

CREATING THE NEVADA FORECLOSURE MEDIATION PROGRAM

Assembly Bill 149 was passed by the Nevada Legislature during the 2009 session and signed by Governor Jim Gibbons. Its purpose is to address the foreclosure crisis head-on and to help keep Nevada families in their homes.

This law establishes a Foreclosure Mediation Program for residential properties that are subject to foreclosure notices – formally known as a **Notice of Default (or Breach) and Election to Sell** – filed on or after July 1, 2009. To qualify for the mediation program, a property must be a homeowner's primary residence and located in Nevada.

Why Should You Mediate?

You can play a major role, with the help of a trained mediator, in deciding the outcome of your individual dilemma. Mediation is a give-and-take process in which the parties work to reach a mutually acceptable resolution.

Resolutions reached through mediations are compromises. If you have the ability to meet the other party half way, everyone may benefit.

Can you, as a homeowner, make your mortgage payments if your home loan is modified?

Working for a Resolution

Sometimes an agreement cannot be reached, even with the help of a trained mediator, and the home will be lost to foreclosure. That is the reality in today's economy.

By working together to explore the various options, the hope is that homeowners can avoid foreclosure and continue living in the homes they purchased.

However, if a homeowner does not have the financial ability to make mortgage payments, even if the loan is modified, foreclosure may

State of Nevada

FORECLOSURE MEDIATION PROGRAM

Mediation is Quick and Efficient

Proposed Supreme Court rules limit mediations to four hours and require that mediations occur within 90 days of a foreclosure notice being recorded.

Those same rules also require that all decision makers be present for the mediations. That means, if an agreement is reached, it can be finalized quickly.

Mediation is Cost Effective

Other than the filing fee paid by the lender, the cost of mediation is \$400, shared equally by the homeowner and the lender. Parties must pay their \$200 portions prior to the mediation.

A lawyer is not required to be present with you in the mediation process, but each side is welcome to have an attorney represent them.

At the Conclusion of the Mediation...

Within 10 days of the mediation, the Mediator will prepare the necessary Mediator's Statement and serve it on the parties. The original will be filed with the Foreclosure Mediation Program Administrator and the mediation will be closed. If there is an agreement, the parties will execute the appropriate documents. If there is no agreement, the parties will be free to pursue other legal remedies.

What if a Party Does Not Speak English and Needs an Interpreter?

If an interpreter is needed by a party, that party is responsible for securing and paying for the interpreter. Parties may bring any person they wish to interpret the proceedings.

A Homeowner's Guide to Nevada's New Foreclosure Procedures

Effective
July 1, 2009



CHOOSING MEDIATION

Mediation is an alternative method to help parties resolve disputes by agreement with the help of trained mediators.

Mediating a foreclosure action has its advantages. It is fast, inexpensive, and offers a flexibility that more formal processes do not.

INFORMATION AND FORMS
www.nevadajudiciary.us

Frequently Asked Questions

What is the Foreclosure Mediation Program (FMP)?

The FMP allows homeowners to sit down with mortgage lenders and trained mediators, to discuss alternatives to foreclosure. Mediation is a process of give and take and the parties must negotiate in good faith.

If a homeowner requests mediation, the lender may not foreclose until mediation has been concluded.

Who May Participate in the FMP?

Under Nevada law, the program is open to homeowners of owner-occupied houses who receive a foreclosure notice — formally titled **Notice of Default (or Breach) and Election to Sell** — filed on or after July 1, 2009. Persons who received foreclosure notices prior to July 1, 2009 may participate only if their lenders agree and the parties make a written request.



Who May Not Participate in the FMP?

- Homeowners who do not occupy the homes being foreclosed
- Those who have already surrendered their homes to the lenders
- Homeowners who have begun bankruptcy proceedings (exceptions may apply)
- Homeowners who receive foreclosure notices from their homeowner associations

How Do I Request Foreclosure Mediation?

The homeowner has 30 days after being served with a foreclosure notice to elect to participate in mediation and notify the trustee and FMP Administrator.

A form to request mediation and easy-to-understand instructions should be attached to the foreclosure notice served on the borrower. If they are not attached or are lost, forms are available on the Nevada Supreme Court website, www.nevadajudiciary.us.

The homeowner must sign and send the Election to Mediate form and the non-refundable \$200 mediation fee (by certified check or money order) to the FMP Administrator. A pre-addressed envelope should be included with your foreclosure notice. The homeowner must also send a copy of the Election to Mediate Form (by certified mail) to the trustee (your lender). A pre-addressed envelope should be included with the foreclosure notice.

Failing to request mediation within 30 days of receiving a foreclosure notice may be considered a waiver of that option and the lender can proceed with the foreclosure.

After I Request Mediation, What is the Next Step?

Within 10 days of the FMP receiving all necessary documents and fees from both the homeowner and the lender, a mediator will be assigned. Mediations are expected to be concluded within 90 days of the recording of the foreclosure notice.

Seven days prior to the mediation, homeowners must submit a financial statement and a housing affordability worksheet (available on the Nevada Supreme Court website) and a proposal for resolving the foreclosure.

What if a Mortgage Company or Lender Does Not Want to Participate in Mediation?

Once a homeowner requests mediation, the lender is required to participate in good faith and have someone at the mediation with the authority to modify a loan.

The lender must bring (1) the original or certified copy of the Mortgage Note, (2) the original or certified copy of the Deed of Trust, (3) the original or certified copy of each assignment of the Mortgage note and Deed of Trust.

The lender must also produce the an appraisal of the property done no more than 60 days before the beginning of the mediation and prepare an estimate of the short sale value of the home. The lender must show the method it uses to determine the eligibility of a homeowner for a loan modification.

What Can the Mediator Do?

The Mediator's role is to help the parties work toward a reasonable resolution to a mutual problem.

The Mediator is not a judge who decides a case and cannot give legal advice. However, the mediator is in charge of the mediation and will set the time and location after consulting with the parties. Mediators will also make decisions on any requests for postponements. Mediators are randomly assigned from a list of qualified and trained individuals.

What if I Fail to Appear for the Mediation?

If the homeowner fails to appear, it may result in the forfeiture of the right to mediate. In that instance, the lender is notified that the foreclosure can proceed.

Under the rules, if a homeowner fails to attend the mediation, the FMP Administrator will issue a certificate stating that no mediation is required. Once that occurs, a foreclosure may go forward.

What if There is an Emergency and I Cannot Attend at the Designated Time?

Mediations may be postponed only if a participant cannot attend because of "extraordinary circumstances." On a written request of a party, a mediation may be rescheduled within 10 days if the mediator agrees.

What is a Loan Modification?

A loan modification is a change in the terms of the mortgage loan. A loan modification can result in a lender adding missed payments to the loan balance, changing the interest rate, extending the term of a loan, or reducing the total amount due on the loan.

Still Have Questions?

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DISCLAIMER: The information in this brochure is general information and not intended to be all inclusive. Additional information is available on the Foreclosure Mediation webpage at www.nevadajudiciary.us