Foreclosure Mediation FAQ

What is Mediation?

Mediation is a dispute resolution process in which an impartial person, a mediator, helps parties negotiate a mutually acceptable settlement. Mediation is non-binding, guided negotiations. Mediators do not decide matters; rather they rely on the ability of the parties to reach a voluntary agreement without coercion.

What is the Mediator's Role?

Mediators are non-judgmental, who listen to the parties and assist and guide the parties toward their own solution by helping them delineate and focus on the important issues and understand each other's interests. Mediators may suggest creative and innovative solutions for the parties to consider. Mediators have no authority to impose an outcome or decide the outcome of a foreclosure action. **Mediators are not permitted to give you legal or financial advice.** Mediators' focus settlement discussions, relay messages, clarifications, questions, proposals and offers and counteroffers back and forth between the parties.

Who are the Mediators?

Mediators participating in the foreclosure mediation program are screened to ensure they have foreclosure mediation training in addition to basic mediation training.

Why Foreclosure Mediation?

Mortgage lenders do not generally want to own houses (especially in the current environment). Lenders are willing to talk with homeowner-borrowers about reasonable, practical solutions to bring about mortgage delinquency resolutions.

How Does Foreclosure Mediation Work?

Upon receipt of this Request for Foreclosure Mediation and Financial Worksheet by the Office of Foreclosure, the material will be distributed to court staff in the local courthouse and to the lender's attorney. Local court staff will assign a mediator to your case and set a date for the mediation when the lender and homeowner-borrower must appear. **Note. A request for mediation does not stay or otherwise delay the foreclosure action.**

What Happens at a Foreclosure Mediation Session?

At the mediation session, you will meet with the mediator, the lender's attorney and a representative of the lender (this person may appear by phone). The mediator will explain his or her role and will organize discussions about what arrangements you and the lender can agree upon that will allow you to keep your home. Commonly, mediators hold private caucuses with each party to (1) focuses each party on the crucial factors necessary for a successful resolution and (2) help each party analyze the strengths and weaknesses of their positions. If the mediation is successful, a foreclosure mediation settlement memorandum will be prepared by the mediator and signed by all parties.

What Are Some Possible Outcomes?

There are a number of possible solutions that you and the lender can explore. The solution will depend upon what you can afford (based on what your income and expenses are), what other resources you have, what type of loan you have, the amount you owe in arrearage and other factors that will be discussed during the mediation. Each lender has a slightly different loss mitigation program. However, every lender will require that you exhibit a reasonable ability to repay the modified monthly mortgage loan payment. If you cannot show ability to pay, then your lender has no incentive to do a workout. The following are some possible solutions:

Reinstatement: Your lender agrees that all amounts required to bring your loan current can be paid (including late fees, attorney fees, taxes, insurance, et cetera) and once these amounts are paid, the foreclosure will be dismissed and you will be back on your regular payment plan.

Repayment Plan: An agreement to resume making your regular monthly payments, plus a portion of the past due payments each month until you are caught up (i.e., the lender raises the monthly payment for a set period of time until the arrears amount is caught up).

Forbearance Agreement: Forbearance agreements are plans that allow borrowers to repay a loan delinquency over time. Regular monthly payments are made according to your loan agreement, and an additional monthly payment is made each month that is applied to the delinquent amount. Once the delinquent amount is paid in full, the normal payment amount resumes. It fully reinstates the loan. A forbearance plan may include one or more of the following features: (a) suspension or reduction of payments for a period sufficient to allow the borrower to recover from the cause of default; (b) a period during which the borrower is only required to make his/her regular monthly mortgage payment before beginning to repay the arrearage; (c) a repayment period of at least six months and (d) allow reasonable foreclosure costs and late fees accrued prior to the execution of the forbearance agreement to be included as part of the repayment schedule. However, they frequently may only be collected after the loan has been reinstated through payment of all principal, interest and escrow advances.

Extension Agreement: This is an agreement in which you pay a portion of the amount of your delinquency, and the remaining portion of the delinquent amount is added on the end of your loan.

Loan Modification: An agreement that permanently changes one or more terms of your mortgage. For example, (1) extend amortization (i.e., extending the number of years you have to repay the loan, such as, converting a 30-year loan to a 40-year loan), (2) converting a sub-prime 2-, 3- 5-, 7-year ARM loan into a fixed rate loan, (3) reducing the mortgage interest rate, (4) adding missed payments to the existing loan balance.

Loan Guarantee Partial Claim: If your mortgage is insured, your lender might help you with a one-time interest-free loan from your mortgage guarantor to bring your account current. You may be allowed to wait several years before repaying this loan.

Time to Refinance: Provided you have a reasonable prospect of arranging to refinance the loan, your lender may agree to some period during which it will not schedule a sheriff's sale.

HOPE for Homeowners Program is a program for borrowers at risk of default and foreclosure and provides new, 30-year, fixed rate mortgages that are insured by the Federal Housing Administration (FHA). Refinancing without the benefit of a government program may be impractical for most homeowners. In today's falling market, home values are often less than the amount of the original loan and refinancing lenders generally will loan no more than 70-80% of the value of the home.

Reverse Mortgage: Reverse mortgages, or home equity conversion mortgage (HECM) loans, are commonly used to help senior citizens tap into their home equity for retirement. As a foreclosure prevention device, you generally need to be age 62 or older and have adequate accumulated home equity.

Principal Reduction: Loan principal is reduced. This may be possible if you have a negative amortization loan (you are paying less than is necessary to full amortize (payoff) the loan during the loan's term) and the lender is willing to reduce principal to the original loan amount. A principal reduction program may be agreed upon in exchange for a shared appreciation mortgage (SAM). A SAM is a fixed rate, fixed term loan. In exchange for a lower interest rate, you agree to give up a portion of the home's future value -- the difference between what it is worth now and what it will be worth in the future.

Principal Forbearance: Forbearance of the repayment of part of the principal interest-free. The actual principal amount due and payable at maturity of the loan (or sale of the property) is the original unmodified principal amount, less any and all periodic principal payments that you make until maturity or sale. The loan payments only partially, not fully, amortize the loan. Contrast with Principal Reduction.

Mortgage Loan Assumption: Most mortgage loans include a “due on transfer” provision. If this provision is waived by the lender, it allows a qualified individual or entity to assume the loan’s payment obligations. This is often used to facilitate the sale of the property to a third party. The original lender may or may not release you from personal liability on the note if the individual or entity assuming the loan’s payment obligation defaults.

Deed in Lieu of Foreclosure: With a deed in lieu of foreclosure, you voluntarily execute a deed conveying your property to the lender in exchange for the lender canceling, in full or partial satisfaction, the debt owed on the loan. The lender often will agree to forgive any deficiency (the amount of the loan that isn’t covered by the sale proceeds) that remains after the house is sold. The lender will also agree not to initiate foreclosure proceedings or to terminate any initiated foreclosure action.

Short sale: A sale for less than what you owe on the mortgage loan. Lenders may allow a home to be sold at a loss (consequently, the term short sale), because a short sale is nonetheless preferable to foreclosure. Foreclosure exposes lenders to potential substantial loss for litigation costs, carrying costs, including real estate taxes and insurance, and low forced sale bids or low resale prices. A short sale may be beneficial when a lender agrees to relieve you of liability for any deficiency (waive suing for a deficiency).

Voluntary Surrender/ Cash for Keys: Lenders may offer homeowners money to leave the home voluntarily without a post-foreclosure judgment eviction, if the house is in relatively good condition and undamaged.

What Happens If a Settlement Is Not Reached?

If mediation is unsuccessful, the foreclosure action will continue, ultimately leading to a sheriff’s sale.