

FORECLOSURE MEDIATION

What to Expect in Mediation

- This resource is for homeowners who have already been referred to foreclosure mediation by an attorney or a housing counselor.
- The following information is intended to help prepare homeowners for their mediation, and explain the foreclosure mediation process.
- For more information about homeowner rights, please refer to our other materials.

What is mediation?

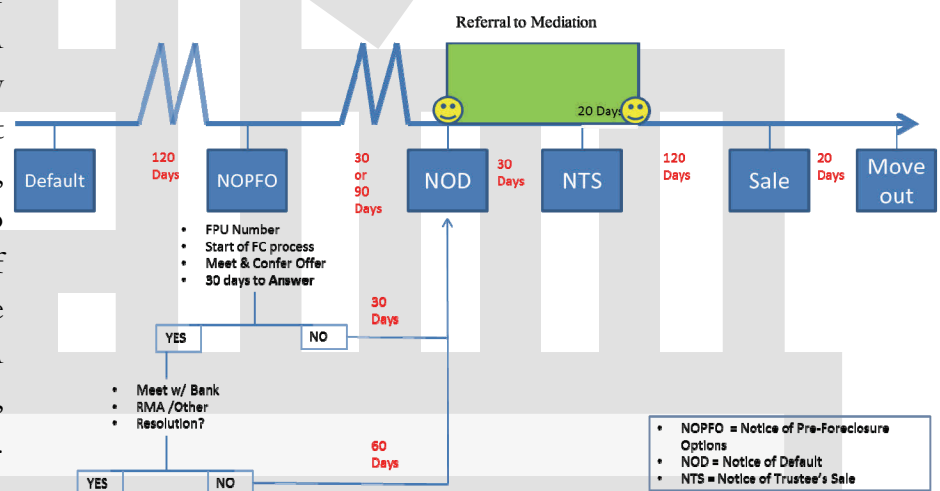
In mediation, parties voluntarily meet before a neutral mediator to discuss their problems. Compared to a judicial remedy like a trial, mediation is less expensive and more flexible. Because mediation occurs outside of the courts, parties do not have the same rights and protections of the court setting.

In the context of *foreclosure* mediation in Washington, homeowners have certain rights and protections under the Deed of Trust Act and the **Foreclosure Fairness Act (FFA)**. The FFA, enacted in July 2011, gives homeowners the right to speak directly with a lender representative who has authority to make decisions about their loan at mediation. If an eligible homeowner is referred to mediation by an attorney or housing counselor, then the foreclosure process must stop until mediation is completed. The FFA is administered by the Washington **Department of Commerce (DOC)**. Some smaller banks, thrifts, and credit unions are exempt from FFA mediation.

Unless the parties agree otherwise, FFA mediations do not require the same level of confidentiality as other mediations. The mediators in FFA mediations cannot be called to testify in court regarding the mediation, so it is advisable to bring a colleague, friend, or family member to the mediation to act as a witness. In other types of mediation, parties communicate indirectly through the mediator. FFA mediations, on the other hand, encourages direct communication.

Ull Sotelo, NP, 3/25/13

Foreclosure Timeline



What happens at a foreclosure mediation session?

The parties will meet in an informal setting, like a relatively small conference room. The mediator will ask you to give an opening statement to explain your story and what you hope to get from mediation. This is your chance to state what caused your default and why you won't default again. The bank will give their response, and the mediation will proceed. A mediation session generally lasts for three hours, during which parties can take breaks, called "caucuses."

To pursue an option besides foreclosure, the bank will need to be convinced that there is a more profitable alternative to foreclosure. This discussion centers around the **Net Present Value (NPV)** test. The NPV test compares the profitability of foreclosing on the home versus offering a loan modification, and it requires a lot of data about the homeowner's finances. As such, mediation includes discussion about certain figures and documentation.

Make sure that you know what is expected of you, and what you can expect from the bank. Take notes. Ask questions. Take a break if you need to. Foreclosure is a confusing process, and mediation is intended to make it easier to handle.

It can be very difficult for homeowners experiencing financial hardships to explain their story, their needs, and their resources within the relatively short time of mediation. You may have worked a lot toward improving your situation, and it may be hard to explain all of this all at once. Don't be discouraged. Be clear about your goals, be ready with your documentation, and get informed about your options.

The Different Roles

Mediation should help facilitate a conversation between homeowners and lenders, but there are other people involved in the process.

The mediator. They are not judges and their role is to facilitate a discussion between all parties involved. There may be two co-mediators who will introduce themselves at the start of mediation. Mediators do not decide the outcome of your case.

The lender representative. In order to facilitate a resolution, this representative is required to have the authority to make decisions about your loan on the spot. The lender representative will most likely participate via speakerphone.

The lender's attorney will be there, but mainly to make sure that the bank complies with, and is protected by, local state laws.

Your attorney or housing counselor. If an attorney or housing counselor has agreed to represent you at mediation, then he or she will be there. Talk to your attorney or housing counselor beforehand about any questions or concerns.

You will also be there. Make sure you know what is expected of you, and what you can expect from your mortgage company. You can bring a family member or a friend for support, but notify the other parties beforehand if you plan to do so.



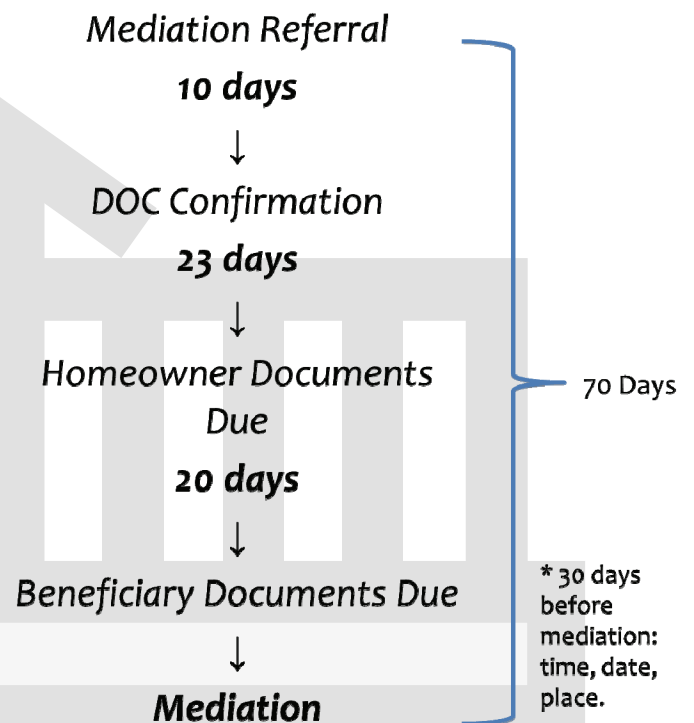
What documents must I submit prior to mediation?

Prior to mediation, you should submit the following information as required by state law (RCW 61.24.163) and federal programs:

- ◆ Making Home Affordable (MHA) Request for Mortgage Assistance or Uniform Borrowers Assistance Form.
 - This application addresses your mortgage situation, current debts and other expense obligations, income sources, and other pertinent information needed to review you for a loan modification or other non-retention options.
- ◆ The Dodd-Frank certification
- ◆ Proof of your current and future income—this includes:
 - **Employment or unemployment benefits** (pay stubs or award letter and proof of deposit into bank account)
 - **Social Security retirement or disability** (award letter and proof of deposit into bank account)
 - **Rental income for tenants** (must provide valid rental agreement and proof of deposit into bank account)
 - **Child support** (child support order and proof of deposit into bank account)
 - **Spousal maintenance** (divorce decree or maintenance award, proof of deposit into bank account)
 - **Public benefits** (award letter for food assistance and EBT transaction history, WIC, TANF, etc.)
 - **Veteran’s Benefits** (award letter and proof of deposit into bank account)
 - **Pension** (award letter and proof of deposit into bank account)
 - **Profit and loss statements** if you are self-employed
 - **Monetary contribution** amount from a family member living in your household (they will need to send in all required documents, just like the borrower)
- ◆ Your bank statements for the last two months
- ◆ Proof of residence, such as a utility bill
- ◆ Tax returns for the previous two years and your authorization for Tax Transcripts (4506-T)
- ◆ Your hardship affidavit and a hardship letter explaining why you went into default
- ◆ If you are getting divorced or are divorced, you must provide a divorce decree and quitclaim deed awarding the property to one spouse
- ◆ Any other information required by the applicable federal mortgage relief program

At mediation, bring copies of everything you have already submitted, or anything you forgot earlier. Bring documents that reflect the last two months (and the last two years of tax returns). Being organized will be a big advantage. By bringing all of your documents and knowing what options may be reasonable for you, mediation is more likely to proceed smoothly.

Foreclosure Mediation Timeline



What can I expect at the end of mediation?

Within 7 days after the mediation, FFA mediators decide whether the parties acted in good faith by issuing a certification. If a party receives a not in good faith certification, then the other party may have legal recourse. For example, if the bank receives a not in good faith certification, then the homeowner may seek a preliminary injunction from the court that stops the bank from foreclosing. If the homeowner receives a not in good faith certification, then the bank can continue with foreclosure.

If you don't resolve everything immediately, there could be a second, or sometimes even a third, mediation. The second session can be scheduled at the mediator's discretion, and any additional sessions after that can be scheduled at both parties' consent. The mediators are paid \$400 for each session, and this fee is split evenly by the homeowner and the lender.

Foreclosure Prevention Unit (FPU)

FPU helps people throughout Washington who are threatened with home foreclosure. If you are a homeowner or a tenant and you need help with a foreclosure call **1-800-606-4819** to see if you are eligible for free legal help.

Get Help

Northwest Justice Project, Statewide Civil Legal Aid

1-800-606-4819, or

www.nwjustice.org/what-clear

Washington State's Homeownership Information Hotline

1-877-894-HOME (1-877-894-4663),

www.wshfc.org/buyers/counseling.htm, or

www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm

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