

Washington Land Title Association 2015 Education Seminar

Session 4(b) Forced Sales

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- Forced sales are involuntary dispositions of real property interests by creditors under state and federal laws.
- When closing and underwriting involuntary dispositions of real property the highlights are:
 1. Deed of trust foreclosure under RCW Ch.61.24.005, *et seq.*
 - a. Non-judicial trustees sale
 - b. Judicial complaint to foreclose equitable right of redemption
 - c. Recent statutory amendments and cases
 - Foreclosure Fairness brochure

About The Program

The Washington State Foreclosure Fairness Program provides homeowner foreclosure assistance by offering free housing counseling, civil legal aid, education and outreach, and the opportunity for mediation.

It addresses the rise in foreclosures by improving communication between lenders and homeowners to avoid foreclosure when possible. It is designed to help homeowners and their lenders reach a resolution.

Who is eligible to participate in the Foreclosure Fairness Program?

Homeowners may be eligible for mediation if they received a Notice of Default from their lender and lived in the home when the foreclosure process started. Certain smaller lenders are exempt from mediation.

What is foreclosure mediation?

Foreclosure mediation is a process where a neutral third party (the mediator) helps the homeowner and lender reach a fair, voluntary, and negotiated agreement. A mediator is not a judge and does not represent either party.

How does a homeowner request mediation?

Homeowners cannot self-refer to get foreclosure mediation. Homeowners must be referred by a housing counselor or an attorney. See the "How The Washington State Foreclosure Fairness Program Works" guide in this brochure for details on when referral to mediation can be made. Any homeowner can contact a **FREE** housing counselor at **any time** by calling Washington State's homeownership information hotline at **1-877-894-HOME (1-877-894-4663)** or visiting www.wshfc.org/buyers/counseling.htm or www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm. Additionally, low- to moderate-income homeowners may also be eligible for help from the statewide civil legal aid hotline: call **1-800-606-4819** or visit www.nwjustice.org/what-clear.

What is the cost to participate in the program?

Housing counseling is **FREE**. If referred to mediation, the cost to the homeowner is \$200. The lender will also pay \$200. The fee must be paid to the mediator prior to mediation. (If more than one mediation session is needed, additional costs may apply.)



Department of Commerce

Innovation is in our nature.

www.commerce.wa.gov/foreclosures



WASHINGTON STATE
HOUSING FINANCE
COMMISSION

www.wshfc.org

ANYONE can call **1-877-894-HOME (4663)** at any time to access **FREE** housing counseling and get foreclosure assistance.

Low- to moderate-income homeowners may also be eligible for help from the statewide civil legal aid toll-free hotline. Call **1-800-606-4819**.

Visit www.homeownership.wa.gov for information about the mediation program, foreclosure prevention, foreclosure alternatives, how to avoid becoming a victim of foreclosure rescue scams, and more.

If you feel you have been a victim of a foreclosure rescue scam or loan modification fraud, file a complaint with the Washington Attorney General's Office at www.atg.wa.gov/fileacomplaint.aspx or the Washington State Department of Financial Institutions at www.dfi.wa.gov/consumers/complaint.htm or **877-RING-DFI (746-4334)**.

To inquire about the availability of this publication in an alternate format, please call **360-725-2650** or **TDD-TTY 360-586-0772**.

To order copies of this brochure for distribution, please call **800-746-4334** or email dfi@dfi.wa.gov.

Are You Facing Foreclosure?



DON'T WAIT until it's too late

Get foreclosure assistance NOW!

How The Washington State Foreclosure Fairness Program Works

Any time

- A homeowner can contact a FREE housing counselor at any time. Call **1-877-894-HOME (1-877-894-4663)** as soon as there is risk of foreclosure.

Step 1

- The homeowner gets a notice from the lender of the right to an opportunity to meet to discuss foreclosure. This is called a Notice of Pre-Foreclosure Options. The lender is required to send this notice to the homeowner before they can issue a Notice of Default.
- If the homeowner requests the meeting (called "meet and confer"), the lender cannot issue the Notice of Default until 90 days after the Notice of Pre-Foreclosure Options was issued. This gives the homeowner and lender time to try to avoid foreclosure if possible.
- The meeting can take place in person, if requested by the homeowner, and will be in the county where the property is located.
- If the homeowner and lender meet and confer and do not reach a resolution during this 90-day period, the lender may send the homeowner a Notice of Default.
- If the homeowner does not request a meeting, the lender may send the homeowner a Notice of Default 30 days after the Notice of Pre-Foreclosure Options was issued.

Step 2

- A homeowner may become eligible for mediation if a Notice of Default is issued. The homeowner should contact a housing counselor, if they haven't already, or an attorney to discuss alternatives to foreclosure and possible mediation.
- If the homeowner is eligible, the housing counselor or attorney requests mediation on the homeowner's behalf. This request is made to the Washington State Department of Commerce (Commerce). Mediation can only be requested AFTER a Notice of Default is issued and up until 20 days after the recording date of the Notice of Trustee Sale. (A Notice of Trustee Sale is a document that tells the homeowner when the sale of the home is scheduled to take place.)
- If the homeowner is referred to mediation before the Notice of Trustee Sale is recorded, the Notice of Trustee Sale cannot be recorded until mediation is complete.

Step 3

- Commerce notifies the homeowner and lender that mediation was requested, assigns a mediator, and notifies each party of their responsibilities, such as documents required for mediation and each party's \$200 mediator fee. This is done within 10 days of Commerce receiving a complete mediation request.
- Mediation is scheduled by the mediator no later than 70 days after the mediator is selected, unless otherwise agreed by the homeowner and the lender.

Step 4

- The homeowner sends required documents to the mediator and the lender (within 23 days of receiving the notice of mediation from Commerce).
- The lender sends its documents to the mediator and homeowner (within 20 days of receiving the homeowner's documents).

Step 5

- Mediation occurs in the county where the property is located.
- The homeowner may be represented by an attorney, housing counselor, or other advocate. However, the homeowner (the borrower(s) named on the mortgage loan) must attend the mediation in person.
- The lender must have a person with authority to modify the loan or negotiate an agreement either in person or available by telephone during the mediation.
- Both the homeowner and the lender must participate in good faith throughout the entire mediation process.
- The mediator's role is not to be a judge. The mediator is a neutral third party who encourages the homeowner and the lender to examine all options, including loan modification, to avoid foreclosure.
- The homeowner and lender either come to an agreement (a loan modification or other alternative), or they do not come to an agreement and the foreclosure process may proceed.

Step 6

- The mediator prepares written certification of mediation results and whether the homeowner and lender participated in good faith. Mediator sends certification to all parties including Commerce within seven business days of mediation.
- If the lender does not mediate in good faith, the homeowner may be able to stop the foreclosure sale in court.

Learn more today at www.homeownership.wa.gov

2. Mortgage Foreclosure
 - a. Agricultural and Timber Lands
 - b. RCW 61.12.010, *et seq.*
3. Real Estate Contract Forfeitures Act
RCW 61.30.010, *et seq.*
4. Judgment Lien Executions, under RCW 6.17.020, *et seq.*
 - a. Homestead Act, RCW 6.13.010, *et seq.*
5. Bankruptcy Code Sections
 - a. 11 U.S.C §362 Automatic Stay
(and obtaining relief from the stay)
 - b. 11 U.S.C §363 Sale Free and Clear of Liens

Deed of Trust Foreclosure

- Requisites to trustee's sale under RCW 61.24.030
 1. Power of Sale; (LPB-22(C), p2, paragraphs 4, 5 and 6)
 2. Not used principally for agricultural purposes;
 3. Default has occurred;
 4. No action commenced by beneficiary;
 5. Deed of Trust has been recorded under the Recording Act;
 6. Trustee must maintain street address for service of process.

Deed of Trust Foreclosure

7. Proof that beneficiary is owner of promissory note or other obligator secured by DOT
 - Trustee reliance on declaration
 8. Written notice of default served 30 days prior
 - Form and language required
 9. Proof of compliance with RCW 61.24.031
- Foreclosure Loss Mitigation Requirements of RCW 61.24

Judicial Decisions

- *Bain v. Metropolitan Mortgage Group, Inc. (2012)*
- *Trujillo v. Northwest Trustee Services, Inc. (2015)*
- *Knecht v. Fidelity National Title (2015)*
- *Myer v. U.S. Bank (2015)*
- *Glidden v. Municipal Authority of Tacoma (1988)*
- *Plein v. Lackey (2003)*

Distinguishing Characteristics of Judicial Foreclosures

- Timelines longer
- Redemption Rights
- Deficiency Judgment
- Court supervision
- Compare foreclosures in Eastern States
- Appeals process available
- Homestead Rights

Bankruptcy Overlap

➤ §362 Automatic Stay

1. All non-judicial and judicial actions stop
2. Chapter 11 and Chapter 13 plans

➤ §363 Sale Free and Clear

1. Notice periods
2. Appeals
3. Delivery of proceeds to trustee or court

Conclusion

Stay Calm and Carry On!

