



PROGRAM DEVELOPMENT GUIDE

With foreclosures on the rise, courts are struggling to keep pace with the greater workload while homeowners are in greater need of relief and banks are losing money on their growing inventories of foreclosed properties. One response has been to establish foreclosure mediation programs. Doing so requires careful planning.

For the program to be used and to function smoothly, it is necessary to get the attorneys for the banks involved early in the planning process. It is also essential for homeowners to be aware of the program and to be prepared to participate in mediation, so that their participation is more efficient. Homeowners need to be educated on their options and their rights before they enter mediation and the mediators must be skilled and trained in issues relating to foreclosures. Courts also need to monitor and evaluate their programs to make sure they are working well for all involved.

When beginning the process of developing a program, the following questions should be answered.

1. *Who are the stakeholders who should be involved in the development of the program?*

A steering committee should be set up to bring stakeholders to the table and make sure all voices are heard. At a minimum, these stakeholders in the program would include attorneys for the banks, programs involved in helping homeowners deal with foreclosures, judges, mediators, and court administrators. Other stakeholders would be government agencies, such as consumer protection offices, housing offices, and attorneys general; lawyers groups, such as legal aid and bar associations; or non-profits, such as housing advocacy and community mediation organizations. This allows all the stakeholders to have their interests and skills brought to the table to buy into and support the program, which increases the probability of success. Once the program is in place, the steering committee can continue to advise the program, revisit policy, and so forth.



2. *What should the goal of the program be?*

The goal should be identified by the stakeholders early in the development process. It is a fundamental element of any mediation program. When the goal is clearly defined, the program can stay focused on accomplishing it. Each program design decision can be made with the goal in mind. In the past few years, court systems have developed foreclosure mediation programs with a variety of stated goals: ensuring communication, improving efficiency and timeliness, assisting borrowers, and stabilizing communities. Click [here](#) for an RSI report on the goals and purposes of foreclosure mediation programs in 26 states.

3. *Which properties will be covered by the program?*

Most jurisdictions limit the program to owner-occupied residential units. However, [Connecticut](#) is expanding its program to all real estate foreclosures.

4. *How will foreclosure cases be referred to mediation?*

Among the possibilities, the four most likely are: make mediation mandatory for all cases, refer cases to mediation when either the homeowner or lender requests it, refer cases to mediation when both parties agree to mediate, or refer on the court's own motion. In some jurisdictions, a fifth option has been put on the table: recommendations by housing counselors. Most jurisdictions opt for a combination of single party request and court order on its own motion. By eliminating the need for both parties to agree to mediation, it is more probable that mediation will occur, which means that the program will be accomplishing some of what it set out to do - relieve court backlog and help homeowners in a time of crisis. Mandatory mediation is often seen as being too onerous, particularly in this case by the attorneys for the banks. It also can lead to overstretching of mediation resources, as well as mediation of cases that are not appropriate. However, it also reaches all homeowners equally, thus making sure that the program benefits even those who would not learn about the program by other means or might not understand their right to mediate the terms of their mortgage. [Connecticut](#) has decided to make its program mandatory.



5. *How will the homeowners learn about the program?*

When homeowners receive the notice of foreclosure, they often see that as the final step, rather than a beginning of a process. They therefore feel helpless and do nothing. Getting the word out that they have options, including mediation, is an important step in the process of helping families facing foreclosure. Possibilities for informing homeowners include informational brochures sent along with the summons, web sites for homeowners and attorneys, public relations efforts, and house-to-house informational campaigns.

6. *When will mediation take place?*

Mediation can be offered from pre-filing until the sale by auction. Some jurisdictions offer it throughout this time. Some wait until housing counselors have had the opportunity to meet with the homeowners and lenders.

7. *What are housing counselors?*

Some jurisdictions have identified individuals with expertise in mortgages and with educating low-income individuals about financial matters to work with people who are facing foreclosure. The housing counselors assist individuals in sorting out their financial position, getting their paperwork in order, and determining whether a mortgage modification would be workable or whether something like a graceful exit would be more appropriate.

8. *How will homeowners be educated about their options and their rights?*

Because homeowners tend not to know what their options and rights are in foreclosure, and because they tend to be pro se, mediation should not take place without the assistance of someone like a housing counselor. They may need legal counsel as well in order to participate meaningfully in the mediation and work out terms that they can realistically meet. Without this support, there is a significant concern that mediation could lead to a detrimental outcome. Courts may want to partner with agencies and organizations that are already working to provide these services.



9. *Who will mediate the cases?*

Some programs, such as the one in [Philadelphia](#), use existing staff. In others, such as New Jersey, lawyers volunteer. Another route has been taken in Florida, where [courts](#) that have established foreclosure mediation programs utilize their existing approved mediator list. [Ohio](#) offers two options to courts: staff mediators or contract mediators. The most important things are that mediators be seen as neutral, have received good basic skills mediation training, and are familiar with foreclosure either by background or through training in foreclosure issues.

10. *Will there be a fee for mediation and, if so, who will pay?*

Foreclosure mediation tends to be free, but is sometimes offered at a particular rate per mediation. If the mediators are paid, the lenders generally are responsible for the fee. However, in Nevada, the lenders and homeowners split the cost. Click [here](#) for a review of funding structures for foreclosure mediation programs around the country (or click [here](#) for the executive summary).

11. *Will the foreclosure process continue or be stayed while mediation is ongoing?*

Generally, the process continues so that the total time to resolution does not increase because of mediation.

12. *How will the program be monitored?*

A court and the community it serves should always know if its program is functioning well and serving the needs it set out to meet. It should therefore set up a monitoring and evaluation system at the same time it is developing the program. See "[Monitoring and Evaluation](#)" in the Court ADR Instruction Manual for more information.