administrator at DISB.¹³² Within two days of mailing the Notice to the borrower, the lender must also record a copy of the Notice with the D.C. Recorder of Deeds.¹³³

If the borrower does not elect to participate within 30 days of receiving the Notice, the Mediation Administrator will send a Mediation Certificate to the lender.

If the borrower elects to participate, the lender is required to participate, and the first mediation session must occur within 45 days of the notice being filed. Once the Mediation Administrator receives the borrower’s required documentation and non-refundable \$50 fee, the Administrator will send a Scheduling Notice to all parties.¹³⁴ The lender must submit required documents, including an explanation of loan modification application decisions, at least five days before mediation. Borrowers must bring the Loss Mitigation Application, which was previously submitted, to the mediation.¹³⁵ Lenders are required to complete the FDIC Net Present Value (NPV) calculation. Mediation must conclude within 90 days of the notice being filed.¹³⁶

If an agreement results after the authorized two sessions, any settlement agreement must be reduced to writing within five business days of the last session.¹³⁷ If no agreement occurs and the Mediation Administrator determines that both parties mediated in good faith, the Administrator issues a Certificate of Mediation or schedules one more mediation session. Once the lender has a

¹³⁰ http://disb.dc.gov/dsr/lib/dsr/pdf/Final_Rulemaking.pdf

¹³¹ <http://dsr.dc.gov/dsr/cwp/view,A.1299.Q.645508.asp>

¹³² Id.

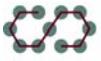
¹³³ Id.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ Id.



Certificate of Mediation, the lender can file a Notice of Intent to Foreclose and the Certificate with the Recorder of Deeds, thus proceeding with the foreclosure process.

PERSONNEL

Mediators: Contractors

DISB is responsible for managing the enrollment of and payment to mediators.¹³⁸ The Mediation Administrator contracts with administrative law judges, attorney-mediators, or mediation organizations to provide mediation services. Mediators must complete a foreclosure mediation training authorized by the DISB Commissioner.¹³⁹ Mediators receive \$300 per case.¹⁴⁰

Attorneys: Though the Program does not provide or require counsel, it does offer a list of providers of free legal representation, which include AARP Legal Counsel for the Elderly, Legal Aid Society of the District of Columbia, and Neighborhood Legal Services Program.¹⁴¹ At one mediation services provider, 14% of borrowers were represented by counsel.¹⁴²

Housing Counselors: No housing counselors are provided, although the Mediation Administrator recommends that borrowers speak with one prior to mediation. Several HUD-Approved Counseling Agencies are available to counsel borrowers and borrowers may take a housing counselor with them to mediation.¹⁴³ At one mediation services provider, 28% of borrowers brought a housing counselor or other non-attorney representative with them to mediation.¹⁴⁴

Outreach: Mail

Borrowers learn about the program when they receive a Notice of Default from their lender.

Other Personnel: The program is managed by DISB.¹⁴⁵ The Mediation Administrator appointed by the Commissioner of DISB schedules the mediation and manages all other communications between the parties.¹⁴⁶ The Administrator also reviews mediation reports, determines whether parties complied with requirements in good faith, issues sanctions, and keeps statistics of outcomes.¹⁴⁷

Notes: In summer of 2012, the D.C. City Council considered revisions to the law that would clarify the obligations of the lender and borrower in mediation, extend the timeline for document

¹³⁸ http://disb.dc.gov/disr/lib/disr/pdf/Final_Rulemaking.pdf

¹³⁹ http://disb.dc.gov/disr/lib/disr/pdf/Final_Rulemaking.pdf

¹⁴⁰ Email from Foreclosure Mediation Program Manager, Center for Dispute Settlement.

¹⁴¹ http://disr.dc.gov/disr/frames.asp?doc=/disr/lib/disr/pdf/disb_foreclosure_resources.pdf

¹⁴² Email from Foreclosure Mediation Program Manager, Center for Dispute Settlement.

¹⁴³ http://disr.dc.gov/disr/frames.asp?doc=/disr/lib/disr/pdf/disb_foreclosure_resources.pdf

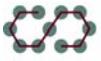
¹⁴⁴ Email from Foreclosure Mediation Program Manager, Center for Dispute Settlement.

¹⁴⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>

¹⁴⁶ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/DownLoad.aspx?IssueFileID=13209.

¹⁴⁷

https://erecruit.dc.gov/psc/erecruit/EMPLOYEE/HRMS/c/HRS_HRAM.HRS_CE.GBL?Page=HRS_CE_JOB_DTL&Action=A&JobOpeningId=17463&SiteId=1&PostingSeq=1&



exchange and mediation from 90 to 180 days, and move cases through the system.¹⁴⁸ The Council held a hearing on the issue in June 2012.¹⁴⁹

¹⁴⁸ http://www.dccouncil.us/files/user_uploads/event_testimony/june5_alexander_savingdchomes.pdf; http://washingtonexaminer.com/proposed-changes-to-foreclosure-law-could-double-mediation-time/article/2501100?custom_click=rss

¹⁴⁹ <http://www.legalaiddc.org/issues/documents/2012%20Legal%20Aid%20Testimony%20on%20Foreclosure%20Mediation%20Law.pdf>
<http://www.legalaiddc.org/issues/documents/2012%20Legal%20Aid%20Testimony%20on%20Foreclosure%20Mediation%20Law.pdf>



FLORIDA

Mandatory Florida Pre-Filing Mediation Process¹⁵⁰

INCEPTION

Initiation Date: August 31, 2010¹⁵¹

Location: Jacksonville, Miami, Pensacola, Fort Myers, the 20th Circuit,¹⁵² the 4th Circuit and the 7th Circuit¹⁵³

Originally Created by: Corporate Regulation
Fannie Mae announced the program via SVC-2010-13.¹⁵⁴

Modified by: Corporate Announcement
This program will no longer be available for borrowers who do not opt in as of October 1, 2012.¹⁵⁵

Sponsorship: Fannie Mae began the pre-filing program in Florida. It partners with financial counselors and contracted attorneys to provide services.

IMPACT

Judicial/Non-Judicial: Pre-judicial
The mediations occur before a foreclosure cases is filed. Florida is a judicial foreclosure state.

Number of Foreclosures: Florida had 456,000 foreclosures in 2009. In 2010, 14.5% of all mortgages in Florida were 60 days or more past due.¹⁵⁶ In 2011, 2.06% of all borrowers were in foreclosure.¹⁵⁷

Funding: Mediation Fees
The servicer pays for mediation up front, up to \$750 for the mediation and up to \$550 for attorney's fees. However, the servicer may add all costs onto the borrower's indebtedness.¹⁵⁸

Costs: The program is free to borrowers. Lenders pay up to \$750 per case.¹⁵⁹

¹⁵⁰ <https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/flprefilemediationprocess.pdf>

¹⁵¹ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁵² <http://www.news-press.com/article/20110524/BUSINESS/105240346/Foreclosure-mediation-start-area?odyssey=mod|newswell|text|Home|p>

¹⁵³ http://www.collinscenter.org/?page=jax_mediation

¹⁵⁴ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁵⁵ http://www.housingwire.com/news/fannie-end-foreclosure-mediation-program-florida?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+housingwire%2FuOVI+%28HousingWire%29

¹⁵⁶ <http://www.daytonabeachrealestateattorney.com/2011/02/floridas-mortgage-delinquency-rate-second-highest-in-the-us.shtml>

¹⁵⁷ <http://www.floridarealtors.org/NewsAndEvents/article.cfm?p=3&id=270765>

¹⁵⁸ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁵⁹ <http://jacksonville.com/business/real-estate/2011-08-15/story/center-helps-jacksonville-area-homeowners-mediation>



Statistics: General comments indicate about 50% of borrowers who participate avoid foreclosure.¹⁶⁰

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Fannie Mae-backed mortgages on homesteaded properties are eligible for this program.¹⁶¹

Participants and Participation Requirements: The borrower is required to appear in person. An attorney from Fannie Mae with two options—a retention and a relinquishment option—must appear in person.

Timeline: Lenders send a notice of availability of pre-suit mediation after the borrower is delinquent for 65 days.¹⁶²

Procedure: A local mediation center contracts with Fannie Mae to provide mediation services to borrowers before a foreclosure is filed. Fannie Mae loan servicers are required to refer all delinquent mortgage loans to an attorney in Fannie Mae’s Retained Attorney Network. The borrower may seek a mediation starting 31 days after defaulting on the loan. Servicers also must provide all referred attorneys with contact information for a primary liaison/team to whom all inquiries and documents should be directed throughout the mediation process. That attorney will then use a software tool, Clarifire, to evaluate the loan for mediation eligibility. The borrower can also request documents from the servicer.¹⁶³ The mediation center conducts a mediation between the servicer and the borrower. Fannie Mae reserves the right to fine servicers for failing to comply with the program. There can be more than one mediation session. A borrower who completes the pre-file mediation may not enter the court mediation program.¹⁶⁴

PERSONNEL

Mediators: Paid Mediators

Mediators are from contracted local mediation centers. Collins Center for Public Policy manages at least two circuits’ programs.¹⁶⁵

Attorneys: Attorneys from Fannie Mae do not represent the borrowers, but they help the borrowers communicate with the servicer liaison.

¹⁶⁰ <http://jacksonville.com/business/real-estate/2011-08-15/story/center-helps-jacksonville-area-homeowners-mediation>

¹⁶¹ <http://www.news-press.com/article/20110524/BUSINESS/105240346/Foreclosure-mediation-start-area?odyssey=mod|newswell|text|Home|p>

¹⁶² http://www.collinscenter.org/?page=jax_mediation

¹⁶³ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁶⁴ <https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/flprefilemediationprocess.pdf>

¹⁶⁵ http://www.collinscenter.org/?page=jax_mediation



Housing Counselors: The financial counselor screens the borrower for eligibility to participate, then works with the borrower to prepare for mediation, should they be eligible.¹⁶⁶ Fannie Mae contracts with financial counselors from across the country to call in and work with borrowers.¹⁶⁷

Outreach: Mediator

The mediation program manager contacts the borrower to offer mediation after the borrower has been delinquent 65 days on their mortgage.¹⁶⁸

Other Personnel: A mediation program manager coordinates the mediations.¹⁶⁹

Bankruptcy Mortgage Modification Mediation Program

INCEPTION

Initiation Date: 2010¹⁷⁰

Location: U.S. District Court for Middle District of Florida, Orlando,¹⁷¹ Tampa¹⁷²

Originally Created by: Court Rule

The U.S. Bankruptcy Court for the Middle District of Florida has Rule 9019-2 allowing for mediation.¹⁷³

Sponsorship: Chapter 13 trustee Laurie Weatherford started the program at the request of the Orlando bankruptcy judge.

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In 2011, 13,018 bankruptcy cases were filed in the Middle District.¹⁷⁴

Funding: No additional funding is allocated for this program.

Costs: Borrowers must pay \$375 to participate.¹⁷⁵

¹⁶⁶ http://www.collinscenter.org/?page=jax_mediation

¹⁶⁷ Email on file with author.

¹⁶⁸ <http://jacksonville.com/business/real-estate/2011-08-15/story/center-helps-jacksonville-area-homeowners-mediation>

¹⁶⁹ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁷⁰ <http://www.heraldtribune.com/article/20111112/ARTICLE/111119827?p=2&tc=pg>

¹⁷¹ <http://www.heraldtribune.com/article/20111112/ARTICLE/111119827?tc=ar;>

<http://www.flmb.uscourts.gov/jennemann/documents/mortgagearticle.pdf>

¹⁷² http://www.flmb.uscourts.gov/forms/documents/tampa_mortgage_modification_mediation.pdf

¹⁷³ <http://courtadr.org/library/view.php?ID=3546>; <http://www.flmb.uscourts.gov/jennemann/documents/mortgagemodificationmediation.pdf>

¹⁷⁴ <http://www.flmb.uscourts.gov/statistics/2011/december.pdf>

¹⁷⁵ <http://www.heraldtribune.com/article/20111112/ARTICLE/111119827?p=4&tc=pg>



Statistics: Between April 2010 and June 2011, 250 of 710 cases (35%) received a loan modification.¹⁷⁶

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Homeowners who enter Chapter 13 bankruptcy and have a mortgage can participate.

Participants and Participation Requirements: Lender attorneys must participate in a “meaningful way.”

Procedure: Borrowers may request mediation at the bankruptcy hearing. If borrowers pay the participation fee, the judge will refer them to a mediation scheduler. Lenders receive the enumerated debts, expenses, and income from the Chapter 13 bankruptcy filing. Mediation usually occurs in one session, since lenders have the financial information needed prior to mediation.

PERSONNEL

Mediators: Attorney Mediators

The court rule requires all mediators be attorneys approved by the court to mediate.¹⁷⁷

Attorneys: Private

Borrower attorneys are trained in the details of the program, so they can better help their clients.¹⁷⁸

Housing Counselors: None

Outreach: None

Other Personnel: The bankruptcy trustees can also make recommendations to the judges about which cases are appropriate for mediation.

¹⁷⁶ <http://www.tampabay.com/news/business/realestate/federal-bankruptcy-program-works-to-keep-people-in-their-homes/1178939>

¹⁷⁷ <http://courtadr.org/library/view.php?ID=3546>

¹⁷⁸ <http://www.heraldtribune.com/article/20111112/ARTICLE/111119827?p=1&tc=pg>



STATE COURT

NOTE: Florida had a statewide, court-ordered foreclosure mediation program that ended in December 2011¹⁷⁹ after reports¹⁸⁰ came out that few eligible borrowers were participating.¹⁸¹ The court order ending the program allowed individual circuits to create their own foreclosure mediation programs. The following reflects what the circuits have done since the conclusion of the statewide program.

Procedures Applicable to Mortgage Foreclosure Cases Involving Residential Property

INCEPTION

Initiation Date: January 2012

Location: 6th Circuit¹⁸²

Originally Created by: Court Administrative Order
Administrative Order No. 2012-002 PA/PI-CIR¹⁸³

Sponsorship: J. Thomas McGrady, Chief Judge of the 6th Circuit

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: 9,983 cases were filed in 2011 and 28,727 were pending.¹⁸⁴

Funding: Fees

There is a mediation fee of \$225 per party that parties pay directly to the mediation service provider.

Costs: Each party pays \$225 directly to the mediation service provider for mediation.¹⁸⁵

Statistics: None have been made public

PROCESS

Opt-in or Opt-out: Opt-out

¹⁷⁹ <http://www.palmbeachpost.com/money/foreclosures/admitting-failure-florida-supreme-court-ends-foreclosure-mediation-2041550.html>

¹⁸⁰ <http://www.palmbeachpost.com/money/foreclosures/panel-kill-foreclosure-mediation-1927455.html>

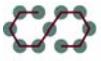
¹⁸¹ <http://www.palmbeachpost.com/money/foreclosures/foreclosure-mediation-programs-low-rate-of-success-leaves-1869726.html>

¹⁸² <http://mattweidnerlaw.com/blog/2012/01/huge-foreclosure-mediation-returns-to-pinellas-county/>

¹⁸³ <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2012/2012-002.htm>

¹⁸⁴ Id.

¹⁸⁵ Id.



Eligibility: Borrowers who have been personally served in all residential properties, including non-homestead and homestead.¹⁸⁶

Participants and Participation Requirements: A borrower and lender representative must appear in person or by phone. They must submit documents prior to mediation.

Timeline: Borrowers must respond to the complaint within 120 days to access mediation. Document exchange and confirmation that no more is needed must be completed within 30 days. Mediation must be conducted within 30 days of the receipt of all documents.¹⁸⁷

Procedure: The mediation program manager receives contact information for every borrower that is personally served. The mediation program manager prepares an order for the court to complete, referring that borrower's case to mediation. If the court issues the order, the mediation program manager sets up the mediation and manages document exchange. Within 30 days of the lender receiving all necessary documents, the mediation occurs. If the lender requests additional information at the mediation not originally requested, the mediator can assess a \$200 fine.

PERSONNEL

Mediators: The not-for-profit organization Mediation Managers, Inc. is contracted to provide mediation services. The mediators are three attorneys.¹⁸⁸

Attorneys: Parties are informed of their right to counsel and given information about legal services and pro bono options.¹⁸⁹

Housing Counselors: The mediation program manager recommends the borrower seek financial counseling.¹⁹⁰

Outreach: Mail

The court's order to appear at mediation is sent to the borrower via mail.

Other Personnel: A mediation program manager is part of the court.

¹⁸⁶ <http://mattweidnerlaw.com/blog/2012/01/huge-foreclosure-mediation-returns-to-pinellas-county/>

¹⁸⁷ <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2012/2012-002.htm>

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ Id.



Residential Mortgage Foreclosure Mediation Program (RMFMP)¹⁹¹

INCEPTION

Initiation Date: April 23, 2012 (Orange)¹⁹² and May 15, 2012 (Osceola)¹⁹³

Location: 9th Circuit (Orange¹⁹⁴ and Osceola Counties)¹⁹⁵

Originally Created by: Court Administrative Order¹⁹⁶
Administrative Orders 2012-06 and 2012-07

Sponsorship: Judge Belvin Perry, Jr.

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures:

Funding: Fees

The mediation program is funded by filing and mediation fees.

Costs: The mediation cost is \$500, comprised of a \$100 initial fee paid by the lender, a \$250 Mediation Program Fee paid by the borrower, and an additional \$150 from the lender.¹⁹⁷

Statistics: None available

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: All residential foreclosures filed in the 9th Circuit after the respective effective dates will be subject to the RMFMP unless the parties agree otherwise in writing; borrowers facing foreclosures filed prior to the respective dates can still file a Borrower's Request to Participate with the Court.¹⁹⁸

¹⁹¹ <http://ninja9.org/adminorders/orders/2012-07%20-%20residential%20foreclosure%20mediation%20procedures%20osceola%20county.pdf> and <http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>

¹⁹² <http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>

¹⁹³ Id.

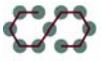
¹⁹⁴ Id.

¹⁹⁵ <http://ninja9.org/adminorders/orders/2012-07%20-%20residential%20foreclosure%20mediation%20procedures%20osceola%20county.pdf>

¹⁹⁶ <http://ninja9.org/adminorders/orders/2012-07%20-%20residential%20foreclosure%20mediation%20procedures%20osceola%20county.pdf> and <http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>

¹⁹⁷ Id.

¹⁹⁸ Id.



Participants and Participation Requirements: The borrower, borrower’s attorney, lender’s attorney, and lender’s attorney with full authority to settle must be physically present at mediation.¹⁹⁹ Prior to mediation, a court mediation staff member determines if everyone is present with the proper authority. Cancellation or a no-show by any party may result in penalties or sanctions by the court.

Timeline: The lender has 5 days after filing the complaint to submit the \$100 fee, upload Form A, and upload the borrower’s information; the date these three things are accomplished is considered the “date eligible.”²⁰⁰ The Borrower must schedule the mediation within 55 days from the date eligible with the Program Manager and give the Program Manager any documents requested by the lender in that timeframe.²⁰¹ Within 40 days of the date eligible the Borrower must contact the Program Manager and pay the \$250 fee; during this same period the Lender must provide a list of documents required and pay the remaining \$150.²⁰² The mediation sessions must conclude with 100 days of the foreclosure action being filed.²⁰³ Ten days after the mediation is concluded the mediator will file a mediation report.²⁰⁴

Procedure: The lender must attach a notification of the RMFMP in both English and Spanish to the summons. The Program Manager will contact the borrower regarding the RMFMP and the borrower’s requirements following the date eligible and will also urge the borrower to speak with a counselor. After the date, time and location for the mediation has been set, the Program Manager will send the parties and file with the Court a Notice of Mediation. The mediator reports to the court whether an agreement was reached; if no agreement is reached the mediator files a mediation report.²⁰⁵

PERSONNEL

Mediators: Paid Mediators

The mediators are independent, trained in foreclosure law and mediation, and are Florida Supreme Court Certified Mediators.²⁰⁶ The Orange County Bar Association provides mediators in Orange County.²⁰⁷

Attorneys: The borrower is allowed to bring an attorney to mediation. The borrower can contact the Legal Aid Society to see if they qualify for representation.²⁰⁸

¹⁹⁹ <http://ninja9.org/adminorders/orders/2012-07%20-%20residential%20foreclosure%20mediation%20procedures%20osceola%20county.pdf> and <http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>

²⁰⁰ Id.

²⁰¹ Id.

²⁰² Id.

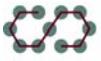
²⁰³ Id.

²⁰⁴ Id.

²⁰⁵ Id.

²⁰⁶ http://orangecountybar.org/content/uploads/PDFs/RMFM%20New%20AO/NewAO_RMFM_Homeowner_FAQs_04-23-12.pdf

²⁰⁷ <http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>



Housing Counselors: Borrowers are encouraged to seek “foreclosure counseling” prior to mediation.

Outreach: The court refers the case to mediation, so there is no outreach.

Other Personnel: The Orange County Bar Association helped establish and currently serves as the Foreclosure Program Manager the Orange County program.²⁰⁹ Any lender filing more than five foreclosures in the 9th Circuit after the effective date of the respective Administrative Orders is required to designate two RMFMP liaisons; one must be an attorney and the other must be a representative of the entity servicing the lender’s mortgages.²¹⁰

Residential Mortgage Foreclosure Mediation Program

INCEPTION

Initiation Date: August 2, 2010

Location: 13th Circuit (Hillsborough County)²¹¹

Originally Created by: Administrative Order
Court Administrative Order S-2011-010 governs the program.²¹²

Sponsorship: Hillsborough County Bar Association²¹³

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In 2012, the Tampa Bay area had about 2,000 foreclosure filings per month.²¹⁴

Funding: Fees
Lender fees for filing foreclosures fund the program.

Costs: The lender pays all costs for the mediation through a filing fee.

Statistics: None available

²⁰⁸ http://orangecountybar.org/content/uploads/PDFs/RMFMP%20New%20AO/NewAO_RMFMP_Homeowner_FAQs_04-23-12.pdf

²⁰⁹ <http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>

²¹⁰ <http://ninja9.org/adminorders/orders/2012-07%20-%20residential%20foreclosure%20mediation%20procedures%20osceola%20county.pdf> and

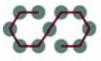
<http://ninja9.org/adminorders/orders/2012-06%20-%20residential%20foreclosure%20mediation%20procedures%20orange%20county.pdf>

²¹¹ <http://www.fljud13.org/Portals/0/Forms/pdfs/FormsforForeclosureMediation.pdf>

²¹² <http://www.fljud13.org/Portals/0/AO/DOCS/S-2011-010.pdf>

²¹³ <http://www.fljud13.org/LegalCommunity/ResidentialMortgageForeclosureMediationProgram.aspx>

²¹⁴ <http://www.tampabay.com/news/business/realestate/foreclosure-filings-rise-again-in-tampa-bay-area/1251185>



PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: Every borrower who has a foreclosure filed against a homestead property is scheduled for a mediation.²¹⁵

Participants and Participation Requirements: The lender must sign a certification that includes the names of two parties who will appear, at least one of which must have full authority to modify the mortgage. The lender must also send a list of its required documents to the borrower via the court prior to the mediation.²¹⁶

Timeline: The process must be completed within 120 days of the foreclosure case being filed.

Procedure: When referred to mediation by the court, the lender must complete a court certification form listing all documents needed to review before offering a loss mitigation option. The borrower may request documents from lender using a similar form. Borrower must provide financial documents to lender before mediation. Part of case management services included in the program is financial counseling for the borrower.²¹⁷ All documents are exchanged via an online portal.²¹⁸ The options required to be reviewed are loan modification, short sale, and deed-in-lieu of foreclosure. At the end of mediation, the mediator must submit a report to the court.²¹⁹

PERSONNEL

Mediators: Attorneys

Mediators are certified civil court mediators who are also members of the local bar association.²²⁰

Attorneys: None provided, but borrowers are allowed to bring a private attorney to mediation.

Housing Counselors: Court Staff

As part of case management, the court provides all borrowers with financial counseling.

Outreach: Mail

The court sends a notice with the date of the scheduled mediation and the documents that must be completed before then.

Other Personnel: The Hillsborough County Bar Association is the program manager.²²¹

²¹⁵ <http://www.fljud13.org/LegalCommunity/ResidentialMortgageForeclosureMediationProgram/HomeownersBorrowersFAQs.aspx>

²¹⁶ <http://www.fljud13.org/LegalCommunity/ResidentialMortgageForeclosureMediationProgram/HomeownersBorrowersFAQs.aspx>

²¹⁷ <http://www.fljud13.org/LegalCommunity/ResidentialMortgageForeclosureMediationProgram/AboutUs.aspx>

²¹⁸ www.rfmfp.com

²¹⁹ <http://www.fljud13.org/Portals/0/Forms/pdfs/FormsforForeclosureMediation.pdf>

²²⁰ <http://www.fljud13.org/LegalCommunity/ResidentialMortgageForeclosureMediationProgram/MediatorsFAQs.aspx>

²²¹ <http://www.fljud13.org/LegalCommunity/ResidentialMortgageForeclosureMediationProgram/AboutUs.aspx>



Foreclosure Mediation Program²²²

INCEPTION

Initiation Date: July 26, 2012

Location: 18th Circuit (Seminole County) ²²³

Originally Created by: Administrative Order
Administrative Order 12-25-S governs the program.²²⁴

Sponsorship: Chief Judge Dickey

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In January 2012, the foreclosure judge was hearing 300 cases in a few days' time.²²⁵

Funding: Fees
Lenders pay the fees for the mediators.

Costs: The lender pays the fee of the mediator. There is no cost for the borrower.

Statistics: None available

PROCESS

Opt-in or Opt-out: Opt-in
Opt-in to answer, opt-out once answered.²²⁶

Eligibility: Borrowers who file an answer to the complaint, claiming a defense to the foreclosure or seeking affirmative relief, are automatically referred to mediation.²²⁷

Participants and Participation Requirements: If the borrower does not appear, the borrower's case goes directly to a summary judgment hearing. If the lender does not appear or does not send someone with authority to settle, the lender's case is dismissed.²²⁸

²²² <http://seminoleclerk.org/resources/fmp.pdf>

²²³ http://articles.orlandosentinel.com/2011-12-20/business/os-court-foreclosure-mediations-20111220_1_foreclosure-mediation-mediation-services-supreme-court

²²⁴ <http://flcourts18.org/PDF/A.O.12-25-S.pdf>

²²⁵ http://abcnews.go.com/Business/florida-judge-hearing-300-foreclosure-cases-days/story?id=15372670#_UFoEqPUROg

²²⁶ http://www.flcourts18.org/PDF/Foreclosures/Foreclosures_Seminole/PROCEDURES_FOR_MORTGAGE_FORECLOSURES.pdf

²²⁷ <http://flcourts18.org/PDF/A.O.12-25-S.pdf>

²²⁸ <http://flcourts18.org/PDF/A.O.12-25-S.pdf>



Timeline: After the mediation is scheduled, the lender has ten days to send a packet to the borrower. The borrower has until 15 days before the mediation to submit the packet to the lender.²²⁹

Procedure: If the borrower files an answer to the foreclosure complaint, the lender is required to schedule a mediation. The lender is responsible for selecting the mediator and notifying the borrower of the date of mediation. The lender must send the borrower a complete loan modification application within 10 days of scheduling the mediation. The borrower must complete it and return it to the lender within 15 days of the mediation.²³⁰

PERSONNEL

Mediators: Court Mediators

Any Supreme Court-approved civil mediator may be selected by the parties to mediate the case.²³¹

Attorneys: None offered

Housing Counselors: The program refers borrowers to financial counseling, but it is not mandatory to participate in mediation.²³²

Outreach: Mail

The lender must send notice of the scheduled mediation session.

Other Personnel: The judge may hear challenges to the attendance of parties.

Homestead Mediation Program²³³

INCEPTION

Initiation Date: May 1, 2012²³⁴

Location: 20th Circuit²³⁵

Originally Created by: Administrative Order²³⁶

Administrative Order 1.14 governs the program.

²²⁹ <http://flcourts18.org/PDF/A.O.12-25-S.pdf>

²³⁰ <http://flcourts18.org/PDF/A.O.12-25-S.pdf>

²³¹ <http://flcourts18.org/PDF/A.O.12-25-S.pdf>

²³² http://flcourts18.org/PDF/Foreclosures/Foreclosures_Seminole/RESOURCES.pdf

²³³ http://www.ca.cjis20.org/pdf/ao/ao_1_14.pdf

²³⁴ http://www.ca.cjis20.org/pdf/ao/ao_1_14.pdf

²³⁵ <http://www.ca.cjis20.org/home/main/homemediation.asp>

²³⁶ <http://www.ca.cjis20.org/home/main/homemediation.asp>



Sponsorship: Chief Judge Rosman

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Foreclosures in the 20th Circuit rose 788% between 2006 and 2009.²³⁷

Funding: Fees

The fees paid to the mediation program are the only funding.

Costs: The mediation cost is \$300, to be split equally by the parties.²³⁸

Statistics: None available

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: All residential homestead properties may opt-in to the program.

Participants and Participation Requirements: The borrower, borrower’s attorney, lender’s attorney, and lender’s attorney with full authority to settle must be physically present at mediation.²³⁹ Prior to mediation, a court mediation staff member determines if everyone is present with the proper authority. Cancellation or a no-show by any party triggers a \$300 fine.

Timeline: The borrower has 20 days after receiving the summons to request mediation and complete the required documents. The mediation is scheduled within 60 days of the order of referral. The mediation sessions must conclude with 45 days of the first mediation session.²⁴⁰

Procedure: The lender sends the borrower a summons, after which the borrower has 20 days to file a responsive pleading and request mediation.²⁴¹ The borrower must also complete a financial information worksheet. The court will then order the borrower and lender to mediation. The court’s office of mediation schedules the mediation within 60 days of the order.²⁴² Mediation does not stay the proceedings.²⁴³ The mediator reports to the court whether an agreement was reached.

PERSONNEL

Mediators: Court Mediator

²³⁷ <http://www.heraldtribune.com/article/20090813/ARTICLE/908131079>

²³⁸ Id.

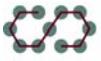
²³⁹ Id.

²⁴⁰ http://www.ca.cjis20.org/pdf/ao/ao_1_14.pdf

²⁴¹ Id.

²⁴² Id.

²⁴³ Id.



Attorneys: The borrower is allowed to bring an attorney to mediation. The attorney must file an appearance with the court.²⁴⁴

Housing Counselors: None required

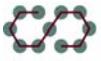
Outreach: Mail

The clerk sends a notice to the borrower and lender about the scheduled mediation.

Other Personnel: The court's Office of Mediation schedules the mediations.²⁴⁵

²⁴⁴ http://www.ca.cjis20.org/pdf/ao/ao_1_14.pdf

²⁴⁵ http://www.ca.cjis20.org/pdf/ao/ao_1_14.pdf



HAWAII

Foreclosure Mediation Pilot Project

INCEPTION

Initiation Date: Initiated as a pilot project on November 1, 2009. The pilot was extended indefinitely on March 27, 2012.

Location: 3rd Circuit²⁴⁶

Originally Created by: Court

Sponsorship: The court, in partnership with the two community mediation centers on the Island

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: For the pilot, 200 of over 1,000 foreclosure cases were followed.²⁴⁷

Funding: Mediation fee

Costs: The two community mediation centers charge the plaintiff \$200 and the borrower \$200. A list of pro bono mediators is also available.

Statistics: As of February 29, 2012, the pilot program had received 237 mediation requests.

- 49 mediations were ordered.
 - 10 orders were rescinded.
 - 21 mediations were still in process.
 - 16 reached an agreement and the case was dismissed.
 - 3 ended without an agreement.
- 16 requests were denied.²⁴⁸

PROCESS

Opt-in or Opt-out: Opt-in

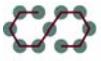
Eligibility: Any residential borrower who is a defendant in a judicial foreclosure case.

Participants and Participation Requirements: None

²⁴⁶ http://www.courts.state.hi.us/news_and_reports/press_releases/2010/01/foreclosure_mediation.html

²⁴⁷ http://www.courts.state.hi.us/news_and_reports/press_releases/2010/01/foreclosure_mediation.html

²⁴⁸ http://www.courts.state.hi.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf;
http://www.courts.state.hi.us/docs/news_and_reports_docs/foreclosure_pilot_project_report_2012.pdf



Timeline: None

Procedure: Lenders are supposed to send the borrowers a Request for Mediation with the summons after filing a foreclosure case. As of October 29, 2010, lenders complied with this requirement 106/200 times.²⁴⁹ Borrowers must file a Request for Mediation, then hand-deliver or mail the Request to a foreclosure judge. The appropriate circuit court schedules a conference with a judge. If the judge believes mediation will be useful for the case, the judge orders the parties to mediate at a local mediation center. The mediation center then coordinates document exchange before the mediation. As an alternative, a list of pro bono mediators is also available.

PERSONNEL

Mediators: Community Mediation Centers

Local mediation centers receive case referrals from judges after the judges hold judicial conferences with both parties. The mediators are often attorneys. They are trained in a culturally-sensitive, judicially-recognized model called the “Diamond.”²⁵⁰

Attorneys: None

Housing Counselors: Meeting with a housing counselor is recommended, but not required, before mediation.²⁵¹

Outreach: Lender Mail

Lenders are supposed to send the borrowers a Request for Mediation with the summons after filing a foreclosure case. As of October 29, 2010, lenders complied with this requirement 106/200 times.²⁵²

Other Personnel: The Centers also serve as program administrators, scheduling mediations and receiving paperwork.

Notes: The Third Circuit did not recommend renewing the program in 2011 without modifications.²⁵³ The program was renewed for another year,²⁵⁴ and renewed again in 2012.

²⁴⁹ http://www.courts.state.hi.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

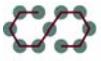
²⁵⁰ http://www.courts.state.hi.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

²⁵¹ http://www.state.hi.us/jud/Hawaii/Circuit/3C_Foreclosure_Mediation_Notice.pdf

²⁵² http://www.courts.state.hi.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

²⁵³ http://www.courts.state.hi.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

²⁵⁴ <http://kailua-konahi.thedailyglobe.com/2011/03/16/foreclosure-mediation-program-to-continue/>



Mortgage Foreclosure Dispute Resolution Program²⁵⁵

INCEPTION

Initiation Date: October 1, 2011

Location: Statewide

Originally Created by: Legislation
Senate Bill 651 (also called Act 48)²⁵⁶

Modified by: Legislation
House Bill 1875 HD2 SD2 CD1 (also known as Act 182)²⁵⁷ on June 28, 2012,²⁵⁸ signed into law by Governor Abercrombie on June 29, 2012²⁵⁹

Sponsorship: The Department of Commerce and Consumer Affairs, Chairwoman of the Senate Consumer Affairs Committee Sen. Roslyn Baker, and many other legislators backed the bill.²⁶⁰

IMPACT

Judicial/Non-Judicial: Non-Judicial
Act 182 allows borrowers who experience a non-judicial foreclosure filing to convert to a judicial foreclosure.²⁶¹

Number of Foreclosures: Approximately 12,425 residences were in foreclosure in 2010.²⁶² In 2011, 6,012 borrowers were in some stage of foreclosure.²⁶³

Funding: Dispute Resolution Fees
Owner-occupants who elect to participate are charged a \$300 fee, and the mortgagee must also pay a fee of \$300. Lenders who fail to comply may be penalized by stays of foreclosure or fines of up to \$1,500 payable to the owner-occupant.

Costs: Each party pays a \$300 fee to participate in dispute resolution.

Statistics: As of July 2012, no foreclosure dispute resolution sessions had occurred.²⁶⁴

²⁵⁵ <http://hawaii.gov/gov/newsroom/in-the-news/help-for-at-risk-homeowners>

²⁵⁶ http://www.capitol.hawaii.gov/session2011/bills/SB651_CD1_.htm

²⁵⁷ http://www.capitol.hawaii.gov/session2012/bills/HB1875_CD1_.htm

²⁵⁸ http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=1875

²⁵⁹ <http://blog.homegain.com/guest-bloggers/hawaii-act-182-revamping-the-foreclosure-process/>

²⁶⁰

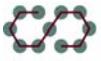
http://www.staradvertiser.com/news/breaking/20110502_Hawaiis_foreclosure_overhaul_calls_for_mediation.html:<http://www.kitv.com/news/26717446/detail.html>

²⁶¹ <http://blog.homegain.com/guest-bloggers/hawaii-act-182-revamping-the-foreclosure-process/>

²⁶² <http://www.kpua.net/news.php?id=22059>

²⁶³ <http://www.bizjournals.com/pacific/news/2012/01/11/realtytrac-hawaii-foreclosures-cut-in.html>

²⁶⁴ <http://hawaii.gov/dcca/oah/mfdr/Mortgage-Foreclosure-Dispute-Resolution-Program-Report-2011.pdf/?searchterm=foreclosure>



PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: The borrower must have lived in the property at least 200 days.

Participants and Participation Requirements: The lender representative must participate in person, unless otherwise agreed to by the parties. The lender representative must have authority to negotiate the loan, must provide notice of the availability of dispute resolution, and must complete all document exchange requirements.²⁶⁵ Failure to come to a resolution is not grounds for a finding of non-compliance.²⁶⁶

Timeline: The borrower must request mediation within 30 days of receiving the notice. The mediation must occur within 60 days of the request.

Procedure: Every lender must file notice of non-judicial foreclosure with the Department of Commerce and Consumer Affairs (DCCA) and the lender attorney must sign an affidavit saying they have personal knowledge that the filing is accurate.²⁶⁷ The DCCA then sends notice to the borrower of the availability of the mediation program. If the borrower has lived in the residential property for at least 200 days, they may request mediation within 30 days of the notice. The face-to-face negotiation, which will occur within 60 days after the request and will be facilitated by a neutral, is then set up by the DCCA. The bank then must participate in the dispute resolution process, under threat of up to \$1,500 in sanctions. All parties must submit documents to the DCCA before dispute resolution. These documents will be checked for compliance; if they do not comply with the statute, the party not in compliance is subject to a fine. The foreclosure process is stayed until the parties reach resolution or come to a decision of no agreement. The program allows borrowers to switch from a non-judicial to a judicial foreclosure, but cannot then remain in non-judicial foreclosure dispute resolution.²⁶⁸

PERSONNEL

Dispute Resolution Neutrals: Paid Neutrals

Those assisting the negotiation process are called dispute resolution neutrals. They are required to have sufficient knowledge in the areas of law, real estate, or finance, but need not have mediation experience.²⁶⁹

Attorneys: None

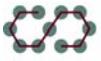
²⁶⁵ http://www.capitol.hawaii.gov/session2012/bills/HB1875_CD1_.htm

²⁶⁶ http://www.capitol.hawaii.gov/session2012/bills/HB1875_CD1_.htm

²⁶⁷ <http://www.hawaiilife.com/articles/2012/07/hawaii-law-act-182/>

²⁶⁸ <http://hawaii.gov/dcca/oah/mfdr/mortgage-foreclosure-dispute-resolution-mfdr-program>

²⁶⁹ http://www.capitol.hawaii.gov/session2011/bills/GM1150_.PDF



Housing Counselors: Borrowers are required to meet with a HUD-approved housing counselor or budget counselor at least 30 days before the dispute resolution session(s).²⁷⁰

Outreach: Mail, Hotline

The DCCA sends out a paper notice to the borrower about the availability of dispute resolution. The DCCA also hosts a hotline for borrowers to request information about the program. Six weeks into the program opening, 100 calls had been received.²⁷¹

Other Personnel: DCCA manages the program.²⁷² The State Judiciary's Center for Alternative Dispute Resolution assists with "performance oversight" of personnel and monthly status report generation.²⁷³

Notes: Fannie Mae announced that it would shift all its foreclosures to the judicial process to avoid the non-judicial dispute resolution program.²⁷⁴ Freddie Mac did so, too.²⁷⁵ The Judiciary expressed concern, as it would cost \$4.3 million in additional personnel to support this increase.²⁷⁶ As of March 2012, judicial foreclosure filings had increased 82% over the previous year.²⁷⁷

The Mortgage Foreclosure Task Force in the legislature proposed changes to the bill in the 2012 session, introduced as HB1875²⁷⁸ HD2.²⁷⁹ The program's report to the legislature at the end of 2011 made the following recommendations for changes: limit the scope of sanctionable behavior to encourage lenders to participate again, allow more time for the borrower to seek housing counseling, allow online election to participate, exclude condo associations from filing requirements, and remove requirement for neutral to witness the signing of an agreement and file the agreement with the neutral's report.²⁸⁰ The changes were incorporated into the revised bill.²⁸¹

²⁷⁰ http://www.capitol.hawaii.gov/session2011/bills/GM1150_.PDF

²⁷¹ <http://hawaii.gov/dcca/oah/mfdr/Mortgage-Foreclosure-Dispute-Resolution-Program-Report-2011.pdf?searchterm=foreclosure>

²⁷² <http://hawaii.gov/dcca/oah/mfdr/mortgage-foreclosure-dispute-resolution-mfdr-program>

²⁷³ http://www.capitol.hawaii.gov/session2011/bills/SB651_CD1_.htm

²⁷⁴ http://www.staradvertiser.com/business/businessnews/20110615_foreclosures_might_swamp_isle_courts.html

²⁷⁵ <http://www.civilbeat.com/posts/2011/07/05/11980-freddie-mac-opts-for-judicial-foreclosures/>

²⁷⁶ http://www.staradvertiser.com/business/businessnews/20110615_foreclosures_might_swamp_isle_courts.html

²⁷⁷ <http://www.civilbeat.com/posts/2011/09/15/12856-hawaii-judicial-foreclosures-up-but-courts-not-overwhelmed/>

²⁷⁸ http://www.capitol.hawaii.gov/session2012/bills/HB1875_SD1_.htm

²⁷⁹ <http://mauitvnews.com/blog/http://mauitvnews.com/blog/2012/03/08/house-moves-to-further-offset-foreclosures/>

²⁸⁰ <http://hawaii.gov/dcca/oah/mfdr/Mortgage-Foreclosure-Dispute-Resolution-Program-Report-2011.pdf?searchterm=foreclosure;>

[http://mauitvnews.com/blog/http://mauitvnews.com/blog/2012/03/08/house-moves-to-further-offset-foreclosures/;](http://mauitvnews.com/blog/http://mauitvnews.com/blog/2012/03/08/house-moves-to-further-offset-foreclosures/)

²⁸¹ http://www.capitol.hawaii.gov/session2012/bills/HB1875_CD1_.htm



ILLINOIS

Circuit Court of Cook County Mortgage Foreclosure Mediation Program

INCEPTION

Initiation Date: April 8, 2010

Location: Circuit Court of Cook County (Chicago)²⁸²

Originally Created by: Court Order, Court Rule

The program was created through a General Administrative Order No. 2010-01, issued by Presiding Judge of the Chancery Division, the Honorable Dorothy Kirie Kinnaird.²⁸³ It is governed by Cook County Court Rule 21 for chancery mediation programs.

Sponsorship: Cook County Chancery Court, Chicago Bar Foundation, Chicago Volunteer Legal Services, Chicago Legal Clinic, Chicago Community Trust, Housing Action Illinois, the Center for Conflict Resolution, Business and Professional People in the Public Interest

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Lenders filed 51,900 foreclosures in Cook County in 2010.²⁸⁴ Lenders filed 56,648 foreclosures in Cook County in 2011.²⁸⁵

Funding: County Appropriation

The Cook County Board of Commissioners designated \$3.5 million for this program.²⁸⁶

Costs: No cost to borrower or lender

Statistics: The Circuit Court of Cook County reports that from April 2010 - April 2012:

Outreach and Housing Counseling

- 29,604 homes were visited by community outreach workers.
 - 13,609 people were spoken to about the Program by outreach workers.
- 87,807 people called the hotline.
 - 19,023 housing counseling sessions were scheduled through the hotline.
- 71 housing counseling workshops were held (started in September 2011).

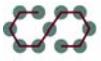
²⁸² <http://cookcountyforeclosurehelp.org/about/>; <http://suffredin.org/news/newsitem.asp?language=&NewsItemID=4063>

²⁸³ <http://www.suffredin.org/pdfs/Foreclosure.AdministrativeOrder.2010-01.pdf>

²⁸⁴ <http://www.suntimes.com/3085556-417/arreola-cook-county-foreclosure-2010.html>

²⁸⁵ http://articles.chicagotribune.com/2012-01-11/business/chi-chicagoarea-foreclosure-filings-decrease-20120111_1_foreclosure-activity-foreclosure-processing-foreclosure-filings

²⁸⁶ <http://www.muchshelist.com/foreclosure-mediation-program-in-cook-county-alert.htm>



- 2,149 households attended housing counseling workshops (started in September 2011).
- 53,264 housing counseling sessions were completed.
- 57,261 people received free legal assistance at court.
- 106 agreements occurred during housing counseling.
- 259 agreements occurred during Chicago Volunteer Legal Services representation.

Mediation

- 4,072 cases were referred to mediation and appointed free representation at the mediation.
 - 3,434 cases completed mediation.
 - 1,742, or 51% of cases that completed mediation, reached an agreement.
 - In 1,304, or 75% of cases with an agreement and 32% of all cases referred to mediation, the borrower reached an agreement with the bank to keep the home.

PROCESS

Opt-in or Opt-out: Opt-in

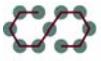
Eligibility: A borrower living in a one- to four-unit residence is eligible.

Participants and Participation Requirements: Borrower, borrower's attorney, and lender's attorney must be present in the room. A lender representative must be on the phone during the entire mediation.

Timeline: There is no mandated timeline for completion of mediation.

Procedure: A borrower who has received a notice of foreclosure may call a hotline or complete an online request form to begin the foreclosure mediation process. The first step is a meeting with a housing counselor, where a borrower may apply for President Obama's Home Affordable Modification Program (HAMP) or other federal programs. Alternatively, a borrower appearing for the first court hearing may encounter a court facilitator, who begins negotiations with the lender for document exchange.²⁸⁷ Next, the borrower meets with a volunteer attorney from Chicago Volunteer Legal Services. The attorney assists the borrower in completing a request for referral to mediation, which the borrower then takes to the court. At some point prior to mediation, the Chicago Legal Clinic will review the case for any legal defenses. A mediation coordinator then coordinates mediations, where the lender's attorney and a borrower with his/her

²⁸⁷ <http://www.chicagotribune.com/classified/realestate/foreclosure/ct-biz-0922-foreclose-20110922.0.4740272.story>



attorney explore options, including graceful exits and loan modifications. The mediation process must be completed before the foreclosure is allowed to move forward.²⁸⁸

PERSONNEL

Mediators: Contract Mediators and Volunteer Mediators

The Center for Conflict Resolution trains the mediators, who are volunteers with mediation experience, real estate/finance experience, or both. The mediators need not be attorneys.²⁸⁹

Attorneys: Pro Bono

All borrowers are assigned pro bono attorneys from Chicago Volunteer Legal Services.²⁹⁰ Borrowers may decline, but most do not.

Housing Counselors: All borrowers must meet with housing counselors as the first step in the mediation program.²⁹¹

Outreach: Door Knocking, Hotline, Events

Chicago Community Trust has charged nine neighborhood organizations with a door-knocking campaign, where outreach workers receive names and addresses of borrowers in the foreclosure process and offers them connection to a hotline that refers them to the mediation process.²⁹² State senators have been hosting outreach events in their districts.²⁹³ Other non-profits have hosted outreach events.²⁹⁴

Other Personnel: Neighborhood organizations have contracts to conduct outreach in heavily impacted areas. A free hotline connects borrowers to housing counselors. A court help desk assists people in completing requests for mediation. The Center for Conflict Resolution coordinates all mediation sessions. Chicago Volunteer Legal Services coordinates all representation.

Notes: In spring 2012, the Illinois Supreme Court Mortgage Foreclosure Committee considered creating a state-wide mediation mandate.²⁹⁵

²⁸⁸ <http://www.iviiipo.org/2011Foreclosure-Powerpoint.pdf>

²⁸⁹ <http://cookcountyforeclosurehelp.org/partners/>

²⁹⁰ <http://www.commissionergoslin.com/2010/08/foreclosure-mediation/>

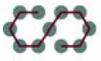
²⁹¹ <http://www.commissionergoslin.com/2010/08/foreclosure-mediation/>

²⁹² <http://news.medill.northwestern.edu/chicago/news.aspx?id=194076&print=1>

²⁹³ http://www.chicagojournal.com/News/11-02-2011/Local_officials_dish_mortgage_help_to_Near_South_Side_residents

²⁹⁴ <http://www.keepyourhomeillinois.org/OtherEvents.pdf>

²⁹⁵ http://www.state.il.us/court/SupremeCourt/Public_Hearings/Mortgage_Foreclosure/Practice_Procedures/default.asp



Residential Mortgage Foreclosure Mandatory Mediation Program²⁹⁶

INCEPTION

Initiation Date: March 1, 2012

Location: McLean County

Originally Created by: Administrative Order

Administrative Order No. 2012-03 of the Chief Judge of the 11th Judicial Circuit, Elizabeth A. Robb, dated February 15, 2012.²⁹⁷

Sponsorship: The Chief Judge of the 11th Judicial Circuit, University of Illinois College of Law

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: McLean County had 463 foreclosures in 2011.²⁹⁸

Funding: Filing Fees

The Circuit Clerk charges an additional \$25 fee over the normal complaint filing fee to be forwarded to the McLean County Treasurer and maintained in a separate fund subject to disbursement on order of the Chief Judge.²⁹⁹

Costs: Filing Fee

Lenders must pay \$25 per residential foreclosure filing.³⁰⁰

Statistics: The Chief Judge of the 11th Judicial Circuit shall maintain statistics on the results of mediation, including the number of cases where the initial criteria was met and the number of cases where loans were modified or otherwise resolved, and report the same to the Administrative Office of the Illinois Courts.³⁰¹ In the first month of the program, 41 borrowers had conferences scheduled and 20 appeared.³⁰²

PROCESS

Opt-in or Opt-out: Opt-out

²⁹⁶ <http://www.mcleancountyil.gov/index.aspx?NID=603>

²⁹⁷ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498>

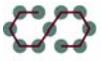
²⁹⁸ http://www.pantagraph.com/news/local/county-starting-mediation-program-to-prevent-families-from-losing-homes/article_1919b6e8-5938-11e1-9096-0019bb2963f4.html

²⁹⁹ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498>

³⁰⁰ <http://wjbc.com/public-weighs-in-on-foreclosure-panels-ideas/>

³⁰¹ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503>

³⁰² <http://wjbc.com/public-weighs-in-on-foreclosure-panels-ideas/>



Eligibility: The parties in all residential real estate foreclosures filed in McLean County will be subject to mediation.

Participants and Participation Requirements: Borrowers are required to attend a pre-mediation conference. If recommended for mediation, the borrower, lender’s counsel and a representative with settlement authority must appear at the mediation. Telephonic appearance is acceptable if pre-approved.

Timeline: The pre-mediation conference must take place between 42 and 60 days after the summons is issued.³⁰³ After the borrower attends the conference and submits documents to the lender, the lender has 14 days to notify the borrower of any document omissions. Mediation will be set within 45 days of confirmation that all documents have been received.

Procedure: A lender filing a complaint for foreclosure must use the court’s summons form³⁰⁴ and attach a Notice of Mandatory Mediation.³⁰⁵ In the summons, the lender must designate a date and time for the pre-mediation screening conference (“conference”) from a list of dates designated by the Court. Lender’s counsel is not required to attend the conference.³⁰⁶ At the conference, the borrower meets with a housing counselor and/or a pro bono attorney, who screen the borrower for income eligibility and review the borrower’s financial documents. If during the conference the housing counselor or attorney determines that loan modification is feasible, borrowers will be asked to provide a completed loan modification packet and settlement offer to lender’s counsel. Then, lender’s counsel will have 14 days to notify borrower’s counsel of any omissions. Once the documents are complete, lender’s counsel will file a Certificate of Readiness to Engage in Mediation (“certificate”), and mediation will be scheduled within 45 days.³⁰⁷ Within 30 days of filing the certificate, lender’s counsel shall provide the counselor/s with a completed questionnaire.³⁰⁸ If the lender or its agent fails to attend and participate in good faith, the Court will issue sanctions including possible dismissal. If the borrower fails to appear in person, the mediation may be terminated and the case referred back to the court.³⁰⁹ Following the mediation, the mediator shall file a report with the court ending the mediation and indicating the results. From the date the summons is filed until the mediator issues his or her report, the foreclosure proceedings are stayed.³¹⁰ If an agreement is reached, it is signed by the parties and their representatives, and filed with the court and with the McLean County Recorder’s Office. If no

³⁰³ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498>

³⁰⁴ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=499>

³⁰⁵ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=500>

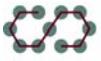
³⁰⁶ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498>

³⁰⁷ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498>

³⁰⁸ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498> and <http://www.mcleancountyil.gov/DocumentView.aspx?DID=506>

³⁰⁹ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498> and <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503>

³¹⁰ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=498> and <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503>



agreement is reached, the clerk shall notify the borrower that the foreclosure case will proceed, the stay has been lifted, and the borrower is required to respond to the complaint.³¹¹

PERSONNEL

Mediators: Contractors

The Chief Judge shall keep a list of mediators who have been certified for approval by the court as foreclosure mediators. To be approved, prospective mediators must submit an application for approval to the Chief Judge and show proof of completion of the court approved foreclosure mediation training.³¹² Mediators approved for the Mandatory Residential Mortgage Foreclosure Mediation Program receive \$100 for each case that reaches mediation. Upon accepting appointment as a mediator, the mediator cannot participate in residential mortgage foreclosure proceedings in McLean County Circuit Court in any capacity.³¹³

Attorneys: Pro Bono and Law Students

The Community Preservation Clinic at the University of Illinois School of Law provides pro bono counsel to the borrowers, including some law students who will represent borrowers.

Housing Counselors: During the pre-mediation conference, borrowers meet a pro bono legal representative and/or a HUD-certified counselor. Counselors assist borrowers in filling out a questionnaire.³¹⁴

Outreach: Phone Call

Law students conduct neighborhood outreach to borrowers who have had a foreclosure case filed against them.

Other Personnel: Second lienholders may attend the mediation.

Peoria County Mandatory Residential Mortgagee Foreclosure Mediation Program

INCEPTION

Initiation Date: The rule was approved in April 2011.

Location: Peoria County

Originally Created by: Court Order
10th Circuit Administrative Order³¹⁵

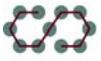
³¹¹ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503>

³¹² <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503>

³¹³ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503>

³¹⁴ <http://www.mcleancountyil.gov/DocumentView.aspx?DID=503> and <http://www.mcleancountyil.gov/DocumentView.aspx?DID=502>

³¹⁵ <http://www.peoriacounty.org/download?path=/courts/Administrative+Orders/ADM+ORDER+2011-04+Foreclosure+Mediaton.pdf>



Sponsorship: Chief Judge Michael Brandt, former Chief Judge Borden, court staff attorney Michelle Miller

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Peoria County had 900 foreclosure cases filed in 2010.³¹⁶

Funding: Filing Fees

The program is funded through an increase in foreclosure filing fee paid by the lender.

Costs: Lenders pay a filing fee of \$150 per foreclosure filing.

Statistics: None

PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: Any residential foreclosure is automatically scheduled for a pre-mediation conference.

Participants and Participation Requirements: The lender must participate in good faith. The lender must send a representative with authority to settle.

Timeline: The pre-mediation conference is held within 60 days of a foreclosure filing. The borrower will be scheduled for mediation within 30 days of the pre-mediation conference.

Procedure: Any foreclosure filed is automatically scheduled for a mandatory pre-mediation conference within 60 days. Along with the summons, borrowers receive a form explaining the mandatory mediation program. The form lists documents the borrower should bring to the pre-mediation conference. At the conference, which the lender does not attend, the mediator reviews documents and evaluates whether the borrower might qualify for a loan modification or other resolution. If the mediator determines the borrower may qualify, the mediator schedules the borrower for mediation within 30 days in person with the lender and lender’s representative. A former judge or attorney with at least five years of real estate experience oversees this first meeting. Failure to attend or to participate in good faith will result in sanctions by the court, including possible dismissal of the action. If the borrower does not qualify, the mediator assists the parties in discussing a consent foreclosure in which the lender will waive any deficiency. If no agreement is reached, the foreclosure resumes.

³¹⁶ <http://www.peoriacounty.org/?newsAction=single&newsItemID=3225>



PERSONNEL

Mediators: Former Judges

The mediators must be former judges or attorneys who have practiced in the real estate area for at least five years. Once mediating cases, the attorneys may not practice in the area of law again. Mediators are paid \$150 per case.

Attorneys: None

Housing Counselors: A list of housing counselors is included in the notice of mediation scheduled, but the borrower is not required to see one before mediation.

Outreach: Mail

The borrower receives a notice of scheduled pre-mediation conference with the notice of foreclosure filing.

Other Personnel: The court staff attorney hosts the pre-mediation conferences.

Notes: The program is modeled after the Will County program.³¹⁷

Madison/Bond County Residential Mortgage Foreclosure Mediation Program³¹⁸

INCEPTION

Initiation Date: April 2011

Location: Madison County and Bond County (3rd Circuit)³¹⁹

Originally Created by: Court Order
3rd Circuit Administrative Order³²⁰

Sponsorship: The committee was a collaboration of the different stakeholders involved in the foreclosure process, including Chief Judge Callis, Madison County Associate Judge Stephen Stobbs, attorneys from Land of Lincoln Legal Aid, banks' attorneys, mediators, and real estate attorneys.³²¹

IMPACT

Judicial/Non-Judicial: Judicial

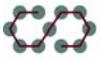
³¹⁷ <http://www.peoriacounty.org/?newsAction=single&newsItemID=3225>

³¹⁸ <http://www.madisonrecord.com/news/234844-foreclosure-mediation-program-to-begin-in-madison-county>

³¹⁹ <http://madisoncountycircuitcourt.org/2012/01/madison-county-circuit-court-announces-success-in-foreclosure-mediation-program/>

³²⁰ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/03/Part-9-Residential-Mortgage-Foreclosure-Mediation.pdf>

³²¹ <http://madisoncountycircuitcourt.org/2011/04/madison-county-circuit-court-to-begin-foreclosure-mediation-program/>



Number of Foreclosures: Madison County had 1,549 in 2010.³²²

Funding: None

At this time, there is no additional funding for this program.

Costs: None³²³

Statistics: As of April 2012, approximately 80% of the 185 borrowers who requested mediation were found eligible.³²⁴ Thirty-five borrowers retained their homes through agreement.³²⁵ As of September 2012, 294 borrowers were “in the program.” Of those, 61 cases had “been resolved” through mediation.³²⁶

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Borrowers in primary residences who want to keep their homes are eligible for a screening for the program.³²⁷ There is no longer a financial threshold requirement to participate.³²⁸

Participants and Participation Requirements: The borrower, borrower’s attorney, and lender’s attorney meet with the program administrator for the pre-mediation session.³²⁹ The borrower is required to bring proof of income and most recent tax return to that session.

Timeline: Borrowers must submit the answer, request for mediation, and financial summary to the court within 30 days of receiving notice.³³⁰

Procedure: The borrower will receive notice of the availability and a financial questionnaire along with the notice of foreclosure.³³¹ The borrower has 30 days to request mediation by completing the financial questionnaire and returning it to the court. The program coordinator reviews the financial information and determines whether the borrower can make mortgage payments if the payments are lowered to 31% of income. If so, the program coordinator will set up a pre-mediation conference with the borrower to facilitate document preparation and exchange. There

³²² http://www.stltoday.com/news/local/illinois/article_76615834-4f4b-5808-aec6-dc14046bd2e5.html

³²³ http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=7939

³²⁴ <http://www.madisonrecord.com/news/243273-foreclosure-assistance-program-is-deemed-successful>

³²⁵ <http://www.judgeanncallis.com/foreclosure-mediation-keeps-families-in-homes/>

³²⁶ http://www.thetelegraph.com/news/local/article_6cbcf9de-f647-11e1-85ff-001a4bcf6878.html

³²⁷ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/05/mediation-request-form.pdf>

³²⁸ http://www.thetelegraph.com/news/local/article_6cbcf9de-f647-11e1-85ff-001a4bcf6878.html

³²⁹ http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=7939

³³⁰ http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=7939

³³¹ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/05/financial-questionnaire.pdf>



are usually two pre-mediation conferences before mediation.³³² A week before mediation, the program administrator gives both parties documents that the mediator will review. At the two-hour mediation, the mediator facilitates discussion between the parties to explore loan modification or alternative loss mitigation workout. The mediator then submits a report on whether the parties came to an agreement. The mediation program does not stay the foreclosure process. The foreclosure case is then dismissed or set for status as determined by the parties' agreement.³³³

PERSONNEL

Mediators: Volunteer Mediators

Mediators must either be licensed to practice law in Illinois or be an experienced mediator. If a volunteer has not completed basic mediation training, the volunteer must do so. Additionally, all volunteers will also be required to attend a specialized foreclosure training on Illinois foreclosure law and loss mitigation options.³³⁴ As of fall 2011, 12 mediators were trained.³³⁵

Attorneys: Law Students

The program works with the Saint Louis University law clinic to provide pro bono legal assistance to borrowers.³³⁶

Housing Counselors: Housing counseling is not required, but is available through the Saint Louis Legal Clinic's HUD-certified counselors.³³⁷

Outreach: Events

A church hosts workshops where trained foreclosure counselors can help borrowers review paperwork and learn more about the process.³³⁸

Other Personnel: There is a court program coordinator who screens cases for eligibility and runs pre-mediation conferences.³³⁹ A committee of 12 attorneys and real estate professionals oversee the program.³⁴⁰

³³² http://www.stltoday.com/suburban-journals/illinois/news/new-county-program-helps-homeowners-keep-their-homes/article_32bfdd5f-8b36-50b6-a317-2092537b53a7.html

³³³ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/05/notice-to-homeowner.pdf>

³³⁴ <http://madisoncountycircuitcourt.org/courts/civil/foreclosure-mediation/>

³³⁵ http://www.theintelligencer.com/local_news/article_e723f01e-0968-11e1-9b6d-001cc4c03286.html

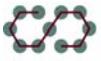
³³⁶ <http://www.madisonrecord.com/news/243273-foreclosure-assistance-program-is-deemed-successful>

³³⁷ <http://www.madisonrecord.com/news/243273-foreclosure-assistance-program-is-deemed-successful>

³³⁸ <http://www.thetelegraph.com/news/homeowners-69531-help-support.html>

³³⁹ https://www.stlbeacon.org/#!/content/26492/illinois_foreclosure_mediation_081312

³⁴⁰ http://www.stltoday.com/suburban-journals/illinois/news/new-county-program-helps-homeowners-keep-their-homes/article_32bfdd5f-8b36-50b6-a317-2092537b53a7.html



Residential Mortgage Foreclosure Mandatory Mediation Program

INCEPTION

Initiation Date: June 2010

Location: 12th Judicial Circuit (Will County)³⁴¹

Originally Created by: Court Order
12th Judicial Circuit Court Administrative Order 10-08³⁴²

Sponsorship: Twelfth Circuit Chief Judge Kinney first brought the proposal to Supreme Court Justice Kilbride, and worked with the Administrative Office of the Illinois Courts, the administrative arm of the Supreme Court, to refine and finalize details. He also has discussed the plan with lawyers for lenders and debtors in the community.³⁴³

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: As of December 2010, 11,098 homes were in foreclosure.³⁴⁴ In 2011, 7,300 foreclosures were filed.³⁴⁵

Funding: Filing Fee

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.³⁴⁶

Costs: The lender pays a \$150 fee for each foreclosure case filed.

Statistics: From August 2010 to August 2011:

- 6,542 foreclosures were filed and scheduled for pre-mediation conference.
 - 3,577 ended when the borrower did not appear at pre-mediation conference or the lender did not have service.
 - 2,965 homeowners appeared.
 - 1,359 homeowners did not qualify for mediation and 1,606 did.

³⁴¹ <http://www.illinoislawvernow.com/2010/06/07/justice-kilbride-chief-judge-kinney-announce-new-foreclosure-mediation-program-for-will-county/>

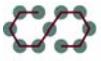
³⁴² <http://willcountycourts.com/mediationadminorder.PDF>

³⁴³ <http://www.illinoislawvernow.com/2010/06/07/justice-kilbride-chief-judge-kinney-announce-new-foreclosure-mediation-program-for-will-county/>

³⁴⁴ <http://www.realtytrac.com/trendcenter/default.aspx?address=Will%20county%2C%20IL&parsed=1&cn=will%20county&stc=il>

³⁴⁵ http://articles.chicagotribune.com/2012-01-11/business/chi-chicagoarea-foreclosure-filings-decrease-20120111_1_foreclosure-activity-foreclosure-processing-foreclosure-filings

³⁴⁶ <http://willcountycourts.com/mediationadminorder.PDF>



- Of those that qualified, 914 reached agreement, which included retention and relinquishment.³⁴⁷

In 2011, 5,734 foreclosure cases were filed and 1,331 cases were mediated.³⁴⁸

PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: All residential owner-occupied properties are eligible and are scheduled for mediation.

Participants and Participation Requirements: Lenders are required to participate in good faith. Mediators report to the foreclosure judge if the lenders do not participate as such. The lender's attorney and a lender representative with authority to settle are required to attend the mediation.³⁴⁹

Timeline: The borrower is scheduled for a pre-mediation conference between 42 and 60 days after receiving the summons. Mediators try to conclude the case within three months.³⁵⁰

Procedure: This program is mandatory, that is, mediation is scheduled when a foreclosure is filed. At a pre-mediation session with the mediator between 42 and 60 days after summons, the mediator determines if the case should go to mediation.³⁵¹ If either party does not appear at the initial pre-mediation meeting, the mediation is terminated.³⁵² Defendants can bring housing counselor and/or counsel with them. Documents must be exchanged, including defendant financials. Plaintiffs must appear in person. The proceedings are confidential. Afterward, the mediator makes a report to the Presiding Judge.

PERSONNEL

Mediators: Attorney Mediators

Mediators, who are former judges or lawyers with seven years of experience, are paid \$150 for each file. As of 2012, there were six mediators trained for the program.³⁵³

Attorneys: None

Housing Counselors: No housing counseling is offered, though housing counseling is encouraged prior to the pre-mediation session.³⁵⁴

³⁴⁷ Phone interview between Kurt Sangmeister, Court Administrator for the 12th Circuit, and Jessica Glowinski, Resource Center Director at Resolution Systems Institute, August 16, 2011.

³⁴⁸ See Chicago Law Bulletin article on file with author.

³⁴⁹ See Chicago Law Bulletin article on file with author.

³⁵⁰ See Chicago Law Bulletin article on file with author.

³⁵¹ <http://willcountycourts.com/mediationadminorder.PDF>

³⁵² <http://willcountycourts.com/Residential%20Mortgage%20Foreclosure%20Mediation%20Program.htm>

³⁵³ See Chicago Law Bulletin on file with author.



Outreach: Mail

A notice with the scheduled conference date is sent to each borrower.

Other Personnel: The Circuit Clerk and the Arbitration Center administer the program as part of normal duties.³⁵⁵

³⁵⁴ <http://willcountycourts.com/Residential%20Mortgage%20Foreclosure%20Mediation%20Program.htm>

³⁵⁵ <http://willcountycourts.com/mediationschedule.PDF>



IOWA³⁵⁶

Iowa Mortgage Help³⁵⁷

INCEPTION

Initiation Date: 2007

The hotline went live September 11, 2007.³⁵⁸

Location: Statewide

Originally Created by: Partnership

It began with a pilot project partnership between Attorney General Tom Miller and Iowa Mediation Services.³⁵⁹

Sponsorship: In 2007, the Attorney General developed this program in partnership with the Iowa Mediation Services, which handled the 1980's farm foreclosure crisis mediation program.³⁶⁰ The Iowa Finance Authority is now also a partner, along with Iowa Legal Aid and the Iowa Home Owner Education Project.³⁶¹

IMPACT

Judicial/Non-Judicial: Non-Judicial

Number of Foreclosures: About 3% of all owned homes (354,738) in Iowa were in foreclosure by the end of 2010. About 25% of loans were delinquent.³⁶² By the end of 2011, 5.82% of all mortgages (about 20,000 of 350,000) were delinquent.³⁶³

Funding: Lawsuit Settlement, Federal Grant, State Agency

The Attorney General initially gave Iowa Mediation Services \$4,500, won in a fraud settlement against mortgagor Ameriquest, to start the project.³⁶⁴ In 2008, the Attorney General 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

³⁵⁶ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html; <http://iowamediationservice.com/>;
http://www.state.ia.us/government/ag/latest_news/releases/sept_2010/foreclosure_scams.html

³⁵⁷ <http://www.iowamortgagehelp.com/about/trust.cfm>

³⁵⁸ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html

³⁵⁹ Id.

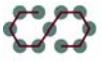
³⁶⁰ Id.

³⁶¹ <http://www.iowafinanceauthority1.com/WebDocs/2011Annual%20Report/28297-1%202011%20IFA%20Annual%20Report.html>

³⁶² <http://blogs.desmoinesregister.com/dmr/index.php/2011/02/17/foreclosure-rate-rises-in-iowa-but-past-due-loans-declining/>

³⁶³ <http://blogs.desmoinesregister.com/dmr/index.php/2012/02/16/foreclosures-down-in-iowa-u-s-in-fourth-quarter-of-2011/>

³⁶⁴ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html



year. In FY2011, the Iowa Finance Authority invested \$645,936 in the Iowa Mortgage Help Program.³⁶⁵

Costs: Each party is charged \$50 for each hour of the mediation.³⁶⁶

Statistics: Between March 2008 and January 2009, the program averaged 69 applicants per week. Through July 2009, this rose to an average of 87 applicants per week. From July 2009 to January 2010, the number of applicants grew again to an average of 99 per week.³⁶⁷ Of borrower participants interviewed, 29% had a modification or other loss-mitigation solution that saved their home, 32% were 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.³⁶⁸ Between March 1, 2008, and June 10, 2011, approximately 5,000 Iowa homeowners were able to avoid foreclosure after contacting the Iowa Mortgage Help program.³⁶⁹

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Any residential borrower may request mediation.

Participants and Participation Requirements: Lender does not have to respond to requests for mediation.

Timeline: None designated

Procedure: Originally, borrowers would call a hotline, where they were connected with Iowa Mediation Service (Service). From there, the borrower had two options. First, the borrower might sign a release allowing the Service to gain access to their financial records. The Service would then call the loan servicer or another party with authority and attempt to negotiate a modification on the borrower's behalf. Second, the borrower could simply request a mediation with the lender and contact the lender personally, and then the Service would provide a neutral third party to mediate the meeting. The program was revised after stimulus money gave the program a personnel boost. Now, a housing counselor answers the hotline and directs the call as needed. The housing counselor recommends mediation, with the Service providing the mediation services, but only if the case is "complex." The counselor may also refer the borrower to a local counseling service for less "serious" situations.³⁷⁰

³⁶⁵ <http://www.iowafinanceauthority1.com/InvestmentByCounty.asp>

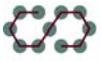
³⁶⁶ <http://iowamediationservice.com/forms/RVM.pdf>

³⁶⁷ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Mortgage_Help_trends.pdf

³⁶⁸ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

³⁶⁹ <http://www.radioiowa.com/2011/06/10/proposal-on-foreclosure-notification-stalled-in-legislature/>

³⁷⁰ <http://www.iowamortgagehelp.com/homeowners/>



PERSONNEL

Mediators: Community Mediation

Iowa Mediation Service schedules and conducts the mediations.³⁷¹

Attorneys: Legal Aid

The borrowers are referred to Iowa Legal Aid, which offers services pro bono.³⁷² The borrowers do not have to be represented in the mediations.

Housing Counselors: Housing counselors from Iowa Mortgage Help who attend the hotline are paid out of the federal stimulus money.³⁷³

Outreach: Hotline

Other Personnel: The Attorney General deploys a staff person to assist the hotline and coordinate hotline work with the Attorney General.

Notes: House File 2327 would extend the requirement that lenders notify borrowers of the availability of counseling and mediation services until July 1, 2013.³⁷⁴

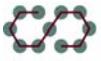
³⁷¹ <http://iowamediationservice.com/>

³⁷² http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

³⁷³ 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

³⁷⁴ [http://search.legis.state.ia.us/NXT/gateway.dll/cl/84th%20ga%20-%20session%202/03_introduced/001_bills/01_house/0hf232700.html?f=templates\\$fn=document-frameset.htm&q=\[and%3Amortgage%20foreclosure%20notice%20mediation%20\]&x=server\\$3.0#LPHit1](http://search.legis.state.ia.us/NXT/gateway.dll/cl/84th%20ga%20-%20session%202/03_introduced/001_bills/01_house/0hf232700.html?f=templates$fn=document-frameset.htm&q=[and%3Amortgage%20foreclosure%20notice%20mediation%20]&x=server$3.0#LPHit1)



INDIANA³⁷⁵

Mortgage Foreclosure Trial Court Assistance Project (MFTCAP)

INCEPTION

Initiation Date: 2009

The filing fee went into effect in July 2009.

Location: Circuits

As of January 2011, 15 counties had adopted a program on a pilot basis: Allen,³⁷⁶ Bartholomew, Clark, Hamilton, Hendricks, Howard, Lake, LaPorte, Madison, Marion, Martin, Monroe, St. Joseph,³⁷⁷ Tippecanoe, and Vanderburgh.³⁷⁸ As of April 2012, 20 counties had adopted programs with the additions of Delaware, Elkhart, Fayette, Clinton and Porter.³⁷⁹ (Johnson and Steuben counties are conducting facilitated settlement conferences outside the pilot programs.)

Originally Created by: The Indiana General Assembly passed Senate Enrolled Act 492, now codified at I.C. 32-30-10.5 *et seq.*³⁸⁰

Modified by: Effective July 1, 2011, Senate Bill 582 requires notice of the availability of a settlement conference on the first page of the foreclosure summons, notice from the court upon filing of the complaint by the lender, and would allow judges to modify loans.³⁸¹ On October 7, 2011, the Indiana Supreme Court issued an order asking that the Best Practices be continually updated by the Mortgage Foreclosure Task Force.³⁸² Best practices were published in January 2011.³⁸³

Sponsorship: The Indiana Lieutenant Governor, the Indiana Foreclosure Prevention Network, and the Indiana Supreme Court's Division of State Court Administration established the program.³⁸⁴ Through a Mortgage Foreclosure Task Force, the Indiana Supreme Court, the Indiana Housing and Community Development Authority, Indiana Pro Bono Commission, and the Indiana

³⁷⁵ <http://www.in.gov/judiciary/admin/mortgage/docs/project-outline.pdf>

³⁷⁶ <http://www.in.gov/judiciary/admin/mortgage/docs/flowchart-allen.pdf>

³⁷⁷ <http://www.in.gov/judiciary/admin/mortgage/docs/flowchart-default.pdf>

³⁷⁸ <http://www.in.gov/judiciary/admin/mortgage/resources.html>

³⁷⁹ <http://www.in.gov/judiciary/admin/2364.htm>

³⁸⁰ <http://www.in.gov/legislative/ic/code/title32/ar30/ch10.5.html>

³⁸¹ <http://www.in.gov/legislative/bills/2011/SE/SE0582.1.html> and <http://www.stites.com/news/577/new-notice-requirements-for-residential-foreclosures-in-indiana> See also <http://www.dsnews.com/articles/indiana-amends-foreclosure-mediation-law-2011-06-15>

³⁸² <http://www.in.gov/judiciary/admin/2364.htm>

³⁸³ <http://www.in.gov/judiciary/admin/mortgage/docs/mortgage-foreclosure-best-practices.pdf>

³⁸⁴ <http://www.in.gov/judiciary/admin/mortgage/resources.html>



Commission for Continuing Legal Education educate trial court judges and train and recruit volunteer lawyers and mediators. Sen. Karen Tallian (D-Portage) authored Senate Bill 582.³⁸⁵

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In the first four months of 2010, Indiana had 14,193 foreclosures.³⁸⁶

Allen County, the first to operate a program in Indiana, had 289 foreclosure filings in March 2010.³⁸⁷ In the first five months of 2012, Allen County had 776 foreclosure filings.³⁸⁸

Funding: Filing Fee

There is a \$50 lender filing fee for new mortgage foreclosure actions filed after 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.³⁸⁹ 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.³⁹⁰

Costs: Lenders pay a \$50 filing fee per foreclosure filing.

Statistics: Of 289 potential mediation cases in Allen County in the first few months of the program, 17 went to a settlement conference and five ended in agreements or dismissals.³⁹¹ Between March and November 2010, Allen, Marion and St. Joseph 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. About 40% concluded with the borrower remaining in the home, while 9% ended in another type of workout.³⁹²

According to statistics provided by the MFTCAP for 18 of the 20 counties for the time period running from April 1, 2010, until June 1, 2012:

- 10,912 telephonic conferences were scheduled.
 - 6,367 telephonic conferences were held (the remaining borrowers failed to appear).
 - 5,617 borrowers were eligible for settlement conferences.
 - 4,982 settlement conferences were requested.

³⁸⁵ <http://www.dsnews.com/articles/indiana-amends-foreclosure-mediation-law-2011-06-15>

³⁸⁶ <http://www.journalgazette.net/article/20100421/BIZ/304219939/1031/BIZ>

³⁸⁷ <http://www.journalgazette.net/article/20100421/BIZ/304219939/1031/BIZ>

³⁸⁸ <http://www.indianasnewscenter.com/news/local/Foreclosure-Stats-Paint-Gloomy-Picture-In-Allen-County-157586785.html>

³⁸⁹ <http://www.in.gov/judiciary/admin/mortgage/resources.html>

³⁹⁰ <http://www.in.gov/judiciary/admin/mortgage/docs/fag.pdf>

³⁹¹ <http://www.journalgazette.net/article/20100421/BIZ/304219939/1031/BIZ>

³⁹² <http://www.theindianalawyer.com/court-programs-economy-among-focuses-of-foreclosure-conference/PARAMS/article/25214>



- 4,647 settlement conferences were held.
 - 2,250 conferences resulted in workouts. 1,953 of these workouts were retentions.
 - 1,927 conferences resulted in foreclosure.
 - 470 conferences were being followed up on by a facilitator.³⁹³

MFTCAP states that an average of almost one in four eligible borrowers in Indiana negotiates an agreement under this program that prevents foreclosure.³⁹⁴

Allen County reported an overall settlement rate of 72% in 2012.³⁹⁵

PROCESS

Opt-in or Opt-out: Opt-out

In order for the program to receive funding from the state court pilot program grant, the program must have participants opt out of mediation rather than opt in.

Eligibility: Any debtor on a mortgage note

Participants and Participation Requirements: The borrower and a lender representative participate in the telephone conference. A lender participant at the in-person settlement conference must have full settlement authority.

Timeline: The borrower must contact the court within 30 days of receiving notification of availability of a settlement conference to request it. At least 30 days before the conference, lenders must submit paperwork to the borrower.

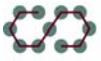
Procedure: A notice of the right to a settlement conference is sent to the borrower. Borrowers then are scheduled for a conference and must contact the project manager to confirm. In most jurisdictions, a project manager (PM) oversees local logistical coordinators (LCs) and/or facilitators, who coordinate with pro bono attorneys (if participating), borrowers, and lenders to schedule and take part in settlement conferences. The settlement conference stays foreclosure.

Allen County model: Under this structure, there is a phone line at the Allen County Courthouse dedicated solely to mortgage foreclosure filings. After a foreclosure case is filed, Judge Nancy Boyer issues a single-page notice to the borrower, ordering the borrower to contact the court hotline. Those who call speak with a court staff person, who evaluates the borrower's eligibility for a settlement conference and asks the borrower if s/he would like to request a settlement conference. If the borrower requests, the court issues an Order for Telephone Conference, requiring the borrower and lender to call into the court at a certain time to speak with a

³⁹³ <http://www.in.gov/judiciary/admin/2364.htm>

³⁹⁴ <http://www.in.gov/judiciary/admin/2364.htm>

³⁹⁵ <http://www.indianasnewscenter.com/news/local/Foreclosure-Stats-Paint-Gloomy-Picture-In-Allen-County-157586785.html>



facilitator. At the telephone conference, the facilitator ascertains what documents are needed from each side, obtains the contact information for the loan servicer, and requires the lender's conference participant have full settlement authority. A Post-Telephone Conference Order is then issued, confirming that the telephone conference took place, listing all the tasks the lender, borrower, and facilitator must complete prior to the settlement conference, and setting time, date, and location for the settlement conference.³⁹⁶

St. Joseph County Model: The St. Joseph County Courts require plaintiffs filing foreclosure cases to provide an extra addressed/stamped envelope and a service list for each borrower. All foreclosure cases with a request for settlement conference are transferred to Judge Manier. The Judge's secretary is the logistical coordinator. When a foreclosure case is filed, the LC uses the extra envelopes provided by the plaintiff to mail out a Notice to Homeowners Facing Foreclosure Proceedings, which includes a tear-off request form with questions determining the borrower's eligibility for a settlement conference. The LC will contact any borrowers who have not requested or declined a settlement conference within ten days after the notice is mailed. Once four requests are received, the LC arranges the conference with a facilitator within three weeks, then mails out a Notice for Telephone Conference to the borrower and lender. At the telephone conference, the facilitator determines what documents are needed by each party in order to successfully negotiate, requires the parties to produce all identified documents by a certain date, and sets a time and date for the settlement conference. A Notice of Settlement Conference is then issued, and the conference takes place. The court must then issue a Post-Settlement Conference Notice, confirming that the conference took place, identifying the parties and facilitators, stating the result reached at the settlement conference (and if no result was reached, whether follow-up work is necessary and who will perform this work).³⁹⁷

PERSONNEL

Mediators: Lawyers, Judges, Law Students

Facilitators 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 borrower needs to be represented by pro bono counsel.³⁹⁸ So far, over 30 foreclosure training events throughout the state reached over 1,000 judges, lawyers, and mediators.³⁹⁹

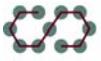
Attorneys: Pro Bono

³⁹⁶ <http://www.in.gov/judiciary/admin/mortgage/docs/project-outline.pdf>

³⁹⁷ <http://www.in.gov/judiciary/admin/mortgage/docs/project-outline.pdf>

³⁹⁸ <http://www.in.gov/judiciary/admin/mortgage/resources.html#step3>

³⁹⁹ <http://www.in.gov/judiciary/admin/mortgage/resources.html>



Pro bono attorneys are called if the facilitator believes it will be beneficial for the borrower to have one. A list of pro bono attorney organizations is available on the mortgage foreclosure website.⁴⁰⁰ However, an estimated 97% of borrowers are unrepresented at the settlement conference.⁴⁰¹

Housing Counselors: The program recommends borrowers contact the Indiana Foreclosure Prevention Network, state-certified “mortgage foreclosure prevention counselors” who will assist with the financials for free, but this is not required.⁴⁰²

Outreach: None

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 borrower 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.⁴⁰³

Notes: Marion and St. Joseph Counties are piloting an online document exchange system that may become active for all settlement conferences.⁴⁰⁴

⁴⁰⁰ <http://www.in.gov/judiciary/home/>

⁴⁰¹ <http://www.theindianalawyer.com/court-programs-economy-among-focuses-of-foreclosure-conference/PARAMS/article/25214>

⁴⁰² <http://www.in.gov/judiciary/home/>

⁴⁰³ <http://www.in.gov/judiciary/admin/mortgage/resources.html#step3>

⁴⁰⁴ <http://www.insideindianabusiness.com/newsitem.asp?ID=47101>



KENTUCKY⁴⁰⁵

Residential Foreclosure Conciliation Project

INCEPTION

Initiation Date: March 30, 2009

Location: County
Jefferson County (Louisville)

Originally Created by: Administrative Order
Jefferson County 30th Circuit Court Administrative Order, under Kentucky Rule of Civil Procedure 16 and Jefferson County Rule of Procedure 1303⁴⁰⁶

Sponsorship: Jefferson County Master Commissioner Daniel T. Albers, the Jefferson County District Court, Kentucky Housing Corporation, and lender firms. The Louisville Legal Aid Society offers free clinics on foreclosures and foreclosure alternatives.⁴⁰⁷ “The Foreclosure Conciliation Working Group includes the Jefferson County Circuit Court, Legal Aid Society, Kentucky Home Ownership Protection Center, Louisville Urban League, Housing Partnership, Inc., the Making Connections Network, Louisville Bar Association, Jefferson County Office of the Circuit Court Clerk, Louisville Metro Government, and a collection of creditors[?] attorneys.”⁴⁰⁸

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Jefferson County scheduled 5,229 court-ordered foreclosure sales in 2010, a 19% increase from 2009.⁴⁰⁹

Funding: State Grant⁴¹⁰
The Annie E. Casey Foundation funds the remainder of program expenses.⁴¹¹ The Foreclosure Conciliation Project has experienced cuts in funding in 2011 and might be in jeopardy.⁴¹²

⁴⁰⁵ http://s98001.gridserver.com/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/kentucky_admin_order.pdf

⁴⁰⁶ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/kentucky_admin_order.pdf

⁴⁰⁷ <http://laslou.org/help/clinics/cliniclist.php>

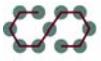
⁴⁰⁸ <http://www.examiner.com/city-hall-in-louisville/fighting-home-foreclosure-louisville>

⁴⁰⁹ <http://www.courier-journal.com/article/20110113/BUSINESS/301140019/1003/rss03>

⁴¹⁰ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

⁴¹¹ <http://www.louisvilleky.gov/Housing/News/2009/>

⁴¹² <http://leoweekly.com/news/help-way-%E2%80%A6-out> and http://www.metropolitanhousing.org/wp-content/uploads/member_docs/2012_Foreclosure_Recovery-low_%20res.pdf



Costs: No cost to either party.

Statistics: None

PROCESS

Opt-in or Opt-out: Opt-in

The program is modeled from Philadelphia’s program, but differs in that the Kentucky program requires the borrower to opt-in.⁴¹³

Eligibility: Borrowers in one- to four-unit residential properties.

Participants and Participation Requirements: If borrower requests a conciliation conference, the lender is required to attend.

Timeline: The conciliation conference occurs about 60 days after the foreclosure is filed.

Procedure: The borrower receives a notice of the availability of the conciliation conference soon after the summons.⁴¹⁴ If the borrower returns financial forms and a certificate of compliance to the court and to the lender, the court will schedule the conciliation conference, which the lender is required to attend. The Master Commissioner holds a conciliation conference. The process does not halt the foreclosure.⁴¹⁵ The required paperwork must be sent by the borrower to the court at least three weeks prior to the date of the conciliation conference.⁴¹⁶

PERSONNEL

Mediators: County Staff

The Master Commissioner or a deputy commissioner serves as a mediator.⁴¹⁷

Attorneys: Pro Bono

Borrowers attend a legal aid clinic before the conciliation conference.⁴¹⁸ Borrowers can request a pro bono attorney if they cannot afford one, though an attorney is not required for the conciliation conference.⁴¹⁹ 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.⁴²⁰

⁴¹³ http://www.realestatedefaultgroup.com/PHR_KYFCProgram.aspx and http://www.kybar.org/documents/cle/ac_material/ac2010_25.pdf

⁴¹⁴ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

⁴¹⁵ http://www.realestatedefaultgroup.com/PHR_KYFCProgram.aspx

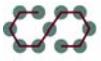
⁴¹⁶ http://www.kybar.org/documents/cle/ac_material/ac2010_25.pdf

⁴¹⁷ <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>; http://www.realestatedefaultgroup.com/PHR_KYFCProgram.aspx

⁴¹⁸ <http://www.kyequaljustice.org/file/view/FCP--pro%2bbono%2boverview.doc>

⁴¹⁹ http://www.martindale.com/real-estate-law/article_Frost-Brown-Todd-LLC_696478.htm; <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>

⁴²⁰ <http://www.kyequaljustice.org/file/view/FCP--pro+bono+overview.doc>



Housing Counselors: Housing counselors meet with borrowers to discuss finances and file a Request for Mediation.⁴²¹ The housing counselor can help the borrower send the proposal and necessary paperwork to the Court.⁴²²

Outreach: Door Knocking, Hotline

Stimulus funds supplied support for outreach workers to knock on doors of people whose homes were in foreclosure.⁴²³ There is also a Protect My Kentucky Home hotline.⁴²⁴

Other Personnel: Outreach workers from Making Connections Louisville attempt to contact borrowers in foreclosure.⁴²⁵ The Master Commissioner of property auctions in the County schedules and hosts the conciliation conferences.⁴²⁶

⁴²¹ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

⁴²² http://www.kybar.org/documents/cle/ac_material/ac2010_25.pdf

⁴²³ <http://www.louisvilleky.gov/NR/rdonlyres/93B83DAE-93F2-49C3-B4FE-97BE6DB8BE8E/0/TeamReportSS5809.pdf>

⁴²⁴ <http://www.laslou.org/lasfiles/FCP%20Release.htm>

⁴²⁵ <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>

⁴²⁶ http://www.martindale.com/real-estate-law/article_Frost-Brown-Todd-LLC_696478.htm



MAINE

Maine Foreclosure Diversion Program⁴²⁷

INCEPTION

Initiation Date: 2009

This began with a pilot program in York County from August 2009 - December 2009.⁴²⁸ The Rule took effect for all of Maine on January 1, 2010, with properties foreclosed on before then qualifying if the judge elects.

Location: Statewide

Originally Created by: Legislation

Public Law 2009 Ch. 402, An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures,⁴²⁹ codified in Maine Rule of Civil Procedure 93⁴³⁰

Sponsorship: Maine Supreme Court

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: From October 2009 through September 2010, 5,841 foreclosures were filed in Maine.⁴³¹

Funding: Filing Fees, Mediation Fees, State Agency

The Administrative Office of the Court maintains a fund to support the program.⁴³² The fund receives money from the Maine Revenue Service and from court filing fees (\$150) and mediation fees (\$200) that the lenders pay.⁴³³

Costs: Lenders pay a \$150 filing fee and a \$200 mediation fee.

Statistics: In the first year of the statewide program, mediation was provided in 983 different foreclosure cases with 1,243 mediation sessions, for which 505 final reports were made. In 107 reports, mediators stated that parties had reached agreement in mediation. In 277 reports, the

⁴²⁷ http://www.courts.state.me.us/court_info/fdp/index.html; <http://www.housingwire.com/2009/07/23/maine-implementing-mandatory-mediation-program>

⁴²⁸ http://s98001.gridserver.com/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/maine_pilot_program.pdf

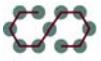
⁴²⁹ http://www.mainelegislature.org/legis/bills/bills_124th/chapters/PUBLIC402.asp

⁴³⁰ http://www.courts.state.me.us/rules_adminorders/rules/MRCivONLY1-12.pdf

⁴³¹ <http://bangordailynews.com/2010/10/24/opinion/mainersquos-foreclosures/>

⁴³² Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

⁴³³ http://www.courts.state.me.us/court_info/rules/fees.shtml



mediators stated the parties were unable to reach agreement. In 121 reports, mediators stated mediation ended when the homeowner did not attend.⁴³⁴

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Borrowers with primary residences with four units or fewer are eligible. Effective January 14, 2011, the homeowners must actually live in the property in foreclosure.⁴³⁵

Participants and Participation Requirements: At mediation, the lender (through in-person or telephonic means as long as the lender's representative is present) and the borrower are required to attend the mediation.

Timeline: Within 20 days of being served, the borrower must request mediation. The Court will schedule it within 90 days of the request. The borrower must submit completed financials to the lender and the Court within 21 days of requesting mediation.

Procedure: A lender must give a defaulted borrower notice that options other than foreclosure, include talking to the bank about loan modification and requesting mediation, are available. The borrower must appear and answer or otherwise request mediation within 20 days of being served a summons and complaint.⁴³⁶ The judge may require parties attend an informational session to review what documents are required. Effective January 14, 2011, should the homeowner fail to appear at the informational session, the scheduling of mediation is in the court's discretion.⁴³⁷ Within 21 days of the informational session (42 days of the summons and complaint if no informational session is required), the borrower will send a completed set of financial forms to the lender's attorney and another set to the court. Failure to complete the forms may result in the court ordering that mediation will not occur.⁴³⁸ The court clerk will send out a Foreclosure Mediation Scheduling Order setting the mediation for a date within 90 days of the order, including a list of information the parties are required to provide to each other and the court.⁴³⁹ Financial information exchanged is confidential. The court then assigns a mediator. Pursuant to Rule 93(g), the mediation must cover proof of ownership of the note and any assignments; "calculations of the sum due on the note for principal, interest, and any costs or fees, reinstatement of the mortgage, and modification of the loan;" and restructuring of the mortgage.⁴⁴⁰ If any loan modification is suggested, the calculations must be from the FDIC. The mediator presents a report to the court that may include whether the parties acted in good faith.

⁴³⁴ http://www.courts.state.me.us/reports_pubs/reports/pdf/fdp_2010_ar.pdf

⁴³⁵ http://www.courts.state.me.us/reports_pubs/reports/pdf/fdp_2010_ar.pdf

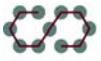
⁴³⁶ Rule 93(c)(1)-(2) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴³⁷ http://www.courts.state.me.us/reports_pubs/reports/pdf/fdp_2010_ar.pdf

⁴³⁸ Rule 93(c)(4)-(5) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴³⁹ Rule 93(e)-(f) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴⁴⁰ Rule 93(g) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf



The foreclosure will be on hold while the mediation process is pending.⁴⁴¹ Mediators can schedule additional sessions.⁴⁴² The court may issue sanctions for failure to attend or participate in good faith.⁴⁴³

PERSONNEL

Mediators: Paid Mediators

The Foreclosure Diversion Program trains mediators in mediation and “all relevant aspects of the law.” The mediator must also know about community resources, including mortgage assistance programs. Once trained, active retired judges and justices and other persons certified to be mediators pursuant to Rule 93, may serve.⁴⁴⁴ Mediators are compensated at the rate of \$175 per half day and \$300 for a full day.⁴⁴⁵ Lenders pay \$200 for each mediation session.

Attorneys: The defendant is not required to be represented at the mediation.⁴⁴⁶

Housing Counselors: The mediator can refer the borrower to a housing counselor or a mortgage assistance program. Housing counselors are contracted.⁴⁴⁷

Outreach: Mail

The borrower receives notice of the pre-mediation hearing in the mail.

Other Personnel: The Director, who is an officer of the court, three clerks, and one administrative assistant are paid.⁴⁴⁸ The Manager, under the direction of the State Court Administrator, manages the Foreclosure Diversion Program and supervises the program statewide; the qualifications and training of the mediators; the scheduling of mediations; the payment of the mediators; the preparation of reports regarding the mediations; and the development of policies, procedures and forms to carry out the program.⁴⁴⁹

Notes: If signed by the Governor, Maine L.B. 145 would allow the homeowner to request court dismissal of a foreclosure if Rule 93’s requirement that the lenders provide proof of ownership of the notes and any assignments is not met.⁴⁵⁰

⁴⁴¹ http://www.mainelegislature.org/legis/bills/bills_124th/chapters/PUBLIC402.asp

⁴⁴² Rule 93(i) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴⁴³ Rule 93(j) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴⁴⁴ Rule 93(b)(3) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴⁴⁵ http://www.courts.state.me.us/court_info/fdp/mediators.html

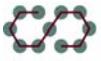
⁴⁴⁶ http://www.courts.state.me.us/court_info/fdp/home_faq.html

⁴⁴⁷ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf

⁴⁴⁸ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf

⁴⁴⁹ Rule 93(b)(2) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf

⁴⁵⁰ http://www.mainelegislature.org/legis/bills/bills_125th/billpdfs/HP012801.pdf



First Call Pilot Project

INCEPTION

Initiation Date: July 2012

Location: County
Bangor and Rockland

Originally Created by: Addition to Current Program
The Pilot Project is not an amendment to the legislation, but an addition to the current program.

Sponsorship: Foreclosure Diversion Program

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: From October 2009 through September 2010, 5,841 foreclosures were filed in Maine.⁴⁵¹

Funding: Filing Fees, Mediation Fees, State Agency
The Administrative Office of the Court maintains a fund to support the program.⁴⁵² The fund receives money from the Maine Revenue Service and from court filing fees (\$150) and mediation fees (\$200) that the lenders pay.⁴⁵³

Costs: Lenders pay a \$150 filing fee and a \$200 mediation fee.

Statistics: None yet available

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Borrowers with primary residences with four units or fewer are eligible for the Diversion Program.⁴⁵⁴ Those selected for the First Call Pilot live in Bangor or Rockland.⁴⁵⁵

Participants and Participation Requirements: The lender (through in-person or telephonic means), and the lender's attorney (in person), and the borrower are required to attend the mediation, but only the borrower is required to attend the informational session.

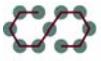
⁴⁵¹ <http://bangordailynews.com/2010/10/24/opinion/mainersquos-foreclosures/>

⁴⁵² Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

⁴⁵³ http://www.courts.state.me.us/court_info/rules/fees.shtml

⁴⁵⁴ http://www.courts.state.me.us/reports_pubs/reports/pdf/fdp_2010_ar.pdf

⁴⁵⁵ http://www.courts.state.me.us/maine_courts/fdp/first_call/index.html



Timeline: Within 20 days of being served, the borrower must request mediation. When the borrower appears for their first court hearing, the mediation is held.

Procedure: The program operates within the Foreclosure Diversion program rules, except it eliminates the six-week waiting period in the normal Diversion program. If a borrower eligible for First Call requests mediation, the court clerk sends notice of the informational meeting and mediation session to both parties. The informational session and mediation session are conducted back-to-back. A judge and housing counselor conduct group informational sessions. Mediators are available and mediations are held at the courthouse. Lenders are not required to conduct a full review of the borrower’s file prior to mediation. The mediator’s report reflects a plan of action that parties generate that day. If more mediation is needed, it is scheduled at that time.⁴⁵⁶

PERSONNEL

Mediators: Paid Mediators

The Diversion Program trains mediators in mediation and “all relevant aspects of the law.” The mediator must know about community resources, including mortgage assistance programs. Once trained, active retired judges and justices and other persons certified to be mediators pursuant to Rule 93 may serve.⁴⁵⁷ Mediators are compensated \$175 per half day and \$300 for a full day.⁴⁵⁸

Attorneys: The defendant is not required to be represented at the mediation.⁴⁵⁹

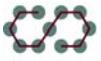
Housing Counselors: Housing counselors conduct the group informational session prior to mediation.⁴⁶⁰ The mediator can refer the borrower to a housing counselor or a mortgage assistance program. Housing counselors are contracted.⁴⁶¹

Outreach: Mail

The borrower receives notice of the pre-mediation informational hearing and the mediation in the mail from the court clerk.

Other Personnel: The Director, who is an officer of the court, three clerks, and one administrative assistant are paid.⁴⁶² The Manager, under the direction of the State Court Administrator, manages the Foreclosure Diversion Program and supervises the program statewide; the qualifications and training of the mediators; the scheduling of mediations; the payment of the mediators; the preparation of reports regarding the mediations; and the development of policies, procedures and forms to carry out the program.⁴⁶³

⁴⁵⁶ http://www.courts.state.me.us/maine_courts/fdp/first_call/index.html
⁴⁵⁷ Rule 93(b)(3) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf
⁴⁵⁸ http://www.courts.state.me.us/court_info/fdp/mediators.html
⁴⁵⁹ http://www.courts.state.me.us/court_info/fdp/home_faq.html
⁴⁶⁰ http://www.courts.state.me.us/maine_courts/fdp/first_call/index.html
⁴⁶¹ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.
⁴⁶² Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.
⁴⁶³ Rule 93(b)(2) http://www.courts.state.me.us/rules_adminorders/rules/MRCivPONLY1-12.pdf



MARYLAND⁴⁶⁴

Maryland's Foreclosure Mediation Program, part of Maryland's statewide Home Owners Preserving Equity (HOPE) Program

INCEPTION

Initiation Date: July 1, 2010⁴⁶⁵

Location: Statewide

Originally Created by: Legislation

The program was created by Title 09.03.12.00, under the authority of Real Property Article, §§7-105.1(c)(3) and (4), and 7-105.1(d)(2)(vii), Annotated Code of Maryland.⁴⁶⁶ It was revised in April 2011 by Chapter 485.⁴⁶⁷

Modified by: Legislation

On May 2, 2012, Senate Bill 856 was signed into law. This law exempted foreclosure mediations from the mediation confidentiality provisions applicable to other Maryland court-connected mediations.⁴⁶⁸ Also on May 2, 2012, House Bill 1374 was signed into law. It creates a pre-filing mediation option for lenders that offer such an option. If borrowers choose to mediate pre-filing, they forgo the right to mediation post-filing.⁴⁶⁹

Sponsorship: The Homeownership Preservation Task Force, which involved the Department of Labor, Licensing and Regulation, the Department of Housing and Community Development, Governor O'Malley, the Circuit Courts, and over 100 people from education, finance, legal and housing sectors⁴⁷⁰

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: There were 50,563 total foreclosures filed in 2010. In the first three quarters of 2011, there were 12,535 foreclosures filed. After the foreclosure mediation law passed, foreclosures dropped from 14,000 per quarter to an average of 4,600 per quarter.⁴⁷¹

⁴⁶⁴ <http://mdhope.org/ForeclosureMediation.aspx>; <http://www.dllr.maryland.gov/finance/emerreg090312.doc>;
http://s98001.gridserver.com/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/md_info_packet.pdf

⁴⁶⁵ <http://mdhope.org/ForeclosureMediation.aspx>
⁴⁶⁶ http://www.dsd.state.md.us/comar/subtitlesearch.aspx?search=09.03.12.*

⁴⁶⁷ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁴⁶⁸ http://mlis.state.md.us/2012rs/chapters_noln/Ch_309_sb0856E.pdf

⁴⁶⁹ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁷⁰ <http://www.dhcd.state.md.us/Website/documents/TaskForceReportFinal.pdf>

⁴⁷¹ http://www.mdhousing.org/website/commTaskForce/documents/Foreclosure_Task_Force_Report_2012.pdf



Funding: Fees, Lawsuit Settlement

Lenders pay \$300 for every foreclosure notice. Borrowers must pay a non-refundable \$50 fee when they formally file the request for mediation, unless they qualify for a fee waiver.⁴⁷² The Court intended this to cover the costs of the mediation, but they do not have the volume expected.⁴⁷³ Housing counselors are paid for in part through the Attorney General settlement funds.⁴⁷⁴

Costs: Pre-filing costs are set by the Commissioner of Financial Regulations.⁴⁷⁵ Lenders pay \$300 for every foreclosure notice. Borrowers must pay a non-refundable \$50 fee when they formally file the request for mediation, unless they qualify for a fee waiver.⁴⁷⁶

Statistics: Of foreclosure filings from July 2010 to December 2010, 96 borrowers requested mediation, and 43 avoided foreclosure.⁴⁷⁷

Between July 2010 and August 2011, 1,180 cases completed mediation.⁴⁷⁸

- 483 (41%) reached resolution or contingent resolution.
 - 182 of non-contingent resolutions were retentions.
 - 30 of non-contingent resolutions were relinquishments.
- 697 (59%) had no resolution.
 - In 176, the borrower did not appear.
 - In 2, the lender did not appear.
 - In 6, neither appeared.

From October 2010 through July 2011, the overall opt-in rate was 14.9%.⁴⁷⁹ In the first four months of 2012, 1,043 borrowers requested mediation.⁴⁸⁰ An official with the program noted that in the first 12 months of the program (July 2010 - July 2011), about 1,100 mediations occurred, but in the subsequent nine months, 1,805 mediations occurred.⁴⁸¹

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Borrowers are eligible if they live in one- to four-unit primary residences.

⁴⁷² http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁴⁷³ <http://washingtonexaminer.com/local/maryland/md-foreclosure-mediation-low-demand>

⁴⁷⁴ <http://blog.mdhousing.org/2012/05/30/54-million-from-settlement-to-be-used-for-foreclosure-prevention-community-stabilization-and-fraud-enforcement/>

⁴⁷⁵ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁷⁶ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

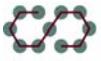
⁴⁷⁷ <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/03/AR2010120302323.html>

⁴⁷⁸ http://www.dhcd.maryland.gov/website/commTaskForce/documents/FTF_20110922_Foreclosure_Response.pdf

⁴⁷⁹ http://www.dhcd.maryland.gov/website/commTaskForce/documents/FTF_20110922_Foreclosure_Response.pdf

⁴⁸⁰ <http://washingtonexaminer.com/local/maryland-news/2012/05/experts-maryland-foreclosure-programs-prolong-crisis/646586>

⁴⁸¹ <http://www.foreclosurelawyers.com/907/>



Participants and Participation Requirements: The borrower and lender representative must be present. Lenders must be present or readily available and must participate in good faith.⁴⁸²

Timeline: After borrowers receive a notice of availability of mediation, the borrower must file a request and a loan modification application with the court within 25 days. The court then refers the case to the Office of Administrative hearings which must conduct mediation within 60 days of the request.

Procedure: For pre-filing, if the lender offers pre-filing mediation, the lender sends notice with the notice of default, and then the borrower has 25 days to request mediation. The Office of Administrative Hearings (OAH) arranges the mediation.⁴⁸³ At the conclusion of pre-filing mediation, the mediator checks off items on a designated discussion checklist and each party signs the list, whether or not there was an agreement.⁴⁸⁴

For post-filing, the lender must provide information along with the summons about options available to borrowers, including specific modification programs like HAMP and lender-specific programs, and a loss mitigation packet with eligibility guidelines and a description of the foreclosure timeline.⁴⁸⁵ The lender must include recommendations for housing counseling and other non-profit/government organizations able to assist. The lender must also file the original mortgage with the court, which has resulted in a 75% drop in foreclosure filings.⁴⁸⁶ Borrowers who, within 15 days, file a loan modification form with the lender, file a Request for Mediation with the Court, and receive approval from the Court qualify for mediation.⁴⁸⁷ The loan modification application is filed electronically, through Hope LoanPort,⁴⁸⁸ which is funded by GMAC Mortgage.⁴⁸⁹ Once the mediation request is filed, the Court refers it to the OAH, which must receive documents at least 20 days before mediation. The OAH must conduct mediation within 60 days of the request for mediation, but may extend 30 days for good cause.⁴⁹⁰ The lender must continue to seek proper borrower documentation until it approves or denies. If it denies modification, the lender must give the borrower a reason. The process does not delay the foreclosure.⁴⁹¹ At the conclusion of post-filing mediation, the mediator checks off items on a

⁴⁸² http://www.washingtonpost.com/opinions/why-marylands-foreclosure-mediation-program-is-crucial/2011/07/07/gIQAcs9I9H_story.html;
http://www.msnbc.msn.com/id/43811197/ns/business-real_estate/t/mediation-efforts-fail-stem-foreclosure-tide/

⁴⁸³ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁸⁴ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁸⁵ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁴⁸⁶ http://www.mdhousing.org/website/commTaskForce/documents/Foreclosure_Task_Force_Report_2012.pdf

⁴⁸⁷ <http://www.mdhope.org/Foreclosure%20Mediation%20FAQ.aspx>

⁴⁸⁸ https://www.hopeloanportal.org/press_release/files/MediationPortal.pdf;

https://www.hopeloanportal.org/press_release/files/MediationPortal.pdf

⁴⁸⁹ <http://nationalmortgageprofessional.com/news26291/direct-consumer-foreclosure-mediation-portal-launched-maryland>;

http://articles.baltimoresun.com/2011-08-17/business/bs-bz-online-foreclosure-portal-20110817_1_foreclosure-mediation-foreclosure-auction-maryland-homeowners; http://www.mortgageservicingnews.com/dailybriefing/2010_544/maryland-paperless-foreclosure-mediation-1029031-1.html

⁴⁹⁰ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁴⁹¹ http://www.msnbc.msn.com/id/43811197/ns/business-real_estate/t/mediation-efforts-fail-stem-foreclosure-tide/



designated discussion checklist and each party signs the list, whether or not there was an agreement.⁴⁹² The OAH mediator submits a report to the court for both pre-filing and post-filing mediation.⁴⁹³

PERSONNEL

Mediators: Judges

The OAH receives the requests for mediation, schedules the mediations, and mediates the cases. Mediators are administrative judges with two days of training and ongoing lunch trainings.⁴⁹⁴

Attorneys: Pro Bono

The notice recommends borrowers secure counsel, but it is not required.⁴⁹⁵ Pro bono attorneys have been trained to represent parties in mediation if requested.⁴⁹⁶

Housing Counselors: Housing counseling is required prior to participating in pre-filing mediation.⁴⁹⁷ No housing counselors are required for post-filing mediation, though a list is included with the notice.⁴⁹⁸ Borrowers are encouraged to contact a counselor from the MD HOPE Counseling Network; 60,892 borrowers have done so since 2007.⁴⁹⁹ Some of the funds collected for the program go to housing counselors in this network.⁵⁰⁰

Outreach: Mail, Hotline, Door Knocking, Events

The court sends out mail notices of the availability of mediation.⁵⁰¹ The MD HOPE Hotline connects borrowers to a housing counselor, who then connects eligible borrowers to the mediation program.⁵⁰² Law students knock on the doors of people who have received a court foreclosure filing in Prince George's County and invite them to request mediation.⁵⁰³ A Take Back Your Home project at American University's Washington School of Law started to reach out for the D.C. foreclosure mediation program, but now reaches out to people in Maryland.⁵⁰⁴ A television station hosted a call-athon for the mortgage foreclosure hotline in July 2011, with almost 900 calls received.⁵⁰⁵ Notices were revised to include simpler language in October 2011, so

⁴⁹² http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁹³ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁹⁴ <http://www.oah.state.md.us/foreclosuremediation.asp>

⁴⁹⁵ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁴⁹⁶ <http://www.mdjustice.org/node/2398>

⁴⁹⁷ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁴⁹⁸ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁴⁹⁹ <http://blog.mdhousing.org/2011/07/06/maryland%E2%80%99s-mediation-program-after-one-year-foreclosures-down-borrowers-getting-help-lenders-talking/>

⁵⁰⁰ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf; <http://blog.mdhousing.org/2012/03/21/maryland-awarded-634936-through-the-national-foreclosure-mitigation-counseling-program-to-help-distressed-homeowners/>

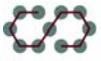
⁵⁰¹ http://www.dhcd.maryland.gov/website/commTaskForce/documents/FTF_20110922_Foreclosure_Response.pdf

⁵⁰² <http://blog.mdhousing.org/2011/12/14/governor-omalley-urges-homeowners-in-financial-distress-to-seek-foreclosure-prevention-counseling/>

⁵⁰³ http://www.msnbc.msn.com/id/43811197/ns/business-real_estate/t/mediation-efforts-fail-stem-foreclosure-tide/

⁵⁰⁴ <http://thedailyrecord.com/2011/12/14/law-students-going-door-to-door-to-spread-word-on-foreclosure-rights/>

⁵⁰⁵ <http://blog.mdhousing.org/2011/07/01/857-callers-respond-to-emergency-mortgage-assistance-program-telethon-on-baltimores-wiz-tv/>



more borrowers would opt-in to the program.⁵⁰⁶ State legislators have held events in their representative districts to educate borrowers on their options, including mediation.⁵⁰⁷

Other Personnel: The Office of Administrative Hearings manages the program.⁵⁰⁸ The Commissioner of Financial Regulations creates the program's forms.⁵⁰⁹ The Commissioner may also issue additional regulations as needed.⁵¹⁰

Notes: A very negative view of the program was published the end of June 2011.⁵¹¹ In the summer of 2011, The Coalition for Homeownership in Prince George's County began working on a plan for a pre-filing foreclosure mediation program.⁵¹² A statewide coalition put out recommendations for improving the foreclosure mediation program in January 2012. It included a recommendation to adopt pre-filing mediation that was accessible if both parties consented and guidelines for such a program.⁵¹³ Pre-filing mediation was adopted in the summer of 2012, but as of September 2012, the regulations for this program have not yet been published.⁵¹⁴

⁵⁰⁶ http://www.mdhousing.org/website/commTaskForce/documents/Foreclosure_Task_Force_Report_2012.pdf

⁵⁰⁷ <http://blog.mdhousing.org/2012/07/27/distressed-homeowners-learn-about-alternatives-to-foreclosure-at-workshop-hosted-by-congresswoman-edwards/>

⁵⁰⁸ <http://www.oah.state.md.us/foreclosuremediation.asp>

⁵⁰⁹ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

⁵¹⁰ http://mlis.state.md.us/2012rs/chapters_noln/Ch_156_hb1374E.pdf

⁵¹¹ http://www.washingtonpost.com/local/program-to-deter-foreclosures-in-maryland-is-less-successful-than-anticipated/2011/06/30/gHQAaguezH_story.html

⁵¹² <http://blog.metrotrends.org/2011/07/community-driven-solutions-community-wide-foreclosure-crisis/>

⁵¹³ http://www.mdhousing.org/website/commTaskForce/documents/Foreclosure_Task_Force_Report_2012.pdf

⁵¹⁴ <http://www.herald-mail.com/news/local/hm-changes-to-take-place-in-marylands-foreclosure-law-20120901.0.622649.story>



MASSACHUSETTS

Facilitating Mediation of Mortgage Foreclosures of Owner Occupied Residential Properties⁵¹⁵

INCEPTION

Initiation Date: September 13, 2011⁵¹⁶

Location: Springfield

Originally Created by: City Ordinance

Chapter 7.60 Section 7.60.030 provides for foreclosure mediation conferences.⁵¹⁷

Sponsorship: Springfield No One Leaves,⁵¹⁸ Amaad Rivera of Springfield City Council Ward 6⁵¹⁹

IMPACT

Judicial/Non-Judicial: Non-Judicial

Number of Foreclosures: In 2010, Springfield had the highest number of foreclosures of any city in the state.⁵²⁰ The state had 4,348 foreclosure filings in the first five months of 2012.⁵²¹

Funding: Mediation Fees

The city is allowed to charge a reasonable fee for administering the program.⁵²²

Costs: Lenders who do not participate in mediation can be fined up to \$300 per day.⁵²³ The borrower and lender both pay for mediation, with the borrower's portion not to exceed 15% of the total cost.⁵²⁴

Statistics: As of July 2012, this program had not yet taken cases.

PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: Any owner-occupied 1- to 4-unit residential property, including condos and co-ops.

⁵¹⁵ <http://www.jdsupra.com/post/documentViewer.aspx?fid=f93f1c54-1276-403f-babb-b379d5174cfa>

⁵¹⁶ <http://www.jdsupra.com/post/documentViewer.aspx?fid=f93f1c54-1276-403f-babb-b379d5174cfa>

⁵¹⁷ http://www.usfn.org/AM/Template.cfm?Section=Home&CONTENTID=20613&TEMPLATE=/CM/HTMLDisplay.cfm&SECTION=Article_Library

⁵¹⁸ <http://wamc.org/post/ordinance-would-require-banks-post-bond-each-foreclosure>

⁵¹⁹ <http://www.wvlp.com/dpp/news/local/hampden/Spfld.-propose-anti-foreclosure-rule>

⁵²⁰ <http://wamc.org/post/ordinance-would-require-banks-post-bond-each-foreclosure>

⁵²¹ <http://www.golocalworchester.com/news/why-worcester-county-foreclosures-have-skyrocketed/>

⁵²² http://www.usfn.org/AM/Template.cfm?Section=Home&CONTENTID=20613&TEMPLATE=/CM/HTMLDisplay.cfm&SECTION=Article_Library

⁵²³ http://news.bostonherald.com/news/regional/view/20110823springfield_approves_tough_anti-foreclosure_laws/

⁵²⁴ http://www.masslive.com/news/index.ssf/2011/08/springfield_city_council_permi.html



Participants and Participation Requirements: The lender must be physically present unless otherwise agreed upon by both parties.⁵²⁵ Lenders must mediate in good faith, which includes considering loan reduction.⁵²⁶ The borrower must bring employment and financial information to the mediation. The lender must bring the mortgage, note, all assignments, as well as a detailed accounting of the outstanding balance, costs and fees.⁵²⁷

Timeline: Mediation must start within 45 days of the notice of right to cure and conclude within 90 days of the notice.⁵²⁸

Procedure: The lender sends the borrower and the city a right to cure notice. The city then refers the case to a loan counselor and a mediation program manager. Mediation must start within 45 days of the notice and conclude within 90 days of the notice. Both parties have to bring certain documents to the mediation. The mediator determines whether the parties mediated in good faith. At the conclusion of mediation, the mediator provides a certificate of compliance, which should be filed with the foreclosure deed.⁵²⁹

PERSONNEL

Mediators: City-approved mediation program manager⁵³⁰

Attorneys: None

Housing Counselors: Borrowers are required to meet with a city-approved loan counselor before mediation.⁵³¹

Outreach: The program has not yet determined how it will reach out to potential participants.

Other Personnel: None

Notes: The Massachusetts Bankers Association sent a letter to the city council asking them to reconsider the legality of the ordinance, especially the provision that requires the lenders consider a loan reduction to comply with good faith negotiations.⁵³² Eventually, a group of small banks sued in state court, claiming the ordinance violated the contracts clause of the constitution. New

⁵²⁵ <http://www.jdsupra.com/post/documentViewer.aspx?fid=f93f1c54-1276-403f-babb-b379d5174cfa>

⁵²⁶ http://www.masslive.com/news/index.ssf/2011/09/massachusetts_bankers_associat.html

⁵²⁷ <http://www.jdsupra.com/post/documentViewer.aspx?fid=f93f1c54-1276-403f-babb-b379d5174cfa>

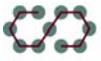
⁵²⁸ http://www.usfn.org/AM/Template.cfm?Section=Home&CONTENTID=20613&TEMPLATE=/CM/HTMLDisplay.cfm&SECTION=Article_Library

⁵²⁹ <http://www.jdsupra.com/post/documentViewer.aspx?fid=f93f1c54-1276-403f-babb-b379d5174cfa>

⁵³⁰ http://www.masslive.com/news/index.ssf/2011/09/massachusetts_bankers_associat.html

⁵³¹ <http://www.jdsupra.com/post/documentViewer.aspx?fid=f93f1c54-1276-403f-babb-b379d5174cfa>

⁵³² http://www.masslive.com/news/index.ssf/2011/09/massachusetts_bankers_associat.html;



foreclosure filings stopped due to the challenge to the ordinance.⁵³³ In June 2012, a Massachusetts district court upheld the ordinance as constitutional.⁵³⁴

Massachusetts legislation (Senate Bill 2298) was proposed in 2011 to create a mandatory pre-filing mediation program.⁵³⁵ Massachusetts Bar Association's House of Delegates voted to support the legislation in principle, though some sections opposed it as drafted.⁵³⁶ The Real Estate Association opposed it because the bill also created a judicial process for foreclosures.⁵³⁷ The Massachusetts Bankers Association opposes it because it will lengthen the foreclosure process and make foreclosure more burdensome for small banks.⁵³⁸ Mandatory mediation was removed from the bill that passed, though a foreclosure mediation exploration committee is required under the new law.⁵³⁹

⁵³³ <http://www.wvlp.com/dpp/news/local/hampden/springfield-foreclosure-rates-drop>

⁵³⁴ <http://www.businessweek.com/ap/2012-07-03/mass-dot-judge-upholds-anti-foreclosure-ordinances> ;
<http://www.scribd.com/doc/99036543/Judge-Ponsor-ruling-in-favor-of-Springfield-s-anti-foreclosure-ordinance>
⁵³⁵ <http://m.nutter.com/nutter-bank-report-june-2012-06-27-2012/>; <http://www.openmediaboston.org/node/2157>

⁵³⁶ <http://www.massbar.org/publications/e-journal/2012/january/01-26/hod>

⁵³⁷ http://www.wvlp.com/dpp/news/politics/state_politics/pushback-on-foreclosure-protection-bill

⁵³⁸ http://www.metrowestdailynews.com/opinions/letters_to_the_editor/x1222859584/Forte-Don-t-make-foreclosure-woes-worse;
http://www.bostonherald.com/news/opinion/op_ed/view/20220707fallacy_in_foreclosure_bill/

⁵³⁹ <http://www.patriotledger.com/business/x1054149903/Mediation-before-foreclosure-wont-be-required-in-Mass>



MICHIGAN⁵⁴⁰

Michigan Foreclosure Prevention Project (MFPP)

INCEPTION

Initiation Date: July 5, 2009

Location: Statewide

Originally Created by: Legislation

House Bill 4454 created the program.⁵⁴¹ Senate Bill 398 extended the program for six months beyond the original July 5, 2011, sunset date.⁵⁴² House Bills 4542-43 (Public Acts 301-302) were signed into law by Governor Rick Snyder, extending the end date until December 31, 2012.⁵⁴³

Sponsorship: Community Economic Development Association of Michigan and the Michigan Foreclosure task force,⁵⁴⁴ which is composed of banks, housing authorities, community organizations and government officials

IMPACT

Judicial/Non-Judicial: Non-Judicial

Number of Foreclosures: Michigan had 135,874 foreclosures in 2010.⁵⁴⁵ From January 2011 to June 2011, 61,005 Michigan properties received foreclosure notices.⁵⁴⁶

Funding: Foundations, State Agency

The MFPP receives grants from the Kresge Foundation, the Ford Foundation, the Michigan State Bar Association, the Institute for Foreclosure Legal Assistance, and the Equal Justice Works AmeriCorps Legal Fellowship Program. The MFPP also has a contract with the Michigan State Housing Development Authority.⁵⁴⁷

Costs: No cost to either party

Statistics: None

⁵⁴⁰ http://miforeclosure.mplp.org/advocate_home/

⁵⁴¹ <http://www.legislature.mi.gov/%28S%28p1p0kb45jgvu4cn2ckbdns55%29%29/documents/2009-2010/billintroduced/House/pdf/2009-HIB-4454.pdf>

⁵⁴² http://www.mlive.com/opinion/flint/index.ssf/2011/07/another_view_michigan_law_is_a.html

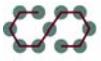
⁵⁴³ <http://www.ncsl.org/issues-research/banking/foreclosures-2011-legislation.aspx#MI>

⁵⁴⁴ http://www.cedam.info/pdfs/mftf/MFTF_2011.PDF

⁵⁴⁵ <http://www.realtytrac.com/content/press-releases/record-29-million-us-properties-receive-foreclosure-filings-in-2010-despite-30-month-low-in-december-6309>

⁵⁴⁶ <http://detroit.cbslocal.com/2011/07/14/mi-still-in-top-10-states-with-worst-foreclosure-rates/>

⁵⁴⁷ http://miforeclosure.mplp.org/advocate_about_us



PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Any residential borrower may participate.

Participants and Participation Requirements: If the borrower requests a meeting, the borrower may bring an attorney and/or a housing counselor to the meeting. The lender representative must be present. If the lender does not comply with all requirements to meet and confer, the borrower may request a judicial foreclosure in court.

Timeline: Upon filing, the servicer notifies the borrower that the borrower has 30 days to contact a housing counselor and set up a meeting with the lender. Once requested, the meeting period may last no longer than 90 days.

Procedure: Not officially mediation, the project sends a notice with the foreclosure informing the borrower of his right to work with a housing counselor, a pro bono attorney and the lender to find a solution. Prior to foreclosure the lender must give the borrower written notice setting out the requirements of Public Act 302, including an explanation of why the mortgage is in default and the amount due; contact information for the mortgage servicer or holder; the designation of a contact person at the mortgage servicer or holder with authority to negotiate an agreement with the borrower; explanation that within 30 days, the borrower can contact the designated person to discuss a potential mortgage modification; notification that if the borrower meets with the designated contact person foreclosure will be delayed until 90 days after the notice was mailed; that if an agreement is reached and adhered to by the borrower the property will not be foreclosed on; if an agreement is not reached the foreclosure proceedings will be with a judge instead of by advertisement; and the borrower’s right to an attorney along with telephone numbers for the Michigan State Bar Association’s lawyer referral service and local legal aid office.⁵⁴⁸ The program requires a foreclosure complaint to be accompanied by a list of approved counselors. A debtor has 30 days to contact one of these approved counselors in order to set up a negotiation with his or her lender.⁵⁴⁹ The housing counselor may attend the negotiation. The borrower has 90 days to work this out before the foreclosure proceeds. If the borrower damages the property during the redemption period, they will be responsible for the damage costs.⁵⁵⁰ If the lender fails to adhere to the requirements of Public Act 302, the borrower has legal recourse including going to court to change the foreclosure into a judicial foreclosure.⁵⁵¹

⁵⁴⁸ <http://www.legislature.mi.gov/documents/2011-2012/publicact/htm/2011-PA-0302.htm>

⁵⁴⁹ http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CKsBEByWBQ&url=http%3A%2F%2Fwww.mcul.org%2Ffiles%2Fecucorp%2F744%2Ffile%2Flegislative%2520Affairs%2FState%2520Issue%2520Briefs%2F2011-12%2520State%2520Issue%2520Brief--90-Day%2520Foreclosure%2520Prevention%2520Revisit.docx&ei=eZ_GT47XDMXs2QXQsqHoAQ&usq=AFQjCNGgxYS7r7I56nThhK4BBusc_SSDAQ

⁵⁵⁰ <http://www.legislature.mi.gov/documents/2011-2012/publicact/htm/2011-PA-0301.htm>

⁵⁵¹ <http://www.legislature.mi.gov/documents/2011-2012/publicact/htm/2011-PA-0302.htm>



PERSONNEL

Mediators: No third party neutral is involved.

Attorneys: The notice includes a list of legal aid services, but an attorney is not required to represent the borrower.⁵⁵² The MFPP provides attorneys for those who request them; those with attorneys for full representation report a 90% positive outcome.⁵⁵³

Housing Counselors: Housing counselors are from the Michigan State Housing Counseling Authority and the borrower must contact a housing counselor before meeting with the lender.⁵⁵⁴ Housing counselors refer to legal services and vice versa.⁵⁵⁵

Outreach: Web

The Michigan Foreclosure Task Force has a continuously-updated online tool kit to assist borrowers through the process.⁵⁵⁶

Other Personnel: A short sale expert performs a role similar to that of a mediator in the negotiation, if the file gets to that point.⁵⁵⁷

Notes: One of the main policy priorities for the Michigan Foreclosure Task Force in 2011 is revising the 90 day negotiation law to be stronger for consumers.⁵⁵⁸

⁵⁵² <http://www.legislature.mi.gov/%28S%28p1p0kb45jgvu4cn2ckbdns55%29%29/documents/2009-2010/billintroduced/House/pdf/2009-HIB-4454.pdf>

⁵⁵³ <http://house.michigan.gov/sessiondocs/2011-2012/testimony/Committee3-4-18-2012-3.pdf>

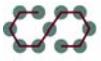
⁵⁵⁴ <http://www.legislature.mi.gov/%28S%28p1p0kb45jgvu4cn2ckbdns55%29%29/documents/2009-2010/billintroduced/House/pdf/2009-HIB-4454.pdf>

⁵⁵⁵ <http://house.michigan.gov/sessiondocs/2011-2012/testimony/Committee3-4-18-2012-3.pdf>

⁵⁵⁶ http://www.upnorthlive.com/news/story.aspx?list=~\home\lists\search&id=745557#.T9uXbFL_klh

⁵⁵⁷ <http://www.mediate.com/comment/viewcomments.cfm?articleid=7718&inclhdr=yes>

⁵⁵⁸ http://www.cedam.info/pdfs/mftf/MFTF_2011.PDF



MISSOURI

Mortgage Foreclosure Intervention Code

INCEPTION

Initiation Date: September 28, 2012

Location: St. Louis County

Originally Created by: County Ordinance
Saint Louis County Revised Ordinance 727.7⁵⁵⁹

Sponsorship: Councilwoman Erby, Washington University School of Law, the Urban League⁵⁶⁰

IMPACT

Judicial/Non-Judicial: Non-Judicial

Number of Foreclosures: About 2,000 homes have been foreclosed upon in 2012.⁵⁶¹

Funding: Filing and Mediation Fees

Costs: The lender pays \$100 along with the notice of the right to request mediation. The lender then pays a \$350 mediation fee if the borrower elects to participate in mediation.

Statistics: St. Louis County may request statistics be kept, but none are mandated in the ordinance.

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Any owner-occupied residential property with one to four units

Participants and Participation Requirements: Both parties must be present or send an authorized representative with full authority to agree to a settlement, loan modification or dismissal. The lender representative must also have real-time access to the borrower's account. If the lender is outside of the St. Louis metro area, the lender may participate by electronic means. The lender must participate in good faith, meaning that the lender pays all fees, sends a representative with the proper authority, provides all required documents, and sends the proper notice.

⁵⁵⁹ <http://www.dykema.com/assets/htmldocuments/dtisapi6.dll.htm>

⁵⁶⁰ http://www.stlamerican.com/business/local_business/article_3b51a23e-fd25-11e1-8dbe-0019bb2963f4.html?photo=1

⁵⁶¹ http://www.stlamerican.com/business/local_business/article_3b51a23e-fd25-11e1-8dbe-0019bb2963f4.html?photo=1



Timeline: Borrowers have 20 days after the notice of the right to request mediation to complete and submit the request form. The mediation coordinator has 60 days from the lender sending the notice of the right to request mediation to schedule a mediation. At least seven days before mediation, the borrower must submit a financial packet and the lender must submit mediation payment and relevant documents. If an agreement is reached, it must be forwarded to the mediation coordinator within two days. The mediation coordinator may extend the mediation time period another 20 days.

Procedure: The lender sends the borrower and the mediation coordinator a right to request mediation along with the notice of foreclosure. The lender also pays a \$100 filing fee. Borrowers have 20 days to elect mediation, which also serves as consent for a 42-day delay of the foreclosure sale. If they elect, the mediation coordinator will select a mediator, notify the parties, and schedule a mediation to occur within 60 days of the lender sending the notice of the right to request mediation. The lender must pay a \$350 mediation fee and send to the mediation coordinator a broker's price opinion, a written proposal to resolve the foreclosure, an estimate of the short sale value, and any offers the lender has made before the mediation. The borrower must submit a request for mortgage assistance form, a financial statement, an opinion about the condition of the house, and any offers the lender has made to the mediation coordinator before mediation. Upon agreement or good faith completion of mediation, the mediation coordinator issues a certificate of completion to the lender. The mediation is confidential and inadmissible, except to prosecute non-compliance by the lender. If the lender records a deed for a property eligible for mediation without receiving a certificate, the lender may be assessed a fine up to \$1,000.

PERSONNEL

Mediators: United States Arbitration & Mediation Midwest, Inc.

Attorneys: None, though borrowers are allowed to bring their own into mediation.

Housing Counselors: The mediation coordinator provides the borrowers a list of housing counselors to consult and to represent them at mediation, but working with a housing counselor is not required.

Outreach: The program has not yet determined how it will reach out to potential participants.

Other Personnel: The mediation coordinator is United States Arbitration & Mediation Midwest, Inc.



NEVADA⁵⁶²

State of Nevada Foreclosure Mediation Program

INCEPTION

Initiation Date: 2009

Location: Statewide

Originally Created by: Legislation, Court Rule

The Nevada General Assembly created the program in 2009 through Assembly Bill 149 (AB 149). Rules are regularly updated and approved by the Nevada Supreme Court.⁵⁶³

Modified by: Court Rule⁵⁶⁴

ADKT 435, the Order Amending Foreclosure Mediation Rules requires more mediator determination and greater confidentiality of financial information.

Sponsorship: Senator Barbara Buckley, a former legal aid director, was the main proponent of the bill. The program was a partnership between HUD, Freddie Mac, and the United Trustee Association, as well as local agencies including the Clark County Neighborhood Justice Center, Legal Aid Center of Southern Nevada, Financial Guidance Center (formally known as Consumer Credit Counseling), the Nevada Foreclosure Prevention Task Force, and Nevada Legal Services⁵⁶⁵ led by the Nevada Supreme Court.⁵⁶⁶ There has been criticism that the ongoing task force is advised by a law firm who represented Wells Fargo for decades.⁵⁶⁷

IMPACT

Judicial/Non-Judicial: Non-Judicial

Though foreclosures in Nevada are non-judicial, the program is connected to the judiciary via the ability to appeal a decision.

Number of Foreclosures: One in 11 Nevada homes received a foreclosure filing in 2010, a total of 106,160 homes.⁵⁶⁸ Foreclosure filings decreased in 2011 because of the “robo-signing” scandal and the new requirements of proof of right to foreclose required under AB 284.⁵⁶⁹

⁵⁶² http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf; <http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/1937/>; <http://www.nevadajudiciary.us/index.php/foreclosure-faqs>.

⁵⁶³ http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf

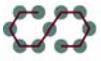
⁵⁶⁴ <http://www.nevadajudiciary.us/index.php/supnews/993-supreme-court-updates-foreclosure-mediation-rules-and-creates-advisory-committee>

⁵⁶⁵ <http://financialservices.house.gov/UploadedFiles/HHRG-112-BA-WState-VCampbell-20120315.pdf>

⁵⁶⁶ <http://www.8newsnow.com/story/15176752/i-team>

⁵⁶⁷ <http://nvbar.org/articles/content/foreclosure-mediation-nevada-why-hasnt-it-worked>

⁵⁶⁸ <http://www.realtytrac.com/content/press-releases/record-29-million-us-properties-receive-foreclosure-filings-in-2010-despite-30-month-low-in-december-6309>



Funding: Court Allocation, Mediation Fee, Federal Grants

The Court keeps funds and allocates them for housing counseling, program administrators, etc. HUD funds some housing counseling through a grant for counselors to prepare borrowers for mediation.⁵⁷⁰ The Court collects \$400 for each mediation, which goes directly to the mediator.⁵⁷¹ As of September 2012, the program was running out of money and needed an additional allocation from the legislature by January if it is to continue.⁵⁷²

Costs: Both parties have to pay \$200 to participate in the mediation, which goes directly to the mediator.⁵⁷³

Statistics: From September 14, 2009, through March 31, 2012, 17,105 mediations were completed.

- 6,491 mediations resulted in agreement.
 - 4,190 mediations resulted in retention agreement.
 - 2,298 mediations resulted in relinquishment agreement.
- 10,627 mediations resulted in no agreement.
- In Fiscal Year 2012 (July 2011- June 2012), lenders did not present certified deed of trust in 17% of mediations, nor certified mortgage note in 25% of mediation.⁵⁷⁴

A non-profit seniors' advocacy group requested the mediators' reports from the mediation program to determine if the program was "working," but was told the cost of redacting them would be almost \$1 million.⁵⁷⁵ A court subsequently ruled that these documents were confidential and not subject to a public records request.⁵⁷⁶ Nevada has been upgrading its tracking system to better track metrics for public reporting.⁵⁷⁷

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: The borrower must have a primary personal residence (no limit on the number of units).

Participants and Participation Requirements: The lender must bring the following documents to mediation: certified copy of the deed of trust, the mortgage note, each assignment, an appraisal,

⁵⁶⁹ <http://www.lvrj.com/business/bank-official-says-lessons-learned-from-robo-signing-134380318.html>

⁵⁷⁰ <http://www.ktvn.com/story/15464935/funding-to-help>

⁵⁷¹ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-download/1937/chk.a6d803ebac40623bc5981f0bb7056f04/no_html.1/

⁵⁷² <http://www.8newsnow.com/story/19356469/i-team>

⁵⁷³ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-download/1937/chk.a6d803ebac40623bc5981f0bb7056f04/no_html.1/

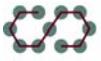
⁵⁷⁴ <http://foreclosure.nevadajudiciary.us/images/statistics/historical-9-09--12-11-results-of-mediations.png>

<http://foreclosure.nevadajudiciary.us/index.php/statistics>

⁵⁷⁵ <http://m.lvsun.com/news/2011/nov/19/court-wants-nonprofit-group-pay-almost-1-million-r/>

⁵⁷⁶ <http://www.lasvegassun.com/news/2012/may/10/court-rules-foreclosure-mediation-records-not-publ/>

⁵⁷⁷ <http://www.rgi.com/article/20120320/BIZ02/303200002/1459>



and an estimate of the short sale value. In 2011, 64% of lenders were in compliance with this requirement.⁵⁷⁸ The lender must also have someone available to contact at mediation who can make a decision about a resolution. In 2011, 96% of lenders complied with this.⁵⁷⁹ As of September 2011, mediators found lenders to have participated in bad faith in 5,771 cases.⁵⁸⁰

Timeline: The borrower must file an Election of Mediation within 30 days of receiving the foreclosure notice and complete financial forms within 30 days of requesting. Documents must be exchanged at least ten days before mediation. Mediation must occur within 135 days of the receipt of mediator payment.

Procedure: The lender must file an affidavit saying they have the legal right to foreclose.⁵⁸¹ Instructions for completing mediation request forms are attached to the notice. The borrower must file an Election of Mediation within 30 days of receiving the foreclosure notice and complete financial forms within 30 days of requesting. Both parties must exchange relevant documents at least ten days before the mediation. The lender must file an Election and bring to the mediation the certified copy of the deed of trust, the mortgage note, and each assignment of the deed of trust/mortgage note. The mediation must occur within 135 days of the Foreclosure Mediation Program Administrator receiving the mediator's payment. The designated mediator must schedule the mediation within 45 days of receiving notice. The lender may participate telephonically with previous approval, but they must have authority to modify the loan without any additional communication needed.⁵⁸² If the mediator determines that any party is mediating in bad faith,⁵⁸³ the other party may request judicial review within 15 days. The program sends out a notice of the availability of a judicial review.⁵⁸⁴ The other party cannot bar a new foreclosure from being filed.⁵⁸⁵

PERSONNEL

Mediators: Judges, Attorneys

Senior Judges, Supreme Court Settlement Judges, hearing masters or other attorneys⁵⁸⁶ conduct the mediations. The pool of mediators may also include non-attorneys with extensive mediation experience. The mediators schedule the mediations.⁵⁸⁷ Mediators are paid \$400 per session.⁵⁸⁸

⁵⁷⁸ <http://foreclosure.nevadajudiciary.us/index.php/statistics/>; <http://www.lasvegassun.com/news/2012/mar/02/third-time-lenders-dont-have-paperwork-foreclosure/>; <http://foreclosure.nevadajudiciary.us/index.php/component/content/article/41-beneficiary-compliance/89-beneficiary-compliance>

⁵⁷⁹ <http://foreclosure.nevadajudiciary.us/index.php/statistics/>

⁵⁸⁰ <http://www.nytimes.com/2012/02/12/business/mortgage-settlement-leaves-much-to-be-desired-fair-game.html>

⁵⁸¹ <http://www.lvrj.com/business/nevada-foreclosures-starts-drop-sharply-133921958.html>

⁵⁸² <http://www.scribd.com/doc/59665111/Pasillas-v-HSBC-Bank-USA-07-Jul-2011>

⁵⁸³ <http://www.vegasinc.com/news/2011/jul/10/state-supreme-court-finding-flaws-some-foreclosur/>

⁵⁸⁴ http://www.swlaw.com/assets/pdf/publications/2012/03/13/ALERT_ForeclosureMediationProgram_PRESS.pdf

⁵⁸⁵ <http://www.nevadajudiciary.us/index.php/advancedopinions/1370-holt-v-regional-trustee-services-corp->

⁵⁸⁶ <http://www.8newsnow.com/story/15176752/i-team>

⁵⁸⁷ <http://www.nevadajudiciary.us/index.php/foreclosure-faqs>

⁵⁸⁸ http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf



Until recently, borrowers could not use mediators' reports in sanction hearings.⁵⁸⁹ Two recent Supreme Court decisions allow that mediators should make determinations about good and bad faith participation that then become part of the court record; judges have to take the mediator's recommendations for sanctions.⁵⁹⁰

Attorneys: Borrowers can have an attorney or housing counselor with them, but this is not required.⁵⁹¹ In partnership with the University of Nevada Las Vegas William S. Boyd School of Law, Legal Aid of Nevada trains pro bono attorneys to represent borrowers.⁵⁹² Legal Aid also has an extensive website that clearly explains the program.⁵⁹³

Housing Counselors: Housing counselors are available and are funded through the Court's program.⁵⁹⁴

Outreach: Events

Legal Aid of Nevada provides free classes once a week and has assisted hundreds of homeowners through these classes.⁵⁹⁵ The law school also hosts free borrower classes.⁵⁹⁶ Senators have called for greater publicity of the program.⁵⁹⁷ In response, the program has been part of more events about saving homes that are open to the public.⁵⁹⁸

Other Personnel: The Administrative Office of the Court administers the program with 12 staff members.⁵⁹⁹ The Mediation Administrator is charged with keeping statistics on the program and reporting them online.⁶⁰⁰

Notes: Nevada has had a few court challenges as a result of the programs.⁶⁰¹

The Supreme Court heard a case in which a borrower's attorney claimed the lender's attorney did not participate in good faith and that the mediator failed to report that fact.⁶⁰² In response, the legislature passed AB 300, which requires the mediator to report details about the conduct of all parties in mediation, such that the details would be helpful in litigation.⁶⁰³

⁵⁸⁹ <http://nvbar.org/articles/content/foreclosure-mediation-nevada-why-hasnt-it-worked>

⁵⁹⁰ <http://www.scribd.com/doc/59665111/Pasillas-v-HSBC-Bank-USA-07-Jul-2011>

⁵⁹¹ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-download/1937/chk_a6d803ebac40623bc5981f0bb7056f04/no_html.1/

⁵⁹² <http://www.docstoc.com/docs/88107836/FORECLOSURE-MEDIATION-COMMUNITY-LEGAL-EDUCATION-CLASS>

⁵⁹³ <http://www.nlslaw.net/mediation.html>

⁵⁹⁴ <http://www.nevadajudiciary.us/index.php/foreclosureremediation/846-nevada-foreclosure-mediation-grants-extend-help-to-homeowners-nearly-300000-in-program-funding-awarded-for-education-projects>

⁵⁹⁵ <http://www.8newsnow.com/story/15062677/homeowners-get-help-combating-foreclosure>

⁵⁹⁶ <http://foreclosure.nevadajudiciary.us/index.php/component/eventlist/categoryevents/4-foreclosure-mediation>

⁵⁹⁷ <http://www.lasvegassun.com/news/2011/dec/14/sandoval-goes-against-gop-grain-promotes-foreclosu/>

⁵⁹⁸ <http://financialservices.house.gov/UploadedFiles/HHRG-112-BA-WState-VCampbell-20120315.pdf>

⁵⁹⁹ <http://www.nevadajudiciary.us/index.php/adminoverview>

⁶⁰⁰ http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB300_R1.pdf

⁶⁰¹ <http://www.lvrj.com/opinion/foreclosure-mediation-119462054.html?ref=054>

⁶⁰² http://www.lvrj.com/blogs/lvlegalnews/Mondays_high_court_arguments_include_first_foreclosure_mediation_appeal.html?ref=479

⁶⁰³ http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB300_R1.pdf



The judges charged with overseeing the appeals of mediation outcomes have been on record saying they think the program is unconstitutional based on a separation-of-powers argument.⁶⁰⁴ A lawsuit filed by Deutsche Bank,⁶⁰⁵ still pending as of this writing, claims the same.⁶⁰⁶ The District Court declared it was constitutional.⁶⁰⁷ The reply brief argues that the program is constitutional as an exercise of police powers.⁶⁰⁸ The State of Nevada was ordered a necessary party in the suit.⁶⁰⁹

Another lawsuit filed by Wells Fargo claims that the law is unconstitutional because the program constitutes a taking.⁶¹⁰ Some lawmakers say they agree with Wells Fargo.⁶¹¹ Some lender advocates say the court should recuse itself from hearing the case.⁶¹² The court will rule on the case in mid-2012.⁶¹³

Foreclosure experts expect the 2011 additional requirements for lenders to lead more lenders to pursue judicial foreclosure.⁶¹⁴ The Supreme Court is suggesting amendments to the rule in 2012 that will add more requirements for the lenders.⁶¹⁵

⁶⁰⁴ http://www.npri.org/publications/pub_detail.asp?id=823

⁶⁰⁵ <http://nevadajournal.com/assets/uploads/2011/08/brooks-2.pdf>

⁶⁰⁶ <http://nevadajournal.com/2011/08/11/court-managed-foreclosure-program-may-violate-nevada-constitution/>

⁶⁰⁷ http://www.npri.org/publications/pub_detail.asp?id=831

⁶⁰⁸ <http://nevadajournal.com/assets/uploads/2011/08/brooks-3.pdf>; <http://nevadajournal.com/2011/12/05/legislative-police-powers-said-trump-us-constitution/>

⁶⁰⁹ http://www.npri.org/docLib/20110811_Flanagan_Order_063011.pdf

⁶¹⁰ <http://m.lasvegassun.com/news/2011/oct/20/state-supreme-court-goes-after-two-banks-foreclosu/>;

<http://nevadajournal.com/2011/10/25/second-lawsuit-challenges-constitutionality-foreclosure-mediation-program/>

<http://www.lasvegassun.com/news/2011/nov/02/conklin-questions-whether-nevada-supreme-court-bia/>

⁶¹¹ http://www.npri.org/publications/pub_detail.asp?id=850

⁶¹³ <http://www.lasvegassun.com/news/2011/dec/14/states-top-court-rule-constitutionality-program-it/>

⁶¹⁴ <http://www.nnbw.com/ArticleRead.aspx?storyID=19496>

⁶¹⁵ <http://foreclosure.nevadajudiciary.us/index.php/component/content/article/1-latest-news/91-rules-july-2012>



NEW JERSEY⁶¹⁶

New Jersey Judiciary's Foreclosure Mediation Program (NJFMP)

INCEPTION

Initiation Date: 2008

Location: Statewide

Originally Created by: Legislation

After a pilot program in Middlesex County showed success, the Judiciary announced its intention to start a statewide program.⁶¹⁷ Gov. Jon Corzine signed a legislative appropriation to support it.⁶¹⁸ The Administrative Office of the Courts outlines the process in a program description.⁶¹⁹

Sponsorship: The program is a joint effort of the Judiciary, the Attorney General, the Housing Mortgage Finance Agency in the Department of Community Affairs, the Public Advocate, the Department of Banking and Insurance, and Legal Services of New Jersey.⁶²⁰

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In 2009, New Jersey had 66,717 foreclosure filings and 58,445 in 2010.⁶²¹ In late 2010, New Jersey's Supreme Court essentially halted foreclosures when it appointed a special master to review all foreclosure filings for instances of robo-signing.⁶²² Experts estimated that 28,500 foreclosures were waiting to be filed in the first half of 2011, and another 55,000 mortgages were at least 90 days past due.⁶²³

Funding: Legislative

It was created through a \$12.5 million appropriation from the state legislature.⁶²⁴ Housing counselors and attorneys received \$12 million for training and \$500,000 went to the judiciary.⁶²⁵ Currently, funds and staff are contributed by the Judiciary, Attorney General, the Housing

⁶¹⁶ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf; <http://www.housingwire.com/2008/10/20/new-jersey-announces-mandatory-foreclosure-mediation-program>

⁶¹⁷ <https://njcourts.judiciary.state.nj.us/web0/pressrel/2008/pr081016c.htm>

⁶¹⁸ <https://njcourts.judiciary.state.nj.us/web0/pressrel/2008/pr081016c.htm>; <http://www.nj.gov/oag/newsreleases09/pr20090109a.html>

⁶¹⁹ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

⁶²⁰ <http://newjersey.realestaterama.com/2009/01/12/statewide-mortgage-foreclosure-mediation-program-launched-ID0191.html>

⁶²¹ http://www.monmouthcountybankruptcyconsumerlawyerblog.com/2011/11/bankruptcy-court-the-road-to-m.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+MonmouthCountyBankruptcyAndConsumerLawyerBlog%29

⁶²² http://www.nj.com/news/index.ssf/2011/06/after_ruling_halted_nj_foreclo.html

⁶²³ http://www.nj.com/news/index.ssf/2011/06/after_ruling_halted_nj_foreclo.html

⁶²⁴ http://www.state.nj.us/dca/hmfa/home/foreclosure/pdf/foreclosure_prevention_in_nj.pdf

⁶²⁵ <http://www.nj.gov/oag/newsreleases09/pr20090109a.html>



Mortgage Finance Agency, the Public Advocate, the Department of Banking and Insurance, and Legal Services of New Jersey.⁶²⁶

Costs: The program is free for both parties.⁶²⁷

Statistics: The program began in early 2009. As of January 2010, the program had mediated more than 1,300 cases. About half resulted in borrowers staying in their homes.⁶²⁸ As of November 14, 2011, 2,612 cases had settled.⁶²⁹

PROCESS

Opt-in or Opt-out: Opt-in

Borrowers who do not contest the foreclosure must call a hotline, complete an online form, or respond to the notice included in their foreclosure filing to request mediation.⁶³⁰ All borrowers who want mediation must complete a Foreclosure Mediation Financial Worksheet and Mediation Request Statement.⁶³¹

Eligibility: Only primary residences of one- to three-unit buildings qualify.

Participants and Participation Requirements: Borrower and borrower's attorney or housing counselor must be present. Plaintiff's attorney must be present and plaintiff representative with "authority to reach a mutually acceptable agreement" must be available by phone or in person.

Timeline: The borrower receives the first notice when the complaint is filed. The borrower receives the second notice 60 days after the complaint is filed. The first mediation is scheduled within 90 days of the office's receipt of financial information from the borrower. The borrower will receive notice 45 days before mediation.

Procedure: A notice about the availability of mediation is sent three times to the borrower, first and third from the servicer and second from the court. To request, the borrower must work with a housing counselor to prepare financial paperwork⁶³² and a Request for Mediation for the court.⁶³³ Mediation can be requested up to the sheriff's sale. Foreclosure will not be stayed, but Sheriff's sale will be if a successful motion is filed by the borrower with the court.⁶³⁴ The office will send financial documents from borrower to lender and to the county court in which the foreclosure mediation is to occur. Any requests for rescheduling must be in writing and approved

⁶²⁶ <http://uspolitics.einnews.com/247pr/229151>

⁶²⁷ http://www.judiciary.state.nj.us/civil/forms/11284_fm_available.pdf

⁶²⁸ http://www.nj.com/business/index.ssf/2010/01/nj_sees_29_percent_year-end_ju.html

⁶²⁹ http://www.monmouthcountybankruptcyconsumerlawyerblog.com/2011/11/bankruptcy-court-the-road-to-m.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+MonmouthCountyBankruptcyAndConsumerLawyerBlog%29

⁶³⁰ <http://www.nj.gov/foreclosuremediation/steps.html>

⁶³¹ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

⁶³² <http://www.judiciary.state.nj.us/civil/foreclosure/index.htm>

⁶³³ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

⁶³⁴ <http://blog.lawinfo.com/2011/08/16/bankruptcy-in-new-jersey-the-new-jersey-judiciary-foreclosure-meditation-program/>



by the local Civil Complementary Dispute Resolution Coordinator.⁶³⁵ There is no indication that more than one mediation session is allowed.⁶³⁶

PERSONNEL

Mediators: Volunteers⁶³⁷

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, none have been.⁶³⁸ For the initial launch, the judiciary trained 700 mediators.⁶³⁹

Attorneys: Legal aid

Pro bono representation for the borrowers is considered part of the program if borrowers qualify for free legal aid under current poverty guidelines.⁶⁴⁰

Housing Counselors: Once a borrower contacts the hotline and learns they are eligible, they are referred to a housing counselor.⁶⁴¹ Counselors are to engage in face-to-face meetings with the borrowers prior to mediation, attempt to help work out a solution with the borrower, work with the NJJFMP attorney, and go with the client to the mediation, if requested.⁶⁴²

Outreach: Hotline, Events

The NJJFMP has a toll-free hotline open Monday through Friday from 8 a.m. until 6 p.m.⁶⁴³ U.S. Senator Frank R. Lautenberg hosts regular, free Mortgage Foreclosure Prevention For a which include presentations on foreclosure mediation.⁶⁴⁴

Other Personnel: A local Civil Complementary Dispute Resolution coordinator at the Civil Practice Division schedules the mediations.⁶⁴⁵ Each county has at least one.⁶⁴⁶

⁶³⁵ http://www.judiciary.state.nj.us/civil/foreclosure/11528_foreclsr_med_adj_policy.pdf

⁶³⁶ http://www.judiciary.state.nj.us/civil/foreclosure/11289_foreclosure_mediation_faq.pdf

⁶³⁷ https://nycourts.judiciary.state.nj.us/web0/civil/foreclosure/11289_foreclosure_mediation_faq.pdf

⁶³⁸ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

⁶³⁹ <http://www.nj.gov/oag/newsreleases09/pr20090109a.html>

⁶⁴⁰ <http://www.nj.gov/foreclosuremediation/right-for-you.html>

⁶⁴¹ <http://www.nj.gov/foreclosuremediation/steps.html>

⁶⁴² http://www.nj.gov/dca/hmfa/biz/othbiz/njifm_housekeeper_couns.html

⁶⁴³ <http://www.nj.gov/foreclosuremediation/>

⁶⁴⁴ http://www.freddiemac.com/homeownership/avoidforeclosure/pdf/Cherry_Hill_Lautenberg_Borrower_Event_Flyer_02-15-12_v2.pdf and http://www.mycentraljersey.com/article/20120827/NJNEWS/308270028/Homeowners-invited-to-mortgage-seminar-at-MCC?nclck_check=1

⁶⁴⁵ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

⁶⁴⁶ <http://www.judiciary.state.nj.us/civil/foreclosure/rosters/ForeclosureMediationPointPersons.pdf>



**United States Bankruptcy Court District of New Jersey Judiciary's
Loss Mitigation Program (LMP)**

INCEPTION

Initiation Date: August 1, 2011⁶⁴⁷

Location: Statewide

Loss mitigation is available for any person filing bankruptcy in the District of New Jersey.

Created/Governed by: Court Order

General Order of the Honorable Judith H. Wizmur, Chief U.S. Bankruptcy Judge for the District of New Jersey dated July 29, 2011⁶⁴⁸

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Between May 2011 and May 2012, 35,913 bankruptcy cases were filed in New Jersey.⁶⁴⁹

Funding: Fees

The only costs associated are with the online document exchange portal, which is free to borrowers. The portal is paid for by fees charged to the lenders who use it.

Costs: None

Statistics: The court tracks the number of cases using the LMP internally, but no official statistics are publicly available at this time.

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: To be eligible, a borrower must have a case filed under Chapter 7, 11, 12 or 13 of the Bankruptcy Code and an ownership interest in the property in question; the property must be the borrower's primary residence.⁶⁵⁰

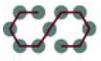
Participants and Participation Requirements: Multiple creditors and co-debtors can participate in the LMP at the request of the parties or direction of the court. For Chapter 13 bankruptcies, the Chapter 13 trustee may participate, if doing so would be in line with his or her duties.⁶⁵¹

⁶⁴⁷ http://www.njb.uscourts.gov/sites/default/files/general-ordes/2011_07_29_JHW-LMP-General_Order_08-01_final.pdf

⁶⁴⁸ http://www.njb.uscourts.gov/sites/default/files/general-ordes/2011_07_29_JHW-LMP-General_Order_08-01_final.pdf

⁶⁴⁹ http://www.njb.uscourts.gov/stats/data/2012_05_year.pdf

⁶⁵⁰ http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf



Timeline: Either party or the court may refer the case to LMP at any time. The non-requesting party has 14 days to object. Parties must then: name a contact person and send requests for information within 14 days of the date of the order; send responses to requests for information within 21 days of receipt of the requests; file a status report⁶⁵² 60 days from the date of the order; and conclude within 90 days of the date of the order.

Procedure: The LMP is not officially mediation; however, the aim of the LMP is to encourage borrowers in the process of bankruptcy and at risk of losing their residences to sit down with lenders to reach a mutually agreed upon solution. Loss mitigation solutions are determined on a case-by-case basis and can include refinancing, a loan modification, forbearance, short sale, or surrender.⁶⁵³ Either the borrower or the lender can initiate LMP proceedings by filing the Local Form, Notice of Request for Loss Mitigation⁶⁵⁴ and a proposed Local Form, Loss Mitigation Order,⁶⁵⁵ together with a certificate of service indicating the documents were sent to the other party or party’s counsel.⁶⁵⁶ Certain lenders have utilized a secure online document exchange portal called the “DMM Portal” which can be used for LMP proceedings.⁶⁵⁷ If it is the borrower requesting the LMP, he or she must make monthly payments to the lender in amounts totaling at least 60% of the monthly principal and interest payments plus 100% of any escrow payments.⁶⁵⁸ The non-filing party has 14 days to object; if there is no objection the court will enter the Local Form, Loss Mitigation Order.⁶⁵⁹ The court can order participation in the LMP at any time, but the parties must be given notice and a chance to voice any objections.⁶⁶⁰ The timeline in the Loss Mitigation Order requires that the parties must: name a contact person and send requests for information within 14 days of the date of the order; send responses to requests for information within 21 days of receipt of the requests; file a status report⁶⁶¹ 60 days from the date of the order; and conclude within 90 days of the date of the order. The borrower must file the status report, but it should be the result of a joint effort.⁶⁶² The parties can request an extension or early termination of the LMP.⁶⁶³ Additionally, within seven days of naming a contact person, the lender’s named contact must initiate contact with the borrower, his or her attorney, or any other party participating in the LMP.⁶⁶⁴ During this required initial contact the parties should concur

⁶⁵¹ http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf

⁶⁵² http://www.njb.uscourts.gov/sites/default/files/forms/Loss_Mitigation_Status_Report.pdf

⁶⁵³ http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf

⁶⁵⁴ http://www.njb.uscourts.gov/sites/default/files/forms/Notice_of_Request_For_Loss_Mitigation_DEBTOR.pdf or

http://www.njb.uscourts.gov/sites/default/files/forms/Notice_of_Request_For_Loss_Mitigation_CREDITOR.pdf

⁶⁵⁵ http://www.njb.uscourts.gov/sites/default/files/forms/Loss_Mitigation_Order.pdf

⁶⁵⁶ http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf

⁶⁵⁷ <http://www.njb.uscourts.gov/content/loss-mitigation-program-and-procedures-0> and <http://www.njb.uscourts.gov/content/dmm-portal>

⁶⁵⁸ http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf

⁶⁵⁹ Id.

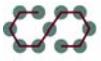
⁶⁶⁰ Id.

⁶⁶¹ http://www.njb.uscourts.gov/sites/default/files/forms/Loss_Mitigation_Status_Report.pdf

⁶⁶² http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf

⁶⁶³ Id.

⁶⁶⁴ Id.



on where and how the when the mitigation sessions will occur and potential solutions to be discussed.⁶⁶⁵ Documents and information exchanged as part of the LMP are considered confidential and are inadmissible in any subsequent proceedings.⁶⁶⁶ Parties are required to participate in good faith and may be sanctioned if they do not comply.⁶⁶⁷ Each party must have present a representative with full settlement authority in person, on the telephone, or on video conference.⁶⁶⁸ At the end of each session, the parties should agree on the scheduling of additional sessions and any additional information or documents needed.⁶⁶⁹ Any party can request a settlement conference or status with the court during the mitigation proceedings.⁶⁷⁰ The court must approve any agreement reached during the LMP.⁶⁷¹

PERSONNEL

Mediators: The LMP does not involve mediators.

Attorneys: None

Housing Counselors: The LMP does not utilize housing counselors.

Outreach: None

Other Personnel: None

Notes: The Bankruptcy Court issued an order stating borrowers in bankruptcy do not have to seek relief from a stay imposed by 11 U.S.C. §362(a) to take part in the state-level New Jersey Foreclosure Mediation Program.⁶⁷²

⁶⁶⁵ http://www.njb.uscourts.gov/sites/default/files/downloads/2011_07_29_Loss_Mitigation_Program_and_Procedures_7-28-11.pdf

⁶⁶⁶ Id.

⁶⁶⁷ Id.

⁶⁶⁸ Id.

⁶⁶⁹ Id.

⁶⁷⁰ Id.

⁶⁷¹ Id.

⁶⁷² http://www.njb.uscourts.gov/mediation/Practitioners_Guide_to_the_Mediation_Process/!SSL!/FlashHelp/Mediation_Guide_and_Forms.htm



NEW MEXICO⁶⁷³

Foreclosure Mediation Option in the Court ADR Pilot Program

INCEPTION

Initiation Date: April 30, 2009

Location: Court Circuit
1st Judicial Circuit, 13th Judicial Circuit

Originally Created by: Administrative Order
1st District Administrative Order No. 2009-00001⁶⁷⁴

Sponsorship: United South Broadway Corp., 1st Judicial District Court, Court Constituent Services (ADR)

Pending Legislation: In 2012, Senate Bill 1 was introduced by State Senator Michael Sanchez (D-Belen) to stop “dual track” proceedings, and Senate Bill 75 was introduced by State Senator Steve Fischman (D-Las Cruces) to require mediation during foreclosure proceedings; both bills died.⁶⁷⁵

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Santa Fe had 143 foreclosure filings in October 2011, 95 in October 2010, and 94 in October 2009.⁶⁷⁶

Funding: Court, Mediation Fees
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 equal shares for mediation, but parties who can’t afford it may request free or reduced-cost mediation.⁶⁷⁷

Costs: Each party pays \$250 for the conference. A borrower can file a motion for free or reduced cost services.⁶⁷⁸

⁶⁷³ <http://firstdistrictcourt.com/Forms/pdf/Admin%20Order%203.pdf>

⁶⁷⁴ <http://firstdistrictcourt.com/Forms/pdf/Admin%20Order%203.pdf>

⁶⁷⁵ <http://www.nmpolitics.net/index/2011/08/time-to-focus-on-jobs/>;

<http://www.nmlegis.gov/lcs/session.aspx?chamber=S&legtype=B&legno=%20%20%201&year=12>

⁶⁷⁶ <http://www.abqjournal.com/main/2011/11/14/abqnewsseeker/sf-county-has-highest-foreclosure-rate-in-n-m.html>

⁶⁷⁷ <http://firstdistrictcourt.com/Forms/doc/How%20to%20use%20the%20Court%20ADR%20Program.doc>

⁶⁷⁸ <http://firstdistrictcourt.com/Forms/doc/How%20to%20use%20the%20Court%20ADR%20Program.doc>



Statistics: About 40% of borrowers appear at the voluntary status conferences before voluntary mediation.⁶⁷⁹ As of August 31, 2011, the borrowers were able to stay in their homes in over 45% of the foreclosures in the pilot mediation program.⁶⁸⁰

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Any party can request a referral to foreclosure mediation.

Participants and Participation Requirements: The plaintiff is required to designate a representative with settlement authority to attend the session either in person or telephonically. The borrower must appear in person.

Timeline: Referral orders require settlement conference sessions to be scheduled within 60 days of entry of the order.

Process: A notice of possibility of mediation comes with the summons. Any party may request mediation by contacting the court's ADR office. Parties may select the facilitator or have one appointed for them. Parties are required to exchange extensive information prior to the mediation session. The facilitator files a certificate of compliance with the court after the conference.

PERSONNEL

Mediators: Attorneys on Court Roster

Mediators are attorneys with foreclosure experience or training who are on the court's ADR settlement facilitator list, which pre-dated this program.⁶⁸¹ Mediators are paid \$500 for a four-hour session, with the possibility to continue the session for another \$150 per hour.⁶⁸²

Attorneys: None are offered and few appear with a borrower⁶⁸³

Housing Counselors: Borrowers are required to see a HUD-approved housing counselor before proceeding with mediation.⁶⁸⁴

Outreach: None

Other Personnel: The court's Constituent Services Director in the ADR office administers the program.⁶⁸⁵

⁶⁷⁹ <http://albuquerqueadr.blogspot.com/2011/02/limitations-and-concerns-related-to.html>

⁶⁸⁰ <http://www.nmpolitics.net/index/2011/08/time-to-focus-on-jobs/>

⁶⁸¹ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

⁶⁸² <http://firstdistrictcourt.com/Forms/pdf/Motion%20for%20Free%20or%20Reduced-Cost%20Settlement%20Facilitation.pdf>

⁶⁸³ LinkedIn exchange with Pilar, a mediator in the 1st Judicial Circuit program.

⁶⁸⁴ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

⁶⁸⁵ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>



NEW YORK

Mandatory Residential Foreclosure Settlement Conference

INCEPTION

Initiation Date: 2008

The program began as a pilot in 2008 and extended to all one- to four-unit residences in late 2009.⁶⁸⁶

Location: Statewide⁶⁸⁷

Originally Created by: Legislation, Court Rule

The New York legislature passed Chapter 507 of 2009 after a successful pilot program governed by Chapter 472 of 2008.⁶⁸⁸ Civil Practice Law and Rules §3408 provides the guidance for procedure.⁶⁸⁹

Sponsorship: New York State Assembly, Chief Office of the Courts

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: A judicial report in November 2010 states that 77,815 foreclosures were pending in New York in 2010.⁶⁹⁰ In 2011, about 26,000 properties had received a foreclosure filing.⁶⁹¹

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).⁶⁹²

Costs: The program is free for all participants.

Statistics:

- From June 1 to July 31, 2009:
 - 795 settlement conferences were held.
 - Settlements occurred in 21 of these conferences.
 - 6 were loan modifications.

⁶⁸⁶ <http://www.propublica.org/article/new-york-state-foreclosure-mediation-shows-glimmers-of-hope-in-helping-home>

⁶⁸⁷ http://www.nycourts.gov/litigants/foreclosures_overview.shtml; <http://www.banking.state.ny.us/hetpinf6.htm>

⁶⁸⁸ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

⁶⁸⁹ http://law.onecle.com/new-york/civil-practice-law-rules/CVPOR3408_3408.html

⁶⁹⁰ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

⁶⁹¹ <http://www.realtytrac.com/content/foreclosure-market-report/new-york-foreclosure-activity-down-in-2011-7046>

⁶⁹² <http://newyork.realestaterama.com/2009/12/15/governor-paterson-signs-comprehensive-foreclosure-legislation-into-law-ID0941.html>



- 6 were temporary forbearances.
- 5 were continued.
- 4 outcomes could not be determined.⁶⁹³
- From January 1, 2010 to October 20, 2010:
 - 89,093 settlement conferences were held (some cases had multiple conferences).⁶⁹⁴
 - 4,062 cases settled.
 - Half of settlements were retention and half were relinquishment.⁶⁹⁵
 - 10,866 borrowers did not appear for the scheduled conferences.⁶⁹⁶
- From November 2010 to September 2011:
 - 7,924 new cases were filed.
 - 82,450 conferences were held.
 - 4,253 cases reached settlement, which is an increase of 29% over the previous year.
 - 10% of borrowers did not appear for the scheduled conferences.⁶⁹⁷

PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: One- to four-unit residences that are primary residences⁶⁹⁸

Participants and Participation Requirements: The lender attorney is required to be present for the conference; the lender can participate by phone.⁶⁹⁹ A pilot program in Queens has a lender present in the courtroom for a week at a time.⁷⁰⁰ If the lender attorney is the only lender representative able to be there, the attorney must have “full authority to dispose of the case.”⁷⁰¹ Parties must participate in good faith.⁷⁰²

Timeline: The first settlement conference must occur no later than 60 days after the lender complies with service requirements. Because lenders are delaying service and because of multiple sessions, foreclosure settlement conferences often do not complete for a year or more after they begin.⁷⁰³

⁶⁹³ <http://ezinearticles.com/?Report-Reveals-Foreclosure-Settlement-Conference-Program-a-Failure-in-New-York-City&id=3589415>

⁶⁹⁴ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

⁶⁹⁵ <http://www.propublica.org/article/new-york-state-foreclosure-mediation-shows-glimmers-of-hope-in-helping-home>

⁶⁹⁶ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

⁶⁹⁷ <http://www.nycourts.gov/publications/pdfs/ForeclosuresReportNov2011.pdf>

⁶⁹⁸ <http://www.propublica.org/article/new-york-state-foreclosure-mediation-shows-glimmers-of-hope-in-helping-home>

⁶⁹⁹ http://www.nytimes.com/2012/02/07/nyregion/in-a-queens-neighborhood-signs-of-uneven-burdens-from-a-housing-crisis.html?_r=1

⁷⁰⁰ <http://thebrooklynink.com/2012/05/06/45206-the-three-year-wait-surviving-foreclosure-in-brooklyn/>

⁷⁰¹ http://www.nytimes.com/2012/02/23/nyregion/new-york-courts-to-intensify-efforts-to-prevent-foreclosures.html?_r=2&hp

⁷⁰² http://law.onecle.com/new-york/civil-practice-law-rules/CVPOR3408_3408.html

⁷⁰³ <http://www.propublica.org/article/new-york-state-foreclosure-mediation-shows-glimmers-of-hope-in-helping-home>



Procedure: Lender attorneys must file an affidavit stating that they had personally checked the accuracy of the documents, and that a live person was behind the documents,⁷⁰⁴ before the case can move to a settlement conference.⁷⁰⁵ The settlement conference is scheduled for no more than 60 days after the lender files notice of service. It is mandatory to attend. The borrower and lender must bring certain documents to a scheduled settlement conference with the hearing office. A borrower who wants to appear pro se will be automatically considered eligible for free legal services. Along with counsel and parties, the judge will explore options for settlement, including loan modifications. If the borrower appears without counsel, the officer is required to inform the borrower of his/her rights. No requests may be made from either side to pay for costs from the other. An average of four to eight appearances constitutes the settlement conference.⁷⁰⁶

PERSONNEL

Mediators: Hearing Officers, Attorneys

Judicial Hearing Officers or Referee Attorneys hold the settlement conferences. Judges are available if needed.⁷⁰⁷

Attorneys: Legal Aid

Free legal services, from legal aid agencies like Empire Justice Center, are available for those who qualify.⁷⁰⁸ If the borrower appears without counsel, the judge is required to inform the borrower of his/her rights and postpone the conference until the borrower has an opportunity to speak with an attorney.⁷⁰⁹ About 37% of borrowers appeared with counsel in 2010.⁷¹⁰ In 2011, the funding for the pro bono attorney program ended; 75% of borrowers or more entered foreclosure court without an attorney.⁷¹¹ Ensuring representation is considered a priority by the judiciary.⁷¹²

Housing Counselors: Borrowers are strongly encouraged to see a housing counselor prior to mediation.⁷¹³

Outreach: Door Knocking

Because of outreach efforts, the rate of borrowers not appearing for court on their foreclosure cases decreased from 90% to 20%.⁷¹⁴ The Department of Financial Services is creating a unit that

⁷⁰⁴ <http://thebrooklynink.com/2012/05/06/45206-the-three-year-wait-surviving-foreclosure-in-brooklyn/>

⁷⁰⁵ http://www.nytimes.com/2012/02/09/nyregion/push-to-avert-foreclosures-hits-court-logjam.html?pagewanted=2&_r=1&src=recg

⁷⁰⁶ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

⁷⁰⁷ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

⁷⁰⁸ http://www.nytimes.com/2012/02/09/nyregion/push-to-avert-foreclosures-hits-court-logjam.html?_r=1&src=recg

⁷⁰⁹ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

⁷¹⁰ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

⁷¹¹ http://www.nytimes.com/2012/02/09/nyregion/push-to-avert-foreclosures-hits-court-logjam.html?_r=1&src=recg

⁷¹² <http://www.nycourts.gov/publications/pdfs/ForeclosuresReportNov2011.pdf>

⁷¹³ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

⁷¹⁴ <http://www.propublica.org/article/new-york-state-foreclosure-mediation-shows-glimmers-of-hope-in-helping-home>



will offer mediation services. The unit will travel around the state in a mobile office and do door-to-door outreach on homes in foreclosure.⁷¹⁵

Other Personnel: A case manager in the court schedules all conferences.

Notes: The most significant cause of delay and reason necessitating multiple sessions has been borrower documents sent to the banks getting lost or not reviewed.⁷¹⁶ A pilot program in Queens will put the court in charge of overseeing the document exchange process, in an attempt to reduce the number of sessions needed.⁷¹⁷ The document exchange process will be overseen by judges, who have authority to sanction parties.⁷¹⁸

⁷¹⁵ <http://www.newsday.com/classifieds/real-estate/new-state-aid-for-those-facing-foreclosure-1.3448650>

⁷¹⁶ http://www.nytimes.com/2012/02/09/nyregion/push-to-avert-foreclosures-hits-court-logjam.html?_r=1&src=recg

⁷¹⁷ http://www.nytimes.com/2012/02/23/nyregion/new-york-courts-to-intensify-efforts-to-prevent-foreclosures.html?_r=2&hp

⁷¹⁸ http://www.brennancenter.org/content/resource/what_bar_can_do_to_alleviate_foreclosure_crisis/



OHIO⁷¹⁹

Foreclosure Mediation Program Model

INCEPTION

Initiation Date: 2008

Location: Statewide

Originally Created by: Court Order

In December 2007, Chief Justice Thomas J. Moyer proposed that courts manage the increasing number of foreclosure cases being filed in Ohio by developing foreclosure mediation programs. On February 7, 2008, he made an announcement to the Ohio Associated Press writers and editors that a model program had been sent to Ohio courts to use mediation in home foreclosure cases.⁷²⁰ By December 16, 2011, 86 of 88 counties had programs.⁷²¹ New Chief Justice Eric Brown pledged that all 88 counties would have foreclosure mediation in the next few years.⁷²²

Sponsorship: The Ohio Supreme Court's Dispute Resolution Section and Advisory Committee, in collaboration with State Treasurer Richard Cordray and the Offices of Governor Strickland and Attorney General Dann, representatives of mortgage lenders, the Ohio State Bar Association, the Equal Justice Foundation, the Ohio Legal Assistance Foundation, the Ohio State Legal Services Association, the Coalition on Homelessness and Housing for Ohio, the Legal Aid Society of Southwest Ohio, and Legal Aid Society of Cleveland developed the mediation model.

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In 2009, Ohio had 89,053 foreclosures filed and another 10,146 reactivated, transferred in or redesignated.⁷²³ The foreclosure filings for 2011 were down 16% from 2010 and totaled 71,566.⁷²⁴

Funding: Filing Fees, County Grants

Ohio authorized courts to charge a filing fee of up to \$500 for foreclosure filings. The Residential Foreclosure Mediation Fund in those counties manages the money and directs it to foreclosure

⁷¹⁹ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/foreclosureMediation.pdf>

⁷²⁰ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

⁷²¹ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/ForeclosureCtyContact.pdf>

⁷²² http://www.huffingtonpost.com/jeff-coryell/ohio-homeowners-in-forecl_b_766203.html

⁷²³ <http://www.supremecourt.ohio.gov/publications/annrep/09OCS/2009OCS.pdf>

⁷²⁴ <http://cincinnati.com/blogs/politics/2012/04/03/report-says-ohio-foreclosures-decline/> and http://www.policymattersohio.org/wp-content/uploads/2012/04/Foreclosure_April20121.pdf



mediations.⁷²⁵ In some counties, the Board of Commissioners has provided funding for the program, including Franklin County (9,107 homes in foreclosure in 2010),⁷²⁶ 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).⁷²⁷

Costs: Lenders pay a filing fee of up to \$500 in some counties. In Stark County, the court provided \$104,000 of contract fees to outside mediators in 2011.⁷²⁸

Statistics: The optional mediation program is state-wide, but statistics are captured locally.

- Stark County had over 3,000 foreclosures filed in 2008 after the program was instituted in March, with 367 going to mediation and half of those ending in settlement.⁷²⁹
- Franklin County had 18,609 foreclosures filed in 2009 and 2010 combined.
 - 3,728 cases were referred to mediation.
 - 91 cases were found unsuitable after referral.
 - 229 cases referred reached agreement before mediation.
 - 304 cases were pending.
 - 810 cases did not have a status readily available.
 - 2,294 mediations were conducted.
 - 744 ended in agreement.
 - 613 agreements were for retention.
 - 131 agreements were for graceful exit.
 - 834 ended without an agreement.
 - 716 cases did not have a status readily available.⁷³⁰
- Cuyahoga County had 23,696 eligible foreclosures in 2010-2011.
 - 6,960 cases were referred to mediation.
 - 4,653 mediations were held, with 2,835 (61%) ending in a settlement.⁷³¹
- In Richland County, Judge James DeWeese requires the parties to participate in foreclosure mediation; there were 750 foreclosures filed in 2010 and 575 in 2011.⁷³²

⁷²⁵ Ohio Revised Code Chapter 2303.201(E)(1).

⁷²⁶ http://www.dispatch.com/live/content/local_news/stories/2011/01/19/foreclosures-fall-in-franklin-county.html?sid=101

⁷²⁷ <http://www.franklincountyohio.gov/fc/content/press/boc10-28-08.cfm>

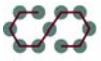
⁷²⁸ <http://www.bankerandtradesman.com/news/150375.html>

⁷²⁹ <http://www.cantonrep.com/news/x2081096350/Foreclosures-keep-Stark-County-courts-sheriff-busy>

⁷³⁰ <http://www.dispatch.com/live/export-content/sites/dispatch/data/nocat/stories/2011/05/15/mediation-art0-gf0cm2d8-10515gfx-meditation-franklin-county-eps-large.jpg>

⁷³¹ http://urban.csuohio.edu/publications/center/center_for_community_planning_and_development/ccfpp_final_2011_report.pdf
http://urban.csuohio.edu/publications/center/center_for_community_planning_and_development/Responding_to_forclosure_CuyahogaCounty_2010.pdf

⁷³² <http://www.mansfieldnewsjournal.com/article/20120226/NEWS01/202260321/Roundtable-Identifying-progess-challenges>



PROCESS

Opt-in or Opt-out: Opt-in and Opt-out

Counties are allowed to choose and have selected both opt-in and opt-out models.

Eligibility: Either a residential borrower or a lender can request mediation.

Participants and Participation Requirements: A lender must have someone participate that can sign an agreement, should one be made.

Timeline: If the borrower chooses to mediate, s/he must request mediation from the Mediation Department within 28 days. The Mediation Department then sends a form to the borrower and the lender to be completed in 14 days. Each county decides a timeline in which to schedule mediation after receipt of party forms.

Procedure: The model was developed so Ohio courts, and national courts, could adapt the model for their own uses. The model suggests a notice of the availability of mediation be sent with the summons. Other resources are suggested to be included, like a mediation brochure and a timeline of the mediation process. If the borrower chooses to mediate, s/he must request mediation from the mediation department within 28 days. The mediation department then sends a form to the borrower and the lender to be completed in 14 days. The mediation department then determines whether mediation is appropriate and tells the court and the parties of the mediation date. If appropriate, the mediator will send a Notice of Mediation to both parties. The mediators are contractors with the court but do not have to be lawyers or judges. The proceeding is confidential. There is one mediation session. After the mediation, all parties complete evaluations.⁷³³

PERSONNEL

Mediators: Paid Mediators

The mediators are contractors with the court or court staff (Stark County)⁷³⁴ 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).⁷³⁵

Attorneys: Pro Bono

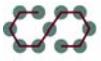
The borrower can bring whomever to the mediation, including a pro bono attorney. The program trains these attorneys, but with the exception of Stark County,⁷³⁶ does not coordinate

⁷³³ <http://www.supremecourtsohio.gov/JCS/disputeResolution/foreclosure/default.asp>

⁷³⁴ <http://www.cantonrep.com/news/x624607745/Common-Pleas-Court-tweaks-foreclosure-mediations>

⁷³⁵ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

⁷³⁶ <http://www.cantonrep.com/news/x624607745/Common-Pleas-Court-tweaks-foreclosure-mediations>



them to represent borrowers; borrowers must contact the attorneys directly if wanted.⁷³⁷ Over 1,100 lawyers have volunteered to either represent borrowers or serve as mediators. Between April 30 and December 31, 2010, legal aid attorneys in Cuyahoga County attended 127 pre-mediation and 159 mediation conferences, or approximately 11% of mediations that occurred during that period. In July 2011, *The Plain Dealer* reported that approximately 70% of borrowers appeared without counsel.⁷³⁸

Housing Counselors: The Ohio Supreme Court recommends housing counselors before mediation.⁷³⁹ Some counties (Franklin) require meeting with a housing counselor.⁷⁴⁰

Outreach: Events, Materials

The Ohio Supreme Court publishes a Mortgage Help Workbook for borrowers.⁷⁴¹ The city of Strongsville designated March 2012 as “Save our Homes” month to raise awareness of the availability of the Cuyahoga Court of Common Pleas Foreclosure Mediation program.⁷⁴² Stark County hosts an event for borrowers to attend after they’ve requested mediation, so they can learn about the process.⁷⁴³

Other Personnel: The court’s mediation department manages the program and provides support for circuits that adopt the model.

Notes: Other jurisdictions outside of Ohio adopted the Cuyahoga County model.⁷⁴⁴

⁷³⁷ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

⁷³⁸ http://www.cleveland.com/opinion/index.ssf/2011/07/put_ohios_home_foreclosures_wh.html

⁷³⁹ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

⁷⁴⁰ <http://www.franklincountyohio.gov/commissioners/homeowner-helpline/assets/pdf/request-for-mediation.pdf>

⁷⁴¹ <http://www.supremecourtofohio.gov/JCS/disputeResolution/foreclosure/MortgageWorkbook.pdf>

⁷⁴² http://www.cleveland.com/strongsville/index.ssf/2012/03/march_is_now_save_our_homes_mo.html

⁷⁴³ <http://www.cantonrep.com/news/x624607745/Common-Pleas-Court-tweaks-foreclosure-mediations>

⁷⁴⁴ http://www.cleveland.com/opinion/index.ssf/2011/07/put_ohios_home_foreclosures_wh.html



OREGON

Foreclosure Avoidance Mediation Program⁷⁴⁵

INCEPTION

Initiation Date: July 12, 2012⁷⁴⁶

Location: Statewide

Originally Created by: Legislation

Senate Bill 1552,⁷⁴⁷ ordered by the House March 5, 2012, including Senate amendments dated February 14, 2012, and House amendments dated March 5, 2012. Signed into effect by Governor John Kitzhaber on April 11, 2012. The Attorney General created administrative rules to govern the program.⁷⁴⁸

Sponsorship: State Senators Atkinson, Beyer, Bates, Boquist, Prozanski, Rosenbaum, Shields, Steiner Hayward, Telfer, and Verger; State Representatives Bailey, Barker, Barnhart, Beyer, Boone, Buckley, Clem, Cowan, Dembrow, Doherty, Frederick, Gelser, Greenlick, Harker, Hunt, Keny-Guyer, Komp, Garrett, Holvey, Kotek, Whisnant, Matthews, Nathanson, Parrish, Read, Roblan, Sheehan, J. Smith, Tomei, Wand, and Witt

IMPACT

Judicial/Non-Judicial Foreclosures: Non-Judicial

Number of Foreclosures: Oregon had 22,492 foreclosures in 2011.⁷⁴⁹

Funding: Mediation Fees, Legislative Appropriation

Senate Bill 1552 established a Foreclosure Avoidance Mediation Fund to pay the mediation service provider for his or her services consisting of monies appropriated to the Attorney General (Section 4). The lender and the borrower shall share the cost of the mediation, the borrower's portion not to exceed \$200, which can be waived by the mediator [Section 2(2)(c)].⁷⁵⁰ The Oregon legislature approved a \$7.6 million allocation for the program in fiscal year 2012.⁷⁵¹

Costs: There is a borrower mediation fee of \$200 and a lender mediation fee of \$425.

⁷⁴⁵ http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml

⁷⁴⁶ <http://oregon.salem-news.com/2012/04/governor-john-kitzhaber-signs-foreclosure-reform-bill/>

⁷⁴⁷ <http://www.leg.state.or.us/l2reg/measpdf/sb1500.dir/sb1552.b.pdf>

⁷⁴⁸ http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml

⁷⁴⁹ <http://www.bizjournals.com/portland/news/2012/01/12/oregon-foreclosures-down-40-in-2011.html>

⁷⁵⁰ <http://gov.oregonlive.com/bill/2012/SB1552/>

⁷⁵¹ <http://www.leg.state.or.us/committees/exhib2web/2011interim/JEB/JEBSSGG/05212012mtg/21%20DOJ%20HCSD%20-%20May%202012.pdf>;

<http://www.statesmanjournal.com/article/20120522/NEWS/305220008/Plan-foreclosure-mediation-money-nears-approval?odyssey=tab|topnews|text|News>



Statistics: No mediations have occurred as of September 15, 2012.

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: Borrowers at risk of default before the lender or trustee has filed a notice of default or borrowers in default can request mediation.

Participants and Participation Requirements: If the borrower requests mediation, the lender or its agent must appear in person at the scheduled mediation with documentation of the trust deed, chain of title, servicing agreement and with authority to enter into agreement for a foreclosure avoidance measure [Section 2(4)(b)].

Timeline: No earlier than 45 days but no later than 90 days after the lender sends a notice of mediation, the mediation should occur. No fewer than 30 days before the mediation, the borrower must confirm that the borrower will come to the mediation.

Procedure: A lender seeking to foreclose on a residential trust deed must notify the borrower of the availability of mediation with the borrower and attend mediation, if the borrower requests it, with the goal of agreeing on a “foreclosure avoidance measure,” as specified in the 2012 Act (Section 2[2][a]). The Attorney General-appointed mediation service provider coordinates the mediation program (Section 2[2][b]). Within 30 days of the lender sending a notice of mediation, the mediation service provider shall send notice to the parties scheduling the mediation, not earlier than 45 days and not later than 90 days after the date the lender’s notice of mediation was sent. The mediation service provider’s notice also specifies a date at least 30 days in advance of the scheduled mediation, by which the borrower must confirm he or she will enter into mediation (Section 2[3]). If the lender complies with Sections 4 and 5 of the 2012 Act, or the borrower doesn’t confirm he or she will enter into mediation, the mediation service provider will provide the lender with a “certificate of compliance” (Section 2[6]).

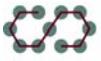
PERSONNEL

Mediators: Paid Mediators

Mediators must complete at least a 32-hour basic mediation skills training and foreclosure mediation training.⁷⁵² Other experience requirements are set by the Attorney General.⁷⁵³ The Collins Center for Public Policy, which handled Florida’s foreclosure mediation program in

⁷⁵² <http://oregonon.org/blog/2012/interested-in-becoming-a-foreclosure-mediator/>

⁷⁵³ http://www.doj.state.or.us/consumer/foreclosure_mediation.shtml



multiple circuits, is the appointed mediation program manager. The first training certified around 300 mediators.⁷⁵⁴

Attorneys: Pro Bono

Notice to borrowers includes Oregon State Bar’s Lawyer Referral Services and an Attorney General-approved list of service agencies that offer free or low-cost legal services [Section 3(3)].

Housing Counselors: Borrowers are required to meet with housing counselors⁷⁵⁵ prior to proceeding with mediation, with exceptions. If, after this meeting, the borrower decides not to go to mediation, he or she shall notify the mediation services provider, who will notify the borrower. If the borrower could not get an appointment with a housing counselor within 30 days of receiving the mediation notice and can get an affidavit from the mediation service provider to that effect, the housing counselor meeting requirement will be waived.

Outreach: Web, Events

Oregon Housing and Community Services conducts online webinars and in-person workshops for borrowers considering entering the program.⁷⁵⁶ Some state representatives are holding community events in their constituencies to describe the program.⁷⁵⁷

Other Personnel: The Attorney General is tasked with coordinating a mediation program, including setting mediation guidelines; appointing a mediation service provider; setting mediators’ fees; paying the mediation service provider; and prescribing qualifications and training for the mediators [Section 2(2)(b)(A-C)].⁷⁵⁸ Mediation Service Provider notifies the Attorney General if the beneficiary does or does not comply with the mediation requirements and if a foreclosure avoidance measure is agreed upon and if so what type [Section 2(5)-(6)]. The program will be overseen by the Department of Justice.⁷⁵⁹

Notes: As of August 2012, lenders were shifting many foreclosure filings to the judicial process.⁷⁶⁰ Borrower advocates are calling on the courts to create mediation programs for foreclosure cases.⁷⁶¹ Lenders were also not honoring request from underwater borrowers, who are statutorily eligible for mediation, to participate in the program.⁷⁶² Lenders will propose amendments to the law during the 2013 legislative session.⁷⁶³

⁷⁵⁴ <http://www.statesmanjournal.com/article/20120712/NEWS/307120021/More-than-55-receive-training-new-foreclosure-mediation-program?odyssey=tab>

⁷⁵⁵ http://www.doj.state.or.us/consumer/pdf/foreclosure_mediation_foreclosure_resources.pdf

⁷⁵⁶ <http://www.statesmanjournal.com/article/20120522/NEWS/305220008/Plan-foreclosure-mediation-money-nears-approval?odyssey=tab|topnews|text|News>

⁷⁵⁷ http://www.tillamookheadlightherald.com/news/article_4eaf6522-c559-11e1-b105-0019bb2963f4.html

⁷⁵⁸ http://www.doj.state.or.us/consumer/foreclosure_mediation_website.shtml

⁷⁵⁹ <http://oregon.salem-news.com/2012/04/governor-john-kitzhaber-signs-foreclosure-reform-bill/>

⁷⁶⁰ <http://www.oregonbusiness.com/linda/8146-foreclosures-shifting-to-courts>

⁷⁶¹ http://www.oregonlive.com/business/index.ssf/2012/09/foreclosure_advocates_push_oreg.html

⁷⁶² http://www.oregonlive.com/front-porch/index.ssf/2012/08/lenders_not_engaging_in_oregon.html

⁷⁶³ http://www.oregonlive.com/opinion/index.ssf/2012/09/solutions_not_excuses_needed_i.html



PENNSYLVANIA

Residential Mortgage Foreclosure Diversion Program

INCEPTION

Initiation Date: April 2008

The pilot program in Philadelphia began in April 2008, with other counties creating programs from 2009 - 2011.

Location: County

Philadelphia hosted the initial pilot program.⁷⁶⁴ After demonstrating success, the Supreme Court asked all counties that didn't have a foreclosure mediation program to develop one.⁷⁶⁵ Other counties with programs include Allegheny,⁷⁶⁶ Beaver,⁷⁶⁷ Berks,⁷⁶⁸ Blair,⁷⁶⁹ Bucks,⁷⁷⁰ Butler,⁷⁷¹ Cumberland,⁷⁷² Fayette,⁷⁷³ Lackawanna,⁷⁷⁴ Lehigh,⁷⁷⁵ Luzerne,⁷⁷⁶ Lycoming,⁷⁷⁷ Monroe,⁷⁷⁸ Northampton,⁷⁷⁹ Schuylkill,⁷⁸⁰ Somerset,⁷⁸¹ and Washington.⁷⁸²

Originally Created by: Administrative Order

The 1st Judicial District of Philadelphia and the Court of Common Pleas of Philadelphia County issued Joint General Court Regulation No. 2008-01 in 2008.⁷⁸³ Other counties, like Butler County,⁷⁸⁴ followed with similar court rules.

⁷⁶⁴ <http://www.pabulletin.com/secure/data/vol38/38-18/824.html>

⁷⁶⁵ http://www.philly.com/inquirer/local/pa/20100913_Pa_foreclosure_mediation_urged.html

⁷⁶⁶ <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202423950217>

⁷⁶⁷ <http://www.pabulletin.com/secure/data/vol42/42-22/1008.html>

⁷⁶⁸ <http://www.co.berks.pa.us/Dept/Courts/Pages/MortgageForeclosureDiversionProgram.aspx>

⁷⁶⁹ http://www.pacourts.us/NR/rdonlyres/BA520708-3C80-42E5-B9B9-F3D99237305D/0/ForeclosureConference_100908.pdf

⁷⁷⁰ <http://www.pabulletin.com/secure/data/vol39/39-27/1190.html>; <http://www.pabulletin.com/secure/data/vol39/39-29/1275.html>;

<http://www.pabulletin.com/secure/data/vol41/41-2/33.html>; <http://www.pabulletin.com/secure/data/vol41/41-49/2046.html>

⁷⁷¹ <http://www.pabulletin.com/secure/data/vol39/39-40/1829.html>;

⁷⁷² <http://www.pabulletin.com/secure/data/vol42/42-13/578.html>

⁷⁷³ <http://www.pabulletin.com/secure/data/vol40/40-14/583.html>

⁷⁷⁴ <http://www.pabulletin.com/secure/data/vol39/39-24/1055.html>

⁷⁷⁵ <http://www.lvforeclosuredefense.com/foreclosure-mediation-representation/>

⁷⁷⁶ <http://rhls.org/documents/LuzerneForeclosureDiversion.pdf>

⁷⁷⁷ http://www.pacourts.us/NR/rdonlyres/BA520708-3C80-42E5-B9B9-F3D99237305D/0/ForeclosureConference_100908.pdf

⁷⁷⁸ <http://www.pabulletin.com/secure/data/vol42/42-18/802.html>

⁷⁷⁹ <http://www.nccpa.org/mfdp/>; <http://www.nccpa.org/mfdp/MFDP-Order.pdf>

⁷⁸⁰ <http://www.pabulletin.com/secure/data/vol41/41-47/1989.html>

⁷⁸¹ <http://www.pabulletin.com/secure/data/vol40/40-13/549.html>

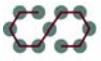
⁷⁸²

<http://www.washingtoncourts.us/downloads/courtAdministration/Mortgage%20Foreclosure%20Diversion%20Program%20Notice%20%28Attachment%29.pdf>

⁷⁸³ <http://www.courts.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>; <http://www.pabulletin.com/secure/data/vol38/38-18/824.html>;

<http://www.pabulletin.com/secure/data/vol38/38-31/1408.html>

⁷⁸⁴ <http://www.pabulletin.com/secure/data/vol39/39-40/1829.html>



Sponsorship: Philadelphia Court of Common Pleas, local housing advocates, the City of Philadelphia, and the County Sheriff's Office.⁷⁸⁵ In other counties, local judges designed the programs.⁷⁸⁶

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Philadelphia had 8,552 foreclosure filings in 2009, a year after the foreclosure diversion program began.⁷⁸⁷ In the first quarter of 2012, 5,839 homes received a foreclosure notice.⁷⁸⁸

Funding: City Grant, County Grant

The City of Philadelphia, through a Community Development Block Grant, funds \$340,000 for the hotline that schedules people for free housing counseling.⁷⁸⁹ It also provides Community Legal Services with \$350,000 to consult with borrowers.⁷⁹⁰

In September of 2011, the Luzerne County Commissioners voted to use \$110,000 from the County's Housing Trust Program to continue funding the foreclosure mediation program.⁷⁹¹

Costs: The program is free to all parties.

Statistics: The Reinvestment Fund, studying the Philadelphia program, reports that between April 2008 and March 2011:⁷⁹²

- An average of approximately 8,100 foreclosure cases were filed each year.
- On average, 70% of all foreclosure cases were eligible for the program (others are not residential or owner-occupied).
- 15,915 cases were referred to the program.
 - 31% of borrowers did not appear at the scheduled conference.
 - 69% appeared at the conference and were eligible for the program.
 - Of those who were eligible, 60% completed the program. Of those completing the program:

⁷⁸⁵ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

⁷⁸⁶ http://www.timesleader.com/stories/County-builds-success-for-struggling-homeowners.72033?search_filter=Wilkes-Barre+program+81%25+success&town_id=1&sub_type=stories

⁷⁸⁷ http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf

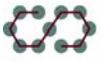
⁷⁸⁸ http://articles.philly.com/2012-04-13/news/31337910_1_foreclosure-activity-realtytrac-foreclosure-process

⁷⁸⁹ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

⁷⁹⁰ http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3594&wit_id=7481

⁷⁹¹ <http://www.timesleader.com/stories/Owners-of-flood-damaged-property-could-see-tax-cut.117451> and <http://citizensvoice.com/news/county-eyes-mortgage-foreclosures-1.1207736#axzz1Z5LRF80D>

⁷⁹² http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf



- 55% ended with an agreement and 84.6% of them were still in their homes after one year.
- 27% ended in a sheriff's sale.
- 7% ended with no agreement.
- 7% ended in a default judgment.
- 5% ended in bankruptcy.
- 40% of those who appeared continued in the program. Of that group:
 - 38% delayed default.
 - 35% had not received proper service.
 - 28% were continued.
 - 10% were scheduled for status.

Luzerne County: In the initial six months, 39 cases were resolved and 22 were still ongoing.⁷⁹³

Lackawanna County: In the first two years, 53% of mediations resulted in agreement and 30% were reported as still in negotiation or as having a temporary agreement in place. Seventeen percent did not result in an agreement and the foreclosure proceeded.⁷⁹⁴

Allegheny County: Between January 2009 and July 2011, 2,221 borrowers participated and 734 came to an agreement with their respective lenders.⁷⁹⁵

PROCESS

Opt-in or Opt-out: Opt-in and Opt-out

The conciliation conference is mandatory in Philadelphia, Lehigh, Northampton⁷⁹⁶ and Cumberland County⁷⁹⁷ for all eligible parties before a judicial sale can proceed. In other Pennsylvania counties, the borrower must ask for a conference.⁷⁹⁸

Eligibility: Residential properties of four units or fewer are eligible.

Participants and Participation Requirements: Participants must have authority to make an agreement at the time of the conciliation.

Timeline: A case management meeting occurs within 45 days of the summons filing. Then conciliation occurs on a variety of timelines and can continue until resolution.

⁷⁹³ http://www.timesleader.com/stories/County-builds-success-for-struggling-homeowners.72033?search_filter=Wilkes-Barre+program+81%25+success&town_id=1&sub_type=stories

⁷⁹⁴ http://www.pennlive.com/midstate/index.ssf/2011/07/cumberland_county_judge_wants.html

⁷⁹⁵ <http://www.post-gazette.com/stories/business/news/lowdown-on-debt-foreclosures-bankruptcies-are-down-but-thats-not-necessarily-a-sign-of-an-improving-economy-222491/> and <http://www.alleghenycountys.us/civil/foreclosure.aspx>

⁷⁹⁶ <http://www.lvforeclosuredefense.com/foreclosure-mediation-representation/>

⁷⁹⁷ <http://www.ccpa.net/DocumentCenter/Home/View/8772>

⁷⁹⁸ http://www.pennlive.com/midstate/index.ssf/2011/07/cumberland_county_judge_wants.html



Procedure: After a case management meeting, the defendant must call a hotline. The hotline worker explains the conciliation process and documents that are needed to the borrower. Documents must be exchanged prior to conciliation. At the conciliation, which happens once a week, pro bono attorneys and housing counselors are present to assist in the negotiations. The conciliators are Judges Pro Tem (retired judges doing pro bono), Civil Case Managers, or other judges and may offer a recommendation at the end of the session. The conciliation session is not confidential. An additional conciliation session may be scheduled. Foreclosure is stayed pending the conciliation.

PERSONNEL

Mediators: Judges

The conciliators are Judges Pro Tem, Civil Case Managers (officers of the court paid a salary), or other judges (paid a normal salary) and may offer a recommendation at the end of the session.⁷⁹⁹ For the original pilot program of 700 cases, six judges were trained.⁸⁰⁰

Attorneys: Pro Bono

The conciliator identifies whether the borrower is represented and, if not, may appoint an attorney to represent the borrower.⁸⁰¹ Over 360 pro bono lawyers have been trained to represent parties in mediation. Of conferences completed by June 2011, 2.2% of borrowers had legal aid attorneys and 2.7% had private counsel.⁸⁰²

Housing Counselors: Borrowers are required to see a housing counselor prior to the conference, though not all of them do. They are allowed to ask for a continuance so they can meet with a housing counselor. If an elderly person is a borrower, additional social services are provided.

Outreach: Door Knocking, Events

Outreach to borrowers is critical to this program. Philadelphia borrowers who had direct contact with an outreach team had 73% involvement in the program, compared to 48% participation for borrowers who did not have direct contact. In Philadelphia, community organizations conduct door-knocking campaigns to let people know about the mandatory program and help them call the hotline.⁸⁰³ Between April 2008 and December 2008, outreach workers made more than 3,000 visits to 2,400 properties. The Philadelphia court also conducts financial literacy classes for borrowers, which can prepare them for conciliation.

Other Personnel: Judges can hear challenges to program participation and issue sanctions, if needed.

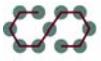
⁷⁹⁹ <http://fjd.phila.gov/pdf/regs/2008/cpigcr-2008-01.pdf>

⁸⁰⁰ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

⁸⁰¹ <http://fjd.phila.gov/pdf/regs/2008/cpigcr-2008-01.pdf>

⁸⁰² http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf

⁸⁰³ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>



RHODE ISLAND

Providence Foreclosure Diversion Program⁸⁰⁴

INCEPTION

Initiation Date: August 16, 2009

Location: City
Providence

Originally Created by: City Council Ordinance
Ordinance No. 340 was passed by the City Council on July 16, 2009 and approved by the Mayor on July 27, 2009.⁸⁰⁵

Modified by: City Council Ordinance
Ordinance No. 18 went into effect on January 26, 2010. It passed the City Council on January 21, 2010, and approved by the Mayor on January 26, 2010.⁸⁰⁶ The Amended Ordinance increased the time allotted to schedule the mediation from 21 to 30 days, added a \$2,000 penalty for non-compliance by the lender, and added exemptions for abandoned properties and properties set for demolition.⁸⁰⁷

Sponsorship: City Council

IMPACT

Judicial/Non-Judicial Foreclosures: Non-Judicial
Foreclosures are filed with the Recorder of Deeds.

Number of Foreclosures: Providence had 303 foreclosures in 2006, 718 in 2007, and 1,158 by October 2008.⁸⁰⁸

Funding: None provided

Costs: No cost to either party

Statistics: None

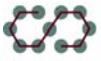
⁸⁰⁴ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_ordinances.pdf

⁸⁰⁵ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_ordinances.pdf

⁸⁰⁶ http://www.psh.com/stuff/contentmgr/files/0/c03ab53eed3cbac2049c87803acb2c76/formdocs/city_of_providence_amended_foreclosure_ordinance.pdf

⁸⁰⁷ http://www.psh.com/stuff/contentmgr/files/0/c03ab53eed3cbac2049c87803acb2c76/formdocs/city_of_providence_amended_foreclosure_ordinance.pdf

⁸⁰⁸ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_ordinances.pdf



PROCESS

Opt-in or Opt-out: Opt-out

Eligibility: The home must be owner-occupied; the primary residence of the borrower; located in Providence; and consisting of one to four residential units, including residential co-ops and condominiums.⁸⁰⁹ Properties declared abandoned or under order for demolition by Providence’s Department of Inspection and Standards were exempted by the Amended Ordinance.⁸¹⁰

Participants and Participation Requirements: Participation is mandatory for both parties, but the lender may be present telephonically.⁸¹¹ The borrower must cooperate with the housing counselor, providing all requested documentation and financial information and completing all applicable loan resolution proposals and applications.⁸¹² If the borrower does not respond to two attempts by the Conciliation Coordinator to attend mediation or does not cooperate with the Ordinance requirements, the requirements of the Ordinance will be deemed met and the lender will receive a certificate from the HUD-approved independent counseling agency allowing the lender to move forward with the foreclosure action.⁸¹³ If the lender is deemed to have participated in good faith, the lender will receive a certificate from a HUD-approved independent counseling agency allowing them to move forward.⁸¹⁴ If the lender does not meet the Ordinance requirements, the Recorder of Deeds will not accept and/or file the deed.⁸¹⁵ A lender may be fined \$2,000 for not abiding by the Ordinance before foreclosing.⁸¹⁶

Timeline: The lender sends the notice of foreclosure to the borrower and City and files the notice of the foreclosure with the Recorder of Deeds. The Conciliation Coordinator schedules the mediation within 30 days of the mailing of the notice of intent to foreclose.⁸¹⁷ The process must conclude within 60 days of the initial notice.⁸¹⁸

Procedure: Prior to filing a deed with the Recorder of Deeds for a foreclosure property, a lender must notify the City in writing of its intent to foreclose in tandem with notifying the borrower about the foreclosure.⁸¹⁹ Both the written notice to the City and the written notice to the borrower must be filed with the Recorder of Deeds.⁸²⁰ Along with the Notice of Intent to Foreclose, the lender must provide the borrower with a list of participating Rhode Island HUD-

⁸⁰⁹ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_odinances.pdf

⁸¹⁰ <http://www.psh.com/content724>

⁸¹¹ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_odinances.pdf

⁸¹² Id.

⁸¹³ Id.

⁸¹⁴ <http://providenceri.com/efile/230>

⁸¹⁵ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_odinances.pdf

⁸¹⁶ <http://www.psh.com/content724>

⁸¹⁷ <http://www.psh.com/content724>

⁸¹⁸ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_odinances.pdf

⁸¹⁹ Id.

⁸²⁰ Id.



approved counseling agencies and notification that the Conciliation Coordinator will be reaching out to the borrower to schedule a conciliation conference.⁸²¹ The Conciliation Coordinator schedules the mediation and meets with the borrower prior to the conciliation conference to put together a written Pre-Conciliation Action Plan.⁸²² The lender must receive a certificate of completion and file it with the Recorder of Deeds to complete the foreclosure.

PERSONNEL

Mediators: City Employee

While not technically a mediator, the Conciliation Coordinator is charged with facilitating communication and possible resolution between the lender and borrower.⁸²³ The Conciliation Coordinator has experience in lending and mortgage servicing.⁸²⁴

Attorneys: None provided

Housing Counselors: Borrowers are assigned housing counselors from HUD-approved counseling agencies prior to proceeding with mediation; this person may come from the same agency but is different from the Conciliation Coordinator.⁸²⁵

Outreach: Website

Other Personnel: The Recorder of Deeds is the contact person for housing counselor agencies and lenders for questions regarding the Ordinance.⁸²⁶

United States Bankruptcy Court District of Rhode Island Loss Mitigation Program⁸²⁷

INCEPTION

Initiation Date: November 1, 2009

Location: Statewide

Originally Created by: Court Rule

General Order 09-003 issued by U.S. Bankruptcy Court Judge Arthur N. Votolato⁸²⁸

Modified by: Court Rule

⁸²¹ <http://providenceri.com/efile/230>

⁸²² <http://providenceri.com/efile/230>

⁸²³ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_ordinances.pdf

⁸²⁴ <http://providenceri.com/efile/230>

⁸²⁵ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/ri_prov_foreclosure_and_eviction_ordinances.pdf

⁸²⁶ <http://providenceri.com/efile/230> and <http://providenceri.com/deeds/ForeclosureOrdinance%20Implementation.rtf>

⁸²⁷ <http://www.rib.uscourts.gov/newhome/LossMitigation/040110%20CLEAN.pdf>

⁸²⁸ <http://loanrateupdate.com/mortgages/r-i-judge-upholds-foreclosure-mediation-program>



General Order 11-009, effective December 1, 2011, issued by U.S. Bankruptcy Court Judge Arthur N. Votolato (the sixth modification of the Loss Mitigation Program)⁸²⁹

Sponsorship: U.S. Bankruptcy Court Judge Arthur N. Votolato; applauded by Rhode Island Senator Sheldon Whitehouse⁸³⁰

IMPACT

Judicial/Non-Judicial Foreclosures: Non-Judicial

Number of Foreclosures: Rhode Island had 4942 filings in bankruptcy court in 2011.⁸³¹

Funding: None

Costs: The program is free to parties.

Statistics: None reported

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: The borrower must be a debtor who has filed Chapter 7, 11, 12 or 13 of the Bankruptcy Code.⁸³²

Participants and Participation Requirements: Both parties must have a representative with settlement authority present for the loss mitigation sessions and any status or settlement conferences with the court.⁸³³ Parties have a duty of good faith and may be sanctioned for not participating in good faith.⁸³⁴ There is no mandatory requirement that the borrower make all mortgage payments during the loss mitigation process; however, borrowers must make Chapter 13 plan payments.⁸³⁵

Timeline: The borrower can request loss mitigation by checking Box XIII of the Model Chapter 13 Plan. Within seven days of filing the plan, the borrower must serve the lender and its counsel and file with the court a Notice and/or Request for Loss Mitigation.⁸³⁶ The lender has 14 days to object, and, if the lender does not object, the court then enters a Loss Mitigation Order setting out the guidelines.⁸³⁷ A borrower can also file with the court and serve the lender and its counsel

⁸²⁹ <http://www.rib.uscourts.gov/Docs/GeneralOrders/11-009.pdf>

⁸³⁰ <http://loanrateupdate.com/mortgages/r-i-judge-upholds-foreclosure-mediation-program>

⁸³¹ <http://www.rib.uscourts.gov/newhome/stats.asp>

⁸³² http://www.rib.uscourts.gov/newhome/RulesInfo/flashhelp/Appendix_IX.htm

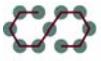
⁸³³ Id.

⁸³⁴ Id.

⁸³⁵ Id.

⁸³⁶ Id.

⁸³⁷ http://www.rib.uscourts.gov/newhome/RulesInfo/flashhelp/Appendix_IX.htm



the Notice and/or Request for Loss Mitigation; the lender has 14 days to object.⁸³⁸ If the lender has filed a motion for relief from an automatic stay, prior to the hearing on the motion the borrower may file a Notice and/or Request for Loss Mitigation to be considered at the time of the motion hearing.⁸³⁹ A lender may also request loss mitigation by filing a Request for Loss Mitigation with the court and serving it on the borrower and borrower’s counsel; the borrower has seven days to object.⁸⁴⁰ Once a Loss Mitigation Order is entered, the lender has seven days to contact the borrower or borrower’s attorney.⁸⁴¹ At least seven days prior to the Loss Mitigation session, the parties will provide requested information.⁸⁴² The parties can request a 90 day extension to the Loss Mitigation period.⁸⁴³

Procedure: The Loss Mitigation Program was designed to include many potential solutions, including loan modification, loan refinance, forbearance, short sale, surrender of the property in full satisfaction, or some combination of same.⁸⁴⁴ Loss mitigation may be initiated by either party or the court at any time.⁸⁴⁵ If there is an objection, the court can hold a hearing on the objection or overrule the objection without hearing if the objection did not include basis for why loss mitigation would not work.⁸⁴⁶ All communications exchanged by the parties during the loss mitigation process are considered inadmissible in subsequent court appearances.⁸⁴⁷ All relevant deadlines, including dates for parties to make contact and exchange information and documents, and the date by which written report on the status of the loss mitigation, must be made to the court. The end date for the loss mitigation period will be included in the Loss Mitigation Order.⁸⁴⁸ The borrower must notify the lender in writing with how they are to be contacted. The lender must provide the borrower with contact information for a representative with settlement authority.⁸⁴⁹ Documents and information can be exchanged via an online portal.⁸⁵⁰ During the initial contact phase, the parties should schedule the loss mitigation session, discuss which types of solution the party is considering, and discuss what information is to be exchanged.⁸⁵¹ The loss mitigation sessions can be in person, via telephone, or via video conference.⁸⁵² The borrower provides the first draft of a status report and sends it to the lender’s attorney at least four business days before it is due to the court; the lenders sends any revisions to the borrower at least one

⁸³⁸ http://www.rib.uscourts.gov/newhome/RulesInfo/flashhelp/Appendix_IX.htm

⁸³⁹ Id.

⁸⁴⁰ Id.

⁸⁴¹ Id.

⁸⁴² Id.

⁸⁴³ Id.

⁸⁴⁴ Id.

⁸⁴⁵ Id.

⁸⁴⁶ Id.

⁸⁴⁷ Id.

⁸⁴⁸ http://www.rib.uscourts.gov/newhome/RulesInfo/flashhelp/Appendix_IX.htm

⁸⁴⁹ Id.

⁸⁵⁰ Id.

⁸⁵¹ Id.

⁸⁵² Id.



business day before the status report is due.⁸⁵³ If the borrower cannot locate the lender's representative or otherwise obtain a joint status report, the borrower can file a solo status report, for which the lender will have 17 days to object.⁸⁵⁴ The status report will inform the court whether loss mitigation sessions had already been held, additional sessions are needed, settlement had been reached, and if an extension to the loss mitigation period is necessary.⁸⁵⁵ If settlement is reached, the parties shall file a written request for approval with the court.⁸⁵⁶ The parties can also request a settlement conference or status conference with the court.⁸⁵⁷

PERSONNEL

Mediators: None

There are no third-party neutrals in this model.

Attorneys: None provided

Housing Counselors: None recommended

Outreach: None

Other Personnel: The Chapter 13 Trustee may be asked by any party to take part in the loss mitigation.⁸⁵⁸ Any party can ask, or the court can direct, that multiple creditors, co-borrowers, or other third parties participate in the loss mitigation.⁸⁵⁹

Notes: In January 2011, Judge Votolato upheld the Loss Mitigation Program after objections were filed by PHH Mortgage Corp. and Ocwen Loan Servicing (servicer of Deutsche Bank National Trust Co.) in two bankruptcy cases.⁸⁶⁰

⁸⁵³ http://www.rib.uscourts.gov/newhome/RulesInfo/flashhelp/Appendix_IX.htm

⁸⁵⁴ Id.

⁸⁵⁵ Id.

⁸⁵⁶ Id.

⁸⁵⁷ Id.

⁸⁵⁸ <http://www.rib.uscourts.gov/newhome/LossMitigation/040110%20CLEAN.pdf>

⁸⁵⁹ http://www.rib.uscourts.gov/newhome/RulesInfo/flashhelp/Appendix_IX.htm

⁸⁶⁰ <http://loanrateupdate.com/mortgages/r-i-judge-upholds-foreclosure-mediation-program>



SOUTH CAROLINA⁸⁶¹

Foreclosure Intervention

INCEPTION

Initiation Date: May 9, 2011

Location: Statewide

Originally Created by: Court Order

Administrative Order No. 2011-05-02-01 of Jean H. Toal, Chief Justice of the South Carolina Supreme Court⁸⁶²

Sponsorship: Jean H. Toal, Chief Justice of the South Carolina Supreme Court; Ira Rheingold, Executive Director of the National Association of Consumer Advocates, quoted in support of the program⁸⁶³

IMPACT

Judicial/Non-Judicial: Judicial⁸⁶⁴

Number of Foreclosures: South Carolina had the 13th highest rate of foreclosures in the country in 2011, with 29,931 properties in foreclosure.⁸⁶⁵

Funding: None

Costs: Each party agrees as to the mediator's compensation.

Statistics: None

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: To qualify, the borrowers must live in the property in question as their principal residence.⁸⁶⁶

⁸⁶¹ <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2011-05-02-01>

⁸⁶² <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2011-05-02-01>;
<http://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=731>

⁸⁶³ http://www.washingtonpost.com/business/economy/ruling-may-slow-foreclosures-in-south-carolina/2011/05/03/AFG8kpiF_story.html

⁸⁶⁴ <http://www.housingwire.com/news/south-carolina-supreme-court-stops-foreclosure-enforcement>

⁸⁶⁵ <http://www.realtytrac.com/content/foreclosure-market-report/south-carolina-foreclosure-activity-down-in-2011-7051>

⁸⁶⁶ <http://www.sccourts.org/selfHelp/FAQMIE.pdf>



Participants and Participation Requirements: Attorneys for the lenders are responsible for coordinating and complying with all document reception requirements.

Timeline: The borrower must file a written response to the complaint within 30 days of receiving it to participate in the Foreclosure Intervention program.

Procedure: For all foreclosures pending on or filed after May 9, 2011, the lender must file with the court and send the borrower notice of the borrower’s right to foreclosure intervention.⁸⁶⁷ If the action was filed prior to May 9, 2011, the Notice of Foreclosure Intervention will be sent by mail; if the action was filed after May 9, 2011, the Notice will be sent with the summons and complaint.⁸⁶⁸ The borrower has 30 days to file a written response to the complaint and Notice of Foreclosure Intervention; if no response is filed the lender’s attorney can file a certificate of failure to participate in the foreclosure intervention process and ask the court for a final merits hearing or trial.⁸⁶⁹ The foreclosure intervention process stays the foreclosure process.⁸⁷⁰ The onus of providing information and facilitating communication regarding the foreclosure intervention process is on the lender’s attorney.⁸⁷¹ Prior to proceeding with foreclosure the lender’s attorney is required to certify to the court that (1) the borrower has been served with the Notice of Foreclosure Intervention; (2) the borrower has reviewed all documents necessary to determine the borrower’s eligibility for foreclosure intervention; (3) the borrower did not meet the requirements for a loan modification and the parties could not agree on another form of loss mitigation; and (4) the borrower was served by mail with a notice informing him or her of the denial of a loan modification or loss mitigation.⁸⁷² The documents, statements, negotiations, and other information communicated during the foreclosure intervention process are protected by the confidentiality provision of Rule 8 of the Court Annexed Alternative Dispute Resolution Rules.⁸⁷³ At any point in the foreclosure intervention process, the court can order the parties to an official mediation, which will be subject to the court ADR⁸⁷⁴ rules.⁸⁷⁵ If the borrower and the lender do reach an agreement, it must be put in writing and served on all the necessary parties.⁸⁷⁶ The court will hear any disagreement on compliance or any agreement reached and can impose sanctions for failure to follow the order or participate in good faith.⁸⁷⁷

⁸⁶⁷ <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2011-05-02-01>

⁸⁶⁸ <http://www.sccourts.org/selfHelp/FAQMIE.pdf>

⁸⁶⁹ <http://www.sccourts.org/selfHelp/FAQMIE.pdf> and

http://www.usfn.org/AM/Template.cfm?Section=USFN_E_Update&Template=/CM/HTMLDisplay.cfm&ContentID=18221

⁸⁷⁰ <http://www.sccourts.org/selfHelp/FAQMIE.pdf>

⁸⁷¹ http://www.usfn.org/AM/Template.cfm?Section=USFN_E_Update&Template=/CM/HTMLDisplay.cfm&ContentID=18221

⁸⁷² http://www.usfn.org/AM/Template.cfm?Section=USFN_E_Update&Template=/CM/HTMLDisplay.cfm&ContentID=18221

⁸⁷³ <http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=8.0&subRuleID=&ruleType=ADR> and

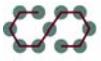
<http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2011-05-02-01>

⁸⁷⁴ <http://courtadr.org/library/view.php?ID=3728>

⁸⁷⁵ <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2011-05-02-01>

⁸⁷⁶ Id.

⁸⁷⁷ Id.



PERSONNEL

Mediators: Attorney Mediators

If mediation is ordered, the mediators will be court-certified neutrals.⁸⁷⁸ Neutrals are attorneys with a minimum of three years of practice and 40 hours of mediation training.⁸⁷⁹

Attorneys: None

Housing Counselors: None

Outreach: Mail Lender

For all foreclosures pending on or filed after May 9, 2011, the lender must file with the court and send the borrower notice of the borrower’s right to foreclosure intervention.⁸⁸⁰ If the action was filed prior to May 9, 2011, the Notice of Foreclosure Intervention will be sent by mail; if the action was filed after May 9, 2011, the Notice will be sent with the summons and complaint.⁸⁸¹

Other Personnel: None

Notes: Senate Bill 702 was introduced on March 17, 2011, to make the mandatory foreclosure mediation law and to set out penalties for fraudulent behavior and abusive practices.⁸⁸²

⁸⁷⁸ <http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=19.0&subRuleID=&ruleType=ADR>

⁸⁷⁹ <http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=19.0&subRuleID=&ruleType=ADR>

⁸⁸⁰ <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=2011-05-02-01>

⁸⁸¹ <http://www.sccourts.org/selfHelp/FAQMIE.pdf>

⁸⁸² <http://springvalley.patch.com/articles/foreclosure-crisis-hearing-set-for-tuesday> and http://www.scstatehouse.gov/sess119_2011-2012/bills/702.htm



VERMONT⁸⁸³

Vermont Foreclosure Mediation Project

INCEPTION

Initiation Date: 2010

Location: Statewide

Originally Created by: Legislation

The Vermont legislature passed 12 V.S.A. §4631-4632 in 2010.

Sponsorship: Vermont Mortgage Bankers Association, Rep. Willem Jewett, Vermont Bar Association,⁸⁸⁴ Vermont Legal Aid, Vermont Volunteer Law Project⁸⁸⁵

IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: In 2009, Vermont had 1,924 foreclosures.⁸⁸⁶ In the first half of 2011, Vermont reported 52 foreclosures filed.⁸⁸⁷

Funding: The servicer pays for the mediation, except for those costs associated with the borrower (borrower's attorney, travel, etc.).⁸⁸⁸

Costs: None for either party

Statistics: None

PROCESS

Opt-in or Opt-out: Opt-in

Eligibility: The program applies to home loans that are subject to HAMP, whether or not the loan has already qualified for a HAMP modification, unless the borrower specifically requests mediation.⁸⁸⁹

⁸⁸³ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

⁸⁸⁴ <http://www.businessweek.com/ap/financialnews/D9EHMV2G0.htm>

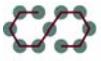
⁸⁸⁵ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

⁸⁸⁶ <http://www.businessweek.com/ap/financialnews/D9EHMV2G0.htm>

⁸⁸⁷ <http://www.realtytrac.com/content/news-and-opinion/foreclosure-activity-in-vermont-down-for-first-half-of-2011-6736>

⁸⁸⁸ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

⁸⁸⁹ <http://www.uvm.edu/consumer/?Page=foreclosure.html>



Participants and Participation Requirements: The lender notifies the Borrower of the option of requesting mediation along with the summons. Borrower must then fill out a request form.⁸⁹⁰ Representation in mediation is not required but is recommended.

Timeline: A mediation may be requested up to four months after the judgment is entered. Upon receipt of a mediation request, the mediator sets the mediation date and alerts the borrower to same and to required documentation to be provided. The borrower must send the requested financial documentation to the mediator at least three weeks prior to the mediation and to the lender at least 20 days prior to the mediation. The mediator must submit a report to the court within seven days of the mediation.⁸⁹¹

Procedure: The redemption period is not stayed by mediation. The lender sends a notice of the opportunity to request mediation along with the summons. Those in foreclosure are recommended to speak with the Vermont Banking's Mortgage Assistance program and a housing counselor at Vermont Home Ownership Center. Once a mediation request is made, the mediator contacts the borrower to inform them of the date of the mediation and to request financial information from them, to be sent three weeks prior to mediation. The program requires lenders to comply with the HAMP program and disclose their HAMP eligibility calculations. The lenders are also supposed to consider all options, including forbearance, modifications and reductions. The lender must produce pooling and servicing agreements if the lender claims it disallows modification. The lender must be able to access electronic records during the mediation. The borrower must send all documentation to the lender within 20 days of the mediation. Mediators must submit a mediator's report to the court and parties within seven days of the mediation. The report must include any calculations used to analyze alternatives and whether the parties operated in good faith. The court may institute sanctions. The judge may send it directly to mediation if the borrower files an appearance, even if she has not requested mediation.

PERSONNEL

Mediators: Attorneys

Mediators must be licensed attorneys and have gone through a Vermont Bar-approved training.⁸⁹² Both parties agree on the mediator.⁸⁹³ They are paid through the lender, but the lender can shift half of the cost to the borrower if there is a surplus sale.⁸⁹⁴ The Vermont Bar maintains a list of approved mediators and the counties they serve.⁸⁹⁵ Advanced training is offered.⁸⁹⁶

⁸⁹⁰ <http://www.vtlawhelp.org/node/838>

⁸⁹¹ http://www.nclc.org/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/vermont_report_form.pdf

⁸⁹² <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

⁸⁹³ <http://www.vtlawhelp.org/node/210#55>

⁸⁹⁴ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

⁸⁹⁵ <https://www.vtbar.org/UserFiles/files/Foreclosure%20Mediators%20for%20website.pdf>

⁸⁹⁶ <https://www.vtbar.org/FOR%20ATTORNEYS/Foreclosure%20Mediation/Mediator%20List%20Information.aspx>



Attorneys: Representation in mediation is not required but is recommended. Vermont Legal Aid and the Vermont Volunteer Law Project offer assistance.⁸⁹⁷

Housing Counselors: Though housing counselors are not supplied, they are recommended.⁸⁹⁸

Outreach: Telephonic

Vermont Legal Aid has been contracted to telephonically contact people who are eligible for the program.

Other Personnel: None

Notes: At the time of this writing, House Bill 600, which would require mandatory mediation in foreclosure proceedings, is stalled in the Rules Committee.⁸⁹⁹ The Department of Financial Regulations formed a study committee during the summer of 2012 to recommend changes to the program to the legislature.⁹⁰⁰

⁸⁹⁷ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

⁸⁹⁸ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

⁸⁹⁹ <http://legiscan.com/gaits/view/381677>

⁹⁰⁰ <https://www.vtbar.org/News/Details.aspx?NewsId=1256>



WASHINGTON

Foreclosure Fairness Act Mediation Program

INCEPTION

Initiation Date: July 21, 2011

Location: Statewide

Originally Created by: Legislation

Legislative Act 132 created a foreclosure mediation program.⁹⁰¹

Sponsorship: The state Foreclosure Prevention Working Group, which included the Attorney General and borrower advocates, made recommendations for a mitigation program.⁹⁰²

Modified by: Legislation

SSB 5988 modified the law to add mediator immunity. The removal of the waiver requirement and the protection for dispute resolution center volunteers is aimed at increasing the speed and number of foreclosure mediations that take place.⁹⁰³

SHB 2614 modified the law to separate the “meet and confer” requirement from the referral to mediation. It also added a requirement that lenders provide a toll-free number for scheduling the meeting. It also extended the timeline during which mediation can be requested, modified the requirements of mediators to conduct an NPV analysis, and increases the mediation training requirement to include experience prior to mediating foreclosure cases.

IMPACT

Judicial/Non-Judicial: Non-Judicial

Number of Foreclosures: In 2010, Washington had over 45,000 foreclosures.⁹⁰⁴ In 2011, Washington had 33,327 foreclosure filings.⁹⁰⁵

Funding: Mediation Fee, Lawsuit Settlement, Grants

Each party pays a fee for the mediation. Of Washington’s share of the nationwide mortgage abuses class action settlement, \$2 million was given to Resolution Washington to fund mediation

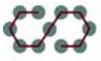
⁹⁰¹ <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Passed%20Legislature/1362-S2.PL.pdf>

⁹⁰² <http://blog.mortgage101.com/2010/02/02/foreclosure-rates-predicted-to-rise-in-2010/>

⁹⁰³ http://www.lakestevenjournal.com/news/article.exm/2011-12-20_senate_bill_protects_the_integrity_of_the_foreclosure_fairness_act

⁹⁰⁴ <http://www.jdsupra.com/post/documentViewer.aspx?fid=75954201-8962-4b89-99cf-033e833ba3a4>

⁹⁰⁵ <http://www.realtytrac.com/content/foreclosure-market-report/washington-foreclosure-activity-down-in-2011-7056>



programs and trainings.⁹⁰⁶ Some community mediation centers in Washington receive funding for the foreclosure mediation program through community foundations.⁹⁰⁷

Costs: Both parties pay equally for mediation. The mediator determines what “reasonable fee” will be charged.⁹⁰⁸

Statistics: In the first three months of the program, more than 600 foreclosures were stayed to allow for mediation to take place.⁹⁰⁹ By December 2011, 771 cases had been referred to mediation.⁹¹⁰ As of April 30, 2012, 364 cases had concluded; 71 of those cases ended with an agreement for the borrower to remain in their home.⁹¹¹

PROCESS

Opt-in or Opt-out: Opt-in

Borrowers seeking to access the mediation program have to be referred by a housing counselor or attorney first.

Eligibility: Borrowers on a mortgage as of July 21, 2011, are eligible, where the borrower is currently living in the property in question.⁹¹² If the lender conducted 250 or more foreclosure sales in the state in the last year, the lenders must comply with the program.

Participants and Participation Requirements: The borrower must appear at mediation. The lender must have a person with authority to modify the loan either present or by telephone.

Timeline: The borrower may be referred to mediation by a housing counselor or attorney any time after receiving the notice of default and no later than 20 days after the notice of trustee sale. Within ten days of the request, the Department of Commerce (DOC) sends a notice about the fees and required documents associated with mediation. Within 23 days of this notice, borrower is required to send documents to the mediator and the lender. Within 20 days of the lender receiving such documents, the lender sends documents to borrower and mediator. The mediator must hold a mediation session within 70 days of the referral to mediation, giving parties 30 days’ notice before the mediation.⁹¹³

Procedure: The lender gives notice of the right to request mediation by letter and telephone 60 days before the lender records a Notice of Default. Before the Notice of Trustee Sale, a housing

⁹⁰⁶ <http://blog.seattlepi.com/boomerconsumer/2012/08/27/groups-that-help-consumers-facing-foreclosure-get-additional-funding-from-settlement-with-five-largest-mortgage-servicers/>

⁹⁰⁷ <http://bbtoday.com/blog/whatcom-dispute-resolution-center-receives-5000-foreclosure-mediation-grant/15466>

⁹⁰⁸ <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Passed%20Legislature/1362-S2.PL.pdf>

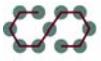
⁹⁰⁹ <http://www.maplevalleyreporter.com/opinion/134542383.html>

⁹¹⁰ <http://www.jdsupra.com/post/documentViewer.aspx?fid=75954201-8962-4b89-99cf-033e833ba3a4>

⁹¹¹ http://blogs.seattleweekly.com/dailyweekly/2012/05/foreclosure_fairness_act_stati.php

⁹¹² <http://www.dfi.wa.gov/consumers/homeownership/pdf/ffa-homeowner-handout.pdf>

⁹¹³ Document on file with author.



counselor or attorney must refer the borrower to mediation via a request to the DOC. Within ten days of receiving the request, the DOC notifies parties, selects a mediator, and sets the mediation. The DOC also instructs the parties on what documentation they must bring to the mediation.⁹¹⁴ The mediator sets a time and place for the mediation.⁹¹⁵ At least three weeks before the mediation, the lender must give the borrower the loan balance, an itemized list of fees and charges, payment history, NPV and loan modification inputs. The borrower must give the lender a financial statement with current and future income, debts and obligations, and the last two years of tax returns. The mediator encourages parties to examine all options, including loan modification, to avoid foreclosure. Often, the mediator will use the FDIC NPV test to give the borrower an idea of eligibility for a loan modification. Within seven days after the mediation, the mediator must certify the mediation results, the parties’ good faith participation, and the proper utilization of the NPV.⁹¹⁶ If the lender fails to mediate in good faith, the borrower may enjoin the foreclosure sale in court.⁹¹⁷

PERSONNEL

Mediators: Community Mediators, Private Mediators

Those who qualify to become foreclosure mediators must be Washington State Bar Association members, employees of HUD-approved housing counseling agencies, employees or volunteers of dispute resolution centers, or retired judges of Washington courts. The Dispute Resolution Centers in Washington all conduct foreclosure mediations.⁹¹⁸ Those who qualify as mediators must attend foreclosure mediation training and must be experienced mediators with a minimum of ten or more completed mediations and either: a minimum of 200 hours of mediation experience; or 60 hours of mediation experience and 40 hours of mediation training.⁹¹⁹ The DOC has laid out the guidelines, including a \$400 flat fee for compensation, which covers the mediator’s costs of preparing for, setting up and facilitating the mediation.⁹²⁰ In December of 2011, the law was changed from requiring the parties to sign of waiver that they would not call the mediator to testify in foreclosure litigation but that the mediator’s certification may be used as evidence, to stating in the law that the mediator is not required to appear as a witness but that the mediator’s certification and other documentation from the mediation can be used in foreclosure litigation by the parties.⁹²¹ The bill also stated dispute resolution center volunteers could not be

⁹¹⁴ <http://www.dfi.wa.gov/consumers/homeownership/pdf/ffa-homeowner-handout.pdf>

⁹¹⁵ <http://www.dfi.wa.gov/consumers/homeownership/pdf/ffa-homeowner-handout.pdf>

⁹¹⁶ <http://www.jdsupra.com/post/documentViewer.aspx?fid=75954201-8962-4b89-99cf-033e833ba3a4>

⁹¹⁷

<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9556&MId=846&wversion=Staging>

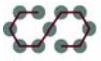
⁹¹⁸ <http://www.bellevuewa.gov/10241.htm>; <http://www.heraldnet.com/article/20110919/NEWS01/709199959>

⁹¹⁹ <http://www.wsba.org/News-and-Events/News/Department-of-Commerce-Foreclosure-Mediation-Training>

⁹²⁰

<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9800&MId=846&wversion=Staging> and <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bill%20Reports/House/2421%20HBA%20JUDI%2012.pdf>

⁹²¹ <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202011/5988-S.SL.pdf>



sued in relation to the mediation, unless the suit was for wanton or willful misconduct.⁹²² In 2012, House Bill 2421 expanded the immunity provision to encompass all foreclosure mediators participating in the program.⁹²³

Attorneys: Pro Bono Attorneys, Law Students

The borrower may be represented by an attorney or other advocate such as a housing counselor, but this is not required. The Northwest Justice Project is a nonprofit representing borrowers, providing information on the process and running a legal aid hotline, CLEAR.⁹²⁴ The Attorney General gave the Access to Justice Institute at Seattle University's College of Law a \$31,000 grant to fund a Pre-Foreclosure Mediation Project run in collaboration with the Ronald A. Peterson Law Clinic to focus on community outreach and provide law students to assist attorneys representing borrowers in foreclosure mediations in Pierce County.⁹²⁵ Law students prepare and represent borrowers in the mediation through the Northwest Justice Project Foreclosure Prevention Unit.⁹²⁶

Housing Counselors: The DOC has a hotline borrowers can call to speak with a certified housing counselor.⁹²⁷

Outreach: Hotline, Events

The Washington Homeownership Resource Center has a free hotline borrowers facing foreclosure can call.⁹²⁸ A foreclosure mediation outreach event at Seattle University's College of Law pairs lawyers and law students to conduct client intake and inform borrowers about the mediation program.⁹²⁹

Other Personnel: The DOC administers the program.⁹³⁰

⁹²² <http://blog.senatedemocrats.wa.gov/hobbs/senate-bill-protects-the-integrity-of-the-foreclosure-fairness-act/>

⁹²³ <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bill%20Reports/House/2421%20HBA%20JUDI%2012.pdf>

⁹²⁴ <http://vimeo.com/37204582> and <http://finlit.blogspot.com/2012/03/video-washington-foreclosure-mediation.html> and

<http://finlit.blogspot.com/2012/03/video-washington-foreclosure-mediation.html>

⁹²⁵ <http://www.law.seattleu.edu/x10637.xml> and <http://www.dfi.wa.gov/consumers/homeownership/pdf/ffa-homeowner-handout.pdf> and

http://www.law.seattleu.edu/Centers_and_Institutes/Access_to_Justice_Institute/Foreclosure_Mediation_Outreach_Project/Events.xml

⁹²⁶ http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~/_/media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/ATJ%20BLC%20Materials/2012/Updates%20and%20Innovation%20Materials%20%20Angeline.ashx and <http://accesstojusticeinstitute.wordpress.com/2012/09/06/thomas-summer-at-the-northwest-justice-projects-foreclosure-prevention-unit/>

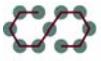
⁹²⁷ <http://www.commerce.wa.gov/site/1367/default.aspx>

⁹²⁸ <http://www.homeownership-wa.org/>

⁹²⁹ <http://accesstojusticeinstitute.wordpress.com/2012/09/11/foreclosure-mediation-outreach-project-community-outreach-event-and-clinic-september-29/>

⁹³⁰

<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9556&MId=846&wversion=Staging>



WISCONSIN

Foreclosure Mediation Program⁹³¹

INCEPTION

Initiation Date: July 2009

Location: County

Milwaukee⁹³² has the first and main program, so it will be the model discussed here; other counties, including Buffalo County,⁹³³ Dane County,⁹³⁴ Kenosha County (which covers both Kenosha and Racine Counties),⁹³⁵ Outagamie County (Green Bay),⁹³⁶ Pepin County,⁹³⁷ Eau Claire County,⁹³⁸ Sheboygan County,⁹³⁹ Winnebago County,⁹⁴⁰ Calumet County,⁹⁴¹ Manitowoc County,⁹⁴² Waushara County,⁹⁴³ and St. Croix County⁹⁴⁴ have local programs that are based on the Milwaukee model. As of this writing, the St. Croix County program is temporarily suspended pending the availability of a new mediator service.⁹⁴⁵

Originally Created by: Court Order

Chief Justice Jeffrey A. Kremers of Milwaukee signed directive 09-14 to start the pilot program.⁹⁴⁶ Other counties' judges have signed similar directives.

Sponsorship: The City of Milwaukee, Attorney General Van Hollen, Marquette University Law School.⁹⁴⁷ The Milwaukee program is currently run by the Milwaukee County Clerk of Circuit Courts.⁹⁴⁸

⁹³¹ <http://www.mediatemilwaukee.com/>

⁹³² <http://www.mediatemilwaukee.com/FAQ.html>

⁹³³ http://www.wisbar.org/AM/Template.cfm?Section=Buffalo_County1#lcr2010_01; see also flier on file

⁹³⁴ <http://www.countyofdane.com/court/prepare/rules.aspx#118>; <http://www.legis.state.wi.us/statutes/Stat0802.pdf>

⁹³⁵ http://www.journaltimes.com/news/local/article_8c5ffb3e-928d-11e0-8b17-001cc4c03286.html and

http://www.journaltimes.com/news/local/article_8c5ffb3e-928d-11e0-8b17-001cc4c03286.html and

<http://www.co.kenosha.wi.us/foreclosure/index.html>

⁹³⁶ <http://law.marquette.edu/foreclosure/images/local-directive.pdf>

⁹³⁷ http://www.wisbar.org/AM/Template.cfm?Section=Pepin_County1#lcr2009_02; see also flier on file

⁹³⁸ <http://www.co.eau-claire.wi.us/CountyDepartments/ClerkOfCourts/docs/ForeclosureMediationGuidelines.pdf>

⁹³⁹ http://www.co.sheboygan.wi.us/html/d_crtclrk_foreclosure_info.html

⁹⁴⁰ http://www.co.winnebago.wi.us/sites/default/files/uploaded-files/Foreclosure_Mediation_Notice_0.pdf

⁹⁴¹ http://www.co.calumet.wi.us/uploads/document/Availability_of_Mediation_1.pdf

⁹⁴² <http://www.co.manitowoc.wi.us/Upload/4/PROGRAM%20DESCRIPTION.pdf>

⁹⁴³ <http://www.co.waushara.wi.us/images/Notice%20Foreclosure.pdf>

⁹⁴⁴ http://www.co.saint-croix.wi.us/index.asp?SEC={01DBD303-BFAB-437F-B1CF-C9632438F2A1}&Type=B_BASIC

⁹⁴⁵ http://www.co.saint-croix.wi.us/index.asp?Type=B_BASIC&SEC={6AC8ED7C-11FB-42AB-8053-24EF548E996E}

⁹⁴⁶ http://www.milwaukeecounty.org/ImageLibrary/Groups/cntyCourts/documents/0914_Foreclosure_Procedures.pdf

⁹⁴⁷ <http://law.marquette.edu/foreclosure/>

⁹⁴⁸ <http://www.mediatemilwaukee.com/>



IMPACT

Judicial/Non-Judicial: Judicial

Number of Foreclosures: Wisconsin had 28,453 foreclosures in 2010.⁹⁴⁹ Milwaukee had 5,800 foreclosure filings in 2009. Wisconsin was 10th in the nation for foreclosures in July of 2011.⁹⁵⁰

Funding: State Agency, Mediation Fee, Settlement Funds

Marquette University Law School received \$310,000 in 2009 from the Wisconsin Department of Justice to start a foreclosure mediation program. The City of Milwaukee and Attorney General J.B. Van Hollen also helped finance the program.⁹⁵¹ After the program changed to the Milwaukee Mortgage Foreclosure Mediation Program (MMFMP), the funding source became the Wisconsin Department of Justice.⁹⁵² The MMFMP requires a \$150 application fee from the borrower; \$125 is refunded if the lender does not agree to mediation.⁹⁵³ If the lender agrees to mediation, it also pays a \$150 fee.⁹⁵⁴ Programs in other counties also utilize the fee structure (i.e. \$100 fee in Kenosha,⁹⁵⁵ Eau Claire,⁹⁵⁶ and Dane⁹⁵⁷ Counties; both the lender and borrower pay \$100 in Manitowoc⁹⁵⁸ and Sheboygan⁹⁵⁹ Counties). Dane County also received a two-year grant of \$25,000 per year from the Wisconsin Department of Justice out of the Countrywide Home Loans settlement monies.⁹⁶⁰

Costs: Each party pays an equal amount, between \$100 and \$150 per party.

Statistics: From program beginning in September 2009 through November 2009, the MMFMP program managed 320 cases. Of those, 172 were scheduled for mediation.⁹⁶¹

PROCESS

Opt-in or Opt-out: Opt-in

⁹⁴⁹ <http://ashlandcurrent.com/article/11/05/16/state-housing-foreclosures-down-first-quarter>

⁹⁵⁰ <http://legalindustrynews.com/7132/mandatory-foreclosure-mediation-a-good-idea/>

⁹⁵¹ <http://legalhelpmilwaukee.org/milwaukee-foreclosure-mediation-program-mission>

⁹⁵² <http://www.mediatemilwaukee.com/>

⁹⁵³ <http://www.mediatemilwaukee.com/FAQ.html>

⁹⁵⁴ <http://www.mediatemilwaukee.com/FAQ.html>

⁹⁵⁵ http://www.journaltimes.com/news/local/article_8c5ffb3e-928d-11e0-8b17-001cc4c03286.html

⁹⁵⁶ <http://www.co.eau-claire.wi.us/CountyDepartments/ClerkOfCourts/docs/ForeclosureMediationGuidelines.pdf>

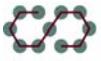
⁹⁵⁷ http://host.madison.com/wsj/business/assessing-the-impact-of-the-dane-county-foreclosure-prevention-taskforce/article_11bc1586-8033-11e1-94be-001a4bcf887a.html

⁹⁵⁸ <http://www.co.manitowoc.wi.us/Upload/4/PROGRAM%20DESCRIPTION.pdf>

⁹⁵⁹ http://www.co.sheboygan.wi.us/html/d_crtclrk_foreclosure_info.html

⁹⁶⁰ http://host.madison.com/wsj/business/assessing-the-impact-of-the-dane-county-foreclosure-prevention-taskforce/article_11bc1586-8033-11e1-94be-001a4bcf887a.html

⁹⁶¹ <http://www.jsonline.com/news/milwaukee/82567662.html>



Eligibility: Only foreclosures on one- to four-unit family residential properties in Milwaukee or Waukesha Counties qualify for the Milwaukee program.⁹⁶² The programs in other counties have the same basic requirement.

Participants and Participation Requirements: The lender must also opt-in to the program. Nothing is specified about who has to be present.

Timeline: The borrower may request mediation within 30 days of receiving the foreclosure summons. Mediation is held 45 - 60 days after the request.

Procedure: The lender attaches a notice announcing the availability of the mediation process to the foreclosure summons and complaint;⁹⁶³ the borrower has 30 days to apply to the MMFMP from receipt of the foreclosure summons and complaint.⁹⁶⁴ Calumet, Dane, Milwaukee, Waushara, and Winnebago Counties have foreclosure mediation request forms online.⁹⁶⁵ If it is the borrower making the request, the request will be vetted for the potential of a positive resolution.⁹⁶⁶ Both the borrower and the lender must agree to mediation, so even if the borrower requests it, the lender can decline to participate. The borrower meets with a housing counselor prior to mediation and brings any requested documentation to the meeting. Mediations are typically scheduled 45 - 60 days after the request for mediation is received. The coordinator collects and distributes borrower and lender information to the other party prior to mediation. Outcomes may be a modification, a graceful exit, or other solution.⁹⁶⁷ The mediation does not stop the foreclosure.⁹⁶⁸

PERSONNEL

Mediators: Volunteer Mediators

Mediators are community members who go through a special training and volunteer to mediate. A Chief Mediator organizes sessions and mediates.⁹⁶⁹

Attorneys: No attorney is required for the borrower. Milwaukee County residents can call The Legal Aid Society of Milwaukee or the Marquette Volunteer Legal Clinic; Waukesha County residents can call the Waukesha Bar Association Lawyer Referral and Information Service.⁹⁷⁰

⁹⁶² <http://www.mediatemilwaukee.com/FAQ.html>

⁹⁶³ <http://county.milwaukee.gov/ImageLibrary/Groups/cntyCourts/documents/12-04ForeclosureProcedures-Ame.pdf>

⁹⁶⁴ <http://www.mediatemilwaukee.com/FAQ.html>

⁹⁶⁵ <http://wilawlibrary.gov/topics/countytopics.php?t=for>

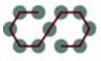
⁹⁶⁶ <http://legalhelpmilwaukee.org/milwaukee-foreclosure-mediation-program-eligibility>

⁹⁶⁷ <http://www.mediatemilwaukee.com/FAQ.html>

⁹⁶⁸ <http://www.indisputably.org/?p=1689>

⁹⁶⁹ <http://www.mediatemilwaukee.com/>

⁹⁷⁰ <http://www.mediatemilwaukee.com/FAQ.html>



Housing Counselors: The borrower is required to meet with a HUD-certified housing counselor prior to mediation.⁹⁷¹

Outreach: Events

Dane County has a bilingual Foreclosure Answer Clinic jointly run by the Dane County Foreclosure Prevention Taskforce, the Dane County Bar Association, and the University of Wisconsin Law School which provides free legal consultations to borrowers.⁹⁷² Dane County also has other resources including a Foreclosure Prevention Specialist and loan modification workshops.⁹⁷³

Other Personnel: A program manager in each county coordinates the mediations. In Milwaukee, this is Metro Milwaukee Mediation, Inc., a private for-profit mediation company contracting with the court.⁹⁷⁴

Notes: In 2011, Senate Bill 511, which would have created a statewide program, failed to pass.⁹⁷⁵

⁹⁷¹ <http://www.indisputably.org/?p=1689> and <http://legalthelpmilwaukee.org/milwaukee-foreclosure-mediation-program-eligibility>

⁹⁷² <http://dane foreclosurehelp.org/2011/10/foreclosure-answer-clinic-a-free-walk-in-legal-resource-thursday-october-6th.html>

⁹⁷³ http://host.madison.com/wsj/business/assessing-the-impact-of-the-dane-county-foreclosure-prevention-taskforce/article_11bc1586-8033-11e1-94be-001a4bcf887a.html

⁹⁷⁴ http://www.mediatemilwaukee.com/uploads/Mediation_Request_Form-FILL_IN_with_rights.pdf

⁹⁷⁵ <https://docs.legis.wisconsin.gov/2011/related/proposals/sb511.pdf>