

NEW JERSEY FORECLOSURE MEDIATION



Administrative Office of the Courts
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Introduction

New Jersey faces an unprecedented increase in mortgage foreclosures. The high incidence of foreclosures has had negative financial and social effect on many of New Jersey's communities, with social dislocation, declining housing values, neighborhood blight, homelessness, and a general decline in neighborhood morale and safety.

Court-referred mediation is one important method to foster an open and effective channel of communication between homeowners and lenders. Foreclosure mediation introduces a neutral third party to assist lenders and defaulting homeowners in reaching a satisfactory resolution to their dispute.

Mediation can result in homeowner-mortgagors staying in their homes and affords lenders the opportunity to avoid foreclosure costs and carrying charges and reduce the number of non-performing loans in their portfolio.

The New Jersey Superior Court's Foreclosure Mediation Program is focused on encouraging homeowners to get professional help.

To increase the likelihood that foreclosure mediation is successful, homeowners will be required to provide financial information and documents and work with a HUD-certified housing agency. This assures that homeowners requesting mediation will arrive at the mediation session with relevant information and a viable and practicable workout plan.

Foreclosure mediation will encourage lenders and loan servicers to identify alternatives to foreclosure and to be flexible in modifying loans in such a way that will benefit homeowners while protecting investors' interests.

Description of New Jersey Judiciary's Foreclosure Mediation Program

Mediation will be available to homeowners who have filed an answer and are contesting the foreclosure as well as to homeowners who fail to make a formal appearance and whose cases are uncontested. Foreclosure mediation may be requested up to the time of the sheriff's sale.

An individual homeowner-borrower can participate in the Court's free foreclosure mediation program if the following eligibility conditions are met: (1) the property is an owner-occupied one- to three-family residential property; (2) the property is the homeowner-borrower's primary residence; (3) the homeowner-borrower is the borrower on the mortgage loan being foreclosed and (4) the homeowner-borrower is not in bankruptcy, or, if the homeowner-borrower

has filed for bankruptcy, the petition has been discharged, dismissed or the bankruptcy stay has been lifted to allow the foreclosure to proceed.

To participate in the Court's foreclosure mediation program an individual homeowner-borrower or a HUD/NJHMFA-certified housing counselor must complete and return the Foreclosure Mediation Financial Worksheet and the Mediation Request Statement (individual) or the Mediation Recommendation Statement (housing counselor) along with supporting documents.

If a non-answering homeowner returns to the court a Foreclosure Mediation Financial Worksheet and Mediation Request/Recommendation Form, mediation will be scheduled. The plaintiff can continue to proceed to finalize the action by asking for a foreclosure judgment and writ, notwithstanding a request by an answering or non-answering homeowner for mediation. However, the sheriff's sale will be stayed while mediation is pending.

When homeowners file answers, judges may order mediation as part of the case management conference.

To encourage the greatest participation, no fee will be charged for mediation.

Mediation proceedings will be held at the courthouse in the county of venue. Foreclosure mediation will be available to homeowners of one- to three-family residential properties. The property in foreclosure must be the primary residence of the homeowner and the homeowner must be the borrower.

Certain homeowners may qualify for assistance by a housing counselor certified by the Department of Housing & Urban Development (HUD) and the New Jersey Housing and Mortgage Finance Agency (NJHMFA). Qualifying homeowners will be directed to these housing counselors through a toll free number (below).

A three-step notification process will start with mortgage foreclosure actions filed on or after January 5, 2009. The notice will announce:

- Free foreclosure mediation
- Request for mediation will not stop the progress of foreclosure actions and unless an answer is filed, the plaintiff-lender will proceed to a default judgment and issuance of a writ of execution
- Qualified homeowners will be directed to HUD/NJHMFA-certified housing agencies for help to complete a financial worksheet provided with the notice
- Mediation will be scheduled when a complete foreclosure mediation financial worksheet and a mediation request/recommendation form are returned to the Administrative Office of the Courts.

- Toll Free hotline number 1-888-989-5277
- Directions to the Judiciary's Web site, njcourts.com for additional forms and information.

Homeowners in pending foreclosure actions that have not yet gone to sheriff's sale may seek mediation. When the court has entered the foreclosure judgment and the writ of execution has been issued, but the sheriff's sale has not been held, homeowners will be required to file a motion seeking an order staying the sheriff's sale and directing the case to mediation.

Volunteer mediators, who have received 18 hours of mediation training, will mediate the cases. Basic mediation training will be available for volunteer attorneys who have not received training. One day of foreclosure-specific training and workout alternatives will be required of all mediators in the program. Training is free of charge.

Notices of Mediation Availability

The first notice of the mediation program will be served with the summons and complaint. A second notice will be sent by the Administrative Office of the Courts' (AOC) Central Office to all residential homeowners 60 days after the complaint is filed. A third notice will be attached to the notice of motion for judgment.

The first and third notices will have attached a foreclosure mediation financial worksheet, individual and housing counselor instruction sheets with the mediation request/recommendation form on the reverse side.

The mediation request/recommendation form will include a certification to be signed by the homeowner that the property is his or her primary residence and he or she is not in bankruptcy. It will also include a financial disclosure authorization to permit the court to share the information with the lender or lender's servicer (through the lender's attorney) and a section where the housing agency, if the homeowner qualifies and makes use of a housing counseling agency, may recommend a possible workout solution.

Sixty days after the complaint is filed, the AOC will send a second notification about the availability of mediation for foreclosure cases. This second notice will be in the form of a large postcard.

A third notice will be sent by the plaintiff's attorney with the notice of motion for judgment and proof of amount due.

Event-Triggering Mediation

A foreclosure mediation financial worksheet and request for mediation form that are returned to the AOC's Office of Foreclosure by an individual homeowner or the housing agency on behalf of a homeowner will trigger the process of scheduling mediation. The worksheet will set out the basic biographical information about the homeowner along with assets, income and monthly expenses. Attached to the worksheet will be tax returns, pay stubs, bank statements, and any additional information pertinent to why the delinquency developed. When the court stays a sheriff's sale to permit mediation, the foreclosure mediation financial worksheet and request for mediation form will be returned to the vicinage Civil Complimentary Dispute Resolution (CDR) point person for setting an expedited mediation date.

Mediation Schedule

Vicinage staff will schedule mediation within 90 days of the receipt of the financial worksheet by the Office of Foreclosure. At least 45 days notice of the mediation date will be provided.

Mediation Logistics

Mediation will take place in county courthouses. Special needs such as interpreters or handicapped access must be communicated to the county where the mediation will occur.

AOC's Office of Foreclosure will bundle individual housing agency workout recommendations and associated financial worksheets (with attachments - tax returns, wage statements, *et cetera*). and send them to the appropriate county of venue and the plaintiffs' attorneys.

The notice of mediation will advise the plaintiff's attorney and homeowner of the date, time and location of the mediation. It will inform the homeowner that he/she may bring an attorney or a housing counselor, or both. It will inform the plaintiff's attorney that a representative of the plaintiff-lender or the lender's servicing company with authority to reach a mutually acceptable agreement must be present or available by telephone. Plaintiffs' attorneys must confer with the lender or lender's servicer in advance of the mediation session.

Court Rule Relaxation

Court rules have been relaxed to implement the foreclosure mediation program. These are:

Rule 4:4-4, to require inclusion of a brochure or notice explaining court's mediation program and attachments to be served with foreclosure complaint and summons.

Rule 4:64-1(d), to require that a final notice, advising that mediation is still available, and attachments, be served with the notice of motion for judgment and proof of amount due.

Rule 4:64-1(d), to require a certification for inclusion in judgment package that final notice advising that mediation is still available was served with the summons and complaint and the motion for judgment and proof of amount due.

Rule 4:64-4 (Abandonment of Action by Plaintiff; Right of Defendant to Proceed), to suspend the right of a subordinate encumbrancer to prosecute an abandoned foreclosure action, if the primary mortgagee agrees to a workout in mediation.

Mediator Training

Mediators must have completed a minimum 18 hours of mediation training, as required by Rule 1:40. In addition, all mediators who meet the basic mediation-training requirement will receive one-day foreclosure specific training, which will be offered at no charge by the Office of Dispute Resolution and the AOC. The AOC will also offer, at no charge, 18 hours of mediation training to attorneys who do not meet the basic mediator training requirements of *R. 1:40*.

Mediator Compensation

Mediators may be compensated if funds are appropriated by the Legislature for this purpose.

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