



THE SUPREME COURT *of* OHIO

Foreclosure Mediation Program Model

Complete Foreclosure Mediation Program Model 

Foreclosure Letter from Chief Justice Thomas J. Moyer to the Courts of Ohio 

Foreclosure Mediation Program Model Documents, Forms, Resources, and Training

Foreclosure Mediator Survey Form

Dispute Resolution Section

Foreclosure Mediation Program Model (*Last Updated: Feb. 14, 2008*)

This eleven step model is designed for courts to modify based on their own needs, resources, and communities. Related documents and forms that are italicized below can be downloaded. For samples of documents not linked, contact the Dispute Resolution Section manager, Jacqueline Hagerott at: hagerotj@sconet.state.oh.us or 614.387.9420.

It is recommended that courts visit this Web site periodically for additional updates, information, resources and best practices that will continue to be added. If you have questions, need assistance implementing the model in your court, or would like a hard copy contact the Dispute Resolution Section manager.

Step One: Building a Foreclosure Mediation Program

Stakeholders Meeting to Discuss Foreclosure Mediation

Schedule a meeting with stakeholders such as: judges; magistrates; lenders; attorneys for borrowers and lenders; community organizations; mediators; legal aid organization; clerk of court; county auditor, treasurer and/or commissioners; local social service agencies; community organizations such as churches, homeowner's and bank associations, etc.

Supreme Court Assistance: Implementation, Goals, and Quality Assessment

Identify and establish goals for the program and quality assessment including time lines for start up, training and other information located in the Case Management Data and Quality Assessment Information Form. It is recommended that this form be sent to the Dispute Resolution Section each quarter in order to share the success of foreclosure mediation in Ohio and offer case management and other program recommendations, if necessary.

You may also schedule a time for the Dispute Resolution Section manager to visit your court to assist in modifying the model to meet your needs and resources and to assist you in identifying and establishing these goals and assessment tools.

Training Contact the Dispute Resolution Section regarding the following:

- Foreclosure Mediation Training Requirements (required for all mediators doing foreclosure mediation in your court)
 - Basic Mediation

- Uniform Mediation Act
- Foreclosure Mediation
- Other Training for Judges/Magistrates, Court Personnel, Stakeholders (optional)

Pre-filed Settlements through Negotiation and Mediation/Marketing

Encourage the settlement of cases through negotiation between the borrower and lender rather than filing a foreclosure case by providing resources such as those listed in Step Four (below) to stakeholders via some or all of the following means: local court (include the court's Web site, if applicable); local bar association; law library; clerk of court; county auditor, treasurer and commissioners; local social service agencies; organizations such as churches and legal aid associations; and bank associations.

In compliance with the R.C. Chapter 2710 Uniform Mediation Act, stakeholders are encouraged to share success stories through the use of the court's mediation program, community mediation services, and/or private mediators.

Relevant Statutes and Rules

R.C. Chapter 2710 Uniform Mediation Act

R.C. Chapter 2303.201(E)(1) (Special Projects)

R.C. 2323.07 Sales of Foreclosed Properties

R.C. Chapter 2329 Execution Against Property

R.C. 5313.07 Proceeding for Foreclosure and Judicial Sale

Supreme Court of Ohio Rules of Superintendence - Rule 16. Mediation

Ohio Rules of Civil Procedure Rule 6. Time

Local Rule Providing for Mediation

Contact the Dispute Resolution Section for assistance in creating or modifying a local rule - See Rule 16. Mediation: Local Rule Guide. An alternate option is for the court to issue a Standing Order for Foreclosure Mediation.

Step Two: The Complaint is filed at the Clerk of Court's Office. This includes:

- Evidence of the Note
- Evidence of the Mortgage
- Judicial Title Report
- Evidence of the Assignment (or other evidence that the plaintiff is the holder or servicer of the note and mortgage if the plaintiff is not identified in the note and mortgage as the holder or servicer). Evidence of the Assignment should be:
 - Filed with the Complaint; OR
 - (*Note: The requirement to file original documents with the complaint is currently in litigation*)
 - Included with the completed Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases; OR
 - Included in a Court Order Requiring Mediation Services

Step Three: The Summons is sent with the complaint to the borrower.

The Request for Foreclosure Mediation and Motion for Extension of Time to Answer or Otherwise Plead may be enclosed with the Summons or available at the Clerk of Court's Office. If you elect to have the Request for Foreclosure Mediation and/or Motion for Extension of Time to Answer or Otherwise Plead forms available at the Clerk of Court's Office it is recommended that you indicate this in the Summons.

Step Four: In addition to the Summons, provide additional information to borrowers such as: Letter to Borrowers, Mediation and Foreclosure Brochures, Post Card, and/or Mediation Glossary and Guide.

Step Five: Within 28 days after service of the Summons, the borrower files an Answer or a Motion for Extension of Time to Answer or Otherwise Plead and may send a Request for Foreclosure Mediation to the Mediation Department. The Request for Foreclosure Mediation form should NOT be sent to or filed with the Clerk of Court's Office.

Step Six: If the borrower sends a Request for Foreclosure Mediation to the Mediation Department, the Mediation Department sends a letter to the lender enclosing the Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases who completes the form and returns it to the Mediation Department within 14 calendar days from the postmarked date of the letter.

If the lender contacts the Mediation Department and requests mediation, the Mediation Department sends a letter to the lender enclosing the Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases who completes the form and returns it to the Mediation Department within 14 calendar days from the postmarked date of the letter. The Mediation Department also sends a letter to the borrower enclosing the Request for Foreclosure Mediation form. The borrower must complete the Request for Foreclosure Mediation form and return it to the Mediation Department within 14 calendar days from the postmarked day of the letter.

Step Seven: The Mediation Department reviews both the Request for Foreclosure Mediation from the borrower and the Plaintiff/Lender's Mediation Questionnaire for Foreclosure Cases to determine if mediation is appropriate.

Step Eight: The Mediation Department sends a status report to the court and the parties as to whether or not mediation will occur.

The judge/magistrate may or may not issue a Court Order Requiring Mediation Services. The mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute. R.C. 2710.01(A). A mediator will not force any party into accepting an agreement that is not mutually acceptable to all the parties.

- If the case is determined to be appropriate for mediation, the Mediation Department schedules the mediation within ___ days of the court order/referral to mediation and schedules and sends Notice of Scheduled Mediation to the Parties including instructions for the parties to attend in person with authority to settle (unless given prior permission by either the mediator or the court to participate by phone) and, to provide any other relevant information necessary for the mediation. A reminder such as an E-mail Reminder may also be sent to the parties to ensure attendance.
- If the case is not appropriate for mediation, the Mediation Department will send notice to the borrower and lender and the case continues on the trial docket.

Step Nine: Mediation session(s) takes place.

Mediation is facilitated in compliance with the Revised Code Chapter 2710 Uniform Mediation Act. Prior to the parties attending mediation, mediation departments may use resources such as Mediation Intake Form or a Mediation Intake Information Sheet to determine if additional steps need to be taken before the session.

- If a voluntary agreement is reached, the parties should memorialize the agreement that complies with R.C. 2710.05 Exceptions to Privilege – Partial Admission of Nonprivileged Communication. Acceptable methods to memorialize the agreement include: written agreement signed by all parties, agreement is read into the record by a court reporter, or agreement is tape recorded with all parties identifying themselves and indicating their consents to the agreement.
- If no voluntary agreement is reached, the case continues on the trial docket.
 - Confidentiality and Privilege: All mediation communications as defined in R.C. 2710.01 Definitions are privileged – R.C. 2710.03 Mediation Communications Privileged. Mediation Communications are confidential to the extent the parties agree – R.C. 2710.07 Confidentiality of Mediation Communications. It is important to maintain the confidentiality of the personal financial information of the borrower, offer(s) made by the borrower and/or lender, and discussions of the

parties through an Agreement to Mediate.

- If your court uses or decides to use contract mediators, the following resources are recommended: Contract Mediator Cover Letter, Contract Mediator Agreement, and Contract Mediator Questionnaire

Step Ten: Outcome of Mediation Report is filed with the court by the Mediation Department in compliance with the R.C. Section 2710.06 Communication or Disclosure by Mediator.

Step Eleven: Quality Assessment - Qualitative and Quantitative

Implement evaluations forms and surveys including the: Foreclosure Mediation Participant Survey, Contract Mediator Questionnaire (if applicable), and Case Management Data and Quality Assessment Information Form. Send the Case Management Data and Quality Assessment Information Form to the Dispute Resolution Section ending each quarter: March 31, June 30, Sept. 30, and Dec. 31 using one of the methods listed on the bottom of the form.

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• 65 South Front Street Columbus, Ohio 43215-3431 •