

Maryland's Foreclosure Mediation Program

What You Need to Know About Foreclosure Mediation

Maryland's new Foreclosure Mediation Law will take effect July 1, 2010. The law requires mortgage lenders and servicers to be much more responsive to homeowners facing foreclosure. The goal of the law is to help homeowners get relief through a loan modification if they qualify or to find an alternative to foreclosure. The law gives homeowners a new opportunity to meet with the lender and an independent party to ensure that alternatives to foreclosure have been considered and evaluated.

Mediation is a process that can be used to resolve disagreements outside a courtroom. Both sides meet with a neutral third party who tries to help them find a resolution. "Foreclosure Mediation" under this new law is designed to help foster a dialogue between homeowners and lenders to make sure a fair assessment is made and the homeowner is offered any options they may qualify for.

Responsibilities of Lenders

Under this law, when a lender notifies a homeowner about possible foreclosure, the lender also must provide more complete information about options available to homeowners, including information about specific modification programs, such as the federal Home Affordable Modification Program (HAMP), any lender-specific programs, and resources and assistance available from nonprofit organizations and government. If a homeowner fills out and returns a loan modification application, the lender must evaluate the request and document their decision before foreclosure can proceed to the next step. Should a lender take the next step, and initiate foreclosure proceedings with the court system, they must also send the homeowner a "Request for Mediation" form.

Responsibilities of Homeowners

Homeowners must contact their lenders and be responsive to any applications for loan modification programs or other alternatives to foreclosure that they may offer. If the home facing foreclosure is a homeowner's principal residence, the homeowner will have the right to request mediation once the lender initiates foreclosure proceedings with the court system. At that time, the lender must send a "Request for Foreclosure Mediation" form. Homeowners will have 15 days to complete the form and file it with the Circuit Court. Homeowners must pay a non-refundable \$50 fee when they formally file this request for mediation.

You should not wait until you can request mediation before starting efforts to save your home. The opportunity to participate in mediation occurs at a late stage in the foreclosure process and does not guarantee you may avoid foreclosure. Contact your lender and a housing counselor at the earliest sign of financial difficulty. A list of housing counseling agencies near you can be obtained by calling the MDHOPE hotline at 877-462-7555 or by clicking on the Counseling tab.

Frequently Asked Questions

- [Q. What should I expect to receive from my lender under this new law? \(Foreclosure Mediation FAQ.aspx#1\)](#)
- [Q. What does Maryland's new foreclosure timeline mean for me? \(Foreclosure Mediation FAQ.aspx#2\)](#)
- [Q. How can I participate in mediation? \(Foreclosure Mediation FAQ.aspx#3\)](#)
- [Q. How do I request mediation? \(Foreclosure Mediation FAQ.aspx#4\)](#)
- [Q. If I request mediation, is it automatic? \(Foreclosure Mediation FAQ.aspx#6\)](#)
- [Q. How should I prepare for mediation? \(Foreclosure Mediation FAQ.aspx#9\)](#)
- [Q. How will the mediation process work? \(Foreclosure Mediation FAQ.aspx#11\)](#)
- [More Frequently Asked Questions about Foreclosure Mediation \(Foreclosure Mediation FAQ.aspx\)](#)

Emergency Foreclosure Mediation Regulations

- **Emergency Foreclosure Mediation Regulations Website**
(<http://www.dllr.maryland.gov/finance/emmerregmortforemed.shtml>)

Foreclosure Mediation Overview

- **Foreclosure Mediation Overview**
(http://www.dhcd.state.md.us/Website/documents/guidlines_Rosa_only.pdf)

Office of Administrative Hearings (OAH)

OAH, which is an independent state agency, is overseeing foreclosure mediation sessions between homeowners and lenders or servicers. Details about foreclosure mediation including how mediations are scheduled, how you can prepare for mediation, as well as information about the mediation process and new foreclosure timelines can be found in the **Frequently Asked Questions (Foreclosure Mediation FAQ.aspx)**. Additional information can be found at **OAH foreclosure mediation page** (**<http://www.oah.state.md.us/foreclosuremediation.asp>**).

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Frequently Asked Questions

- Q1: What should I expect to receive from my lender under this new law?
- Q2: What does Maryland's new foreclosure timeline mean for me?
- Q3: How can I participate in mediation?
- Q4: How do I request mediation?
- Q5: Which cases are eligible for mediation after the new Foreclosure Mediation Law takes effect on July 1, 2010?
- Q6: If I request mediation, is it automatic?
- Q7: Where do I send my request for mediation?
- Q8: How much will it cost to participate in the session?
- Q9: How should I prepare for mediation?
- Q10: Who can I bring with me to mediation?
- Q11: How will the mediation process work?
- Q12: Who conducts the mediation and where does it take place?
- Q13: What role does the mediator have in trying to resolve the disagreement?
- Q14: What happens when we reach an agreement at mediation?
- Q15: Can the lender use discussions held and offers made at the mediation in future proceedings?
- Q16: What if I want to withdraw my request for mediation or change my mind about participating in mediation?
- Q17: What if I need to postpone the scheduled mediation?
- Q18: What is a Notice of Intent to Foreclose (NOI)?
- Q19: What is Loss Mitigation?
- Q20: You have not answered all of my questions. Where do I go for help?
- Q21: Where can I find information about resources and programs to help me avoid foreclosure?
- Q22: Now that there is a mediation program, should I still contact a housing counselor for help?

Answers

Q1. What should I expect to receive from my lender under this new law?

A. When you receive a Notice of Intent to Foreclose after July 1, 2010, the lender must also include the following documents:

- Information and resources on how to access housing counseling services
- An explanation of the Maryland foreclosure process and timeline
- A Loss Mitigation Application, including a description of the eligibility requirements for programs offered by the lender/servicer

- Instructions for completing and returning the application to the attorney handling the foreclosure for the lender
- An envelope preprinted with the address of the person responsible for conducting the loss mitigation analysis

If you receive a PRELIMINARY LOSS MITIGATION AFFIDAVIT when you are personally served with court papers when the foreclosure action is filed, your lender must also include the following documents:

- A Loss Mitigation Application and a description of the eligibility requirements
- Instructions for completing and returning the application to the attorney handling the foreclosure for the lender
- An envelope preprinted with the address of the attorney handling the foreclosure for the lender

If you receive a FINAL LOSS MITIGATION AFFIDAVIT, your lender must also include the following documents:

- A Request for Foreclosure Mediation Form
- An envelope preprinted with the address of the Clerk of the Circuit Court
- An envelope preprinted with the address of the foreclosure attorney handling the foreclosure for the lender

Q2. What does Maryland's new foreclosure timeline mean for me?

A. The process leading up to foreclosure begins when you receive a "Notice of Intent to Foreclose" in the mail. You are not yet in foreclosure at this point but you should act immediately! Complete the packet you receive in the mail and return it in the envelope that was included.

45 days after you get the Notice of Intent to Foreclose in the mail, a foreclosure may be filed in Court. When a foreclosure is filed against you, you will be served with a packet of papers called an "Order to Docket". Maryland law requires that your mortgage company reviews your circumstances to see if you are eligible to avoid foreclosure before they can sell your house at foreclosure. This review is called loss mitigation analysis. If this analysis is completed before your foreclosure is filed and you have a document called a "Final Loss Mitigation Affidavit" in the packet of paper that you receive, you should refer to column 1 below. If the analysis was not completed, you will have a "Preliminary Loss Mitigation Affidavit" in your packet of paper and you should look at column 2 below to understand the foreclosure process.

Timeline # 1

Where the Order to Docket or Complaint to Foreclose includes the "Final Loss Mitigation Affidavit." (Times in this chart are for general information. The timing of specific events in an actual foreclosure action may vary as permitted by law.)

- Day 1 Missed mortgage payment.
- Day 45 Notice of Intent to Foreclose must be mailed by regular & certified mail.
- Day 90 Order to Docket or Complaint to Foreclose filed in circuit court.
- Day 105 Last day for homeowner to request foreclosure mediation.*

* If foreclosure mediation is not requested by day 105, or if a motion to stay the sale has not been filed, the property may be sold on day 135 and the remainder of this timeline is inapplicable.

- Day 110 If foreclosure mediation is requested, circuit court sends the request to the Maryland Office of Administrative Hearings by this day.
- Day 170 If requested, foreclosure mediation must take place by this day unless postponement is requested.
- Day 185 Foreclosure sale can be held unless a motion to stay the sale is filed.

Timeline #2

Where the Order to Docket or Complaint to Foreclose includes the "Preliminary Loss Mitigation Affidavit." (Times in this chart are for general information. The timing of specific events in an actual foreclosure action may vary as permitted by law.)

- Day 1 Missed mortgage payment.
- Day 45 Notice of Intent to Foreclose mailed regular & certified mail.
- Day 90 Order to Docket or Complaint to Foreclose filed in circuit court.
- Day 118 "Final Loss Mitigation Affidavit" and form to request foreclosure mediation sent by regular & certified mail.
- Day 133 Last day for homeowner to request foreclosure mediation.*

* If foreclosure mediation is not requested by day 133, or if a motion to stay the sale has not been filed, the property may be sold on day 148 and the remainder of this time line is inapplicable.

- Day 138 If foreclosure mediation is requested, the circuit court sends the request to the Maryland Office of Administrative Hearings by this day.
- Day 198 If requested, foreclosure mediation must take place by this day unless postponement is requested.
- Day 213 Foreclosure sale can be held unless a motion to stay the sale is filed.

Q3. How can I participate in mediation?

A. If your home is your principal residence and your lender filed a foreclosure action after July 1, 2010, you may request mediation when your lender initiates foreclosure proceedings with the court system. Lenders will need to file one of two documents with the Circuit Court at the Order to Docket phase:

- A "Preliminary Loss Mitigation Affidavit" if they have not completed an analysis of your ability to repay the loan; OR
- A "Final Loss Mitigation Affidavit" if they have completed the analysis. As part of the Final Loss Mitigation Affidavit, your lender must send you a "Request for Foreclosure Mediation" form. You have 15 days from the time you receive this form to complete it and file the request for mediation with the Circuit Court. Homeowners must pay a non-refundable \$50 fee when they formally file this request for mediation.

This is the only time you will be offered the opportunity to request foreclosure mediation. Commercial and other non-owner occupied properties are not eligible for foreclosure mediation.

You should not wait until you can request mediation before starting efforts to save your home. The opportunity to participate in mediation occurs at a late stage in the foreclosure process and does not guarantee you may avoid foreclosure. Contact your lender and a housing counselor at the earliest sign of financial difficulty. A list of housing counseling agencies near you can be obtained by calling the MDHOPE hotline at 877-462-7555 or by visiting www.mdhope.org

Q4. How do I request mediation?

A. To request mediation, you must complete the Request for Mediation form sent to you by your lender. This form will arrive along with the servicer/lenders's Final Loss Mitigation Affidavit. You will also receive preprinted envelopes for returning your Request for Mediation form to the Clerk of the Circuit Court and the service/lender's attorney.

If you receive the Request for Mediation form with a Final Loss Mitigation Affidavit at the Order to Docket stage, your form must be filed with the court within 15 days from the day of personal service of the foreclosure action.

If you receive the Request for Mediation form with a later Final Loss Mitigation Affidavit, the form must be filed with the court within 15 days of the postmark on the envelope containing the Request for Mediation form and the Final Loss Mitigation Affidavit.

Q5. Which cases are eligible for mediation after the new Foreclosure Mediation Law takes effect on July 1, 2010?

A. New foreclosure cases filed with the Circuit Court on or after July 1, 2010 are eligible for the Foreclosure Mediation Program. If a foreclosure case was filed with the Circuit Court prior to July 1, 2010, homeowners will not be eligible for mediation.

Q6. If I request mediation, is it automatic?

A. Your request is automatically referred to the Office of Administrative Hearings (OAH) for scheduling. However, your lender can object by showing that mediation for your case is inappropriate. If your lender objects, the Court will decide whether the mediation should go forward. If the Court decides you are not entitled to mediation, you should consider consulting legal counsel who can advise you about any other legal options you may have to avoid foreclosure.

Q7. Where do I send my request for mediation?

A. Your “Request for Foreclosure Mediation” form must be sent to the Circuit Court in the county or city where your foreclosure action has been filed by your lender’s attorney. You must also send it to the attorney handling the foreclosure for your lender.

Q8. How much will it cost to participate in the session?

A. Homeowners must pay a non-refundable \$50 fee when they formally file a Request for Foreclosure Mediation with the Circuit Court.

Q9. How should I prepare for mediation?

A. You and your lender will be required to exchange all necessary documents 20 days prior to the mediation. The Office of Administrative Hearings (OAH) will send you a list of required documents when they send out the date of the scheduled mediation. A local housing counselor may be able to help you prepare for mediation. A list of local housing counseling organizations can be found at www.mdhope.org

Q10. Who can I bring with me to mediation?

A. You may bring anyone you believe will be helpful in resolving the dispute, including a trusted friend, relative, advocate, or an attorney. Only an attorney will be allowed to speak on your behalf, but anyone can assist you with the mediation.

Q11. How will the mediation process work?

A. Once your mediation request is filed with the Circuit Court, the court refers it to the OAH. The OAH must conduct the mediation within 60 days after it receives your request from the court. They will schedule the session and notify you of the time, date and place for the mediation session. If you need an interpreter, you will need to fill out the “Request for Interpreter” form that comes with the notice from OAH and return it as soon as possible.

Q12. Who conducts the mediation and where does it take place?

A. The mediator is an administrative law judge with the Maryland Office of Administrative Hearings who is trained in mediation. OAH will schedule mediations around the state depending on where the foreclosure action has been filed.

Q13. What role does the mediator have in trying to resolve the disagreement?

A. The mediator is not a decision maker nor does he/she have any legal powers to dictate an outcome. The mediator is neutral and does not take sides. Their goal is to assist the parties in finding common ground and helping them reach a solution that is satisfactory to both parties.

Q14. What happens when we reach an agreement at mediation?

A. The mediator will draft an agreement for you and the lender to sign and you will receive a copy before you leave the mediation session.

Q15. Can the lender use discussions held and offers made at the mediation in future proceedings?

A. No, mediation sessions are closed proceedings. Discussions that occur during mediation are confidential and cannot be used as evidence in any subsequent hearing or civil action by you or your lender. At the start of the mediation session, the parties will sign an agreement that sets forth all of the ground rules of the mediation, including specific confidentiality provisions.

Q16. What if I want to withdraw my request for mediation or change my mind about participating in mediation?

A. You should mail or hand-deliver a signed letter stating that you wish to withdraw your request to OAH as soon as possible. You may choose to include information on why the request is being withdrawn. The address of the Maryland Office of Administrative Hearings is 11101 Gilroy Road, Hunt Valley, MD 21031. Please note that if you withdraw from mediation and your home is still in danger of foreclosure, the OAH will send your case back to the Circuit Court and the foreclosure proceedings will continue. You will not have another opportunity to request mediation.

Q17. What if I need to postpone the scheduled mediation?

A. Postponements may be granted only for good cause. Requests for postponement must be made in writing and received by the Office of Administrative Hearings not less than five (5) business days prior to the scheduled hearing date. The request should include the case name, OAH case number, hearing date, the reason for the postponement request, a telephone number where the requestor can be contacted Monday through Friday between 8:30 a.m. and 4:30 p.m., and at least three (3) dates within a 60-day period in which the requesting party and its witnesses will be available for a hearing. A copy of the request must be mailed to all parties involved in the case. OAH may require documentation for the reasons for the postponement request. If a party needs to make an emergency request for postponement, he or she may do so by telephone. For more information, contact the Office of Administrative Hearings at (410) 229-4100.

For additional FAQs about Foreclosure Mediation, please visit the Office of Administrative Hearing's website <http://www.oah.state.md.us>

Q18. What is a Notice of Intent to Foreclose (NOI)?

A. A Notice of Intent to Foreclose is a notice informing a homeowner that their lender intends to file a foreclosure action in court because the homeowner is delinquent on his/her mortgage payments. The lender cannot file any action in court until 45 days after they have sent the Notice of Intent to Foreclose.

Q19. What is Loss Mitigation?

A. "Loss Mitigation" is an opportunity provided by the lender for a homeowner to avoid foreclosure. This can include a loan modification or other changes to the terms of the loan to allow the homeowner to stay in the property. Loss mitigation may also include other options such as a short sale, a deed in lieu of foreclosure or other opportunities for a homeowner to relinquish the property before a foreclosure occurs.

Q20. You have not answered all of my questions. Where do I go for help?

A. Homeowners should contact legal counsel or a local housing counseling organization which may provide additional guidance. For a list of local housing counseling organizations, please visit www.mdhope.org. For questions related to mediation scheduling such as locations or possible postponement, please contact OAH at (410) 229-4100. Additional information on mediation can also be found on OAH's website at <http://www.oah.state.md.us>

Q21. Where can I find information about resources and programs to help me avoid foreclosure?

A. Resources to assist homeowners facing foreclosure can be found by calling 1-877-462-7555 or visiting www.mdhope.org. The website site includes contact information for local housing counselors, information about foreclosure assistance programs, financial and legal resources and other advice and assistance to help homeowners facing foreclosure.

Q22. Now that there is a mediation program, should I still contact a housing counselor for help?

A. Yes – at the earliest sign of financial difficulty. Do not wait for an offer of mediation, which is one of the last stages in the foreclosure process. A housing counselor may also help you prepare for foreclosure mediation. A full list of counselors is available at www.mdhope.org or by calling 1-877-462-7555.

Disclaimer: The information and notices contained herein are intended as general research and information and are expressly not intended, and should not be regarded, as financial or legal advice. Individual matters and underlying facts may vary, and a licensed legal practitioner in your jurisdiction should be consulted if any questions arise.