

# States Should Implement Borrower Information Campaigns

## MBA RECOMMENDS

MBA suggests that states implement borrower information campaigns rather than impose cumbersome mandatory mediation requirements on borrowers and lenders. MBA does not support mandatory mediation because it creates costly processes that duplicate existing efforts to help delinquent borrowers avoid foreclosure.

## BACKGROUND

Recently, there has been an increase in state legislative activity requiring mandatory mediation between a delinquent borrower and the loan servicer before a lender may exercise its right to foreclose on a property. Such proposals were first introduced in 2007 in Pennsylvania and Ohio and in Connecticut in 2008. More recently, bills have been introduced in Massachusetts, Maine, Illinois, Indiana, Pennsylvania, New York, Nevada, Minnesota, Iowa and Oregon requiring mediation as part of the foreclosure process. Proponents of mediation claim this concept will ensure servicers respond to delinquent homeowners who want to work out a deal so they can keep their homes.

Lenders, however, find that mediation rarely produces results that they haven't achieved from their own efforts to help the delinquent borrower avoid losing his or her home. Mandatory mediation is an expensive and bureaucratic process that is not necessary and confuses the loss mitigation processes that lenders already have in place. Mediation programs are frequently expensive, with direct fees to both the servicer and the borrower, and result in duplicative requirements, increased investor, tax and insurance advances, duplication of foreclosure costs, technology and staffing time.

Lenders and servicers devote a great deal of resources to provide workable loss-mitigation solutions to troubled borrowers on an individualized, case-by-case basis. Servicers contact borrowers soon after they fall behind

in their mortgage payments to explore a wide variety of ways to avoid foreclosure. Mandatory mediation would require mortgage servicers to shift their focus from directly helping borrowers to navigating bureaucratic processes. Time and effort that servicers currently spend helping large numbers of troubled borrowers will be redirected to ensuring compliance with burdensome notice requirements and orders of the mediator.

## MBA POSITION

MBA does not support mandatory mediation because it creates costly processes that duplicate existing efforts to help delinquent borrowers avoid foreclosure in a far more cumbersome manner. Widespread adoption of mandatory mediation across 50 states and possibly a far greater number of local jurisdictions is a model that is unsustainable. Moreover, there is no empirical evidence that shows that mandatory mediation is any more effective than lenders' existing loss mitigation programs.

The states should focus their efforts on encouraging at risk borrowers to communicate with their lender to explore alternatives to foreclosure when the borrower is unable to make his or her monthly mortgage payment.



## PRINCIPLES IN THE EVENT OF STATE IMPOSED MEDIATION

If states are determined to pass state mediation requirements, several principles should be adopted to limit duplicating loss mitigation efforts and costs.

- Blanket foreclosure moratoria should not be part of mediation programs and servicers should not be forced to halt the foreclosure process. Counseling and mediation efforts can be undertaken parallel to the foreclosure process. Any mediation proposal should fit within a state's current foreclosure timeline so as not to create an artificial delay.
- Mediation should only be contemplated on owner-occupied primary residences. Vacant properties should be excluded from any state mediation requirement as it is in everyone's best interest to get these properties quickly into the hands of new owners.
- Borrowers should be required to opt into mediation. Many borrowers are already in negotiations with their servicers and a separate mediation event may be unwanted, unnecessary, confusing and costly.
- Mandatory mediation should be used as a last resort when servicers have been unresponsive to a borrower's request for loss mitigation prior to foreclosure sale. Mandatory mediation should not be used to contest a loss mitigation decision by the servicer. Mandatory mediation should only be available to borrowers who can prove they tried to contact their servicer to seek loss-mitigation well before the foreclosure sale, but has received no response from their servicer. By making mandatory mediation contingent on the borrower contacting their servicer first, the need for mandatory mediation will be lessened.
- The mediation process should begin during the first legal action phase of foreclosure, which is approximately the 120-150th day of the delinquency, to avoid duplicating loss mitigation.
- Servicers should not be required to provide originals or copies of legal documents. Mediation is not a legal proceeding and there is no need to duplicate or exceed the state's legal requirements to foreclose. Moreover, the risk of losing original documents is too great.
- If an actual mediation session is needed, conference calls and other communication channels should be permitted. Servicers are simply unable to support in-person sessions given the high volume of loss mitigation activity.
- Mediators should be HUD-approved housing counselors. Mediators should not have the authority to dictate a settlement. Borrowers should be obligated to provide requested information to the servicer prior to any mediation session. If the borrower fails to cooperate, such as fails to provide requested documentation, or fails to participate in the mediation session, the mediation should be considered abandoned and foreclosure resume.
- Mediation should be a one-time event, not a series of events. Other reasonable limits should be placed on the borrower's use of mediation, including how often this option can be invoked.
- Where property retention is not an option for the borrower, the servicer should be permitted to use non-retention loss mitigation options, such as short sales and deeds in lieu of foreclosure, as a satisfactory outcome to mediation or loss mitigation without mediation.