

## Defining terms in foreclosure mediation

**Mediation:** A process by which a neutral mediator assists parties in trying to reach a voluntary negotiated settlement to resolve their dispute

**Foreclosure mediation:** Mediation conducted in the course of foreclosure proceedings. The mediation can be a condition to initiating foreclosure or occur any time up to the sale of the property. The timing depends on the rules of the particular program. We also include “two-tier” mediation programs in this term. Two-tier programs, such as the one in Philadelphia, require the parties to hold an informal conciliation conference first without a mediator. If the parties reach an impasse, the case is referred to formal mediation.

**Voluntary versus mandatory mediation:** In voluntary mediation, a homeowner must request—or “opt in”—for mediation. In mandatory mediation, a session is automatically scheduled for both parties. A homeowner may or may not be able to “opt out” depending on the particular program.

**Judicial foreclosure versus nonjudicial foreclosure:** Foreclosure mediation can take place in one of two contexts: judicial foreclosure, in which the servicer has to file a complaint in court to initiate foreclosure; and nonjudicial foreclosure, in which a servicer simply provides public notice of the default and sale without court intervention. While many states permit both types of foreclosure, most focus on one.

**Mediation in a judicial foreclosure:** This generally begins simultaneously with the foreclosure proceedings. To initiate a foreclosure, the servicer

files a complaint and then sends the homeowner notice of that filing. Included within that notice is an additional document about mediation. If the mediation program is voluntary, then the notice informs the homeowner that mediation is available and explains how the homeowner can request it. If the program is mandatory, the notice includes the date and time of the first mediation session. Under most current programs, mediation occurs alongside the court proceedings—it does not stay them—so a homeowner must file an answer and provide discovery responses while also attending mediation sessions. Where mediation offers some protection on the back end, mediation is a condition for completing the foreclosure so the court will not enter judgment (which then leads to the sale of the property) until the mediation is complete. In cases where mediation is successful, the case generally settles and foreclosure proceedings are discontinued as unnecessary.

**Mediation in nonjudicial foreclosure.** This type of mediation takes place *before* the foreclosure proceedings, because nonjudicial proceedings are much faster and require far less process than judicial foreclosure proceedings. A servicer need only post a notice of sale and then sell the property after a set time period. Some states require one additional notice prior to the notice of sale telling the homeowner she has defaulted on the mortgage. For mediation to be effective, it must occur before the notice of sale is posted to give the parties sufficient time for adequate negotiations. If at all possible, it should occur before the notice of default. As above, if mediation is successful, the foreclosure proceedings generally become moot.