

A Maryland Judiciary Production
My Laws, My Courts, My Maryland
Foreclosure Mediation

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In this video, we will talk about foreclosure mediation. We'll explain how to request mediation, how to prepare for mediation, and what you can expect during a mediation session. We will also talk about what happens after mediation. Foreclosure mediation is different than mediation in other types of cases. If you are considering mediating other types of cases, you should view the My Laws, My Courts, My Maryland video, *Mediation*. You should also know that there are two types of foreclosure mediation: Pre-file mediation and post-file mediation. This video focuses on the more common type, post-file foreclosure mediation.

[STEP1: What is Foreclosure Mediation?]

What is Foreclosure Mediation?

Mediation is a process in which two sides in a dispute meet to try to reach a voluntary agreement. Basically, foreclosure mediation is a conversation between you (the homeowner) and your lender. In foreclosure mediation, you and your lender will work with an impartial individual who will help you in reaching an agreement.

Who is at Mediation?

At mediation, you sit down with the mediator and your lender, or the lender's representative, and discuss your situation. Your lender must attend by phone or in-person. If any party does not attend, the mediator may cancel the mediation. If the lender does not attend, the circuit court may dismiss the foreclosure action. If you do not attend, you may lose your chance at mediation.

You may bring a spouse, family member, or friend to mediation for support. You may also bring a lawyer. The goal of foreclosure mediation is to see if there is a way for you to keep your home. Everyone whose name is listed on the mortgage should attend the mediation. If someone can't make it, ask for a postponement. If you do not attend the mediation, the case will be sent back to the circuit court and the foreclosure sale may proceed.

How Do I Request Mediation?

Although some lenders offer "pre-file mediation," most mediations occur after the lender has started the foreclosure process in court. You will know that the court process has begun because the lender will have mailed to you a copy of an Order to Docket and a Final Loss Mitigation Affidavit. Before this point, you must have defaulted on your mortgage. You also should have received a Notice of Intent to Foreclose from your lender. If you have questions about the foreclosure process, view the My Laws, My Courts, My Maryland video *Foreclosure*. If you did not reach out to The Maryland Home Owners Preserving Equity Initiative when you received those documents, you may want to contact Maryland HOPE for free counseling on the foreclosure mediation process.

The Final Loss Mitigation Affidavit should include a form and directions for how to request mediation. Read the notice carefully. Once you receive the form, you have 25 days to submit your request for mediation. Keep in mind that by requesting mediation, you may add up to 60 days to the foreclosure process. Those extra days can be valuable time you may use to find a way to avoid foreclosure.

What Does Mediation Cost?

You must pay \$50 to the circuit court when you file your request for mediation. If you cannot afford it, file the form along with a motion asking the court to waive the fee. If you do not submit your “Request for Foreclosure Mediation” form and \$50 fee during the 25 day time frame, you will not get another chance to request mediation. Be sure you file your request and pay any required fees on time.

[STEP 2: How to Prepare for Mediation]

What Should I Consider Before Mediation?

Try to know your goal for mediation beforehand. Discuss your mediation strategy with a housing counselor. A housing counselor may help you determine whether it is realistic to try to keep your home, and what other option you may have. In other words, a counselor can help you see whether you have enough income to pay your household debts plus a monthly mortgage payment along with past due mortgage payments. Maryland HOPE connects homeowners with free counselors and legal services.

What Should I Take to Mediation?

When your mediation is scheduled, you will receive a notice. Read this notice carefully. You must submit certain documents before mediation.

If you are trying to modify your mortgage loan, keep in mind that the lender will consider household income, the combined income of all adults in the house. You should bring the following documents, even if you've submitted them before:

- A copy of the Borrowers Information Worksheet, which asks you to give the lender information about your income, employment, assets and debts.
- A completed, up-to-date modification application
- Three months of current bank statements
- One month of current pay check stubs
- Two years of signed federal income tax returns
- Copies of your most recent bills; proof of payment of property taxes and insurance (if you pay them directly and not through your mortgage company)
- A Current Hardship Letter. This is a letter that explains why you fell behind on your mortgage. It also explains how your circumstances have changed since you fell behind.

If you are not working but are receiving benefits like social security, disability, or retirement income, you should bring:

- Proof that you are receiving Social Security. This could be an award letter from the Social Security Administration.

- Proof that you are receiving other benefits like food stamps or cash assistance. This could be an award letter from the state or federal agency administering these benefits.
- Retirement income documentation. This could be a letter showing the amount of retirement income you receive monthly.

[STEP 3: What Happens During Mediation?]

What Happens During Mediation?

Mediation usually lasts about an hour, but can last up to two hours. In mediation you can discuss a range of solutions, some of which may permit you to avoid foreclosure. Some common solutions include:

- Loan modification. If the lender agrees to a loan modification, the terms of your loan change so that your payment is affordable for you. If approved, you can stay in your home.
- A short sale. This is where the lender gives you time to sell your home with a private real estate agent. The list price of your home may be less than what you owe on the mortgage. If approved, you will have to find a private agent to list your home. You will also have to move out when it's sold.
- Deed in lieu of foreclosure. This is where you give the house back to the bank. In exchange, the bank will forgive the debt that you owe. If approved, you will have to move.

- Cash for keys. This is where the bank agrees to pay you money in exchange for moving out of the house earlier than you would have had to otherwise. If approved, you will have to move.

Keep in mind that there may be tax consequences if the bank agrees to forgive any debt that you owe. That may mean you owe taxes on the amount of debt forgiven. If you're not sure about taxes that you might owe, talk to an experienced tax lawyer or a CPA (a Certified Public Accountant).

[STEP 4: What Happens After Mediation?]

What Happens After Mediation?

After mediation, the mediator should file a report with the circuit court within seven days. The report will say whether you and the lender reached an agreement in mediation.

If you reach an agreement, the mediator may list the items that were agreed to on an agreement form. Then, all parties will sign it. Often lenders don't want to put anything in writing. Remember, mediation is confidential. Even if you agreed to something in mediation, if it is not in writing, you may not be protected.

If you and the lender do not come to an agreement, think seriously about your next steps. The lender can schedule the sale of your home as soon as 15 days after your mediation has occurred. If you think you have a good reason that the lender does not have the right to foreclose on your home, you can file a motion with the court. You may also want to consider getting free legal advice from The Debtor Assistance Project (DAP), a program run through the U.S. Bankruptcy Court of Maryland.

[STEP 5: Resources]

The Maryland HOPE Initiative, a program operated by the State of Maryland, offers foreclosure prevention resources. **Do not pay for housing counseling.** Maryland HOPE can refer you to free housing counseling resources. The program can also guide you to free or reduced-fee legal resources. It is important to reach out to housing counselors. Be proactive in this process. Be your own advocate.

Remember, you must request mediation as soon as you receive a copy of the Final Loss Mitigation Affidavit. The mediation notice will outline the documents that you must submit before your mediation session. Don't forget to pay the \$50 fee. Consider discussing your options with a housing counselor before mediation and expect to discuss different types of solutions during your mediation session. At mediation, try to get the terms of the agreement in writing. If you and the lender could not reach an agreement, think about your next steps.

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