

Civil Justice Tip Sheet: Foreclosure Mediation

What is foreclosure mediation?

- Mediation is your opportunity to meet with a representative from your lender to discuss options to prevent a foreclosure sale of your home.
- The mediation session is not a formal court proceeding. It is a meeting between you and your lender, and takes place around a table. The mediation is conducted by an Administrative Law Judge (ALJ) who is a neutral third-party. An attorney for your lender will be at the mediation, and your lender will call-in by telephone.

What are the benefits of attending mediation?

- Mediation will help to ensure that you explore all available options to prevent foreclosure.
- You may be able to negotiate a loan modification, forbearance, reinstatement, short sale, or deed in lieu of foreclosure, or other non-foreclosure resolutions.
- The foreclosure sale is put on hold until at least 15 days after the mediation takes place.

What do I need to do to prepare for mediation?

- You will need to send the Office of Administrative Hearings (OAH) and your lender documents **at least 20 days prior** to your mediation. This is called a “document exchange.” OAH will send you a letter, listing all the documents you must send to them, and to the lender’s attorney before the mediation. You must send the listed documents to OAH and the lender, **even if you have already submitted these documents to the lender previously.**
- If you don’t already have an attorney, you should try to find an attorney who will attend mediation with you. Contact Civil Justice at (410) 706-0174 or www.civiljusticenetwork.org to see if you qualify for a free or reduced-price attorney.
- If you are pursuing a loan modification, make sure you have submitted all documents requested by the lender for the modification review prior to mediation. This is in addition to the document exchange mentioned above.
- If you have questions about where to go for your mediation or are going to be late, contact OAH immediately. If you do not arrive within 15 minutes of your scheduled mediation time, your mediation will be cancelled and not rescheduled.

Who can I bring to the mediation?

- You can bring an attorney, housing counselor, family member or someone else with you to the mediation.

What should I expect at my mediation session?

- The ALJ will explain to you all the options that may be available to you to stop a foreclosure sale. These may be referred to as your “loss mitigation” options.
- The lender will want to see proof, through your paperwork, that you can afford to stay in the house. You should be prepared to show the lender copies of all relevant documents, even if you have submitted them previously. For example, you will need to bring any documents you submitted when requesting a prior loan modification.
- The mediation session can last approximately 90 minutes to 2 hours.
- During the mediation, you can request time to talk privately to the ALJ or anyone you brought with you.
- If you are asked to submit additional documents to the lender, request specific instructions on what documents are needed and when they are due. Ask the bank if they will agree to postpone any foreclosure sale until after the deadline to submit additional documents. Be sure to submit documents to the bank and the bank’s attorney directly and request written acknowledgment that they received them.

- The ALJ will explain to you that the mediation is confidential and the conversation with your lender at the mediation cannot be used for any future legal action. However, you are able to talk to your attorney, housing counselor, or other representative about what occurred at the mediation after its completion.

What options are discussed at mediation?

- You will discuss the possibility of obtaining a loan modification from the lender. A loan modification is an agreement to change the terms of your existing mortgage with the goal of a more affordable monthly payment. Other options that allow you to stay in your home include reinstatement of the loan (where you bring the delinquent loan current in one payment) and forbearance (where the lender agrees to reduce or suspend mortgage payments for a limited period of time and not initiate foreclosure proceedings during this period).
- You may also discuss options that will not allow you to keep the home, but will prevent a foreclosure sale. Those options may include selling your home either through a regular sale or a short sale (an agreement to sell the house for less than the mortgage amount owed), or agreeing to a deed-in-lieu of foreclosure (an agreement to give the property back to the bank without a foreclosure sale).

Can the ALJ make decisions about my case at mediation?

- The ALJ is acting as a neutral third-party and cannot make any decisions about the foreclosure case. Any challenges you have to the foreclosure case need to be made in the Circuit Court where the foreclosure action was filed.
- At your mediation session, you can ask the ALJ for a “continuance” to have another mediation session scheduled if more time is needed to reach a solution in your case. For example, if you need time to submit any additional documents to your lender or your lender needs time to review documents that you have already submitted. The ALJ may grant the continuance only if they find there is “good cause” to do so, and you must show that you have a good reason for this request.

Can the mediation be rescheduled or postponed?

- If you are unable to attend the mediation, contact OAH immediately at (410) 229-4100 – in limited circumstances they may reschedule or postpone your mediation.

What can I expect after my mediation?

- If your mediation results in a written agreement, the attorney for the lender may decide to dismiss your foreclosure case. However, this might not happen immediately. For example, if your lender agrees to give you a loan modification, it may wait to dismiss the case until after you completed the trial payment plan.
- Unless a written agreement is reached, OAH will send you a notice that no agreement was reached and your lender can proceed to sell the property.
- Even if no written agreement is reached, you may still be given time to submit additional documents to your lender so the lender can consider you for a modification or other loss mitigation options.
- If no written agreement is reached at your mediation, a foreclosure sale can be scheduled in as little as 15 days from the date of your mediation session.

What options do I have if no agreement was reached at my mediation?

- You have 15 days from the date of your mediation session to file a “Motion to Stay the Sale” with the Circuit Court if you believe your lender should not be allowed to proceed with the foreclosure sale. These are complicated proceedings and you should seek the assistance of an attorney to file a motion to stay the sale.
- Until the date of the foreclosure sale, you might be able to stop or postpone the sale by filing for bankruptcy. Bankruptcies are complicated legal procedures, and you should consult an experienced bankruptcy attorney before deciding to file.