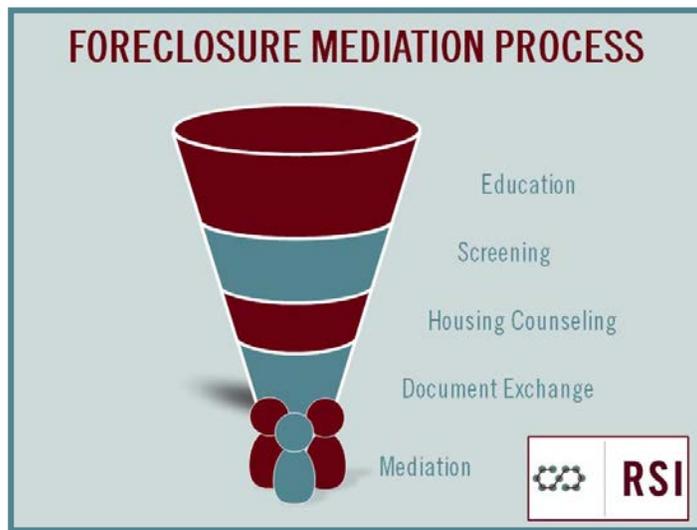




A FORECLOSURE MEDIATION PRIMER

While the existence of foreclosure mediation programs predates the 2008 housing crisis, it was the dramatic rise in foreclosure filings spurred by those events that led more than half the US states to develop alternate processes to resolve the numerous foreclosure actions they confronted. Among other goals, the states wanted to help facilitate conversations between homeowners and lenders, and give the parties an efficient way to decide what happens to the home. Would the borrower retain the property or would the lender take ownership?

The mediation process is best envisioned as a funnel. A manager (usually, a court or government agency) notifies all borrowers in foreclosure of the availability of mediation, along with some general information about the process. A borrower may be automatically scheduled for a dispute resolution session (“opt-out”), or must request to participate (“opt-in”) in order to be deemed eligible. If a borrower wishes to apply for a loan modification, their servicer must receive a complete financial packet before deciding about a modification. (Anyone who has applied for a mortgage knows that there is a lot of paperwork involved. When a homeowner is trying to keep their home, there is even more paperwork.) At this stage, the program, through partnerships with outside agencies, might also provide homeowners with housing counseling services or legal advice.



One essential factor in successful foreclosure mediation is the facilitation of the communication process by which lenders request information, homeowners submit information, lenders request additional or clarified information and homeowners submit additional information. This is more complicated than it would seem. While all lenders require similar information, there are some variations among lenders. Plus, if a homeowner makes an error when submitting information, by the time the corrected information is submitted, other items in the package (such as pay stubs) may be too old for the bank to use them in deciding on a loan modification. Simple errors, such as sending unsigned tax returns or omitting blank pages from bank statements, can snowball into much larger delays. Facilitating effective communication between lender and homeowner is essential.



Once the paperwork has been fully prepared and exchanged, and these other services have been provided to the homeowner, the parties will meet for a mediation session, where a neutral third-party mediator facilitates a discussion between the borrower and lender representative about the borrower's options. Some of these options include a loan modification or an agreement by which the homeowner relinquishes the property in exchange for some consideration, such as moving costs. The parties can agree to hold a second session, exchange more paperwork, proceed with foreclosure or pursue an alternative to foreclosure.

At the conclusion of mediation, there are several possible outcomes. The parties reach an agreement—either relinquishment (borrower will sell or otherwise leave the home) or retention (the borrower will remain in the home). Alternatively, parties may reach a partial agreement or come to no agreement at all.

Across all these outcomes, there are many positive benefits of mediation. Homeowners benefit by getting an opportunity to obtain a modified loan and keep their home, mitigating the amount they owe, or, at the very least, having a clear communication with their lender. Lenders benefit by either leaving the table with a performing mortgage, preventing them from having to deal with the costs of maintaining and selling the property, or taking possession of the property with significantly fewer complications. Courts and judges benefit by having fewer cases where the underlying problem is a communication issue between the parties. And communities benefit by reducing the amount of foreclosed properties, which can serve to alleviate the downward pressure on the housing market.

To learn more about the benefits, as well as the challenges, foreclosure mediation presents, please see our [Foreclosure Mediation Special Topics Resource Collection](#).