



**FORECLOSURE MEDIATION IN DEPTH:  
ARTICULATED PURPOSES AND OBJECTIVES FOR FORECLOSURE MEDIATION PROGRAMS  
AS OF JULY 28, 2011  
HEATHER SCHEIWE KULP**

Foreclosure mediation and mitigation programs began appearing in local, state, and national contexts in response to the 2007 foreclosure crisis. As the crisis persists, more states have adopted or are looking to adopt such programs as a way to ensure borrowers and lenders sit down together to discuss the foreclosure at hand.

Resolution Systems Institute has long advocated that mediation programs begin their program development process by establishing clear, articulated goals. This will inform every other part of the program, including the standards by which the program will be evaluated later.

Most legislative or administrative foreclosure mediation programs state purposes behind the creation of the program. Some, even court programs that are supposed to be outcome-neutral, state a particular intended outcome (other than judicial efficiency) for the program. Where available, the administrative order or legislation is cited directly. For programs without such founding documents, an authority on the program is cited. Where a program cites more than one purpose, the citation is included under multiple categories. Note that the stated purposes are from publicly-available sources and may not reflect what is actually happening in the programs. I've categorized states by purpose and included language where relevant:

**No Enumerated Purpose**

California  
Connecticut  
Delaware<sup>1</sup>  
D.C.  
Hawaii<sup>2</sup>  
Maryland<sup>3</sup>  
Oregon

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<sup>1</sup> While the Supreme Court's Administrative Order does not list a purpose, the state legislation moving through the House does state a purpose: "To decrease judicial burden, adverse effect on families, and property value decline." Del. H.B. 58 (2011).

<sup>2</sup> There is no specific statement in the legislation, but public statements indicate the program is "for borrowers" to create an "opportunity for a face-to-face" discussion. Mark Niesse, *Hawaii Foreclosure Overhaul Calls for Mediation*, Honolulu STAR ADVISER, May 2, 2011, *available at* [http://www.staradvertiser.com/news/breaking/20110502\\_Hawaiis\\_foreclosure\\_overhaul\\_calls\\_for\\_mediation.html](http://www.staradvertiser.com/news/breaking/20110502_Hawaiis_foreclosure_overhaul_calls_for_mediation.html)

<sup>3</sup> Interestingly, Maryland's recent (April 2011) revision of the legislation removed the preamble, which had stated that the purpose of the foreclosure mediation program was to "save homes." 2010 Md. Laws Ch. 485, *available at* [http://mlis.state.md.us/2010rs/chapters\\_noln/Ch\\_485\\_hb0472E.pdf](http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf).





## Ensure Communication

*Florida:* “Whereas, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties’ needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened.”<sup>4</sup>

*Kentucky:* “For many homeowners facing foreclosure, connecting with their lenders is difficult. This program arranges an opportunity for homeowners and lenders to meet and communicate about options. The foreclosure process can be bewildering. Having a clear plan to follow will make this process less traumatic and more educational for the homeowners.”<sup>5</sup>

*Massachusetts:* “This ordinance is so important because it requires the banks and the mortgage companies to meet face to face with a homeowner to determine whether a solution can be worked out. The loss of a home is devastating to a family and a neighborhood. Too many times we hear stories from homeowners and they can’t get through to a real person to have a conversation about their situation. Requiring mediation could really make a difference to Boston families – especially during these hard financial times.”<sup>6</sup>

*New Hampshire:* “The Foreclosure Mediation Program (the “Program”) provides a process where lenders and borrowers can work together with an experienced mediator to resolve potential and actual defaults and possible foreclosure of the borrowers’ principal residence.”<sup>7</sup>

*New Jersey:* “While the courts must remain neutral in all foreclosure matters, it is in everyone’s best interest to have a forum where homeowners facing foreclosure have the opportunity to negotiate to save their homes. Our goal is to get lenders and borrowers to meet at the table and work out a mutually beneficial arrangement. I encourage continued cooperation among the courts, lenders, borrowers, and the bar as we address the increasing number of foreclosure actions in New Jersey in today’s difficult economic times.”<sup>8</sup>

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<sup>4</sup> In re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases, Fl. S.C. Admin. Ord. 09-54, 2 (2009), available at [http://www.floridasupremecourt.org/pub\\_info/documents/AOSC09-54\\_Foreclosures.pdf](http://www.floridasupremecourt.org/pub_info/documents/AOSC09-54_Foreclosures.pdf).

<sup>5</sup> Press Release, Foreclosure Conciliation Working Group, Mayor Abramson and Congressman John Yarmuth Announce Foreclosure Conciliation Project (June 30, 2009), <http://www.louisvilleky.gov/Housing/News/2009/>.

<sup>6</sup> *Mayor Menino Files Legislation to Help Homeowners Stay in Their Homes*, BOSTON SENIORITY (City of Boston/Commission on Affairs of the Elderly, Boston, M.A.), Jan. 2011, at 3, available at [http://www.cityofboston.gov/Images\\_Documents/January%20-%20Volume%2035,%20Number%201\\_tcm3-23086.pdf](http://www.cityofboston.gov/Images_Documents/January%20-%20Volume%2035,%20Number%201_tcm3-23086.pdf).

<sup>7</sup> New Hampshire Judicial Branch Program to Reduce Foreclosure, Program Goal, <http://www.courts.state.nh.us/adrp/foreclosure/structure.htm>.

<sup>8</sup> Press Release, New Jersey Courts, Judiciary Announces Foreclosure Mediation Program to Assist Homeowners at Risk of Losing Their Homes (October 26, 2008), available at <https://njcourts.judiciary.state.nj.us/web0/pressrel/2008/pr081016c.htm>.





*New York:* To design a system where lenders and borrowers could participate in a meaningful settlement conference.<sup>9</sup>

*Vermont:* “[T]o assure the availability of mediation and application of the federal Home Affordable Modification Program (“HAMP”) requirements in actions for foreclosure of a mortgage.”<sup>10</sup>

## Improve Efficiency and Timeliness

*Florida:* “Whereas, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties’ needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened.”<sup>11</sup>

*Nevada:* To provide for orderly, timely, and cost-effective mediation.

*New Mexico:* “Authorize and systematize mediation” to “minimize case processing time, save costs and expense for the parties, and assist the parties in resolving the issues.”<sup>12</sup>

*Ohio:* “Mediation will assist courts in managing the explosion of foreclosure cases on their dockets for a more efficient administration of justice while assisting Ohio’s most vulnerable homeowners facing the prospect of losing their homes.”<sup>13</sup>

*Pennsylvania:* The court may “implement case management programs designed to assist the Court and the litigants in the simplification of the issues involved, and to address such other matters which may aid in the timely and efficient disposition of the action.” The program is “designed to provide early Court intervention in residential owner occupied mortgage foreclosure cases which will assure timely determination of eligibility under various federal, state and local programs established to facilitate loan work-out and other solutions to permit residential homeowners, where possible, to retain their properties and permit lenders to move forward to the Sheriff Sale of the properties.”<sup>14</sup>

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<sup>9</sup> Ann Pfau, *2010 Report of the Chief Administrator of the Courts*, N.Y. UNI. Ct. Sys. 3 (2011),

<http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>.

<sup>10</sup> Vt. Stat. Ann. tit. 12, § 4631 (2009).

<sup>11</sup> In re: Final Report, *supra* note 4.

<sup>12</sup> In the Matter of a Foreclosure Mediation ADR Option, N.M. 1st Dist. Admin. Ord. 203, Purpose (2009), *available at* <http://firstdistrictcourt.com/Forms/pdf/Admin%20Order%203.pdf>.

<sup>13</sup> Thomas J. Moyer, Chief Judge, Supreme Court of Ohio, Announcement to Ohio Associated Press (Feb. 7, 2008), *available at* <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>.

<sup>14</sup> Residential Mortgage Foreclosure Diversion Pilot Program, 1st Jud. Dist. Philadelphia Joint Gen. Ct. Reg. No. 2008-01, Intro. (2008), *available at* <http://www.courts.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>.





### Assist Borrowers

*Illinois (Cook County):* To assist borrowers.<sup>15</sup>

*Iowa:* “We are especially motivated to help borrowers because there has been a lot of misconduct by some in the subprime industry.”<sup>16</sup>

*Michigan:* Called the “Michigan Foreclosure Prevention Project.”

*Ohio:* “Mediation will assist courts in managing the explosion of foreclosure cases on their dockets for a more efficient administration of justice while assisting Ohio’s most vulnerable homeowners facing the prospect of losing their homes.”<sup>17</sup>

*Washington:* “[P]rotecting and assisting homeowners from foreclosure” by encouraging homeowners to access housing counselors and create a framework for communication that helps avoid foreclosure whenever possible.<sup>18</sup>

### Stabilize Communities

*Indiana:* “[T]o avoid unnecessary foreclosures of residential properties and thereby provide stability to Indiana's statewide and local economies.”<sup>19</sup>

*Rhode Island:* “The city's purpose in sections 13-213 through 13-217, inclusive, is to protect the public health, safety and welfare by providing early, HUD-approved independent counseling agency-supervised intervention in residential owner-occupied mortgage foreclosure cases which will assure timely determination of eligibility under various federal, state and local programs established to facilitate loan work-out and other solutions to permit residential homeowners, where possible, to retain their properties and permit lenders to move forward to auction/sale of the properties and recordation of a foreclosure deed upon conclusion of the process.”<sup>20</sup>

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<sup>15</sup> Subject: Mortgage Foreclosure Mediation Program, Cook Cty. Gen. Admin. Ord. No. 2010-01 (2010), <http://www.suffredin.org/pdfs/Foreclosure.AdministrativeOrder.2010-01.pdf>.

<sup>16</sup> Press Release, Miller Organizes Mortgage Foreclosure Project to Prevent Flood of Foreclosures, Office of the Iowa Attorney General (Sept. 11, 2007), [http://www.iowa.gov/government/ag/latest\\_news/releases/sept\\_2007/Foreclosure\\_Hotline.html](http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html).

<sup>17</sup> Thomas J. Moyer, *supra* note 13.

<sup>18</sup> Wash. Rev. Code § 2SHB 1362.SL (2011), available at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202011/1362-S2.SL.pdf>.

<sup>19</sup> Indiana Code § 32-30-10.5 (2009), <http://www.in.gov/legislative/ic/code/title32/ar30/ch10.5.html>

<sup>20</sup> Providence, R.I., Code § 13-213 (2009).

