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**Foreclosure Mediation in Ohio: What You Need to Know**

(Updated 7/27/10)

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. Feb. 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.

*"Mediation will assist courts in managing the explosion of foreclosure cases on their dockets for a more efficient administration of justice while assisting Ohio's most vulnerable homeowners facing the prospect of losing their homes," Chief Justice Moyer said. "I am calling on all judges in Ohio who have jurisdiction over foreclosure cases to utilize the model in their courtroom by modifying it to meet the needs and resources of their communities."*

Since the model is designed to be modified by local courts to meet their needs, foreclosure mediation varies from one court to another. The following questions, answers, and resources are used in various ways by counties, community organizations and other states to enhance and build foreclosure mediation programs.

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**1. What is foreclosure?**

Foreclosure is the process a lender/servicer uses to repossess your home. Once you receive notice that your lender/servicer has filed a mortgage foreclosure lawsuit, you could lose your home in 3-6 months. Immediate action on your part may prevent foreclosure.

- **Open your mail.** You will receive important information from the courts that you need in order to resolve your situation.
- **Don't Wait.** Taking action sooner means more options for you. If you do nothing, you will lose your home.
- **Contact your mortgage lender or servicer (depending on who you have who filed the foreclosure action against you) as soon as you receive the notice from the court.** Explain your circumstances and you may be able to work out a repayment/loss mitigation plan to avoid foreclosure.
- **Do NOT move out of your home.** It is important that your home remain occupied throughout the entire process and keep it in good condition both inside and out until the sheriff informs you that you have to leave.
- **Beware of Scams.** There are many people who try to take advantage of your financial situation. Some may attempt to take ownership of your home or charge fees for services that are available for free. Seek legal advice.
- **Need help?** Go to Save Dream at: [www.savethedream.ohio.gov](http://www.savethedream.ohio.gov) or call 1.888.404.4674 or contact your local legal aid office or a HUD approved financial counselor, all for FREE. Your local bar association may have resources available as well.

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**2. What is foreclosure mediation?**

"Mediation means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute." See **Ohio Revised Code Uniform Mediation Act Section 2710.01 (A)**. A neutral individual, ("mediator") works with the parties to a mortgage, with or without attorneys, to resolve the mortgage problem by mutual agreement which can occur at various times throughout the foreclosure process such as before it reaches court, default judgment, or foreclosure sale. The mediator (even a mediator who is also an attorney) cannot give legal or financial advice to either side and has no authority to decide the case. The mediator helps the participants negotiate more efficiently to reach an agreement sooner than they could alone.

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**3. If I am in foreclosure, how can I get mediation in my county?**

Go to the Supreme Court's Web site at: [www.supremecourt.ohio.gov/foreclosure](http://www.supremecourt.ohio.gov/foreclosure). Click on "Ohio Foreclosure Mediation Contact Information by County" which will give you the contact information for your county. If you have questions, contact the Dispute Resolution Section at 614.387.9420.

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**4. What if I have not missed any payments?**

Contact your mortgage lender or servicer if you think you are going to have difficulties paying your mortgage in full. Explain your circumstances and you may be able to work out a repayment/loss mitigation plan to avoid having a foreclosure action filed against you. Be sure that you are talking with the department who is able to discuss "loss mitigation" options with you.

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**5. Why should I mediate my mortgage problem?**

Mediation allows the parties to determine if a mutually acceptable agreement that is commercially reasonable and sustainable is possible. Many mortgage issues can be resolved through good communication between the borrower and the lender/servicer. Lenders/servicers are and have been willing to discuss flexible solutions. Mediation provides a more informal environment in which to have discussions that, without a mediator, might be tense or difficult. There are also additional benefits of cost and time savings. Litigation can be timely, expensive and stressful. Mediation allows parties to create agreements that include conditions and terms that may be restricted by legal remedies. However, for mediation to be productive and cost-effective, all parties must actively participate and share information prior to the mediation in order to avoid additional, and costly, mediations.

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**6. What should I do if I want to participate in addition to being prepared to do so?**

You should go to the Supreme Court of Ohio Dispute Resolution Section's Web site at: [www.supremecourt.ohio.gov/foreclosure](http://www.supremecourt.ohio.gov/foreclosure) to look up the foreclosure mediation contact information for the county where the foreclosure case was filed. You are urged to seek legal counsel or a HUD approved financial counselor as soon as possible by calling Save the Dream at 1.888.404.4674 to assist in preparing you for and possibly participating in mediation. If you request mediation, this process may vary, so it is very important that you contact your local court to determine if they offer foreclosure mediation (some courts offer mediation even if you have not missed a payment) and follow their process to schedule mediation and meet the legal timelines set for you. Failure to meet these deadlines will make it more difficult for you to work out an agreement. The court will then schedule a mediation session with your lender/servicer (or schedule with the borrower if the lender/servicer submits the request).

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**7. What should I do if mediation is not an option for foreclosure cases in my county due to limited financial resources or because individuals do not see the value of mediation in addition to help in recruiting attorneys to represent homeowners in mediation?**

Contact Jacqueline C. Hagerott, manager of the Dispute Resolution Section of the Supreme Court of Ohio at [Jacqueline.Hagerott@sc.ohio.gov](mailto:Jacqueline.Hagerott@sc.ohio.gov).

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**8. Will there be a "court order" to attend mediation when mediation is voluntary?**

There may be an order by the judge for the parties to attend mediation. "Mediation means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute." See **Ohio Revised Code Uniform Mediation Act Section 2710.01 (A)**. The mediation *agreement* is voluntary. Therefore, parties can be ordered to attend mediation but cannot be required to reach an agreement.

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**9. Does participating in, or a request for mediation, stop the foreclosure case filed against me?**

No. The foreclosure mediation models used by the courts in Ohio follow the rules of civil procedure consistent with all other civil cases while giving borrowers the same access to mediation that has been regularly available for other case types for more than a decade. The foreclosure action continues until you and your lender/servicer reach a final agreement and the lender/servicer dismisses the case. If you fail to take one of the aforementioned actions, a default judgment will likely be filed against you. Because you have been served with legal documents, it may be a good idea to contact an attorney. Please note that participating in the mediation program does not mean you have filed an answer to the foreclosure document. You are required to follow all rules of civil procedure as you would if you did not participate in mediation.

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**10. What does a "successful foreclosure mediation" mean?**

A successful mediation means a mutually acceptable agreement has been reached that is both commercially reasonable and sustainable over time. Ohio has learned that successfully mediated cases do not always result in keeping people in their homes. In some cases, an agreement that is both commercially reasonable and sustainable over time cannot be achieved. However, mediation has proven successful in resolving cases by creating a transition for borrowers to find alternate housing and avail themselves of other resources to manage a difficult situation. Two counties in Ohio are reporting 77 and 62 percent foreclosure mediation success rates, which include settlement agreements that not only keep people in their homes, but also provide transition strategies. Some foreclosure cases need to be resolved through litigation.

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**11. Who attends the mediation session?**

The borrower and any support person(s) they wish to include and the lender/servicer or their attorney/agent will participate in the mediation. It is highly likely that the same attorney will appear for multiple lenders/servicers if they work for a law firm that represents multiple lenders/servicers. Mediation programs should be as sensitive to the lender/servicer's request for a continuance of the mediation session as a borrower's request, since they are very likely trying to manage multiple requests for mediation in multiple states. In cases with a conflict which is due, in part, to the attorney unable to travel to multiple locations in one day, participation by phone has been a successful alternative. A lender/servicer representative with authority to settle and the current property owner(s) should be present (in person or by phone) and prepared to negotiate. The mediator can meet separately with each side for private, more candid discussions. It is important to note that borrowers must provide their financial information to lenders/servicers in advance of the mediation in order to ensure the lender/servicer representative has settlement authority at the mediation or readily available by phone.

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**12. Who does the assessment of the cases to determine the appropriateness of the case for mediation and at what stage does the assessment take place?**

It depends on how the program is designed in that local court. It may be a mediation coordinator, the mediator, an administrative staff person, or other individual trained and designated by the court. As soon as mediation is requested, the parties should provide the documentation requested by the court. The assessment should take place as soon as the documents are received so the parties have time to gather, provide, process and share additional information if necessary without delaying the process.

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**13. Who can "participate" in the mediation?**

By law, anyone who attends the mediation may participate. Participation in mediation is outlined in the **Ohio Revised Code Uniform Mediation Act Section 2710.09** which states, "An attorney or other individual designated by a party may accompany the party to and participate in a mediation." It further states that "A waiver of participation given before the mediation may be rescinded." However, your attorney is the only person who can give you legal advice.

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**14. How do I know if the lender/servicer is the real party in interest?**

It is common that the court order will state that the parties participate in person (the lender/servicer may participate by phone if permitted by the court) with authority to settle the case. To determine if the lender/servicer is the real party in interest, you are urged to seek legal counsel or call the Save

the Dream hotline at 1.888.404.4674.

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**15. Does it impact the foreclosure mediation case if the lender/servicer participates by phone?**

Many foreclosure mediation cases have been conducted with the lender/servicer participating by phone. The benefit is a savings to the borrower since it keeps the cost of attorney fees and travel expenses of the lender/servicer, which may be charged to the homeowner as additional fees, to the foreclosure action. An additional benefit of lender/servicer phone participation is that the lender/servicer has computer access to all available loss mitigation options, credit reports, and loan information. It is important to note that the lender/servicer that is participating in person or by phone have the authority to settle or have someone ready by phone for the duration of the mediation session that has authority to settle the action. Again, lenders and servicers need the borrowers' financial information in advance of the mediation in order to have settlement authority.

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**16. Who participates in the mediation if the borrower is deceased?**

The lender/servicer is prohibited under the Fair Debt Collection Practices Act from discussing the loan with heirs unless they are the appointed administrator of the estate.

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**17. Is the mediator an advocate for the borrower?**

No. The mediator is not an advocate, advisor, judge, jury, or arbitrator of the case for either party. The Supreme Court of Ohio recommends that local court foreclosure mediation programs in Ohio utilize the facilitative style of mediation where the mediator guides the parties through a party self-determination process to assist them in reaching a mutually acceptable agreement to resolve the foreclosure. In the session, the mediator is a neutral third party; not an advocate for either party. Even if the mediator uses the evaluative or transformative styles of mediation they are not an advocate for either party.

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**18. How do I know if the mediator is qualified?**

Under the **Ohio Revised Code Uniform Mediation Act Section 2710.08 (C)** it states, "At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute." Therefore, a mediator must disclose their qualifications when asked to do so. The Supreme Court of Ohio recommends that mediators who mediate foreclosure cases have the following, minimum, training requirements: Basic Mediation (a minimum of 12 hours), Foreclosure Mediation (offered by the Supreme Court of Ohio), and the Uniform Mediation Act (a minimum of 2 hours). The Supreme Court of Ohio Dispute Resolution Section offers these and advanced trainings which can be found on the Dispute Resolution Section's Web site by clicking on the Events Calendar at: [www.supremecourt.ohio.gov/JCS/disputeResolution](http://www.supremecourt.ohio.gov/JCS/disputeResolution). There is also listed on the Dispute Resolution Section's Web site a **directory of foreclosure mediators in Ohio** who meet the minimum three trainings recommended by the Supreme Court of Ohio.

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**19. Does the mediator need to be an attorney or have a background in finance or real estate?**

The Supreme Court of Ohio recommends that foreclosure mediation programs utilize the facilitative style of mediation where the mediator guides the parties through a party self-determination process to assist them in reaching a mutually acceptable agreement to resolve the foreclosure. In the session, the mediator is a neutral third party; not an advocate for either party. Therefore, they need not have expertise in the area in which they are mediating. However, it is important to check with your local court to determine what qualifications they require of their mediators.

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**20. What does the mediator do?**

Most court programs utilize the facilitative style of mediation where the mediator guides the parties through a party self-determination process to see if a mutually acceptable agreement may be reached to resolve the foreclosure. In the session, the mediator is a neutral third party; not an advocate for either party.

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**21. What is the responsibility of the mediator to make pro se defendants aware of available resources?**

The mediator must abide by all the requirements outlined in the **Ohio Revised Code Uniform Mediation Act Chapter 2710**. The mediator is responsible for the process which can vary between courts. It is important to talk with your local court to find out what their process is for foreclosure mediation. Although this is not a legal requirement with regard to pro se defendants, many mediation programs through their process require mediators to provide the parties with all the necessary financial documents prior to the mediation session so an additional session does not need to be scheduled due to a lack of information.

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**22. How does the mediator access the necessary financial documents?**

Many mediation programs have standard forms provided to the parties to complete and exchange

with each other before the mediation session. The lender/servicer (plaintiff) should provide the designated person for the mediation program with financial documents that are necessary for them to reach an agreement. For example, a financial worksheet and documents required as support, such as bank statements, pay stubs, hardship letter, etc.

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### 23. Will the mediator issue a decision in my case?

No. "...a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject to the mediation." See **Ohio Revised Code Section 2710.06 (A)** Communication or disclosure by mediator.

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### 24. What can a mediator tell a judge?

Communication or disclosure by a mediator is outlined in the **Ohio Revised Code Uniform Mediation Act Section 2710.06 (B)** which states: "A mediator may disclose any of the following: (1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; (2) A mediation communication as permitted by **section 2710.01 of the Ohio Revised Code**; (3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against abuse, neglect, abandonment, or exploitation."

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### 25. What do I do if I do not feel that the mediator is impartial or I have other concerns or questions about the mediator or the mediation process and/or procedure(s)?

The **Ohio Revised Code Uniform Mediation Act Section 2710.08 (G)** states: "A mediator shall be impartial, unless, after disclosure of the facts required to be disclosed by divisions (A) and (B) of this section the parties agree otherwise." You can contact the local court or organization who provided the mediator for your mediation to express your concerns or positive feedback. You can also send information to the manager of the Dispute Resolution Section of the Supreme Court by completing the Dispute Resolution Section **Online Inquiry & Feedback Form**.

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### 26. What if I am a mediator and want to help?

You should go to the Supreme Court of Ohio Dispute Resolution Section's Web site at: [www.supremecourt.ohio.gov/foreclosure](http://www.supremecourt.ohio.gov/foreclosure) to look up the foreclosure mediation contact information for the county where you would like to help. Many courts have established a roster of foreclosure mediators who meet the training requirements recommended by the Supreme Court of Ohio outlined in the aforementioned question. You can also sign-up with the Supreme Court to be included in the Directory of Foreclosure Mediators, a resource for courts to access the names of individuals trained to mediate foreclosure cases who have indicated they meet the Supreme Court of Ohio's training recommendations and are willing to work in that county. To be included in this Directory you need to have had the following trainings recommended by the Supreme Court of Ohio:

- Basic Mediation (minimum 12 hours)
- Foreclosure Mediation Training offered by the Supreme Court of Ohio
- Training on the Uniform Mediation Act (minimum two hours)

If you have had all the Supreme Court of Ohio recommended training, complete the "**Directory of Foreclosure Mediators Sign-up Form**" located on the Dispute Resolution Section Web site at: <http://www.supremecourt.ohio.gov/foreclosure>.

All individuals self-report training and other qualifications. It is recommended that individuals verify respective local court required and preferred qualifications before assigning cases. Inclusion on this list does not imply an endorsement by the Supreme Court of Ohio.

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### 27. When can a foreclosure case be mediated?

A foreclosure case can be mediated before it is filed in court up to the point of the confirmation of the sale. Even after a case has gone to sheriff sale it can be mediated. It will be much more difficult to mediate a case where a judgment has already been rendered in favor of the servicer/lender and even more so if it has already gone to a sheriff's sale, but it has occurred and people have been able to work out agreements that keep them in their homes.

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### 28. How long will the mediation take? Will there be more than one session?

Most foreclosure mediations take between one and two hours. It is critical that all parties complete the necessary documents, such as financial worksheets, and bring supporting documentation, such as pay stubs and utility bills, and share them with each other before the mediation session. One of the most successful resources being used are HUD certified housing counselors, which can be found by clicking on "Ohio Housing Counselor Contact Information by County" on the Dispute Resolution Section's Web site at [www.supremecourt.ohio.gov/foreclosure](http://www.supremecourt.ohio.gov/foreclosure). These counselors assist the borrowers in assessing their financial situation in addition to completing forms required by the courts and lenders necessary to reach an agreement. The result is an efficient and effective use of state allocated resources because borrowers and lenders/servicers are fully prepared for the mediation session. This minimizes the requirement for an additional session due to a lack of information which may result in increased fees being charged to the homeowner due to extra time and expense incurred by the lender/servicer. Some local courts are also conducting pre-mediation conference calls to ensure parties are fully prepared, have provided all the necessary financial documentation and are able to attend on the scheduled date.

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**29. What should I bring to the mediation?**

Typically, you need to share the following with the lender/servicer *before* the mediation: 1) two most recent pay stubs, 2) the last two months of bank statements, 3) the questionnaire and financial worksheet provided to you by the mediation department or the lender/servicer, 4) payment history (this may be provided by the lender/servicer) and 5) in some cases, tax records. You should check with your mediator to make sure that you have the documentation that is necessary for the lender/servicer to fully assess your situation to determine if a commercially reasonable and sustainable agreement can be met.

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**30. What is the difference between "Itemized reinstatement letters" and "payment history?"**

Each lender has different codes for different events and different formats and they are basically in German to normal people. An Ohio firm prepares "itemized reinstatement letters" for each borrower for each mediation. It details the total amount needed to reinstate, broken down by amount of missed payments and interest; any escrow shortages; late charges/fees; non-sufficient funds (NSF) fees; appraisals; property inspections, and attorney's fees and costs. That is the most helpful information as it lets the borrower know exactly what the lender has them due for.

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**31. If a foreclosure action has been filed against me, should I move out?**

No. The lender/servicer prefers that people stay in their home until they are told they must move out. It is advantageous for the homeowner and the lender/servicer that the home is occupied and kept in good condition through the foreclosure process.

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**32. What is pre-suit or pre-filing mediation?**

Pre-suit also, called pre-filing mediation, is the same as mediation, which occurs after a lawsuit has been filed but with greater benefit because it takes place before a foreclosure action is filed in court against you. Therefore, there are no filing fees, less stress, impact on credit reports, etc. Once a lawsuit is filed, it is public record. Credit reporting services monitor court records and note the filing of a foreclosure on a person's credit report. Pre-suit mediation that results in a mutually acceptable agreement may avoid a public record, save expenses, and solve a problem (like non-payment). Parties are encouraged to anticipate their inability to make payments due to (financial counselors are a great resource to assist you in this phase):

- Injury or illness (temporary or permanent);
- Adjustable Rate Mortgage (ARM): a mortgage loan where the interest rate changes periodically throughout the course of the loan;
- Balloon Payment: any repayment option under which the borrower is required to pay the entire amount of the outstanding balance of the loan as of a specified date or the end of a specified period;
- Expenses becoming greater than income.

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**33. How does using foreclosure mediation differ from using a "debt relief" service?**

Mediation keeps the parties to the problem directly communicating and in control of their outcome. There are no hidden or ongoing fees or costs associated with mediation and, in most cases; it only takes a few hours of time. "Debt relief" services, however, may charge excessive fees for modest results, and some are actual scams.

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**34. What if I am approached by an outside party that promises they can help get my home out of foreclosure?**

In Ohio, we are very fortunate to have a network of resources available at [www.savethedream.ohio.gov](http://www.savethedream.ohio.gov) to help homeowners facing foreclosure. These services are free to the borrower.

Unfortunately, there are others who attempt to profit from others' unfortunate circumstances. Foreclosure Rescue scams have taken advantage of many of Ohio's homeowners. According to Ohio's Attorney General, the basic elements of the scam involve a company contacting a homeowner facing foreclosure by phone or by showing up at their door and promising to stop the foreclosure process for a fee. The homeowner then, in a desperate, last ditch effort to save their home, succumbs to the false promises made by the company and hands over money they cannot afford to lose. The foreclosure rescue then pockets the funds and eventually the home is foreclosed upon, leaving the homeowner with little besides broken promises and broken dreams.

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**35. Should I bring witnesses and exhibits to the mediation like I would for a trial?**

A mediation session is not conducted like a trial by presenting and asking questions of witnesses, exhibits, opening and closing arguments. However, you are encouraged to bring documents related to your mortgage and financial circumstances that you feel are relevant to reaching an agreement with the other party. All mediation communications as defined by the **Ohio Revised Code Uniform Mediation Act Section 2710.01 (B)** include a statement, whether oral, in a record, verbal, nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator. Therefore, these communications which occur before, during and after mediation for the purposes of the

mediation are privileged under the **Ohio Revised Code Uniform Mediation Act Section 2710.03** are not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided in **Section 2710.04 of the Ohio Revised Code**. This encourages open and honest communications between the parties which increases the probability of a successful outcome.

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### **36. Will I testify?**

No. In mediation, everyone sits at the table as equals in a discussion. You are there to listen, participate, negotiate, and decide whether or not to settle and if so, the terms of the agreement that are mutually acceptable to both parties.

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### **37. What are my options and what if I just want to give up the house and walk away?**

The decision to give up your house to foreclosure should not be made lightly. You have various options that your lender/servicer is willing to agree to that may surprise you. Keep in mind, your lender/servicer is attending the mediation to work out an agreement that is mutually acceptable to both parties, using the resources available to both. Be open-minded before and throughout the entire process. Staying in your home is one option which can be done through various means including, but not limited to, a repayment plan, loan modification/refinance, reinstatement of your loan, or forbearance. If, however, you do decide to give up your house, you can return your mortgaged property to the lender/servicer through "a deed in lieu of foreclosure." You can still mediate such issues as the date of turn over, when to move out, and what other obligations exist as part of the deed in lieu of foreclosure process. There are also other options including, but not limited to, a short sale or consent judgment. It is important to note the impact your options will have on your credit report. Some of these options will be less harmful.

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### **38. What happens if we reach a mutually acceptable agreement that is commercially reasonable and sustainable?**

If a voluntary agreement is reached, the parties should memorialize the agreement that complies with the **Ohio Revised Code Uniform Mediation Act Section 2710.05 Exceptions to Privilege – Partial Admission of Nonprivileged Communication**. Acceptable methods to memorialize the agreement include: written agreement signed by all parties, agreement that is read into the record by a court reporter, or agreement that is tape recorded with all parties identifying themselves and indicating their consents to the agreement. Once the agreement has been memorialized, the lender/servicer will typically file a motion to dismiss the case without prejudice. It is recommended that the parties establish specific timelines for all components of the agreement including details regarding who will file the motion to dismiss the case and when.

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### **39. What happens to second and/or third mortgages and/or junior liens?**

It is imperative that they are noticed for mediations. A lot of times the courts or the mediators do not inform the second and third of the mediation so they don't appear. Also, simply because an agreement may be reached on the first doesn't prevent the second or third from foreclosing.

There are three primary considerations for any junior lien with regard to a first mortgage workout. One consideration is whether the junior lienholder is seeking collection. Often medical and similar judgment liens are imposed with the idea of collecting when the property is sold, but without taking overt collection action. The lien just sits there. So long as the existence of the lien does not interfere with reworking the first mortgage loan, it may not be necessary to deal with it immediately.

Another consideration arises when the existence of the junior lien makes a first mortgage workout unworkable. For instance, take the case of a piggyback 80/20 first/second financing structure, where the amount of the first mortgage lien alone is greater than the value of the property, and where the homeowner cannot afford to service both loans. To allow for a first mortgage loan modification to work, the second mortgage must disappear. The borrower and the first mortgage lienholder can proceed to mediate a workable solution between them, with part of the solution being some action to dispose of the second mortgage. One possibility is for the parties to agree on a first mortgage workout, to be implemented in a Chapter 7 or 13 bankruptcy proceeding that disposes of the junior lien(s). Another possibility is to make the junior lienholder an offer that he/she/it cannot refuse. For example, one might give the junior lienholder the alternative of accepting an immediate \$500 cash payment in exchange for releasing the junior lien (often several thousand or tens of thousands of dollars), rather than getting nothing as a result of bankruptcy. The first mortgage lender in one case advanced the funds for such a settlement payment, adding that amount to the reworked first mortgage principal balance. Regardless of the method by which the junior lien is disposed of, mediation with the first mortgage lienholder must take the junior liens into account, and may have to include some agreement for dealing with at least some of them.

The third consideration arises when a junior lienholder is pursuing active collection efforts. Obviously such collection efforts force the first mortgage mediation to proceed on an artificially accelerated schedule, and may prevent any practical workout solution. In such cases, the borrower may need to seek an advocate to resist the collection efforts, or to eliminate the junior lien via bankruptcy. In any event, most first mortgage lenders in my experience will need to see that the borrower has some possibility of resisting or disposing of the junior lien before they will seriously discuss a loan workout.

You are urged to seek legal counsel. You may be eligible for free legal assistance. Contact the Save the Dream hotline by calling 1.888.404.4674 or your local bar association.

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### **40. What is a "reverse mortgage" and is it an appropriate option in a foreclosure case?**

Another new trend that has developed is the use of Reverse Mortgages, sometimes referred to as

Home Equity Conversion Mortgages (HECM). Some Mortgage Brokers are preying on the elderly by showing up at their homes and offering to do Reverse Mortgages to save their homes from foreclosure. This type of loan is available for homeowners that are 62 years of age or older and does not have to be paid back until the borrower dies, sells their home, or permanently moves out of the home. For some, this is a good option, but for many others, it is not. There are many costs associated with these loans. If you are considering this type of loan, you should contact a HUD-Approved Counseling Agency. A list is available at [www.hud.gov](http://www.hud.gov) or by calling 1-800-CALL FHA. Also, more information is available at [www.aarp.org](http://www.aarp.org).

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#### **41. Are there tax consequences if we reach a settlement agreement?**

Tax consequences arise when there is "debt forgiveness." Debt forgiveness may arise in a loan modification, deed-in-lieu, short sale, or other options where money is owed but not paid. However, there are exceptions and individuals should consult with an attorney or their accountant to discuss them. If tax is owed, a lender may agree that it will not hold an individual accountable for tax on the income (debt forgiveness) but the Internal Revenue Service is not bound by such an agreement.

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#### **42. What about the Mortgage Forgiveness Debt Relief Act and Debt Cancellation?**

If you owe a debt to someone else and they cancel or forgive that debt, the canceled amount may be taxable. The Mortgage Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualifies for the relief. This provision applies to debt forgiven in calendar years 2007 through 2012. Up to \$2 million of forgiven debt is eligible for this exclusion (\$1 million if married filing separately). The exclusion does not apply if the discharge is due to services performed for the lender or any other reason not directly related to a decline in the home's value or the taxpayer's financial condition. More information, including detailed examples can be found in **Publication 4681**, Canceled Debts, Foreclosures, Repossessions, and Abandonments. Also see IRS news release **IR-2008-17**. The most commonly asked questions and answers about The Mortgage Forgiveness Debt Relief Act and debt cancellation can be found at: <http://www.irs.gov/individuals/article/0,,id=179414,00.html>.

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#### **43. If a home is foreclosed and sold at a sheriff's auction and sells for a substantial amount over what is owed to debtors, what becomes of the surplus funds? Is the person who was foreclosed on entitled to any of those funds?**

Generally after the sheriff's sale, the court will place on an Entry or Order, Confirming the Sale, Ordering Deed, and Distributing the Sale Proceeds. The general order of distribution is the court, the sheriff, the county treasurer's office, then the lien holders, and if there are any remaining proceeds after the distribution, that amount goes to the individual being foreclosed upon. For more information about the sheriff's sale and other questions concerning distribution of proceeds please contact your local county sheriff or clerk of courts.

Information on Ohio sheriffs by county can be found at: [www.buckeyesheriffs.org/Ohio%20Sheriffs.htm](http://www.buckeyesheriffs.org/Ohio%20Sheriffs.htm). It has a map of Ohio and folks can get links to individual sites and contact information for each of the county sheriffs. The sheriff conducts the sale and they have developed a nice FAQ that applies to purchasers of the sale property, the homeowner and even the tenant. The FAQ for Franklin County is [www.sheriff.franklin.oh.us/](http://www.sheriff.franklin.oh.us/).

Information on Ohio clerks can be found at [www.occaohio.com/](http://www.occaohio.com/).

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#### **44. I want a trial. Why should I settle?**

Citizens, including the borrower and lender/servicer, have the right to a fair court hearing, but foreclosure cases rarely, if ever, go to trial. The judge usually decides foreclosures based on motions the lender files with the court. Each side should thoroughly discuss every factor before choosing to settle with new terms or go forward with foreclosure. Mediation allows you to explore settlement without risk with the help of a mediator.

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#### **45. What happens if we can't settle?**

If both parties agree to negotiate further, the mediator can schedule a follow-up mediation, or the case could ultimately go forward in court.

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#### **46. How will the involvement of the Federal Government in the control/ownership of financial institutions impact negotiation of defaulted mortgages?**

At this time it is difficult to determine the impact that the Troubled Asset Relief Program (TARP) will have. As additional information is provided we will continue to update the Section's Web site in addition to discussing the topic at future foreclosure mediation roundtables. Future roundtables can be found on the Section's Events Calendar located at: [www.supremecourt.ohio.gov/JCS/disputeResolution](http://www.supremecourt.ohio.gov/JCS/disputeResolution).

#### **47. What if I have more questions that have not been included in this document and/or how do I get more information on resources available to educate myself on foreclosure issues?**

Statewide information and resources may be found on the Save the Dream Web site at: [www.savethedream.ohio.gov](http://www.savethedream.ohio.gov) or by calling 1.888.404.4674.



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American Bar Association Residential Foreclosure Mediation Resources  
<http://www.abanet.org/dispute/mediation/resources.html>

Fannie Mae  
[www.fanniemae.com/index.jhtml](http://www.fanniemae.com/index.jhtml)

Federal Deposit Insurance Corporation (FDIC)  
[www.fdic.gov/index.html](http://www.fdic.gov/index.html)

Federal Trade Commission  
[www.ftc.gov](http://www.ftc.gov)

Financial Stability - Information about the Government's Financial Stability Initiative  
[www.financialstability.gov](http://www.financialstability.gov)

Freddie Mac  
[www.freddie.com/index.html](http://www.freddie.com/index.html)

Freddie Mac Weekly Primary Mortgage Market Survey  
[www.freddie.com/dlink/html/PMMS/display/PMMSOutputYr.jsp](http://www.freddie.com/dlink/html/PMMS/display/PMMSOutputYr.jsp)

Making Home Affordable Government Stimulus Program  
<http://makinghomeaffordable.gov/counselor.html>

Mortgage Bankers Association  
[www.mortgagebankers.org](http://www.mortgagebankers.org)

Mortgage Information for Beginners  
[www.forbeginners.info/mortgage/refinance.htm](http://www.forbeginners.info/mortgage/refinance.htm)

National Center for State Courts Foreclosure Resource Page  
<http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=ForeCI>

National Consumer Law Center  
[www.nclc.org/issues/financial\\_distress/loan\\_modification.shtml](http://www.nclc.org/issues/financial_distress/loan_modification.shtml)

National Search for Sheriff Auctions  
[www.foreclosure.com/sheriff\\_auctions.html](http://www.foreclosure.com/sheriff_auctions.html)

Studies, Briefs and Presentations - First American CoreLogic, Inc.  
[www.facorelogic.com/newsroom/marketstudies.jsp](http://www.facorelogic.com/newsroom/marketstudies.jsp)

U.S. Department of Housing and Urban Development (HUD)  
[www.hud.gov/](http://www.hud.gov/)

U.S. Department of Treasury  
[www.treas.gov](http://www.treas.gov)

The American Recovery and Reinvestment Act  
[www.recovery.gov](http://www.recovery.gov)

The White House, Washington  
[www.whitehouse.gov](http://www.whitehouse.gov)

United States Department of Veteran's Affairs (VA)  
[www.va.gov/](http://www.va.gov/)


Veterans Mortgage Services  
[www.onlinevaservices.com/](http://www.onlinevaservices.com/)

This document is intended to provide broad, general information about the law. It will be updated periodically with new questions and resources. Before applying this information to a specific legal problem, readers are urged to seek the advice of a licensed attorney.

If you have questions and/or feedback, contact Jacqueline C. Hagerott, Manager of the Dispute Resolution Section of the Supreme Court of Ohio at [Jacqueline.Hagerott@sc.ohio.gov](mailto:Jacqueline.Hagerott@sc.ohio.gov) or 614.387.9420. Additional information about foreclosure mediation may be found on the Dispute Resolution Section's Web site at: [www.supremecourt.ohio.gov/foreclosure](http://www.supremecourt.ohio.gov/foreclosure).

This document was authored by Jacqueline C. Hagerott, Esq., Manager of the Dispute Resolution Section of the Supreme Court of Ohio with contributions by Susan Choe, Esq., Section Chief Office of the Ohio Attorney General, Amy Hathaway, Esq., Harold Paddock, Esq., mediator and arbitrator, Stephanie Spruill, Housing Counseling Manager, Ohio Housing Finance Agency and David Wiechel, Esq.

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 Excel files may be viewed, printed, and searched using the free Excel Viewer.