

Foreclosure Mediation

In a Nutshell

Foreclosure mediation is a process by which neutral third parties (the “mediator”) work with homeowners and lenders to determine whether foreclosure of owner-occupied residences can be prevented by new agreements such as loan modifications, repayment plans, short sales, or deeds-in-lieu-of-foreclosure.

The “How To”

Foreclosure mediation programs have been created in at least 25 states, two-thirds of which are in judicial foreclosure states requiring court authorization of foreclosure, and one-third in non-judicial foreclosure states permitting lenders to conduct foreclosure sales without court involvement. Karen Tokarz, Kim. L. Kirn, and Justin Vail, *Foreclosure Mediation Programs: A Crucial and Effective Response by States, Cities and Courts to the Foreclosure Crisis*, The St. Louis Bar Journal, Summer 2012, at p. 28; Melanca Clark and Daniel Olmos, *Foreclosure Mediation: Emerging Research and Evaluation Practices*, Access to Justice Initiative, U. S. Department of Justice, December 2011, at p. 6.

In Illinois:

The Illinois Circuit Court for Madison and Bond Counties has approved a residential foreclosure mediation program for owner-occupied, primary residences. Interested homeowners can initiate mediation by filing a request for mediation and a financial questionnaire within 30 days of being served with a foreclosure summons. The necessary request for mediation and financial questionnaire forms are included with the foreclosure summons. A pre-mediation conference is scheduled by the program administrator within 60 days after the request for mediation is received. If the parties do not resolve the case through the pre-mediation process, the homeowner may request full mediation, which is conducted by a court-approved mediator selected by the program administrator.

Participation in both the pre-mediation conference and the mediation is mandatory for the foreclosing lender. Both parties must participate in good faith; the lender’s representative “must have full authority to enter into all settlement options, including options involving retention and non-retention of [the] property.” If agreement is reached on an alternative to foreclosure, except a trial modification, the foreclosure case is dismissed. If a trial modification is agreed to, the court retains jurisdiction until the end of the trial period. If no agreement is reached and the court is satisfied that the parties participated in the mediation in good faith, the foreclosure case is allowed to go forward.

The Third Judicial Circuit, Madison and Bond County, Illinois, defines and authorizes foreclosure mediation in Part 9 of its Rules of Practice, found [here](#).

In Missouri:

Contrary to the Illinois practice, courts in Missouri typically do not get involved in the foreclosure process, as lenders are permitted to initiate non-judicial foreclosure and sale by complying with public notice and service requirements. Prior to May, 2013, Missouri statutes were silent on the question of foreclosure mediation. Exercising their home rule powers, the St. Louis County Council and the St. Louis Board of Aldermen enacted ordinances in 2012 establishing mandatory foreclosure mediation programs patterned after the Madison/Bond County program.

Lenders objected to the mandatory nature of the programs, claiming that the City and County lacked authority to mandate foreclosure mediation. While litigation was pending, the Missouri General Assembly enacted and sent to Governor Nixon legislation preempting local foreclosure mediation programs, thereby requiring state legislation to authorize mandatory foreclosure mediation. House Committee Substitute for House Bill Nos. 446 & 211, 97th General Assembly, May 6, 2013, adding section 443.454, RSMo. Governor Nixon took no action, allowing the legislation that wipes out foreclosure mediation ordinances in St. Louis City and St. Louis County to go into effect without his signature. Voluntary foreclosure mediation presumably will not be affected by the preemptive legislation.

Planning & Zoning

This process has no direct planning or zoning implicatons.

Dollars & Cents

In St. Louis City and County, lenders/bankers are required to pay for mediation and face a fine for violation of any provision.

The St. Louis [Real Estate Tax Assistance Fund](#) helps prevent foreclosures and displacement of homeowners who are unable to pay their real estate tax bills.

Measuring Success

The Resolutions Systems Institute offers a [Foreclosure Disput Resolution by the Numbers](#) report.

Discover More

The Resolution Systems Institute provides a [Program Development Guide](#) for foreclosure mediation.

The St. Louis [Real Estate Tax Assistance Fund](#) helps prevent foreclosures and displacement of homeowners who are unable to pay their real estate tax bills.