

Center for American Progress



# It's Time We Talked

Mandatory Mediation in the Foreclosure Process

Andrew Jakabovics

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[www.americanprogress.org](http://www.americanprogress.org)

Progressive Ideas for a Strong, Just and Free America



## Current Facts & Figures

- 9 million foreclosures expected in the next 4 years
  - 1 in 6 U.S. homes with mortgages
- 321,480 foreclosure filings in May 2009.
- 8.22% of residential mortgages delinquent in Q1
  - Mortgages + delinquencies are at 12%, the highest rate ever recorded by the Mortgage Bankers Association



## What Is Mediation?

- What it's not:
  - “Cramdown”
  - Arbitration
- Mediation: a voluntary negotiation between parties in the presence of a neutral third party
- Mandatory Mediation: Mediation in which the parties are required to participate
  - They are *not* required to settle



## Benefits of Mediation Over Foreclosure

- Good for Borrowers
  - Greater opportunity to save home
  - Reduced monthly payments
  - When house can't be saved, offers “graceful exit”
- Good for Servicers
  - Avoid costly foreclosure process
  - Don't leave money on the table
  - Able to make more valuable offers relative to foreclosure
  - When house can't be saved, can get clear title sooner
- Good for Taxpayers
  - Reduces burdens on courts
  - Fewer foreclosures reduces downward pressure on property values
  - Avoids glut of bank-owned homes for sale



## How We Know Mediation Works

- Philadelphia and Connecticut are two of the longest-running programs.
  - Divergent styles due to geographic scope, funding, and available social services.
  - Similarities outweigh differences.
- Parties participating in mediation avoid foreclosure over 70% of the time.
  - Includes both modifications and “graceful exits.”
- Participation is the issue.
  - Participation goes beyond the parties themselves, because everyone benefits from mediation.



## Where Are We Now?

- 7 jurisdictions have put in place mandatory negotiations between servicers and homeowners.
- 2 more are coming on-line July 1, 2009.
- Florida's Supreme Court Task Force is set to publish state-wide recommendations in August 2009.
- Over a dozen other jurisdictions are pursuing foreclosure mediation programs.



## Suggested Federal Government Role

- Fund state and local programs
  - Explicit Congressional Appropriation
  - HUD guidance explicitly permitting the use of Community Development Block Grant
- Require mediation:
  - Servicers participating in HAMP to mediate prior to foreclosure
  - All federally-insured mortgages (FHA/VA)
  - Fannie Mae and Freddie Mac servicers



## Best Practices for Establishing a Program

- Find a Champion Within the System
- Get Buy-In From Stakeholders
- Do Not Wait for Funding
- Put in Place a Case Management System
- Continually Evaluate Your Program
- Require Ongoing Training for Participating Professionals



## Best Practices for Running a Program

- Maximize Eligibility, Maximize Participation
- Involve Housing Counselors Wherever Possible
- Implement Outreach Programs
- Servicer or its Counsel Must Have the Authority to Make a Deal
- Require Parties to Meet in Person Where Possible



## Practices That Need Further Consideration

- Are time limits a good thing?
- Who gets to declare an impasse?
- Should programs require a pre-mediation meeting with a housing counselor?
- Should mediation stay proceedings?



## Learning From Each Other

- Nationwide Round-Table.
- Program administrators/officials.
  - Limit size; add other stakeholders where possible.
- Share current and evolving practices.
  - More granular discussion of best practices.
    - Number of notices to send.
    - Automatically schedule mediation or wait for a response.
    - Put off first mediation session to collect documents.
    - Institute information session.
- Government (HUD) or private funding.

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