



FORECLOSURE MEDIATION AND MITIGATION PROGRAM MODELS

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DESCRIPTION

The following is a state-by-state guide to alternative dispute resolution mechanisms used to deal with the recent growth in residential foreclosures. Many of the programs use mediation, defined as a negotiation process facilitated by a third-person neutral.¹ Some of the programs use mitigation processes that do not involve a third-person neutral, but are valuable as examples of how jurisdictions with limited resources may make use of alternative processes.

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. I use “borrower” to connote the person who took out the original mortgage.

Any blank categories in the program descriptions indicate that the particular program does not offer those services or, in the case of statistics, has not published any.

ARIZONA

Location: statewide

Name: This new program has no name yet.

Initiation Date: Fall 2011

Created/Governed by: The coordinator is still creating rules for the program.

Judicial/Non-Judicial Foreclosures: non-judicial foreclosures as part of bankruptcy court proceedings

Size: In 2010, Arizona had 100,871 homes foreclosed upon.²

Process: The mediation program will be triggered in bankruptcy court.³

Mediators: Arizona State University Sandra Day O’Connor School of Law Lodestar Mediation Clinic students will co-mediate cases.

Attorneys:

Housing Counselors: The program requires borrowers to have gone through HUD level 2 counseling.⁴

Other Personnel: The coordinator is a clinician at Arizona State University’s Sandra Day O’Connor College of Law.⁵

Funding: A state grant sponsors the program.⁶

¹ There is much debate about whether foreclosure mediation should be considered mediation at all. I recognize the value of the debate, especially as these new “mediation” programs impact traditional court and non-court mediators and mediation processes. For simplicity’s sake, I have chosen to define mediation broadly in the foreclosure context, as a process that involves a negotiation between a lender representative and a borrower, with a third-person neutral party present. This does not imply that the neutral is a professional mediator nor that the program complies with all mediation rules/laws in the jurisdiction. These are major issues that foreclosure mediation must address, but they are beyond the scope of this document.

² American Bar Association Dispute Resolution Section presentation powerpoint on file with author.

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.



Sponsorship: The Arizona Attorney General has sponsored an Arizona Foreclosure Prevention Task Force, which began meeting in August 2009.⁷ The Task Force included lenders, borrower advocates, Arizona Department of Housing representatives, and faculty from Arizona State University's dispute resolution clinic.

Statistics:

Notes:

CALIFORNIA⁸

Location: statewide

Name: Perata Mortgage Relief

Initiation Date: signed July 8, 2008⁹

Created/Governed by: SB 1137¹⁰, the Perata Mortgage Relief Act, now codified at California Civil Code Sections 2923.5 and 2923.6.¹¹

Judicial/Non-judicial Foreclosures: non-judicial

Size: In 2010, California experienced 338,999 foreclosures started and 189,810 foreclosure sales.¹² In the month of March 2011, California had 28,032 Notice of Default filings and 24,397 Notice of Sale filings.¹³

Process: 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. 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.¹⁴ 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.¹⁵ 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.¹⁶ Some federal district courts have ruled that federal law actually pre-empts Perata and therefore, Perata's requirements are null.¹⁷

Mediators:

Attorneys:

Housing Counselors:

Other Personnel:

Funding:

⁷ <http://www.azforeclosureprevention.org/>

⁸ <http://ssl.csg.org/dockets/2010cycle/30Abills/0630a04caforeclosure.pdf>

⁹ <http://www.sfgate.com/cgi-bin/article/article?f=/c/a/2008/07/08/BA3411LL25.DTL>

¹⁰ http://info.sen.ca.gov/pub/07-08/bill/sen/sb_1101-1150/sb_1137_cfa_20080402_090259_sen_comm.html

¹¹ <http://law.onecle.com/california/civil/2923.5.html>

¹² <http://www.foreclosureradar.com/foreclosure-report/foreclosure-report-2010>

¹³ <http://www.foreclosureradar.com/california-foreclosures>

¹⁴ http://www.corp.ca.gov/forms/pdf/CFP_Application_Package.pdf

¹⁵ *Mabry v. Superior Court*, 110 Cal.Rptr.3d 201, 232 (Cal. Ct. App. 2010).

¹⁶ *Id.* at 233.

¹⁷ *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).



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.¹⁸

Statistics:

Notes:

COLORADO¹⁹

Location: Douglas County

Name: Douglas County Housing Partnership Foreclosure Mediation Program

Initiation Date: Spring 2008

Created/Governed by: a partnership between Douglas County and the Douglas County Housing Partnership
Judicial/Non-Judicial Foreclosures: non-judicial public trustee

Size: This program is limited to Douglas County residents.²⁰ Douglas County had an estimated 2500 foreclosures in 2008.²¹ In April 2011, Douglas County had 216 foreclosure filings.²²

Process: 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 home must be owner occupied and be located in Douglas County. The borrower's attorney files a Notice of Election and Demand to the Public Trustee. 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.

Mediators: Douglas County Housing Partnership staff

Attorneys:

Housing Counselors: Douglas County Housing Partnership staff

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

Funding: The borrowers do not pay anything. DCHP and Douglas County Public Trustee's Office established the program as part of an \$800,000 Colorado Division of Housing and Urban Development budget allocation to help with the foreclosure crisis. The administrator of the program and the workshops are funded through a \$75,000 federal grant from NeighborWorks.²³ In 2011, the Colorado Foreclosure Hotline, which refers some borrowers to Douglas County's program, received \$600,000 from the attorney general.²⁴

Sponsorship: Douglas County Housing Partnership and Douglas County Public Trustee's Office developed the program.²⁵

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 20-30 families a month receive one-on-one housing counseling and mediation with their lender.²⁶

¹⁸ <http://democrats.assembly.ca.gov/issues/mortgagecrisis/pdf/SB1137factsheet.pdf>

¹⁹ <http://www.douglascountyhousingpartnership.org/foreclosure.htm>

²⁰ <http://www.douglascountyhousingpartnership.org/foreclosure.htm>

²¹ <http://www.douglascountyhousingpartnership.org/news.htm>

²² <http://www.realtytrac.com/states/Colorado/Douglas-County.html>

²³ <http://www.douglascountyhousingpartnership.org/news.htm>

²⁴ <http://www.credit.com/blog/2011/03/colorado-foreclosure-assistance-program-receives-state-grant/>

²⁵ http://www.douglas.co.us/news/DCHP_Foreclosure_Counseling_Expands.html



Notes:

CONNECTICUT²⁷

Location: statewide

Name: Foreclosure Mediation Program

Initiation Date: 2008, revised 2009, revised and extended June 2011

Created/Governed by: Public Act 08-176²⁸, then revised by Public Act 09-209: An Act Concerning Implementation of the S.A.F.E. Mortgage Licensing Act²⁹, then revised by House Bill 6351 to extend to July 2014³⁰

Judicial/Non-Judicial Foreclosures: judicial

Size: Statewide, there were 26,510 foreclosure cases filed between July 1, 2009, and June 30, 2010.

Process: 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 on or after July 1, 2008, or be a religious organization and have a foreclosure return date of October 2011 or later. The lender sends a notice of the possibility of mediation, a certificate of mediation form, and an appearance form to the borrower. If the borrower files a certificate of mediation and an appearance within 15 days of receiving the summons, a mediation with a court-supplied mediator is scheduled. The mediation is mandatory if both parties have filed an appearance. Documents must be exchanged at least 15 days before mediation. The borrower does not need to bring an attorney. The lender may be represented by counsel and, if so, must be within telephonic contact during the mediation. 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.³¹

Mediators: The mediators are judicial employees, so are paid as part of their job.³² The mediators are trained in foreclosure law, mediation and community services, but are not required to be lawyers.

Attorneys: Some private attorneys specialize in representing people in foreclosure mediation, but no attorneys are part of the program.³³

Housing Counselors: A list of housing counseling services is attached to the summons and borrowers are highly encouraged to access these services.³⁴

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

Funding: The borrowers pay no fees.³⁵ In the first year, Connecticut's State Banking Fund appropriated \$2 million to the Judicial Department to establish and manage the program.³⁶ In 2010, Connecticut's Banking Fund gave the program \$3.3 million.³⁷

²⁶ Statistics from interview with Travis Anderson, Program Administrator, Jan. 18, 2011.

²⁷ <http://www.jud.state.ct.us/external/news/press270.htm>; http://www.jud.state.ct.us/foreclosure/homeowner_qs.htm

²⁸ <http://www.cga.ct.gov/2008/rpt/2008-R-0516.htm>

²⁹ <http://www.cga.ct.gov/2009/act/Pa/pdf/2009PA-00209-R00SB-00948-PA.PDF>

³⁰ <http://cga.ct.gov/2011/fc/2011HB-06351-R000893-FC.htm>

³¹ <http://cga.ct.gov/2011/fc/2011HB-06351-R000893-FC.htm>

³² <http://www.jud.ct.gov/external/news/press270.htm>

³³ <http://www.law.com/jsp/article.jsp?id=1202489201400&slreturn=1&hbxlogin=1>

³⁴ <http://cga.ct.gov/2011/fc/2011HB-06351-R000893-FC.htm>

³⁵ <http://www.jud2.ct.gov/webforms/forms/cv094.pdf>

³⁶ Connecticut Public Act No. 08-176 Sec. 20 (2008).



Sponsorship: The Judicial Branch's Superior Court Operations Unit manages the program.

Statistics: Certificates recognizing the completion of mediation have been filed in 47% (9,865) of the 21,174 mediation-eligible cases as of the end of 2010.³⁸ Of mediations completed, about 67% ended in agreement, with 60% retaining their homes.³⁹

Notes:

DELAWARE⁴⁰

Location: statewide

Name: Residential Mortgage Foreclosure Mediation Program⁴¹

Initiation Date: September 2009

Created/Governed by: 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. 2011-2⁴²

Judicial/Non-Judicial Foreclosures: judicial

Size: Delaware had 4706 foreclosures in 2010.⁴³

Process: Borrowers in one- to four-unit buildings are eligible. They find out about the program through information in the notice of foreclosure or by calling the Attorney General's Foreclosure Hotline. Borrowers must complete an Intake Form and a Foreclosure Intervention Counseling Client's Checklist with a housing counselor or a legal services attorney, then must send it to the lender and Delaware Volunteer Legal Services within 30 days to request mediation.⁴⁴ They then prepare a proposal with the housing counselor under which they can reasonably sustain monthly mortgage payments at 38% of income. If they cannot afford payments at 38% of income, then they do not qualify for the mediation program. Delaware Volunteer Legal Services coordinates the mediation. The proposal is presented to the lender and then is discussed in mediation, which must occur within 60 days of the request.

Mediators: All mediators are attorneys from Community Legal Aid Society providing mediation services pro bono.⁴⁵

Attorneys: 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.⁴⁶

Housing Counselors: Borrowers are required to meet with housing counselors prior to proceeding with mediation. 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.

³⁷ http://articles.courant.com/2011-03-21/business/hc-foreclosure-mediation-0322-20110321_1_foreclosure-cases-banks-committee-mediation-program

³⁸ http://www.jud.ct.gov/statistics/FMP/FMP_graph_2010.pdf

³⁹ <http://www.hartfordbusiness.com/news9913.html>; see also powerpoint on file with author.

⁴⁰ <http://www.deforeclosurehelp.org/mediation.html>; http://www.deforeclosurehelp.org/media/mediation_press_release.pdf

⁴¹ http://deforeclosurehelp.org/media/mediation_press_release.pdf

⁴² http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2011_2.pdf

⁴³ http://deforeclosurehelp.org/media/2010_mort_complaints.pdf

⁴⁴ <http://www.newarkpostonline.com/articles/2011/02/02/news/doc4d49c6f8c9339056595456.txt>

⁴⁵ <http://declasi.org/index.php/foreclosure-mediation>; <http://declasi.org/index.php/component/content/article/31>

⁴⁶ <http://declasi.org/index.php/foreclosure-mediation>





⁴⁷ The housing counselor can also assist the borrower in the initial meeting with the lender and in the mediation itself.⁴⁸

Other Personnel: The Attorney General hosts a foreclosure helpline that links people to the program.⁴⁹

Funding: Proposed House Bill 58 would require the lenders to pay all costs of mediation. It passed the House in May 2011.⁵⁰

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's Office; 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.⁵¹

Statistics: Community Legal Aid Society, Inc., is responsible for keeping statistics, but the Court has not reported these yet.⁵²

Notes: House Bill 58 would amend the program to be mandatory for all foreclosures.⁵³

DISTRICT OF COLUMBIA⁵⁴

Location: district-wide

Name: Saving D.C. Homes from Foreclosure

Initiation Date: October 26, 2010

Created/Governed by: City Council Bill 18-691⁵⁵

Judicial/Non-Judicial Foreclosures: non-judicial

Size: The program has not yet begun, but as of November 2010, there were 3000 foreclosures in process in the District.⁵⁶

Process: Lenders must send a notice of availability of mediation to borrowers with the notice of foreclosure, then must follow up with another letter about the availability of mediation. The lender also sends the notice to the District's Department of Insurance, Securities and Banking.⁵⁷ If borrowers do not opt out of mediation, then lenders and borrowers have 90 days to mediate before finalizing a foreclosure. The District's Department of Insurance, Securities and Banking monitors the program, including ensuring lenders comply with the program requirements. Mediators may charge no more than \$1000, with the borrowers paying at least \$50 of the fee.

⁴⁷ http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2009-3.pdf

⁴⁸ <http://declasi.org/index.php/foreclosure-mediation/fag>

⁴⁹ http://deforeclosurehelp.org/media/mediation_press_release.pdf

⁵⁰ <http://www.delawareonline.com/article/20110511/NEWS02/105110336/Foreclosure-mediation-bills-pass-Delaware-House>

⁵¹ http://deforeclosurehelp.org/media/mediation_press_release.pdf

⁵² http://courts.delaware.gov/Superior/pdf/Administrative_Directive_2011_2.pdf

⁵³ <http://legis.delaware.gov/LIS/LIS146.nsf/vwLegislation/HB%2058?Opendocument>

⁵⁴ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>;

http://www.washingtonexaminer.com/local/D_C_-homeowners-to-get-foreclosure-reprieve-1512275-107000153.html#ixzz14tUqHFQx; http://disb.dc.gov/disr/lib/disr/pdf/foreclosure_mitigation_kit_v9_2.pdf

⁵⁵ <http://www.dccouncil.washington.dc.us/images/00001/20101116105210.pdf>

⁵⁶ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>

⁵⁷ <http://www.housingwire.com/2010/11/18/washington-dc-creates-quasi-judicial-foreclosure-process>





Mediators: The Mediation Administrator contracts with mediators to provide mediation services. The Mayor determines what mediator specifications and qualifications will be.⁵⁸ Mediators may charge no more than \$1000 for the mediation process.

Attorneys:

Housing Counselors: No housing counselors are provided, although the Mediation Administrator recommends that borrowers speak with one prior to mediation.

Other Personnel: The Mediation Administrator appointed by the Commissioner of the Department of Insurance, Securities, and Banking receives an Election to Mediate form from the borrower and arranges the mediation and all other communications between the parties.⁵⁹ The Administrator also reviews mediation reports and keeps statistics of outcomes.⁶⁰

Funding: The program is managed by the District's Department of Insurance, Securities and Banking.⁶¹ The borrower pays a \$50 administration fee to the Department. 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 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.⁶²

Sponsorship: Proposed by Ward 4 Council Member Muriel Bowser and approved by the District Council, the program will be managed by the District's Department of Insurance, Securities and Banking. Very few, if any, stakeholders were included in discussions.⁶³

Statistics:

Notes:

FLORIDA⁶⁴

Location: required statewide, but only seven of 20 circuits were producing statistics by July 1, 2010 (the⁶⁵, 2nd⁶⁶, 3rd⁶⁷, 4th⁶⁸, 11th⁶⁹, 14th⁶⁹, and 19^{th70} districts)⁷¹ and another ten had programs, but were not producing statistics: 5th⁷², 6th⁷³, 7th⁷⁴, 10th⁷⁵, 12th⁷⁶, 13th⁷⁷, 16th⁷⁸, 17th⁷⁹, 18th⁸⁰, and 20th⁸¹

⁵⁸ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209.

⁵⁹ D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209.

⁶⁰ 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

⁶¹ <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111201962.html>

⁶² D.C. Act 18-635 (Dec. 9, 2010), dcregs.dc.gov/Notice/Download.aspx?IssueFileID=13209.

⁶³ <http://www.housingwire.com/2010/11/18/washington-dc-creates-quasi-judicial-foreclosure-process>

⁶⁴ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>.

⁶⁵ http://www.firstjudicialcircuit.org/sites/default/files/document_library/AO2010-01.pdf

⁶⁶ http://image.clerk.leon.fl.us/official_records/download_document.asp?book=4117&page=1420

⁶⁷ http://www.jud3.flcourts.org/admin_orders/Admin_Order_2010-003.pdf

⁶⁸ <http://www.jaxbar.org/rmfmp.php>

⁶⁹ <http://www.jud14.flcourts.org/Administrative%20Orders/2010-00-02.pdf>

⁷⁰ http://www.circuit19.org/documents/Foreclosure/foreclosure_Index.htm

⁷¹ http://www.floridasupremecourt.org/pub_info/documents/Foreclosure/12-28-2010_Foreclosure_Mediation_Report_1.pdf

⁷² <http://www.circuit5.org/ao/A-2010-13.pdf>

⁷³ <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2010/2010-025.htm>

⁷⁴ http://www.floridasupremecourt.org/pub_info/documents/foreclosure_orders/7th_Circuit.pdf

⁷⁵ http://www.floridasupremecourt.org/pub_info/documents/foreclosure_orders/7th_Circuit.pdf





Name: Residential Mortgage Foreclosure Mediation Program

Initiation Date: December 2009

Created/Governed by: Supreme Court order No. AOSC09-54⁸²

Judicial/Non-judicial: judicial

Size: Florida had a backlog of 485,286 foreclosures in 2010.⁸³

Process: All new foreclosure cases involving primary residences will be referred to mediation once Florida's 20 judicial circuits issue administrative orders. Non-primary residences may be eligible if the borrower files a Motion to Compel Mediation and the judge rules in the affirmative on the motion.⁸⁴ Borrowers may opt out after being called by the mediation manager. Borrowers must see a foreclosure counselor to be eligible for mediation. Tenants can opt in to mediation but must share costs with the lender. Mediators must be from non-profit organizations independent of the judiciary branch which can sustain operations without any payment from the courts. The program also requires statewide data collection on mediation outcomes. The mediation manager must schedule a mediation between 60 and 120 days after the foreclosure suit is filed. The mediation manager is responsible for contacting the borrower and explaining the program.

Mediators: Only Florida Supreme Court-certified civil mediators specially trained in residential mortgage foreclosure matters may be assigned to mediate cases referred to a managed mediation program.⁸⁵ No other requirements, including geographic, may be placed on mediators by the provider organization.⁸⁶ A variety of organizations provide the mediations, including the American Arbitration Association, Collins Center for Public Policy and others.

Attorneys:

Housing Counselors: Housing counselors are required before entering mediation, but not paid for by the program.

Other Personnel: The mediation managers must be from non-profit organizations independent of the judicial branch⁸⁷ which can sustain operations without any payment from the courts, be politically and professionally neutral, and have demonstrated the ability to efficiently manage a high volume of mediations. All providers are responsible for receiving referrals to mediation, reaching out to borrowers, assigning mediators, facilitating the exchange of documents between parties, scheduling mediation conferences within designated time frames, and developing procedures for verifying compliance with the managed mediation administrative order issued by the circuit chief judge.⁸⁸

⁷⁶ http://www.floridasupremecourt.org/pub_info/documents/foreclosure_orders/Signed_05-20-2010_12th_Circuit.pdf

⁷⁷ http://www.floridasupremecourt.org/pub_info/documents/foreclosure_orders/13th_Circuit.pdf

⁷⁸ <http://www.keyscourts.net/foreclosure/adminorder3.005.pdf>

⁷⁹ <http://www.17th.flcourts.org/2010-29-Civ.pdf>

⁸⁰ http://www.floridasupremecourt.org/pub_info/documents/foreclosure_orders/18th_Circuit.pdf

⁸¹ <http://www.ca.cjis20.org/home/main/foreclosure.asp>

⁸² <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>

⁸³ <http://www.tampabay.com/news/business/banking/florida-ranks-second-in-number-of-foreclosures-for-2010/1145229>

⁸⁴ <http://smrl.com/foreclosure-101-rmfm/>

⁸⁵ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>

⁸⁶ <http://www.floridasupremecourt.org/clerk/adminorders/2010/AOSC10-57.pdf>

⁸⁷ Local mediation centers existed prior to the foreclosure mediation program to serve the state's other court-connected mediation programs. However, many centers have expanded in response to the foreclosure program's volume. See, e.g.,

<http://www.collinscenter.org/?page=FMMediatorFAQ>

⁸⁸ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>



Funding: The lender pays in stages: part paid at the time the complaint is filed, then the balance paid after mediation is scheduled. Lenders may recover costs if the final judgment is foreclosure, if the case settles prior to mediation, or if the borrowers decline to participate in the program before mediation. Mediation organizations may not charge more than \$750 for program participation.⁸⁹

Sponsorship: After a 2009 Task Force on Residential Mortgage Foreclosure Cases⁹⁰ recommended foreclosure mediation as a response to Florida's high foreclosure rate⁹¹, the Supreme Court adopted a foreclosure mediation program.⁹²

Statistics: Between March and June of 2010, 13,417 files were referred for mediation, 3,341 mediations were scheduled, 2,250 mediations were conducted, 218 ended because one party did not appear, and 768 ended with an agreement by both parties.⁹³

Notes: The poor statistical results of the program have been blamed in large part on borrowers not responding to program administrator phone calls.⁹⁴

Location: Jacksonville, Miami, Pensacola, Fort Myers and the 20th Circuit⁹⁵

Name: Mandatory Florida Pre-Filing Mediation Process⁹⁶

Initiation Date: August 31, 2010⁹⁷

Created/Governed by: Fannie Mae Announcement SVC-2010-13

Judicial/Non-judicial: pre-judicial

Size: Florida had 456,000 foreclosures in 2009.

Process: Fannie Mae-backed mortgages are eligible for this program.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

Mediators: Mediators are from contracted local mediation centers.

⁸⁹ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-54.pdf>

⁹⁰ <http://www.floridasupremecourt.org/clerk/adminorders/2009/AOSC09-8.pdf>

⁹¹ http://www.floridasupremecourt.org/pub_info/documents/Filed_08-17-2009_Foreclosure_Final_Report.pdf

⁹² <http://www.housingwire.com/2009/12/29/florida-supreme-court-adopts-foreclosure-mediation-program>

⁹³ http://www.floridasupremecourt.org/pub_info/documents/Foreclosure/12-28-2010_Foreclosure_Mediation_Report_1.pdf

⁹⁴ <http://www.sun-sentinel.com/news/opinion/editorials/fl-foreclosure-oped0508-20110508.0.348283.story>

⁹⁵ <http://www.news-press.com/article/20110524/BUSINESS/105240346/Foreclosure-mediation-start-area?odyssey=mod|newswell|text|Homelp>

⁹⁶ <https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/flprefilemediationprocess.pdf>

⁹⁷ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

⁹⁸ <http://www.news-press.com/article/20110524/BUSINESS/105240346/Foreclosure-mediation-start-area?odyssey=mod|newswell|text|Homelp>

⁹⁹ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁰⁰ <https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/flprefilemediationprocess.pdf>





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

Housing Counselors:

Other Personnel: A mediation program manager coordinates the mediations.¹⁰¹

Funding: 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.¹⁰²

Sponsorship: Fannie Mae began the pre-filing program in Florida.

Statistics:

Notes:

HAWAII

Location: statewide

Name: Mortgage Foreclosure Dispute Resolution Program¹⁰³

Initiation Date: The program will begin October 1, 2011 and continue until September 30, 2014.

Created/Governed by: Senate Bill 651 (also called Act 48)¹⁰⁴

Judicial/Non-judicial: non-judicial

Size: Approximately 12,425 residences were in foreclosure in 2010.¹⁰⁵

Process: Every lender must file notice of non-judicial foreclosure with the Department of Commerce and Consumer Affairs (DCCA). 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 Consumer Affairs Office. The bank then must participate in the dispute resolution process, under threat of up to \$1500 in sanctions. The foreclosure process is stayed until the parties reach resolution or come to no agreement. The Program allows borrowers to switch from a non-judicial to a judicial foreclosure, but cannot then remain in mediation.¹⁰⁶

Mediators: 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.¹⁰⁷

Attorneys:

Housing Counselors: Borrowers are required to meet with a HUD-approved housing counselor or budget counselor at least 30 days before the mediation.¹⁰⁸

Other Personnel: Department of Commerce and Consumer Affairs will manage the program.¹⁰⁹ The State Judiciary’s Center for Alternative Dispute Resolution will assist with “performance oversight” of personnel and

¹⁰¹ <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁰² <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1013.pdf>

¹⁰³ <http://hawaii.gov/gov/newsroom/in-the-news/help-for-at-risk-homeowners>

¹⁰⁴ http://www.capitol.hawaii.gov/session2011/bills/SB651_CD1_.htm

¹⁰⁵ <http://www.kpua.net/news.php?id=22059>

¹⁰⁶ <http://hawaii.gov/dcca/oah/mfdr/mortgage-foreclosure-dispute-resolution-mfdr-program>

¹⁰⁷ http://www.capitol.hawaii.gov/session2011/bills/GM1150_.PDF

¹⁰⁸ http://www.capitol.hawaii.gov/session2011/bills/GM1150_.PDF

¹⁰⁹ <http://hawaii.gov/dcca/oah/mfdr/mortgage-foreclosure-dispute-resolution-mfdr-program>





monthly status report generation.¹¹⁰

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

Sponsorship: Department of Commerce and Consumer Affairs, Sen. Roslyn Baker, chairwoman of the Senate Consumer Affairs Committee, and many other legislators backed the bill.¹¹¹

Statistics:

Notes: There is concern that the new law has in effect halted foreclosures, as lenders figure out how to implement the program's requirements.¹¹²

Location: Third Circuit¹¹³

Name: Foreclosure Mediation Pilot Program

Initiation Date: November 1, 2009

Created/Governed by: pilot project of Third Circuit Court

Judicial/Non-judicial: judicial

Size: Approximately 12,425 residences were in foreclosure in 2010.¹¹⁴

Process: Borrowers must file a Request for Mediation, then hand-deliver or mail the Request to a foreclosure judge. The appropriate district 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.

Mediators: Local mediation centers receive case referrals from judges after the judges hold judicial conferences with both parties. The Court funds the Centers.¹¹⁵ The mediators are usually attorneys. They are trained in a culturally-sensitive, judicially-recognized model called the "Diamond."¹¹⁶

Attorneys:

Housing Counselors: Meeting with a housing counselor is recommended, but not required, before mediation.¹¹⁷

Other Personnel:

Funding: The Hawaii State Legislature ordered the Judiciary to conduct a feasibility study on future program funding. The Legislature may fund a program attached to the Court's Center for Dispute Resolution or may fund a separate program.¹¹⁸

Sponsorship:

Statistics: From November 2009-June 2010 in the Third Circuit, 31 cases qualified for the Foreclosure Mediation Pilot Program, 27 requests for mediation were received, and 18 judicial conferences were held. Of

¹¹⁰ http://www.capitol.hawaii.gov/session2011/bills/SB651_CD1 .htm

¹¹¹

http://www.staradvertiser.com/news/breaking/20110502_Hawaii foreclosure overhaul calls for mediation.html; <http://www.kitv.com/news/26717446/detail.html>

¹¹² http://www.staradvertiser.com/business/businessnews/20110529_Laws_delay_halts_foreclosures.html

¹¹³ http://www.courts.state.hi.us/news_and_reports/press_releases/2010/01/foreclosure_mediation.html

¹¹⁴ <http://www.kpua.net/news.php?id=22059>

¹¹⁵ http://www.courts.state.hi.us/services/alternative_dispute/about_the_center.html

¹¹⁶ http://www.courts.state.hi.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

¹¹⁷ http://www.state.hi.us/jud/Hawaii/Circuit/3C_Foreclosure_Mediation_Notice.pdf

¹¹⁸ <http://www.capitol.hawaii.gov/session2010/Bills/SCR170 .HTM>





those cases, 12 were ordered to mediation, seven mediations were held and four cases reached agreement. Additionally, five cases were pending.¹¹⁹

Notes: The judiciary did not recommend renewing the program.¹²⁰ Nonetheless, the program was renewed for another year.¹²¹

ILLINOIS

Location: 12th Judicial Circuit (Will County)¹²²

Name: Residential Mortgage Foreclosure Mandatory Mediation Program

Initiation Date: June 2010

Created/Governed by: 12th Judicial Circuit Court Administrative Order 10-08¹²³

Judicial/Non-judicial: judicial

Size: As of December 2010, 11,098 homes were in foreclosure.¹²⁴

Process: 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.¹²⁵ If either party does not appear at the initial pre-mediation meeting, the mediation is terminated.¹²⁶ 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.

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

Attorneys:

Housing Counselors: No housing counseling is offered, though housing counseling is encouraged prior to the pre-mediation session.¹²⁷

Other Personnel: The Circuit Clerk and the Arbitration Center administer the program as part of normal duties.¹²⁸

Funding: Defendants do not pay anything. To finance the program, the Supreme Court has authorized an increase in the filing fees paid by a plaintiff for all foreclosures in the 12th Judicial Circuit from \$276 to \$426. The County Treasurer holds the fee in a fund and disburses it at the order of the Chief Judge.¹²⁹

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,

¹¹⁹ <http://www.karlbayer.com/blog/?p=10748;>

¹²⁰ http://www.courts.state.il.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

¹²¹ http://www.courts.state.il.us/docs/ADA/foreclosure_pilot_project_report_ADA.pdf

¹²² <http://kailua-konahi.thedailyglobe.com/2011/03/16/foreclosure-mediation-program-to-continue/>

¹²³ <http://www.illinoislawyernow.com/2010/06/07/justice-kilbride-chief-judge-kinney-announce-new-foreclosure-mediation-program-for-will-county/>

¹²⁴ <http://willcountycourts.com/mediationadminorder.PDF>

¹²⁵ <http://www.realtytrac.com/trendcenter/default.aspx?address=Will%20county%2C%20IL&parsed=1&cn=will%20county&stc=il>

¹²⁶ <http://willcountycourts.com/mediationadminorder.PDF>

¹²⁷ <http://willcountycourts.com/Residential%20Mortgage%20Foreclosure%20Mediation%20Program.htm>

¹²⁸ <http://willcountycourts.com/Residential%20Mortgage%20Foreclosure%20Mediation%20Program.htm>

¹²⁹ <http://willcountycourts.com/mediationschedule.PDF>

¹²⁹ <http://willcountycourts.com/mediationadminorder.PDF>



to refine and finalize details. He also has discussed the plan with lawyers for lenders and debtors in the community.¹³⁰

Statistics:

Notes:

Location: Circuit Court of Cook County (Chicago)¹³¹

Name: Circuit Court of Cook County Mortgage Foreclosure Mediation Program

Initiation Date: April 8, 2010

Created/Governed by: 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.¹³² It is governed by Cook County Court Rule 21 for chancery mediation programs.

Judicial/Non-judicial: judicial

Size: Lenders filed 51,900 foreclosures in Cook County in 2010.¹³³

Process: 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 HAMP or other federal programs. 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 up to three mediations, where the lender's attorney and a borrower with his/her attorney explore options, including graceful exits and loan modifications.

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.¹³⁴

Attorneys: All borrowers are offered pro bono attorneys from Chicago Volunteer Legal Services.¹³⁵

Housing Counselors: All borrowers must meet with housing counselors as the first step in the mediation program.¹³⁶

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.

Funding: The Cook County Board of Commissioners designated \$3.5 million for this program.¹³⁷

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

¹³⁰ <http://www.illinoislawyernow.com/2010/06/07/justice-kilbride-chief-judge-kinney-announce-new-foreclosure-mediation-program-for-will-county/>

¹³¹ <http://cookcountyforeclosurehelp.org/about/>; <http://suffredin.org/news/newsitem.asp?language=&NewsItemID=4063>

¹³² <http://www.suffredin.org/pdfs/Foreclosure.AdministrativeOrder.2010-01.pdf>

¹³³ <http://www.suntimes.com/3085556-417/arreola-cook-county-foreclosure-2010.html>

¹³⁴ <http://cookcountyforeclosurehelp.org/partners/>

¹³⁵ <http://www.commissionergoslin.com/2010/08/foreclosure-mediation/>

¹³⁶ <http://www.commissionergoslin.com/2010/08/foreclosure-mediation/>

¹³⁷ <http://www.muchshelist.com/foreclosure-mediation-program-in-cook-county-alert.htm>





Statistics: The latest statistics are from April 2011.¹³⁸ The court reports that 9,813 people from the hotline scheduled to meet with housing counselors, 1,820 were scheduled from mediation. 1119 were still in process. 627 mediations were completed, with 402 mediations ending in agreement. Of those with agreements, 216 people have retained their homes.

Notes:

Location: Peoria County

Name: Peoria County Mandatory Residential Mortgagee Foreclosure Mediation Program

Initiation Date: The rule was approved in April 2011.

Created/Governed by: 10th Circuit Administrative Order

Judicial/Non-judicial: judicial

Size: Peoria County had 900 foreclosure cases filed in 2010.¹³⁹

Process: 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 a 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.

Mediators: 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:

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.

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

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

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

Statistics:

Notes: The program is modeled after the Will County program.¹⁴⁰

Location: Madison County

Name: Madison County Residential Mortgage Foreclosure Mediation Program¹⁴¹

Initiation Date: The rule was approved in April 2011.

Created/Governed by: Third Circuit Administrative Order

Judicial/Non-judicial: judicial

¹³⁸ <http://www.dailyherald.com/article/20110503/news/705039801/#ixzz1LP1KRBI5>

¹³⁹ <http://www.peoriacounty.org/?newsAction=single&newsItemId=3225>

¹⁴⁰ <http://www.peoriacounty.org/?newsAction=single&newsItemId=3225>

¹⁴¹ <http://www.madisonrecord.com/news/234844-foreclosure-mediation-program-to-begin-in-madison-county>





Size: Madison County had 1,549 in 2010.¹⁴²

Process: Borrowers in primary residences who want to keep their homes are eligible for the program.¹⁴³ The borrower will receive notice of the availability and a financial questionnaire along with the notice of foreclosure.¹⁴⁴ 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. The mediation program does not stall the foreclosure process. 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 foreclosure case is then dismissed or set for status as determined by the parties' agreement.¹⁴⁵

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.¹⁴⁶

Attorneys:

Housing Counselors:

Other Personnel: An AmeriCorps VISTA attorney will serve as the program coordinator.¹⁴⁷

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

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.¹⁴⁸

Statistics:

Notes:

INDIANA¹⁴⁹

Location: The program is to be statewide by the end of 2011, though each county is responsible for developing its own program.¹⁵⁰ As of January 2011, fifteen circuits have adopted a program on a pilot basis: Allen,¹⁵¹ Bartholomew, Clark, Hamilton, Hendricks, Howard, Lake, LaPorte, Madison, Marion, Martin, Monroe, St. Joseph,¹⁵² Tippecanoe, and Vanderburgh.¹⁵³

Name: Mortgage Foreclosure Trial Court Assistance Project

¹⁴² http://www.stltoday.com/news/local/illinois/article_76615834-4f4b-5808-aec6-dc14046bd2e5.html

¹⁴³ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/05/mediation-request-form.pdf>

¹⁴⁴ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/05/financial-questionnaire.pdf>

¹⁴⁵ <http://madisoncountycircuitcourt.org/cms/wp-content/uploads/2011/05/notice-to-homeowner.pdf>

¹⁴⁶ <http://madisoncountycircuitcourt.org/courts/civil/foreclosure-mediation/>

¹⁴⁷ <http://www.madisonrecord.com/news/234844-foreclosure-mediation-program-to-begin-in-madison-county>

¹⁴⁸ <http://madisoncountycircuitcourt.org/2011/04/madison-county-circuit-court-to-begin-foreclosure-mediation-program/>

¹⁴⁹ <http://www.in.gov/judiciary/admin/mortgage/docs/project-outline.pdf>

¹⁵⁰ <http://www.in.gov/judiciary/admin/mortgage/resources.html>

¹⁵¹ <http://www.in.gov/judiciary/admin/mortgage/docs/flowchart-allen.pdf>

¹⁵² <http://www.in.gov/judiciary/admin/mortgage/docs/flowchart-default.pdf>

¹⁵³ <http://www.in.gov/judiciary/admin/mortgage/resources.html>





Initiation Date: The filing fee went into effect in July 2009.

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

Judicial/Non-judicial: judicial

Size: In March 2010, Allen County, first to operate a program, had 289 foreclosure filings.¹⁵⁴

Process: A notice of the right to a settlement conference is sent to the borrower. 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. 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, Judge Nancy Boyer established a phone line at the Allen County Courthouse dedicated solely to mortgage foreclosure filings. After a foreclosure case is filed, Judge Boyer issues a single-page notice to the borrower, ordering the borrower to contact the court hotline. Those who call speak with court staff 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 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.¹⁵⁵

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).¹⁵⁶

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

¹⁵⁴ <http://www.journalgazette.net/article/20100421/BIZ/304219939/1031/BIZ>

¹⁵⁵ <http://www.in.gov/judiciary/admin/mortgage/docs/project-outline.pdf>

¹⁵⁶ <http://www.in.gov/judiciary/admin/mortgage/docs/project-outline.pdf>





pro bono counsel.¹⁵⁷ So far, over 30 foreclosure training events throughout the state reached over 1,000 judges, lawyers, and mediators.¹⁵⁸

Attorneys: 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.¹⁵⁹ However, an estimated 97% of borrowers are unrepresented at the settlement conference.¹⁶⁰

Housing Counselors: The Program recommends borrowers meet with a state-certified “mortgage foreclosure prevention counselor” who will assist with the financials, but this is not required.¹⁶¹

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.¹⁶²

Funding: 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.¹⁶³ 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.¹⁶⁴

Sponsorship: The Indiana Lieutenant Governor, the Indiana Foreclosure Prevention Network (IFPN) and the Indiana Supreme Court’s Division of State Court Administration (STAD) established the program.¹⁶⁵ Through a Mortgage Foreclosure Task Force, the Indiana Supreme Court, the Indiana Housing and Community Development Authority (IHCDA), Indiana Pro Bono Commission and the Indiana Commission for Continuing Legal Education educate trial court judges and train and recruit volunteer lawyers and mediators.

Statistics: Of 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.¹⁶⁶ Between March and November 2010, the primary program counties reported that 1,491 orders for phone conferences were mailed, 737 phone conferences occurred, and 681 borrowers from those conferences were found to be eligible for in-person settlement conference. From there, 623 conferences were requested, and 541 conferences had taken place so far. About 40% conclude with the borrower remaining in the home, while 9% end in another type of workout.¹⁶⁷

¹⁵⁷ <http://www.in.gov/judiciary/admin/mortgage/resources.html#step3>

¹⁵⁸ <http://www.in.gov/judiciary/admin/mortgage/resources.html>

¹⁵⁹ <http://www.in.gov/judiciary/home/>

¹⁶⁰ <http://www.theindianalawyer.com/court-programs-economy-among-focuses-of-foreclosure-conference/PARAMS/article/25214>

¹⁶¹ <http://www.in.gov/judiciary/home/>

¹⁶² <http://www.in.gov/judiciary/admin/mortgage/resources.html#step3>

¹⁶³ <http://www.in.gov/judiciary/admin/mortgage/resources.html>

¹⁶⁴ <http://www.in.gov/judiciary/admin/mortgage/docs/faq.pdf>

¹⁶⁵ <http://www.in.gov/judiciary/admin/mortgage/resources.html>

¹⁶⁶ <http://www.journalgazette.net/article/20100421/BIZ/304219939/1031/BIZ>

¹⁶⁷ <http://www.theindianalawyer.com/court-programs-economy-among-focuses-of-foreclosure-conference/PARAMS/article/25214>





Notes: Best practices were published in January 2011.¹⁶⁸ SB 582 is on the governor’s desk awaiting signature. It would require an additional notice of the availability of a settlement conference and would allow judges to modify loans.¹⁶⁹ Two counties are piloting an online document exchange system that may become active for all settlement conferences.¹⁷⁰

IOWA¹⁷¹

Location: statewide

Name: Iowa Mortgage Help¹⁷²

Initiation Date: The hotline went live September 11, 2007.¹⁷³

Created/Governed by: Pilot project partnership between Iowa Attorney General Tom Miller and Iowa Mediation Services.¹⁷⁴

Judicial/Non-judicial: non-judicial

Size: About 3% of all owned homes (354,738) in Iowa were in foreclosure by the end of 2010. About 25% of loans were delinquent.¹⁷⁵

Process: This state-wide program is opt-in. Originally, borrowers would call a hotline where they were connected with Iowa Mediation 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, in which case 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 Iowa Mediation Services providing the mediation services, but only if the case is “complex.”

Mediators: Iowa Mediation Services schedules and conducts the mediations.¹⁷⁶ Each lender is charged \$50 for each hour of the mediation.¹⁷⁷

Attorneys: The borrowers are referred to Iowa Legal Aid, which offers services pro bono.¹⁷⁸ 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.¹⁷⁹

¹⁶⁸ <http://www.in.gov/judiciary/admin/mortgage/docs/mortgage-foreclosure-best-practices.pdf>

¹⁶⁹ <http://www.in.gov/legislative/bills/2011/SE/SE0582.1.html>

¹⁷⁰ <http://www.insideindianabusiness.com/newsitem.asp?ID=47101>

¹⁷¹ 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

¹⁷² <http://www.iowamortgagehelp.com/about/trust.cfm>

¹⁷³ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html

¹⁷⁴ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html

¹⁷⁵ <http://blogs.desmoinesregister.com/dmr/index.php/2011/02/17/foreclosure-rate-rises-in-iowa-but-past-due-loans-declining/>

¹⁷⁶ <http://iowamediationservice.com/>

¹⁷⁷ <http://iowamediationservice.com/forms/RVM.pdf>

¹⁷⁸ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

¹⁷⁹ 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





Other Personnel: The Attorney General’s Office deploys a staff person to assist the Hotline and coordinate Hotline work with the A.G.

Funding: The A.G. initially gave Iowa Mediation Services \$4500, won in a fraud settlement against mortgagor Ameriquet, to start the project.¹⁸⁰ In 2008, the AG received a \$1.5 million federal stimulus grant to grow the program through 2009. In 2010, Iowa estimated that about \$750,000 to \$1 million was needed to sustain the program through the end of the year. The A.G. is exploring state legislative action to authorize funding from the Iowa Finance Authority Housing Trust Fund (project-based housing program); state funds from the Governor and Legislature; federal funds; and any other sources to fund the program.¹⁸¹ An unnamed federal grant funds the collaboration currently.¹⁸²

Sponsorship: In 2007, the Iowa Attorney General developed this program in partnership with the Iowa Mediation Services, who had handled the 1980s farm foreclosure crisis mediation program.¹⁸³

Statistics: Between March 2008 and January 2009, the program averaged 69 applicants per week. Through July 2009, it averaged 87 applicants. From July 2009 to January 2010, it averaged 99 applicants.¹⁸⁴ Of borrower participants interviewed, 29% had a modification or other loss-mitigation solution that saved their home, 32% are still in negotiations, 23% received mortgage counseling only, and 15% had a negative outcome, such as loss of home or bankruptcy, or they withdrew from counseling.¹⁸⁵

Notes:

KENTUCKY ¹⁸⁶

Location: Jefferson County (Louisville)

Name: Residential Foreclosure Conciliation Project

Initiation Date: March 30, 2009

Created/Governed by: Jefferson County 30th Circuit Court Administrative Order, under Kentucky Rule of Civil Procedure 16 and Jefferson County Rule of Procedure 1303.

Judicial/Non-judicial: judicial

Size: Jefferson County scheduled 5,229 court-ordered foreclosure sales in 2010, a 19% increase from 2009.¹⁸⁷

Process: This program requires borrowers request conciliation.¹⁸⁸ The borrower will receive a notice of the availability of the conciliation conference soon after the summons. 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. A Master Commissioner holds a conciliation conference before the sale of a one- to four-unit residential property. The process does not halt the foreclosure.¹⁸⁹

Mediators: The Master Commissioner or a deputy commissioner serves as a mediator.¹⁹⁰

¹⁸⁰ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html

¹⁸¹ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

¹⁸² <http://www.iowamortgagehelp.com/about/trust.cfm>

¹⁸³ http://www.iowa.gov/government/ag/latest_news/releases/sept_2007/Foreclosure_Hotline.html

¹⁸⁴ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Mortgage_Help_trends.pdf

¹⁸⁵ http://www.state.ia.us/government/ag/latest_news/releases/mar_2010/Fund_Iowa_Mortgage_Help_Hotline.html

¹⁸⁶ http://s98001.gridserver.com/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/kentucky_admin_order.pdf;

¹⁸⁷ <http://www.courier-journal.com/article/20110113/BUSINESS/301140019/1003/rss03>

¹⁸⁸ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

¹⁸⁹ http://www.realestatedefaultgroup.com/PHR_KYFCProgram.aspx

¹⁹⁰ <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>; http://www.realestatedefaultgroup.com/PHR_KYFCProgram.aspx





Attorneys: Borrowers can request a pro bono attorney if they cannot afford one, though, an attorney is not required for the conciliation conference.¹⁹¹ 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.¹⁹²

Housing Counselors: Housing counselors meet with borrowers to discuss finances and file a Request for Mediation.¹⁹³

Other Personnel: Outreach workers from Making Connections Louisville attempt to contact borrowers in foreclosure.¹⁹⁴ The Master Commissioner of property auctions in the County schedules and hosts the conciliation conferences.¹⁹⁵

Funding: A state grant, funded by the federal stimulus, funds outreach and housing counselors.¹⁹⁶ The Annie E. Casey Foundation funds the remainder of program expenses.¹⁹⁷

Sponsorship: Jefferson County Master Commissioner Daniel T. Albers, The Jefferson County District Court, Kentucky Housing Corporation, and lender firms.

Statistics:

Notes: The program is modeled from Philadelphia's program.¹⁹⁸

MAINE

Location: statewide

Name: Maine Foreclosure Diversion Program¹⁹⁹

Initiation Date: This began with a pilot program in York County from August 2009-December 2009.²⁰⁰ The Rule took effect for all of Maine on January 1, 2010, with properties foreclosed on before then qualifying if the judge elects.

Created/Governed by: Public Law 2009 Ch. 402, An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures²⁰¹

Judicial/Non-judicial: judicial

Size: In 2009, 5,841 foreclosures were filed in Maine.²⁰²

Process: Borrowers with primary residences with four units or fewer are eligible. A lender must give notice to a defaulted borrower that options other than foreclosure include talking to the bank about loan modification and requesting mediation. The Bureau of Consumer Credit Protection then sends out a notice of the availability of mediation to the borrower. The Bureau manages a hotline and contracts with non-profit housing counselors to serve borrowers. The borrower must request mediation. The judge may require parties attend an informational session to review what documents are required. Financial information exchanged is confidential. The Court

¹⁹¹ http://www.martindale.com/real-estate-law/article_Frost-Brown-Todd-LLC_696478.htm; <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>

¹⁹² <http://www.kyequaljustice.org/file/view/FCP--pro+bono+overview.doc>

¹⁹³ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

¹⁹⁴ <http://www.lrc.ky.gov/lrcpubs/RR365.pdf>

¹⁹⁵ http://www.martindale.com/real-estate-law/article_Frost-Brown-Todd-LLC_696478.htm

¹⁹⁶ <http://www.dsnews.com/articles/louisville-kentucky-starts-foreclosure-mediation-pilot-2009-04-08>

¹⁹⁷ <http://www.louisvilleky.gov/Housing/News/2009/>

¹⁹⁸ http://www.realestatedefaultgroup.com/PHR_KYFCProgram.aspx

¹⁹⁹ http://www.courts.state.me.us/court_info/fdp/index.html; <http://www.housingwire.com/2009/07/23/maine-implementing-mandatory-mediation-program>

²⁰⁰ http://s98001.gridserver.com/images/pdf/foreclosure_mortgage/foreclosure_med_prog_by_state/maine_pilot_program.pdf

²⁰¹ http://www.mainelegislature.org/legis/bills/bills_124th/chapters/PUBLIC402.asp

²⁰² <http://bangordailynews.com/2010/10/24/opinion/mainersquos-foreclosures/>





then assigns a mediator. 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. The mediator can refer the borrower to a housing counselor or a mortgage assistance program. 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. 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. The foreclosure will be on hold while the mediation process is pending.²⁰³

Mediators: The Foreclosure Diversion Program trains the mediators. Mediators are compensated at the rate of \$175 per half day and \$300 for a full day.²⁰⁴ Lenders pay \$200 for each mediation session.

Attorneys: The defendant is not required to be represented at the mediation.²⁰⁵

Housing Counselors: Housing counselors are contracted.²⁰⁶

Other Personnel: The Director, who is an officer of the Court, three clerks, and one administrative assistant are paid.²⁰⁷

Funding: The Administrative Office of the Court maintains a fund to support the program.²⁰⁸ The fund receives money from the Maine Revenue Service and from court filing fees (\$150) and mediation fees (\$200) that the lenders pay.²⁰⁹

Sponsorship: Maine Supreme Court

Statistics: The mandatory program mediated 300 foreclosures through June 2010. Of those cases, 39 were resolved and 65 were not. Most of the rest needed more time or forged a temporary agreement.²¹⁰ Participants can get waivers from participating after showing the court the party understands the consequences of waiving participation.²¹¹

Notes:

MARYLAND²¹²

Location: statewide

Name: Maryland’s Foreclosure Mediation Program, part of Maryland’s statewide Home Owners Preserving Equity (HOPE) Program

Initiation Date: The law took effect July 1, 2010.²¹³

Created/Governed by: 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.²¹⁴ It was revised in April 2011 by Chapter 485.²¹⁵

²⁰³ http://www.mainelegislature.org/legis/bills/bills_124th/chapters/PUBLIC402.asp

²⁰⁴ http://www.courts.state.me.us/court_info/fdp/mediators.html

²⁰⁵ http://www.courts.state.me.us/court_info/fdp/home_faq.html

²⁰⁶ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

²⁰⁷ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

²⁰⁸ Sec. 1(12)(A), http://www.mainelegislature.org/legis/bills/bills_124th/chappdfs/PUBLIC402.pdf.

²⁰⁹ http://www.courts.state.me.us/court_info/rules/fees.shtml

²¹⁰ <http://www.kjonline.com/news/Maine-Foreclosure-crisis-impact-attorneys-banks-freeze.html>

²¹¹ http://www.courts.state.me.us/court_info/fdp/home_faq.html

²¹² <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

²¹³ <http://mdhope.org/ForeclosureMediation.aspx>

²¹⁴ http://www.dsd.state.md.us/comar/subtitlesearch.aspx?search=09.03.12.*





Judicial/Non-judicial: judicial

Size: There were 55,629 total foreclosures filed in 2010.²¹⁶

Process: Borrowers are eligible if they live in one- to four-unit primary residences. Along with the summons, the lender must provide information about options available to borrowers, including specific modification programs like the Home Affordable Modification Program (HAMP) and lender-specific programs, and a loss mitigation packet with eligibility guidelines and a description of the foreclosure timeline.²¹⁷ 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. 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.²¹⁸ Once the mediation request is filed, the Court refers it to the Office of Administrative Hearings (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.²¹⁹ The borrower and lender representative must be present. 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.

Mediators: The Office of Administrative Hearings 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.²²⁰

Attorneys: The notice recommends borrowers secure counsel, but it is not required.²²¹

Housing Counselors: No housing counselors are required, though a list is included with the notice.²²² Some of the funds collected for the program go to housing counselors.²²³

Other Personnel: The Office of Administrative Hearings manages the program.²²⁴ The Commissioner of Financial Regulations creates the program's forms.²²⁵

Funding: 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.²²⁶ The Court intended this to cover the costs of the mediation, but they do not have the volume expected.²²⁷

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 sectors.²²⁸

Statistics: Of foreclosure filings from July 2010 to December 2010, 130 mediations were requested.²²⁹ About half resulted in foreclosure avoidance.²³⁰ Between September 2010 and June 2011, 940 mediation requests

²¹⁵ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²¹⁶ <http://www.realtytrac.com/states/Maryland.html>

²¹⁷ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²¹⁸ <http://www.mdhope.org/Foreclosure%20Mediation%20FAQ.aspx>

²¹⁹ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²²⁰ <http://www.oah.state.md.us/foreclosuremediation.asp>

²²¹ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²²² http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²²³ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²²⁴ <http://www.oah.state.md.us/foreclosuremediation.asp>

²²⁵ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²²⁶ http://mlis.state.md.us/2010rs/chapters_noln/Ch_485_hb0472E.pdf

²²⁷ <http://washingtonexaminer.com/local/maryland/md-foreclosure-mediation-low-demand>

²²⁸ <http://www.dhcd.state.md.us/Website/documents/TaskForceReportFinal.pdf>

²²⁹ <http://washingtonexaminer.com/local/maryland/md-foreclosure-mediation-low-demand>





were filed with the Office of Administrative hearings. Loan modifications resulting from mediation numbered 70. More than 200 borrowers have contingent agreements that allow them to stay in their houses until a final resolution is made. In about 140 cases, the homeowners did not show up for their scheduled hearings. Another 80 homeowners were ruled ineligible for the program because of bankruptcy or for other reasons. In 55 cases, the mediation was canceled because the parties reached an agreement prior to mediation. Pending mediations number 190.²³¹

Notes: A very negative view of the program was published the end of June 2011.²³²

MASSACHUSETTS

Location: Boston

Name: Mediation of Mortgage Foreclosures

Initiation Date: Mayor Merino filed the ordinance in December 2010.

Created/Governed by: City Council ordinance Docket #1592, An Act to Facilitate the Mediation of Mortgage Foreclosures of Owner Occupied Residential Real Property in the City of Boston²³³

Judicial/Non-judicial: non-judicial

Size: Boston had 776 foreclosures filed between January and October 2010.²³⁴

Process: A lender must obtain a certificate recognizing completion of mediation with the borrower before the lender forecloses.²³⁵

Mediators: Mediators must be credentialed as if they were applying with the Supreme Court of Massachusetts. They are paid through the lender’s fee.

Attorneys: The borrower can be represented by the person of their choosing, though the representative does not have to be an attorney.²³⁶

Housing Counselors: The borrower is required to see a housing counselor before mediation.

Other Personnel: The city refers foreclosures to a mediation manager from a non-profit organization to schedule and oversee the process.²³⁷

Funding: Banks pay an indeterminate amount for the mediation program. Banks may not pass on their payment to the borrower after the mediation. The borrower pays \$75 to enter the program, but may apply for a hardship waiver.²³⁸

Sponsorship:

Statistics:

Notes: There has been some state legislative momentum to require foreclosures to go through the court system.²³⁹

²³⁰ <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/03/AR2010120302323.html>

²³¹ See email exchange on file with author.

²³² http://www.washingtonpost.com/local/program-to-deter-foreclosures-in-maryland-is-less-successful-than-anticipated/2011/06/30/gHQAaguezH_story.html

²³³ www.maapl.info%2Fuploads%2FBoston_MediationofMortgageForeclosures.doc

²³⁴ <http://goarticles.com/article/Boston-Mayor-Wants-Mediation-Prior-to-Foreclosure/4003400/>

²³⁵ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

²³⁶ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

²³⁷ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

²³⁸ http://www.cityofboston.gov/cityclerk/hearing/upload_pdfs/docket_pdfs/159212122010.pdf

²³⁹ <http://www.bostontenant.org/index.php/pages/page/foreclosure>





MICHIGAN²⁴⁰

Location: statewide

Name: Michigan Foreclosure Prevention Project

Initiation Date: July 5, 2009.

Created/Governed by: House Bill 4454 created the program.²⁴¹

Judicial/Non-judicial: non-judicial

Size: Michigan had 135,874 foreclosures in 2010.²⁴²

Process: 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. The program requires a foreclosure complaint to be accompanied by a list of approved counselors. A debtor has 14 days to contact one of these approved counselors in order to set up a negotiation with his or her lender. The housing counselor may also attend the meeting. The borrower has 90 days to work this out before the foreclosure proceeds.

Mediators:

Attorneys: The notice includes a list of legal aid services, but an attorney is not required to represent the borrower.²⁴³

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.²⁴⁴

Other Personnel:

Funding:

Sponsorship: Community Economic Development Association of Michigan and the Michigan Foreclosure task force, which is composed of banks, housing authorities, community organizations and government officials.

Statistics:

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.²⁴⁵

NEVADA²⁴⁶

Location: statewide

Name: State of Nevada Foreclosure Mediation Program

Initiation Date: 2009

²⁴⁰ http://miforeclosure.mplp.org/advocate_home/

²⁴¹ <http://www.legislature.mi.gov/%28S%28p1p0kb45igvu4cn2ckbdns55%29%29/documents/2009-2010/billintroduced/House/pdf/2009-HIB-4454.pdf>

²⁴² <http://www.realtytrac.com/content/press-releases/record-29-million-us-properties-receive-foreclosure-filings-in-2010-despite-30-month-low-in-december-6309>

²⁴³ <http://www.legislature.mi.gov/%28S%28p1p0kb45igvu4cn2ckbdns55%29%29/documents/2009-2010/billintroduced/House/pdf/2009-HIB-4454.pdf>

²⁴⁴ <http://www.legislature.mi.gov/%28S%28p1p0kb45igvu4cn2ckbdns55%29%29/documents/2009-2010/billintroduced/House/pdf/2009-HIB-4454.pdf>

²⁴⁵ http://www.cedam.info/pdfs/mftf/MFTF_2011.PDF

²⁴⁶ 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>.



Created/Governed by: 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.²⁴⁷

Judicial/Non-judicial: non-judicial connected to the judiciary

Size: One in 11 Nevada homes received a foreclosure filing in 2010, a total of 106,160 homes.²⁴⁸

Process: The borrower must have a primary personal residence (no limit on the number of units). 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 10 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 who is an employee of the Administrative Office of the Courts. The designated mediator must schedule the mediation within 45 days of receiving notice. The lender may participate telephonically with previous approval. If any party is mediating in bad faith, the other party may request judicial review within 15 days.

Mediators: Senior Judges, Supreme Court Settlement Judges, hearing masters or other attorneys conduct the mediations. The pool of mediators may also include non-attorneys with extensive mediation experience. The mediators schedule the mediations.²⁴⁹ Mediators are paid \$400 per session.²⁵⁰

Attorneys: Borrowers can have an attorney or housing counselor with them, but this is not required.²⁵¹ Legal Aid of Nevada provides free classes once a week and has assisted hundreds of homeowners through these classes.²⁵²

Housing Counselors: Housing counselors are available and are funded through the Court's program.²⁵³

Other Personnel: The Administrative Office of the Court administers the program with 12 staff members.²⁵⁴ The Mediation Administrator is charged with keeping statistics on the program and reporting them online.²⁵⁵

Funding: Both parties have to pay \$200 to participate in the mediation, which goes directly to the mediator.²⁵⁶ The Court keeps funds and allocates them for housing counseling, program administrators, etc.

Sponsorship: The program was a partnership led by the Nevada Supreme Court.

Statistics: One source says that from July 2009 to January 2010, 3,890 of the 38,277 Nevada homes in foreclosure requested mediation and of those, 1,821 were assigned mediators and 877 mediations were completed.²⁵⁷ Another source says that from September 2009 through September 2010, 6,021 mediations have

²⁴⁷ http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf

²⁴⁸ <http://www.realtytrac.com/content/press-releases/record-29-million-us-properties-receive-foreclosure-filings-in-2010-despite-30-month-low-in-december-6309>

²⁴⁹ <http://www.nevadajudiciary.us/index.php/foreclosure-faqs>

²⁵⁰ http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf

²⁵¹ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/function/download/1937/chk.a6d803ebac40623bc5981f0bb7056f04/no_html.1/

²⁵² <http://www.8newsnow.com/story/15062677/homeowners-get-help-combating-foreclosure>

²⁵³ <http://www.nevadajudiciary.us/index.php/foreclosuremediation/846-nevada-foreclosure-mediation-grants-extend-help-to-homeowners-nearly-300000-in-program-funding-awarded-for-education-projects>

²⁵⁴ <http://www.nevadajudiciary.us/index.php/adminoverview>

²⁵⁵ http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB300_R1.pdf

²⁵⁶ http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/function/download/1937/chk.a6d803ebac40623bc5981f0bb7056f04/no_html.1/

²⁵⁷ <http://www.lvrj.com/news/few-take-part-in-foreclosure-mediation-82038592.html>





taken place and 66% of them resulted in an agreement.²⁵⁸ Recently, reports indicate that 37% of borrowers who participate end up staying in their homes.²⁵⁹

Notes: Nevada has had a few court challenges as a result of the programs.²⁶⁰ 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.²⁶¹ 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.²⁶²

NEW HAMPSHIRE²⁶³

Location: statewide

Name: Foreclosure Mediation Program

Initiation Date: January 2010²⁶⁴

Created/Governed by: the authority of the Court Office of Mediation, under Rule 170

Judicial/Non-judicial: judicial

Size: In December 2010, 4,861 New Hampshire homes were in foreclosure.²⁶⁵

Process: The borrower must be an occupant of a single- to four-family home. To opt in to the program, the borrower must print out and return a screening form from the New Hampshire Court website. Upon receipt of an eligibility screening form from the borrower, the lender determines whether the borrower, who may be at risk for a loan default resulting in foreclosure, is eligible for the mediation program. Only borrowers whom the lenders consider eligible for a restructured loan are then sent to mediation. Documents must be exchanged before the mediation. Mediation is free to both parties. The Court's Office of Mediation arranges the mediation. The lender may participate telephonically. The mediator is trained in mediation and foreclosure law. Only one mediation session is allowed. All mediation is confidential. The foreclosure proceeding is not stayed.

Mediators: The mediators are judicial branch contract mediators.²⁶⁶ They are paid by the Office of Mediation and Arbitration (OMA).²⁶⁷

Attorneys: None are offered, though it is "strongly suggested" that borrowers obtain counsel. Legal aid websites are included on the Foreclosure Mediation Program page.²⁶⁸

Housing Counselors:

Other Personnel: The New Hampshire Judicial Branch OMA established the program and added it to the job description of the OMA Director. The OMA is self-funded.²⁶⁹ Lenders evaluate borrowers for program eligibility. The OMA schedules the mediations.²⁷⁰

²⁵⁸ <http://abcnews.go.com/Business/wireStory?id=12597429&page=1>

²⁵⁹ <http://www.newstimes.com/news/article/Legislators-hope-new-laws-slow-Nevada-foreclosures-1437472.php>

²⁶⁰ <http://www.lvri.com/opinion/foreclosure-mediation-119462054.html?ref=054>

²⁶¹

http://www.lvri.com/blogs/lvlegalnews/Mondays_high_court_arguments_include_first_foreclosure_mediation_appeal.html?ref=479

²⁶² http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB300_R1.pdf

²⁶³ <http://www.courts.state.nh.us/adrp/foreclosure/faq.htm>

²⁶⁴ http://www.boston.com/news/local/new_hampshire/articles/2010/01/12/nh_launches_foreclosure_mediation_program/

²⁶⁵ <http://www.realtytrac.com/trendcenter/default.aspx?address=NH>

²⁶⁶ <http://www.courts.state.nh.us/adrp/foreclosure/faq.htm>

²⁶⁷ <http://www.courts.state.nh.us/adrp/foreclosure/structure.htm>

²⁶⁸ <http://www.courts.state.nh.us/adrp/foreclosure/faq.htm>

²⁶⁹ <http://www.nhbar.org/publications/archives/display-news-issue.asp?id=5484>

²⁷⁰ <http://www.courts.state.nh.us/adrp/foreclosure/index.htm>





Funding: There is no cost to either party for the mediation. The program is funded by the New Hampshire Housing Finance Authority, the New Hampshire Charitable Foundation and the Oleander Jameson Trust.²⁷¹

Sponsorship: The New Hampshire Judicial Branch Office of Mediation and Arbitration established the program.

Statistics: New Hampshire has had 102 cases referred to mediation, with 23 being closed without mediation. Of those mediated, 14 reached settlement and 61 are still “in the pipeline.”²⁷²

Notes:

NEW JERSEY²⁷³

Location: statewide

Name: New Jersey Judiciary’s Foreclosure Mediation Program

Initiation Date: After the Judiciary announced its intention to start a statewide program, Gov. Jon Corzine signed a legislative appropriation to support it in 2008.²⁷⁴

Created/Governed by: Legislation passed during the 2008 session after a pilot program in Middlesex showed success.²⁷⁵

Judicial/Non-judicial: judicial

Size: In 2009, New Jersey had 62,775 foreclosure filings.²⁷⁶

Process: Only residences of one to three units qualify. Mediation is mandatory for borrowers that contest the foreclosure, optional for those who do not contest the foreclosure, and is an option for borrowers that fail to appear, resulting in a default judgment. The notice is sent three times to the borrower. Mediation can be requested up to the Sheriff’s sale. To request, the borrower must work with a housing counselor to prepare HUD paperwork and a Request for Mediation for the court. Foreclosure will not be stayed, but Sheriff’s sale will be. Mediation is free. Training for the volunteer mediators, who do not have to be attorneys, is free. They must take a day-long course in relevant foreclosure law and complete 18 hours of training. They may be paid if funds are appropriated. A Civil Complementary Dispute Resolution coordinator manages the flow of cases. The first mediation is scheduled within 90 days of the office’s receipt of financial information from the borrower. The office will send documents from borrower to lender.

Mediators: Mediators are neutral volunteers.²⁷⁷ 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.²⁷⁸ For the initial launch, the judiciary trained 700 mediators.²⁷⁹

Attorneys: Pro bono representation for the borrowers is considered part of the program if borrowers qualify for free legal aid under current income guidelines.²⁸⁰

²⁷¹ http://www.boston.com/news/local/new_hampshire/articles/2010/01/12/nh_launches_foreclosure_mediation_program/

²⁷² Shawne K. Wickham, NH foreclosure mediation program sees limited success: 14 settlements, N.H. Sun. News, July 17, 2011, available at <http://www.unionleader.com/article/20110717/NEWS02/707179975>.

²⁷³ 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>

²⁷⁴ <https://njcourts.judiciary.state.nj.us/web0/pressrel/2008/pr081016c.htm>;
<http://www.nj.gov/oag/newsreleases09/pr20090109a.html>

²⁷⁵ <https://njcourts.judiciary.state.nj.us/web0/pressrel/2008/pr081016c.htm>

²⁷⁶ http://www.nj.com/business/index.ssf/2010/01/nj_sees_29_percent_year-end_ju.html

²⁷⁷ https://njcourts.judiciary.state.nj.us/web0/civil/foreclosure/11289_foreclosure_mediation_faq.pdf

²⁷⁸ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

²⁷⁹ <http://www.nj.gov/oag/newsreleases09/pr20090109a.html>





Housing Counselors: Once a borrower contacts the hotline and learns they are eligible, they are referred to a housing counselor.²⁸¹ The program has funded and trained 21 housing counseling agencies around the state.²⁸²

Other Personnel: A Civil Complementary Dispute Resolution coordinator at the Civil Practice Division schedules the mediations.²⁸³

Funding: The program is free for parties.²⁸⁴ It was created through a \$12.5 million appropriation from the state legislature.²⁸⁵ \$12 million went to training housing counselors and attorneys. \$500,000 went to the judiciary.²⁸⁶

Sponsorship: The program is a joint effort of the Judiciary, the Office of 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.²⁸⁷

Statistics: The program began in early 2009. As of January 2010, the program had mediated 1,300 cases. About half resulted in borrowers staying in their homes.²⁸⁸

Notes:

NEW MEXICO²⁸⁹

Location: First Judicial Circuit (Santa Fe)

Name: Foreclosure Mediation Option in the Court ADR Pilot Program

Initiation Date: April 30, 2009

Created/Governed by: First District Administrative Order No. 2009-00001²⁹⁰

Judicial/Non-judicial: judicial

Size: Santa Fe County experienced more than triple the foreclosure sales in the first six months of 2010 as in the first six months of 2009, at 77 and 23 respectively.²⁹¹

Process: A notice of possibility of mediation comes with the summons. Any party can request a referral to foreclosure mediation. Referral orders require mediation sessions to be scheduled within 60 days of entry of the order. Parties are required to exchange extensive information prior to the mediation session. The plaintiff is required to designate a representative with settlement authority to attend the session either in person or telephonically. The defendant borrower is required to meet with a HUD-approved housing counselor prior to session.

Mediators: Mediators are attorneys with foreclosure experience or training who are on the court's ADR settlement facilitator list, which pre-dated this program.²⁹² Mediators are paid \$500 for a four-hour session.²⁹³

Attorneys: None are offered and few appear with a borrower.²⁹⁴

²⁸⁰ <http://www.nj.gov/foreclosuremediation/right-for-you.html>

²⁸¹ <http://www.nj.gov/foreclosuremediation/steps.html>

²⁸² http://www.state.nj.us/dca/hmfa/home/foreclosure/pdf/foreclosure_prevention_in_nj.pdf

²⁸³ http://www.judiciary.state.nj.us/civil/foreclosure/11290_foreclosure_med_info.pdf

²⁸⁴ http://www.judiciary.state.nj.us/civil/forms/11284_fm_available.pdf

²⁸⁵ http://www.state.nj.us/dca/hmfa/home/foreclosure/pdf/foreclosure_prevention_in_nj.pdf

²⁸⁶ <http://www.nj.gov/oag/newsreleases09/pr20090109a.html>

²⁸⁷ <http://newjersey.realestaterama.com/2009/01/12/statewide-mortgage-foreclosure-mediation-program-launched-ID0191.html>

²⁸⁸ http://www.nj.com/business/index.ssf/2010/01/nj_sees_29_percent_year-end_ju.html

²⁸⁹ <http://firstdistrictcourt.com/Forms/pdf/Admin%20Order%203.pdf>

²⁹⁰ <http://firstdistrictcourt.com/Forms/pdf/Admin%20Order%203.pdf>

²⁹¹ <http://www.santafenewmexican.com/SantaFeNorthernNM/Foreclosures--Santa-Fe-County-sees-a-surge>

²⁹² <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

²⁹³ <http://firstdistrictcourt.com/Forms/pdf/Motion%20for%20Free%20or%20Reduced-Cost%20Settlement%20Facilitation.pdf>





Housing Counselors: Borrowers are required to see a HUD-approved housing counselor before proceeding with mediation.²⁹⁵

Other Personnel: The court’s Constituent Services Director in the ADR office administers the program.²⁹⁶

Funding: The pilot program is part of a broader ADR pilot initiative in the court and as such, administrative costs are part of the court’s regular budget. Parties pay equal shares for mediation, but parties who can’t afford it may request free or reduced-cost mediation.²⁹⁷

Sponsorship: United South Broadway Corp., First Judicial District Court, Court Constituent Services (ADR)

Statistics: About 40% of borrowers appear at the voluntary status conferences before voluntary mediation.²⁹⁸

Notes:

NEW YORK

Location: statewide²⁹⁹

Name: Mandatory Residential Foreclosure Settlement Conference

Initiation Date: Began as a pilot in 2008; extended to all one-to-four unit residences in late 2009.³⁰⁰

Created/Governed by: The New York legislature passed Chapter 507 of 2009 after a successful pilot program governed by Chapter 472 of 2008. Civil Practice Law and Rules § 3408 provides the guidance for procedure.³⁰¹

Judicial/Non-judicial: judicial

Size: A judicial report in November 2010 states that 77,815 foreclosures were pending in New York in 2010.³⁰²

Process: 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 judge. 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 judge 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.³⁰³

Mediators: Judicial Hearing Officers or Referee Attorneys hold the settlement conferences. Judges are available if needed.³⁰⁴

Attorneys: Free legal services are available for those who qualify. 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.³⁰⁵ About 37% of borrowers appear with counsel.³⁰⁶

Housing Counselors: Borrowers are strongly encouraged to see a housing counselor prior to mediation.³⁰⁷

²⁹⁴ LinkedIn exchange with Pilar, a mediator in the New Mexico program.

²⁹⁵ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

²⁹⁶ <http://firstdistrictcourt.com/Forms/pdf/ADR-No.2009-01.pdf>

²⁹⁷ <http://firstdistrictcourt.com/Forms/doc/How%20to%20use%20the%20Court%20ADR%20Program.doc>

²⁹⁸ <http://albuquerqueadr.blogspot.com/2011/02/limitations-and-concerns-related-to.html>

²⁹⁹ http://www.nycourts.gov/litigants/foreclosures_overview.shtml; <http://www.banking.state.ny.us/hetpinf6.htm>

³⁰⁰ <http://www.propublica.org/article/new-york-state-foreclosure-mediation-shows-glimmers-of-hope-in-helping-home>

³⁰¹ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

³⁰² <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

³⁰³ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

³⁰⁴ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

³⁰⁵ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

³⁰⁶ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>





Other Personnel: A case manager in the court schedules all conferences.

Funding: The Division of Housing and Community Renewal provides extensive funding for housing counselors, attorney training, and court programs. The budget was increased by \$25 million for 2010 (no data found for what it was prior to this increase).³⁰⁸

Sponsorship: New York State Assembly, Chief Office of the Courts

Statistics: The state-wide program is required for all foreclosures. From June 1 to July 31, 2009, there were 795 settlement conferences. Settlements occurred in 21 of these conferences. Of these, six were loan modifications, six were temporary forbearances, five were continued, and four outcomes could not be determined.³⁰⁹ A November 2010 report states that 89,093 settlement conferences (some cases get multiple conferences) were held in 2010.³¹⁰ Of those, 4,062 cases settled. 10,866 borrowers did not appear for the scheduled conferences.³¹¹

Notes:

OHIO³¹²

Location: statewide

Name: Foreclosure Mediation Program Model

Initiation Date: 2008

Created/Governed by: 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. One 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.³¹³ By December 16, 2011, 86 of 88 counties had programs.³¹⁴ New Chief Justice Eric Brown pledged that all 88 counties would have foreclosure mediation in the next few years.³¹⁵

Judicial/Non-judicial: judicial

Size: In the first quarter of 2010, Ohio had 24,711 foreclosures filed.³¹⁶ Ohio had 130,879 foreclosure cases in 2009.³¹⁷

Process: 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 borrower. The Mediation Department then sends a form to the borrower and the lender to be completed in 14

³⁰⁷ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

³⁰⁸ <http://newyork.realestaterama.com/2009/12/15/governor-paterson-signs-comprehensive-foreclosure-legislation-into-law-ID0941.html>

³⁰⁹ <http://ezinearticles.com/?Report-Reveals-Foreclosure-Settlement-Conference-Program-a-Failure-in-New-York-City&id=3589415>

³¹⁰ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

³¹¹ <http://www.propublica.org/documents/item/2010-report-of-the-chief-administrator-of-the-courts>

³¹² <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/foreclosureMediation.pdf>

³¹³ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

³¹⁴ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/ForeclosureCtyContact.pdf>

³¹⁵ http://www.huffingtonpost.com/jeff-coryell/ohio-homeowners-in-forecl_b_766203.html

³¹⁶ http://www.cleveland.com/open/index.ssf/2010/06/ohio_foreclosure_legislation_s.html

³¹⁷ <http://www.supremecourt.ohio.gov/publications/annrep/09OCS/2009OCS.pdf>





days. The Mediation Department then determines whether mediation is appropriate and tells the court and the parties. If appropriate, the mediator will send a Notice of Mediation to both parties. The mediators are employees of the court but do not have to be lawyers or judges. Over 1,100 lawyers have volunteered to either represent borrowers or serve as mediators. The proceeding is confidential. There is one mediation session. After the mediation, all parties complete evaluations.

Mediators: The mediators are contractors with the court and do not have to be lawyers or judges. They must be trained in basic mediation (a minimum of 12 hours), foreclosure mediation (offered by the Supreme Court of Ohio), and the Uniform Mediation Act (a minimum of two hours).³¹⁸

Attorneys: The borrower can bring whomever the borrower wants to the mediation, including a pro bono attorney. The program trains these attorneys, but does not coordinate them to represent borrowers; borrowers must contact the attorneys directly if wanted.³¹⁹ 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.

Housing Counselors: The Ohio Supreme Court recommends, but does not mandate, the use of housing counselors prior to mediation.³²⁰ Some counties (e.g., Franklin) require borrowers meet with housing counselor.³²¹

Other Personnel: The Mediation Department manages the program and provides support for circuits that adopt the Model.

Funding: In some counties, the Board of Commissioners has provided funding for the program, including Franklin County (9,107 homes in foreclosure in 2010³²²), 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).³²³ 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 mediations.³²⁴

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.

Statistics: The optional mediation program is state-wide, with some local variance. As local examples, Stark County had over 3000 foreclosures filed in 2008 after the program was instituted in March, with 367 going to mediation and half of those ending in settlement.³²⁵ Franklin County had 9,368 foreclosures in 2010, 1892 cases were referred to mediation, and 1373 mediations were conducted. Of those, 279 ended in agreement and

³¹⁸ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

³¹⁹ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

³²⁰ <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

³²¹ <http://www.franklincountyohio.gov/commissioners/homeowner-helpline/assets/pdf/request-for-mediation.pdf>

³²² http://www.dispatch.com/live/content/local_news/stories/2011/01/19/foreclosures-fall-in-franklin-county.html?sid=101

³²³ <http://www.franklincountyohio.gov/fc/content/press/boc10-28-08.cfm>

³²⁴ Ohio Revised Code Chapter 2303.201(E)(1).

³²⁵ <http://www.cantonrep.com/news/x2081096350/Foreclosures-keep-Stark-County-courts-sheriff-busy>





279 were still pending.³²⁶ Cuyahoga County had 3296 cases of 12,051 total foreclosures referred to mediation in 2010. Of those, 2376 mediations were held, with 1459 ending in a settlement. So, 44% of cases referred to mediation ended in agreement.³²⁷

Notes:

OREGON³²⁸

Location: statewide

Name: Foreclosure Notice Requirement

Initiation Date: 2009; the program will end January 2, 2012.

Created/Governed by: Senate Bill 628³²⁹

Judicial/Non-judicial: non-judicial

Size: In January 2010, 22,653 Oregonians were in foreclosure or at least 90 days delinquent on their loans.³³⁰

Process: Lenders are required to send out a notice of availability to meet to the borrowers with the summons. Borrowers then have 30 days to request an in person or telephonic meeting with the lenders to discuss loan modification options. If the borrowers request it, the lenders must comply. Borrowers may also work with a non-profit housing counselor to request a modification. No loan modification is required, but the lender must file an affidavit with the county recorded stating the lender’s compliance with the requirement.

Mediators:

Attorneys:

Housing Counselors: Borrowers may request a meeting with the lender through a housing counselor, but this is not required.

Other Personnel: The Division of Finance and Corporate Securities administers the program.

Funding: No funds were appropriated for this program.

Sponsorship: Senator Bonamici, Representative Holvey, Senator Walker, Representative Kahl³³¹

Statistics:

Notes:

Location: Mediators are available in Ashland, Eugene, and Portland. Efforts are being made to recruit mediators in Bend and other Eastern Oregon areas.³³²

Name: Court-Sponsored Foreclosure Mediation Panel

Initiation Date:

Created/Governed by: Local Rule 16-4, the regular civil procedure ADR rule³³³

Judicial/Non-judicial: judicial

³²⁶ <http://www.dispatch.com/live/export-content/sites/dispatch/data/nocat/stories/2011/05/15/mediation-art0-gf0cm2d8-10515gfx-mediation-franklin-county-eps-large.jpg>

³²⁷ Powerpoint from Kathryn W. Hexter, Cleveland State University, on file with author.

³²⁸ http://oregon.gov/DCBS/foreclosurehelp/new_law.shtml; <http://www.cbs.state.or.us/dfcs/ml/hb3630.html>

³²⁹ <http://www.leg.state.or.us/09reg/measpdf/sb0600.dir/sb0628.en.pdf>

³³⁰ http://www.oregonlive.com/business/index.ssf/2010/07/oregon_foreclosure_rate_falls_2.html

³³¹ <http://www.leg.state.or.us/09reg/measpdf/sb0600.dir/sb0628.en.pdf>

³³² <http://www.ord.uscourts.gov/alternative-dispute-resolution/court-sponsored-foreclosure-mediation-panel>

³³³ <http://www.ord.uscourts.gov/alternative-dispute-resolution/court-sponsored-foreclosure-mediation-panel>





Size: In January 2010, 22,653 Oregonians were in foreclosure or at least 90 days delinquent on their loans.³³⁴

Process: Any party with a case pending in federal court that involves foreclosure may request the case be referred to the mediation panel.³³⁵

Mediators: Mediators, who come from the court’s pre-approved panel and must be attorneys admitted to the federal practice for at least five years,³³⁶ will mediate up to two cases for free. Otherwise, parties can agree on the mediator rate.³³⁷

Attorneys:

Housing Counselors: Borrowers may request a meeting with the lender through a housing counselor, but this is not required.

Other Personnel: The Division of Finance and Corporate Securities administers the program.

Funding: No funds were appropriated for this program.

Sponsorship: The U.S. District Court for the District of Oregon

Statistics:

Notes:

PENNSYLVANIA

Location: Philadelphia;³³⁸ The Supreme Court recently asked all counties that didn’t have a foreclosure mediation program to develop one.³³⁹ Other counties with programs include Allegheny,³⁴⁰ Bucks,³⁴¹ Butler,³⁴² Fayette,³⁴³ Lackawanna,³⁴⁴ Northampton³⁴⁵ and Somerset.³⁴⁶

Name: Residential Mortgage Foreclosure Pilot Diversion Program

Initiation Date: April 2008

Created/Governed by: The First Judicial District of Philadelphia and the Court of Common Pleas of Philadelphia County issued Joint General Court Regulation No. 2008-01 in 2008.³⁴⁷

Judicial/Non-judicial: judicial

Size: Philadelphia had 8,552 foreclosure filings in 2009.³⁴⁸

Process: Only residential properties of four units or fewer are eligible. The conciliation conference is mandatory for all eligible parties before a judicial sale can proceed. First, a Case Management meeting occurs within 45 days of the summons filing. Then the defendant must to call a hotline. The parties can meet with HUD-paid

³³⁴ http://www.oregonlive.com/business/index.ssf/2010/07/oregon_forclosure_rate_falls_2.html

³³⁵ <http://ord.uscourts.gov/local-rules-of-civil-procedure/lr-16-pretrial-conferences-scheduling-and-case-management>

³³⁶ <http://www.ord.uscourts.gov/local-rules-of-civil-procedure/lr-16-pretrial-conferences-scheduling-and-case-management>

³³⁷ <http://www.ord.uscourts.gov/alternative-dispute-resolution/court-sponsored-foreclosure-mediation-panel>

³³⁸ Some notes are on file with RSI.

³³⁹ http://www.philly.com/inquirer/local/pa/20100913_Pa_foreclosure_mediation_urged.html

³⁴⁰ <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202423950217>

³⁴¹ <http://www.lasp.org/news/post/bucks-county-starts-foreclosure-program>

³⁴² <http://www.pabulletin.com/secure/data/vol39/39-40/1829.html>

³⁴³ <http://www.pabulletin.com/secure/data/vol40/40-14/583.html>

³⁴⁴ <http://www.pabulletin.com/secure/data/vol39/39-24/1055.html>

³⁴⁵ <http://www.nccpa.org/mfdp/>; <http://www.nccpa.org/mfdp/MFDP-Order.pdf>; <http://www.lehighvalleylive.com/northampton-county/index.ssf?/base/sports-0/123622950726330.xml&coll=3>

³⁴⁶ <http://www.pabulletin.com/secure/data/vol40/40-13/549.html>

³⁴⁷ <http://www.courts.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>

³⁴⁸ http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf





housing counselors. Documents must be exchanged prior to conciliation. 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 at the first conciliation session. Foreclosure is stayed pending the conciliation. Outreach to borrowers is critical to this program. Referral to conciliation happens during call, which is one day a week, and thus makes it difficult for pro bono respondent attorneys to file legal challenges before conciliation. If an elderly person is a borrower, additional social services are provided.

Mediators: 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.³⁴⁹ For the original pilot program of 700 cases, six judges were trained.³⁵⁰

Attorneys: The conciliator identifies whether the borrower is represented and, if not, may appoint an attorney to represent the borrower.³⁵¹ 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.³⁵²

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.

Other Personnel:

Funding: The City of Philadelphia, through a Community Development Block Grant, funds \$340,000 for the hotline that schedules people for free housing counseling.³⁵³ It also provides Community Legal Services with \$350,000 to consult with borrowers.³⁵⁴

Sponsorship: Philadelphia Court of Common Pleas, local housing advocates, the City of Philadelphia and the County Sheriff's Office.³⁵⁵

Statistics: The program began in April 2008. As of December 2008, outreach workers made more than 3,000 visits to 2,400 properties. 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. Of the 2,331 households who participated in a conciliation conference, 2,270 avoided foreclosure, 603 resolved with the lender (stayed or had a graceful exit), 244 averted by bankruptcy, and 1,423 postponed mediation to talk with a housing counselor.³⁵⁶ As of July 2009, 5,000 borrowers participated, 1,400 foreclosures were averted, and 700 sheriff's sales were postponed.³⁵⁷ As of December 16, 2010, unofficial court reports show there have been more than 13,000 conferences, resulting in borrowers maintaining 2,500 and 3,000 homes outright. About 3,500 to 4,000 homes were under temporary modifications. Conciliators have 110 cases once a week, hearing cases in both the morning and afternoon.³⁵⁸ As of June 2011, over 15,000 cases have been referred to the program. 70% of cases are eligible for the program. About 30% of borrowers do not appear at the scheduled conference. About 20% of conferences end with agreement. 2% of cases end in bankruptcy. 12% of cases end with a

³⁴⁹ <http://fd.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>

³⁵⁰ <http://www.courts.state.ny.us/whatsnew/pdf/ResidentialForeclosure6-08.pdf>

³⁵¹ <http://fd.phila.gov/pdf/regs/2008/cpjgcr-2008-01.pdf>

³⁵² http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf

³⁵³ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

³⁵⁴ http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3594&wit_id=7481

³⁵⁵ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

³⁵⁶ <http://www.phila.gov/rda/residential%20mortgage%20foreclosure%20diversion%20program.htm>

³⁵⁷ <http://debtorsadvocate.wordpress.com/2009/07/01/philadelphia-floreclosure-diversion-programs-success-story/>

³⁵⁸ http://articles.philly.com/2010-12-16/news/25292682_1_stu-bykofsky-walruses-philadelphia-lawyers





sheriff's sale. 3% of cases end with no agreement. 22% of cases ordered are still pending. The rest defaulted.³⁵⁹

Notes:

RHODE ISLAND³⁶⁰

Location: Providence (main program), other municipalities have programs in bankruptcy court

Name: City Ordinance³⁶¹

Initiation Date: November 2009

Created/Governed by: The City Council passed an ordinance in 2009³⁶², although Deutsche Bank challenged the constitutionality of the action. The superior court upheld the ordinance (May 17, 2010).³⁶³ Deutsche Bank withdrew any objections.³⁶⁴

Judicial/Non-judicial: non-judicial

Size: In Providence, foreclosures doubled from 303 in 2006 to 718 in 2007. In 2008, Providence had 1158 foreclosures.³⁶⁵

Process: The city's recorder of deeds will not accept a foreclosure filing if the lender does not take certain steps. The lender must notify the city of its intent to foreclose on the property at the same time it notifies the borrower. After filing the notice, the lender and borrower must schedule a counseling conference no later than 30 days after mailing the notice. If the borrower does not respond after two attempts by the counseling conference coordinator, the counseling agency will authorize the lender to move ahead with the foreclosure proceedings. The bank may be sued for up to \$2000 if the bank fails to notify the borrower of the foreclosure possibility.

Mediators: The Conciliation Coordinator is in a HUD-approved housing agency, but cannot be the same person as the housing counselor. If this person charges a fee, the lender must pay it and not pass the cost on to the borrower at any time.³⁶⁶

Attorneys:

Housing Counselors: A HUD-approved housing counselor must provide the borrower counseling before the conference. If this person charges a fee, the lender must pay it and not pass the cost on to the borrower at any time.

Other Personnel: The Recorder of Deeds is the government point person for any questions.³⁶⁷

Funding: Any costs for the counseling and conciliation conference are borne by the lender. The lender must also pay a \$2000 fine if they do not comply with the conference requirements.³⁶⁸

Sponsorship: city council

³⁵⁹ http://www.trfund.com/resource/downloads/policypubs/Foreclosure_Diversion_Initial_Report.pdf

³⁶⁰ <http://www.housingwire.com/2010/01/12/providence-fines-lenders-2000-in-foreclosure-mediation-law>

³⁶¹ www.providenceri.com/deeds/ForeclosureOrdinance%20Implementation.rtf

³⁶² Sec. 13-213, <http://library.municode.com/index.aspx?clientID=11458&stateID=39&statename=Rhode%20Island>.

³⁶³ <http://www.ethnicnewz.org/en/ri-superior-court-upholds-providence-homeowner-rights-vs-foreclosures>

³⁶⁴ <http://www.meetthe112th.com/latest-news/no-end-to-foreclosures-on-homes/>

³⁶⁵ http://www.unitedtrustees.com/enews/pdf/Foreclosure_Ordinance.pdf

³⁶⁶ <http://cityof.providenceri.com/efile/230>

³⁶⁷ <http://cityof.providenceri.com/efile/230>

³⁶⁸ http://www.unitedtrustees.com/enews/pdf/Foreclosure_Ordinance.pdf





Statistics: Originally, it was mandatory — no deed from a lender could be recorded until the lender and borrower went through the conciliation conference.³⁶⁹ However, this provision was overturned in court. Now, if lenders do not complete the conference, they must pay a \$2000 fine.³⁷⁰

Notes: Other litigation about this program has resulted in the program being upheld.³⁷¹

VERMONT³⁷²

Location: statewide

Name: Vermont Foreclosure Mediation Project

Initiation Date: 2010

Created/Governed by: The Vermont legislature passed 12 V.S.A. § 4631-4632 in 2010.

Judicial/Non-judicial: judicial

Size: In 2009, Vermont had 1924 foreclosures.³⁷³

Process: The program applies to home loans that are subject to President Obama’s Home Affordable Mortgage Program (HAMP), whether or not the loan has already qualified for a HAMP modification, unless the borrower specifically requests mediation.³⁷⁴ 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. Representation in mediation is not required but is recommended. 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 servicers to comply with the HAMP program and disclose their HAMP eligibility calculations. The servicers are also supposed to consider all options, including forbearance, modifications and reductions. The servicer must produce pooling and servicing agreements if the servicer claims it disallows modification. The servicer must be able to access electronic records during the mediation. The borrower must send all documentation to the servicer 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. A mediation may be requested up to four months after the judgment is entered. The judge may send it directly to mediation if the borrower files an appearance, even she has not requested mediation.

Mediators: Mediators must be licensed attorneys and have gone through a Vermont Bar-approved training.³⁷⁵ Both parties agree on the mediator.³⁷⁶ They are paid through the lender, but the lender can shift half of the cost to the borrower if there is a surplus sale.³⁷⁷

³⁶⁹ http://www.unitedtrustees.com/enews/pdf/Foreclosure_Ordinance.pdf

³⁷⁰ Lanphear, *Deutsche Bank v. City of Providence* (Providence Sup. Ct. 2010).

³⁷¹ <http://stopforeclosurefraud.com/2011/01/30/rhode-island-bk-judge-upholds-mediation-program-in-re-sosa-in-re-lawton/>

³⁷² <http://www.uvm.edu/consumer/?Page=foreclosure.html>

³⁷³ <http://www.businessweek.com/ap/financialnews/D9EHMV2G0.htm>

³⁷⁴ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

³⁷⁵ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

³⁷⁶ <http://www.vtlawhelp.org/node/210#55>

³⁷⁷ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>





Attorneys: Representation in mediation is not required but is recommended. Vermont Legal Aid and the Vermont Volunteer Law Project offer assistance.³⁷⁸

Housing Counselors: Though housing counselors are not supplied, they are recommended.³⁷⁹

Other Personnel: Vermont Legal Aid has been contracted to telephonically contact people who are eligible for the program.

Funding: The servicer pays for the mediation, except for those costs associated with the borrower (borrower’s attorney, travel, etc.).³⁸⁰

Sponsorship: Vermont Mortgage Bankers Association, Rep. Willem Jewett, Vermont Bar Association,³⁸¹ Vermont Legal Aid, Vermont Volunteer Law Project³⁸²

Statistics:

Notes:

WASHINGTON

Location: statewide

Name: Foreclosure Fairness Act Mediation Program

Initiation Date: Law effective July 21, 2011

Created/Governed by: Legislative Act 132³⁸³

Judicial/Non-judicial: non-judicial

Size: Washington state saw a major increase in foreclosures the last two years, up 115% from 2008.

Process: Borrowers on a mortgage as of July 21, 2011, are eligible. If the lender conducted 250 or more foreclosure sales in the state in the last year, the lenders must comply with the program. 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 counselor or attorney must make the request for the borrower. Within ten days of receiving the request, the Department of Commerce notifies parties, selects a mediator, and sets the mediation no later than 45 days out. The mediator sets a time and place. At least ten days before the mediation, the lender must give the borrower the loan balance, an itemized list of fees and charges, payment history, net present value 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 lender must have a person with authority to modify the loan either present or by telephone. The mediator encourages parties to examine all options, including loan modification, to avoid foreclosure. Within seven days of mediation, the mediator must certify the mediation results and good faith participation. If the lender fails to mediate in good faith, the borrower may enjoin the foreclosure sale in court.³⁸⁴

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

³⁷⁸ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

³⁷⁹ <http://www.uvm.edu/consumer/?Page=foreclosure.html>

³⁸⁰ <http://www.leg.state.vt.us/docs/2010/Acts/ACT132.pdf>

³⁸¹ <http://www.businessweek.com/ap/financialnews/D9EHMV2G0.htm>

³⁸² <http://www.uvm.edu/consumer/?Page=foreclosure.html>

³⁸³ <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Passed%20Legislature/1362-S2.PL.pdf>

³⁸⁴

<http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9556&MId=846&wvrsion=Staging>





resolution centers, or retired judges of Washington courts. Those who qualify must attend foreclosure mediation training and must be experienced mediators with a minimum of 10 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.³⁸⁵

Attorneys: The borrower may be represented by an attorney or other advocate such as a housing counselor, but this is not required.

Housing Counselors:

Other Personnel: The state Department of Commerce administers the program.³⁸⁶

Funding: Each party pays a fee for the mediation. The mediator determines what “reasonable fee” will be charged.³⁸⁷

Sponsorship: The state Foreclosure Prevention Working Group, which included the Attorney General and borrower advocates, made recommendations for a mitigation program.³⁸⁸

Statistics:

Notes:

WISCONSIN

Location: Milwaukee³⁸⁹ has the first and main program, so will be discussed here; other counties, including Buffalo County,³⁹⁰ Dane County,³⁹¹ Kenosha,³⁹² Outagamie County (Green Bay),³⁹³ Pepin County³⁹⁴ and St. Croix County³⁹⁵ have unique programs

Name: Foreclosure Mediation Program

Initiation Date: July 2009

Created/Governed by: Chief Justice Jeffrey A. Kremers of Milwaukee signed directive 09-14 to start the program.³⁹⁶

Judicial/Non-judicial: judicial

Size: Wisconsin had 28,453 foreclosures in 2010.³⁹⁷ Milwaukee (a few other counties have programs, but Milwaukee is the largest) had 5,800 foreclosure filings in 2009.

Process: Only foreclosures on one- to four-family residential properties qualify. The lender attaches a notice announcing the availability of the mediation process to the foreclosure summons and complaint. Mediation must be affirmatively requested by either the borrower or the lender. Both the borrower and the lender must

³⁸⁵ <http://www.wsba.org/News-and-Events/News/Department-of-Commerce-Foreclosure-Mediation-Training>

³⁸⁶ <http://www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=9556&Mid=846&wve rsion=Staging>

³⁸⁷ <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Passed%20Legislature/1362-S2.PL.pdf>

³⁸⁸ <http://blog.mortgage101.com/2010/02/02/foreclosure-rates-predicted-to-rise-in-2010/>

³⁸⁹ <http://law.marquette.edu/foreclosure/details.html>; <http://law.marquette.edu/foreclosure/homeowner-faqs.html>;

<http://www.indisputably.org/?p=1689>

³⁹⁰ http://www.wisbar.org/AM/Template.cfm?Section=Buffalo_County1#lcr2010_01; see also flier on file

³⁹¹ <http://www.countyofdane.com/court/prepare/rules.aspx#118>; <http://www.legis.state.wi.us/statutes/Stat0802.pdf>

³⁹² http://www.journaltimes.com/news/local/article_8c5ffb3e-928d-11e0-8b17-001cc4c03286.html

³⁹³ <http://law.marquette.edu/foreclosure/images/local-directive.pdf>

³⁹⁴ http://www.wisbar.org/AM/Template.cfm?Section=Pepin_County1#lcr2009_02; see also flier on file

³⁹⁵ http://www.co.saint-croix.wi.us/index.asp?SEC={01DBD303-BFAB-437F-B1CF-C9632438F2A1}&Type=B_BASIC

³⁹⁶ http://www.milwaukeecounty.org/ImageLibrary/Groups/cntyCourts/documents/0914_Foreclosure_Procedures.pdf

³⁹⁷ <http://ashlandcurrent.com/article/11/05/16/state-housing-foreclosures-down-first-quarter>





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. 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.³⁹⁸ The mediation does not stop the foreclosure.³⁹⁹

Mediators: Mediators are community members who go through a special training and volunteer to mediate. A Chief Mediator organizes sessions and mediates.⁴⁰⁰

Attorneys: No attorney is required for the borrower.

Housing Counselors: The borrower is required to meet with a housing counselor prior to mediation.⁴⁰¹

Other Personnel: The program coordinator and Chief Mediator is at Marquette Law School and is paid.⁴⁰²

Funding: Marquette University Law School received \$310,000 in 2009 from the Wisconsin Department of Justice to start a foreclosure mediation program. The borrower and the lender each pay a \$100 processing fee to Marquette University.⁴⁰³

Sponsorship: The City of Milwaukee, Attorney General Van Hollen, Marquette University Law School.⁴⁰⁴

Statistics: From program beginning in September 2009 through November 2009, the program managed 320 cases. Of those, 172 were scheduled for mediation.⁴⁰⁵

Notes:

³⁹⁸ <http://law.marquette.edu/foreclosure/images/process-flowchart.pdf>

³⁹⁹ <http://www.indisputably.org/?p=1689>

⁴⁰⁰ <http://law.marquette.edu/foreclosure/>

⁴⁰¹ <http://www.indisputably.org/?p=1689>

⁴⁰² <http://law.marquette.edu/foreclosure/>

⁴⁰³ <http://law.marquette.edu/foreclosure/homeowner-faqs.html>

⁴⁰⁴ <http://law.marquette.edu/foreclosure/>

⁴⁰⁵ <http://www.jsonline.com/news/milwaukee/82567662.html>