

WHAT IS FORECLOSURE MEDIATION?

A Guide For Parties in Delaware County Foreclosure Mediation

What is mediation and how does it work in foreclosure cases? Mediation is a process of guided negotiations. A neutral individual, called a mediator, works with the parties to a mortgage, with or without attorneys, in a discussion of their problem. The talks are an effort to resolve the issue with the mortgage by mutual agreement before it reaches default judgment or foreclosure sale. The mediator has no authority to make a decision. The mediator serves as a discussion leader to help the participants negotiate more efficiently, and, hopefully, reach an agreement sooner than they could on their own.

What is a mediator? A mediator is an independent, trained neutral, who works like a diplomat to help people settle disputes. A mediator does not have to be but is frequently an attorney. However, even when the mediator is an attorney, they cannot give legal or financial advice to either side. The Delaware County Common Pleas Court maintains a list of approved foreclosure mediators and appoints them to pending cases.

Why should I bother to mediate my mortgage problem? Many difficulties with mortgages, either before suit is filed (such as when a ARM reset is approaching or when a homeowner is slightly behind in payments) or while a foreclosure case is pending in court, can be resolved through reasonable discussions. An experienced mediator can help the parties find a creative solution that they may have overlooked. Because mortgage lenders don't want to own houses, they are generally willing to talk with a borrower about reasonable, practical solutions to bring the mortgage current. Mediation, with the chance to talk privately with the mediator, has a better opportunity to reach a resolution than a possibly tense or difficult one-on-one negotiation.

How is mediation different than some of these "debt relief" services I see advertised? Many debt relief services are actually scams where the "service" charges you a hefty monthly fee, but provides little or nothing in return. No "debt relief service" is going to pay your mortgage for you or reduce your monthly payments. However, the mediation of a foreclosure problem through an order of the court gives everyone, the lender and the borrower, the chance to talk candidly and openly about the current problem with the mortgage, and look for a long-term solution that satisfies everyone. Perhaps the loan can be extended, the interest rate amended, or a homeowner given more time to catch up on overdue payments. A mediation leads to an agreement that both sides find fair and workable going forward. The mediator is compensated by the Delaware County Common Pleas Court.

Will the mediator issue a decision in my case? No. All the mediator can do is help the parties and attorneys look at the dispute more objectively, discuss various options for a workout of the mortgage, listen to each side privately, and assist the participants in finding a mutually acceptable solution. A mediator makes no decision, judgment, or recommendation on the outcome.

What can a mediator tell a judge? Next to nothing. The mediator will only tell the Delaware County Common Pleas Court whether or not the case settled. Discussions in mediation are inadmissible at trial under Evidence Rule 408 and the Uniform Mediation Act as adopted in Ohio. Even if the lawsuit goes forward after mediation fails to reach a settlement, the mediator is still subject to the obligation to disclose nothing about the mediation discussions.

Should I bring witnesses and exhibits to the mediation? No. A mediation is not like a trial or arbitration. While the attorneys, parties, and the mediator will discuss the situation, there are no witnesses, no testimony, no exhibits, no objections, no cross examination, and no arguments. You may bring documents that relate to and explain the situation surrounding your mortgage and your financial circumstances.

Will I be expected to testify? No. Because mediation is a focused negotiation process, the mediator uses a conference room, but everyone sits at the table as equals in a discussion format. Mediations can be held in a courthouse conference room, or by agreement elsewhere at the parties' convenience. There is no witness stand and no testimony. You will be expected to listen, participate in the discussions as appropriate, and make decisions about how to negotiate, and whether or not to settle.

Can the mediator tell me how to handle my case? No. The mediator is not there as a judge, jury, or arbitrator of the case, or as an advocate or advisor for either side. It is important that you analyze and reasonably evaluate your own financial situation and the benefits of working out possible new terms for a mortgage. The mediator may point out certain problems to each side, but this is just part of looking at the case objectively. The mediator, the attorneys, and the parties will also discuss the costs and drawbacks of going forward with foreclosure litigation as compared to the benefits of settlement.

Will the other side be there? Generally yes. A representative of the mortgage lender, with authority to settle, and the current property owner(s) should be at the conference and prepared to negotiate. Telephone participation is permitted by prior permission of the Court or the mediator. During the course of the mediation, the mediator can and usually will meet separately with each side for private, more candid discussions.

Can I bring my attorney to the mediation? Yes. Under the Uniform Mediation Act, a party in mediation can bring their attorney or any other support person to the conference.

What if I just want to give up the house and walk away? Giving up your house in the face of a foreclosure case is a serious decision and one that should not be made lightly. Returning the ownership of a mortgaged property to the lender is called "a deed in lieu of foreclosure". The parties to a foreclosure can still mediate about such issues as when is the house to be turned over, when does the family have to move out, and what other money obligations can be negotiated as part of the deed in lieu of foreclosure.

I want my day in court. Why should I settle? Every citizen has a right to seek a fair hearing in court, but you should consider that a trial is not the only legal choice available. Foreclosure cases rarely, if ever, go to trial. Almost always, the judge decides a foreclosure case based on written motions filed by the lender with the court. Each side should thoroughly discuss every factor in the current situation before making the important choice to settle with new terms or go to a foreclosure proceeding. Mediation is an opportunity for both sides of a case to explore settlement possibilities without risk or penalty, and with the aid of a trained mediator.

What happens if we can't settle? If the parties cannot settle at the mediation, several things might happen. The parties or attorneys may agree to negotiate further later on, or the mediator can schedule a follow-up mediation. Or the case could ultimately go forward in court. There is no penalty or extra cost for using mediation.