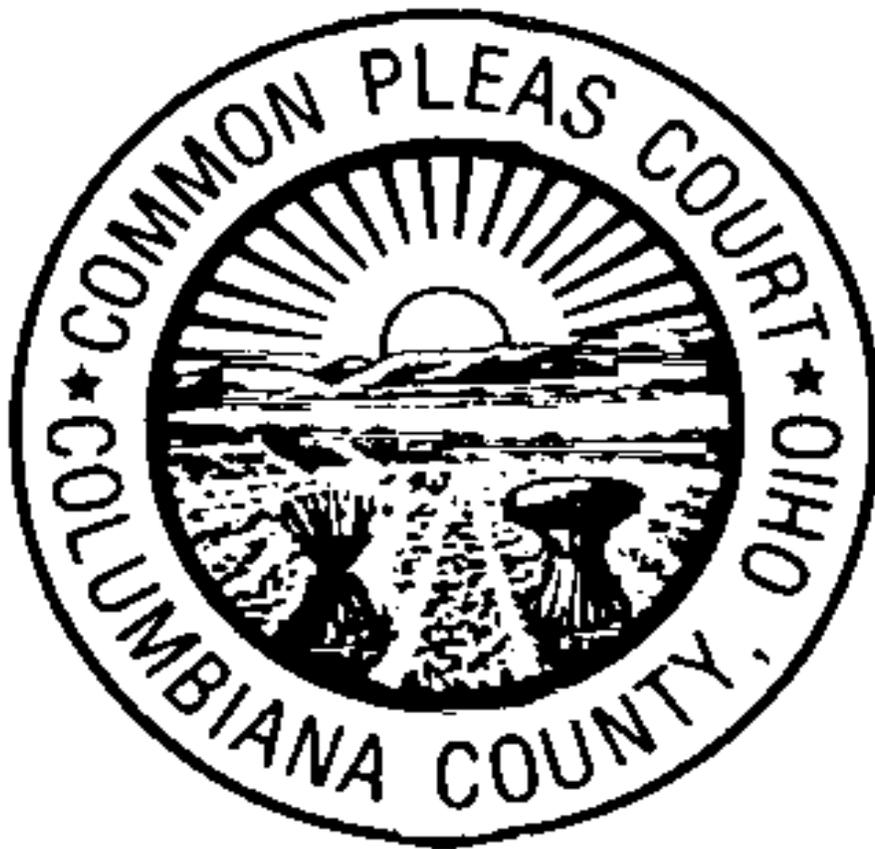


# **Foreclosure Mediation Packet**



## ***About the Foreclosure Mediation Process***

**Is the property your home?**

**Are you currently living in this property?**

**Would you like to remain living in this property?**

If you answered YES to these questions, foreclosure mediation might be helpful to you.

**What is foreclosure mediation?**

Foreclosure mediation is a voluntary, out of court procedure designed to help people resolve their disputes. Although you are strongly urged to seek legal counsel, it is not necessary for an attorney to represent you at mediation. At your own expense, you may have your own attorney present at mediation. You may also be eligible for free or reduced legal services to assist you at the mediation. To determine your eligibility for free or reduced legal services, call Legal Aid at 330-373-1448, or the Save the Dream Hotline at 1-888-404-4674.

If requested and approved, mediation will take place with a court-appointed mediator. A mediator is a neutral person appointed by the Court to help people reach a voluntary agreement regarding their case. The mediator is NOT a judge and is not permitted to give you legal advice. The mediator will not decide if any agreement is appropriate, only if the agreement satisfies everyone.

**How much does it cost?**

The Foreclosure mediation process is conducted at no cost. Local attorneys volunteer their time to serve as mediator. If you choose to hire your own attorney to represent you at mediation, then you must pay the cost of your attorney.

**Where do I begin?**

To request foreclosure mediation, go to [www.ccclerk.org](http://www.ccclerk.org) and access the Mediation Packet located under the Forms section of the Common Pleas Court or pick up the packet in the Clerk of Court's Office located at 105 S. Market Street, Lisbon, Ohio 44432. The Mediation Request Form located within the packet ***MUST BE SUBMITTED TO KATIE DICKEY at 105 S.MARKET ST. LISBON, OHIO 44432 WITHIN 28 DAYS OF THE DATE YOU RECEIVE THIS SUMMONS.*** After you submit this Form, the Court will give the opposing party a chance to respond. If the other party agrees to participate in mediation, the Court will send you further information and set up a date and time for mediation.

**What if I don't want to request foreclosure mediation?**

You are not required to request foreclosure mediation. However, in that event a judgment by default may be entered against you causing your home to be sold.

**YOU ARE STRONGLY URGED TO SEEK LEGAL COUNSEL TO PROTECT YOUR RIGHTS.**

# **FREQUENTLY ASKED QUESTIONS ABOUT FORECLOSURE MEDIATION**

## **What is foreclosure?**

Foreclosure is the process a lender/servicer uses to repossess your home. Once you receive notice that your lender/servicer has filed a mortgage foreclosure lawsuit, you could lose your home in 3-6 months. Immediate action on your part may prevent foreclosure.

- **Open your mail.** You will receive important information from the courts that you need in order to resolve your situation.
- **Don't Wait.** Taking action sooner means more options for you. If you do nothing, you will lose your home.
- **Contact your mortgage lender or servicer (depending on who you have who filed the foreclosure action against you) as soon as you receive the notice from the court.** Explain your circumstances and you may be able to work out a repayment/loss mitigation plan to avoid foreclosure.
- **Do NOT move out of your home.** It is important that your home remain occupied throughout the entire process and keep it in good condition both inside and out until the sheriff informs you that you have to leave.
- **Beware of Scams.** There are many people who try to take advantage of your financial situation. Some may attempt to take ownership of your home or charge fees for services that are available for free. Seek legal advice.
- **Need help?** Go to Save Dream at: [www.savethedream.ohio.gov](http://www.savethedream.ohio.gov) or call 1.888.404.4674 or contact your local legal aid office or a HUD approved financial counselor, all for FREE. Your local bar association may have resources available as well.

## **What is foreclosure mediation?**

“Mediation means any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.” See [Ohio Revised Code Uniform Mediation Act Section 2710.01 \(A\)](#). A neutral individual, (“mediator”) works with the parties to a mortgage, with or without attorneys, to resolve the mortgage problem by mutual agreement which can occur at various times throughout the foreclosure process such as before it reaches court, default judgment, or foreclosure sale. The mediator (even a mediator who is also an attorney) cannot give legal or financial advice to either side and has no authority to decide the case. The mediator helps the participants negotiate more efficiently to reach an agreement sooner than they could alone.

## **Why should I mediate my mortgage problem?**

Mediation allows the parties to determine if a mutually acceptable agreement that is commercially reasonable and sustainable is possible. Many mortgage issues can be resolved through good communication between the borrower and the lender/servicer. Lenders/servicers are and have been willing to discuss flexible solutions. Mediation provides a more informal environment in which to have discussions that, without a mediator, might be tense or difficult. There are also additional benefits of cost and time savings. Litigation can be timely, expensive and stressful. Mediation allows parties to create agreements that include conditions and terms that may be restricted by legal remedies. However, for mediation to be productive and cost-effective, all parties must actively participate and share information prior to the mediation in order to avoid additional, and costly, mediations.

## **Does participating in, or a request for mediation, stop the foreclosure case filed against me?**

No. The foreclosure mediation models used by the courts in Ohio follow the rules of civil procedure consistent with all other civil cases while giving borrowers the same access to mediation that has been regularly available for other case types for more than a decade. The foreclosure action continues until you and your lender/servicer reach a final agreement and the lender/servicer dismisses the case. If you fail to take one of the aforementioned actions, a default judgment will likely be filed against you. Because you have been served with legal documents,

it may be a good idea to contact an attorney. Please note that participating in the mediation program does not mean you have filed an answer to the foreclosure document. You are required to follow all rules of civil procedure as you would if you did not participate in mediation.

### **Who attends the mediation session?**

The borrower and any support person(s) they wish to include and the lender/servicer or their attorney/agent will participate in the mediation. It is highly likely that the same attorney will appear for multiple lenders/servicers if they work for a law firm that represents multiple lenders/servicers. Mediation programs should be as sensitive to the lender/servicer's request for a continuance of the mediation session as a borrower's request, since they are very likely trying to manage multiple requests for mediation in multiple states. In cases with a conflict which is due, in part, to the attorney unable to travel to multiple locations in one day, participation by phone has been a successful alternative. A lender/servicer representative with authority to settle and the current property owner(s) should be present (in person or by phone) and prepared to negotiate. The mediator can meet separately with each side for private, more candid discussions. It is important to note that borrowers must provide their financial information to lenders/servicers in advance of the mediation in order to ensure the lender/servicer representative has settlement authority at the mediation or readily available by phone.

### **Is the mediator an advocate for the borrower?**

No. The mediator is not an advocate, advisor, judge, jury, or arbitrator of the case for either party. The Supreme Court of Ohio recommends that local court foreclosure mediation programs in Ohio utilize the facilitative style of mediation where the mediator guides the parties through a party self-determination process to assist them in reaching a mutually acceptable agreement to resolve the foreclosure. In the session, the mediator is a neutral third party; not an advocate for either party. Even if the mediator uses the evaluative or transformative styles of mediation they are not an advocate for either party.

### **Will the mediator issue a decision in my case?**

No. "...a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, department, agency, or officer of this state or its political subdivisions that may make a ruling on the dispute that is the subject to the mediation." See [Ohio Revised Code Section 2710.06 \(A\)](#) Communication or disclosure by mediator.

### **What can a mediator tell a judge?**

Communication or disclosure by a mediator is outlined in the [Ohio Revised Code Uniform Mediation Act Section 2710.06 \(B\)](#) which states: "A mediator may disclose any of the following: (1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; (2) A mediation communication as permitted by [section 2710.01 of the Ohio Revised Code](#); (3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against abuse, neglect, abandonment, or exploitation."

### **How long will the mediation take? Will there be more than one session?**

Most foreclosure mediations take between one and two hours. It is critical that all parties complete the necessary documents, such as financial worksheets, and bring supporting documentation, such as pay stubs and utility bills, and share them with each other before the mediation session. One of the most successful resources being used are HUD certified housing counselors, which can be found by clicking on "Ohio Housing Counselor Contact Information by County" on the Dispute Resolution Section's Web site at [www.supremecourt.ohio.gov/foreclosure](http://www.supremecourt.ohio.gov/foreclosure). These counselors assist the borrowers in assessing their financial situation in addition to completing forms required by the courts and lenders necessary to reach an agreement. The result is an efficient and effective use of state allocated resources because borrowers and lenders/servicers are fully prepared for the mediation session. This minimizes the requirement for an additional session due to a lack of information which may result in increased fees being charged to the homeowner due to extra time and expense incurred by the lender/servicer. Some local courts are also conducting pre-mediation conference calls

to ensure parties are fully prepared, have provided all the necessary financial documentation and are able to attend on the scheduled date.

**If a foreclosure action has been filed against me, should I move out?**

No. The lender/servicer prefers that people stay in their home until they are told they must move out. It is advantageous for the homeowner and the lender/servicer that the home is occupied and kept in good condition through the foreclosure process.

**What are my options and what if I just want to give up the house and walk away?**

The decision to give up your house to foreclosure should not be made lightly. You have various options that your lender/servicer is willing to agree to that may surprise you. Keep in mind, your lender/servicer is attending the mediation to work out an agreement that is mutually acceptable to both parties, using the resources available to both. Be open-minded before and throughout the entire process. Staying in your home is one option which can be done through various means including, but not limited to, a repayment plan, loan modification/refinance, reinstatement of your loan, or forbearance. If, however, you do decide to give up your house, you can return your mortgaged property to the lender/servicer through “a deed in lieu of foreclosure.” You can still mediate such issues as the date of turn over, when to move out, and what other obligations exist as part of the deed in lieu of foreclosure process. There are also other options including, but not limited to, a short sale or consent judgment. It is important to note the impact your options will have on your credit report. Some of these options will be less harmful.

**What happens if we reach a mutually acceptable agreement that is commercially reasonable and sustainable?**

If a voluntary agreement is reached, the parties should memorialize the agreement that complies with the [Ohio Revised Code Uniform Mediation Act Section 2710.05 Exceptions to Privilege – Partial Admission of Nonprivileged Communication](#). Acceptable methods to memorialize the agreement include: written agreement signed by all parties, agreement that is read into the record by a court reporter, or agreement that is tape recorded with all parties identifying themselves and indicating their consents to the agreement. Once the agreement has been memorialized, the lender/servicer will typically file a motion to dismiss the case without prejudice. It is recommended that the parties establish specific timelines for all components of the agreement including details regarding who will file the motion to dismiss the case and when.

**I want a trial. Why should I settle?**

Citizens, including the borrower and lender/servicer, have the right to a fair court hearing, but foreclosure cases rarely, if ever, go to trial. The judge usually decides foreclosures based on motions the lender files with the court. Each side should thoroughly discuss every factor before choosing to settle with new terms or go forward with foreclosure. Mediation allows you to explore settlement without risk with the help of a mediator.

**What happens if we can't settle?**

If both parties agree to negotiate further, the mediator can schedule a follow-up mediation, or the case could ultimately go forward in court.

# OPTIONS TO KEEP YOUR HOME

The Save the Dream Project was designed in 2008 and is a multi-media foreclosure prevention initiative aimed at helping Ohioans take action to save the dream of homeownership. Foreclosure mediation is a program to help the borrower and the lender come to an agreement after a complaint is filed against the borrower without the court having to issue an order of foreclosure. Some agreements that you and the lender might reach during foreclosure mediation include the following:

- **Mortgage Modification** -- A mortgage modification is when your mortgage servicer agrees to alter your original mortgage contract. This may involve lowering the interest rate, extending the life of the loan, or reducing your principal balance.
- **Refinance** – If you have good credit history and have not missed a mortgage payment, you may be able to refinance your loan to obtain a fixed interest rate and/or a lower interest rate. Often, there are fees associated with refinancing a loan, so consider this option carefully and weigh the cost of refinancing against the money you would save in the long run through reduced monthly payments.
- **Repayment Plan** – If you missed a mortgage payment due to a temporary change in finances that has been resolved, your lender may work with you to develop a repayment plan that allows you to repay your missed payments over time in addition to your regular monthly payment rather than paying it back in one lump sum.
- **Partial Claim** – Under a partial claim, HUD advances a loan to repay the past-due interest and escrow amounts. The loan is due and payable when the borrower pays off the first mortgage or no longer owns the property. The loan is interest-free and the account is brought up-to-date immediately. Partial claims are only allowed on FHA loans.
- **Forbearance Agreement** – A forbearance agreement is the temporary reduction or suspension of a borrower's payment. The mortgage servicer then develops a repayment plan based upon the customer's financial situation. Because of long-term implications, this option is used only in severe hardship cases.
- **Bankruptcy** – Declaring bankruptcy may or may not allow you to keep your home. You should seek the advice of an attorney if you are considering declaring bankruptcy. Income-eligible people who may qualify for legal aid may visit [Ohio Legal Services](#) to learn more.

The Columbiana County Court of Common Pleas has developed a foreclosure mediation program. The court aims to reduce the number of foreclosure cases by coordinating mediation between the borrower and the lender. The court hopes for a result that allows the homeowner to remain in the home while the lender receives an acceptable payment.

# **RESOURCES**

Save the Dream

<http://www.savethedream.ohio.gov/>

Ohio Supreme Court Frequently Asked Questions

<http://www.supremecourtsohio.gov/JCS/disputeResolution/foreclosure/FAQ.asp>

American Bar Association Residential Foreclosure Mediation Resources

<http://www.abanet.org/dispute/mediation/resources.html>

Making Home Affordable Government Stimulus Program

<http://makinghomeaffordable.gov/counselor.html>

Mortgage Information for Beginners

[www.forbeginners.info/mortgage/refinance.htm](http://www.forbeginners.info/mortgage/refinance.htm)

National Search for Sheriff Auctions

[www.foreclosure.com/sheriff\\_auctions.html](http://www.foreclosure.com/sheriff_auctions.html)

U.S. Department of Housing and Urban Development (HUD)

[www.hud.gov/](http://www.hud.gov/)

U.S. Department of Treasury

[www.treas.gov](http://www.treas.gov)

The American Recovery and Reinvestment Act

[www.recovery.gov](http://www.recovery.gov)

The Save the Dream Hotline

[1-888-404-4674](tel:1-888-404-4674)

If you have any questions about the Columbiana County Foreclosure Mediation Program, please contact Katie Dickey at: [330-424-7777](tel:330-424-7777) ex. 1115

# MEDIATION REQUEST

\*You MUST return this form to Katie Dickey at 105 S. Market Street Lisbon, Ohio 44432 within 28 days of the date you receive the summons. This form does not guarantee that your case will be sent to mediation. The Court will give the opposing party a chance to respond to your request. If the opposing party objects, your case may not be mediated.

You are strongly urged to seek legal counsel immediately. You may also be eligible for the assistance of a volunteer lawyer to represent you in the mediation. To determine your eligibility for a volunteer lawyer, call Legal Aid 330-373-1448. You may also contact the Save the Dream hotline by calling 1-888-404-4674.

Case Number

\_\_\_\_\_

(if applicable)

Your Name:

\_\_\_\_\_

Attorney's Name:

\_\_\_\_\_

Your Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney's address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Day Time Phone

\_\_\_\_\_

Attorney's Phone:

\_\_\_\_\_

Evening Phone

\_\_\_\_\_

Cell Phone

\_\_\_\_\_

1. Is this property your home? \_\_\_\_\_
2. Are you currently living in this property? \_\_\_\_\_
3. Is this property your only home? \_\_\_\_\_
4. Are you interested in trying to remain in this property? \_\_\_\_\_
5. Are you in bankruptcy? \_\_\_\_\_

Print the name of the person requesting foreclosure mediation:

\_\_\_\_\_

\_\_\_\_\_

X

**Signature**

X

**Signature**

Date: \_\_\_\_\_

\*This request must be received within 28 days of the date you received the summons.