

Succes through mediation – early intervention is key

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Connecticut Mortgage
Bankers Association, Inc.

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In July 2008, the Connecticut judiciary implemented a program that offers free mediation sessions for homeowners facing foreclosure of a first or second mortgage.

The mediation program is designed to bring together homeowners, judicial branch employees who are trained in mediation and foreclosure law, and a representative of the mortgage lender.

In one or more sessions that occur over a period of up to 90 days, borrower and lender can explore a possible resolution of the default that led to the foreclosure.

Notices about the availability of the program and an emergency mortgage assistance payment program must be served on the borrower at the time the foreclosure is filed.

Borrowers should review these notices carefully and call the servicer or their lender's attorney to request the "hardship package."

A completed "hardship package" will contain a borrower's explanation of the circumstances that gave rise to the default, such as disability, divorce, loss of employment or interest rate increase (the hardship) and will contain information and supporting documents that reveal the borrower's current financial situation, such as income, expenses, assets, employment and anticipated changes in financial situation (the feasibility considerations).

Borrowers who complete and return the "hardship package" to the lender before the first mediation, or at least before the second mediation session, will expedite the resolution of the foreclosure.

A prompt resolution is good for the borrower because it stops the arrearage (the dollar amount in default) from growing. It is good for the lender because it stops the erosion of equity in the

mortgaged property.

It's also good for the borrower to achieve clarity about the resolution of the lawsuit and to start budgeting for the future.

Some alternatives to foreclosure that might be discussed include loan modification, reinstatement, a repayment plan, a short sale or a short payoff.

Even if the lender does not offer loan modifications, the borrower should explore other alternatives, such as a repayment plan for a period of 90 to 180 days pending a refinance. This is effectively a loan modification with a different lender that results in a new mortgage.

A short sale is the sale of the property for an amount that is less than the mortgage debt.

The Connecticut Housing Finance Authority administers the recently funded Emergency Mortgage Assistance Payment Program. Eligibility standards are in the process of being modified to make this program more accessible to Connecticut residents.

At the mediation, the lender may request information or documents that supplement the hardship package, such as wage documentation or a proposed sales contract or listing agreement.

Compliance with these requests ensures that the lender will consider all relevant information before making a decision.

While the mediation program has been successful for some homeowners, it is not a "miracle cure" for mortgage default.

If the borrower is unemployed or underemployed, separated or divorced without enough income to qualify for certain loss mitigation programs, the best resolution might be a short sale or a negotiated or stipulated judgment of foreclosure. Mediators can help the borrower review these alternatives.

Martha Croog is managing member of Martha Croog LLC in West Hartford. The firm's practice is dedicated to the representation of the mortgage banking industry. Croog is a member of the board of directors of the Connecticut Mortgage Bankers Association and the Mortgage Bankers Association.