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A Lawyer's Perspective

Foreclosure mediation fact sheet

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I had intended for last week's column to be my wrap-up on the foreclosure issue until the Obama Administration put its policy people into place to shape the myriad of issues and proposals into a coherent policy and program. Then, I attended Foreclosure Mediation Training presented by the Administrative Office of the Courts and the Office of Dispute Settlement of the Department of the Public Advocate. By the end of the session, I knew that I had to share what I had heard with you.

Michelle Perone, Esq., Chief of the Civil Court Programs at the New Jersey Administrative Office of the Courts and Caroline Petrilla, Esq., Assistant Director of the Office of Dispute Settlement of the Department of the Public Advocate, explained the state court program to provide free mediation services to homeowners caught up in the current foreclosure crisis. The program also included video presentations by a lender's attorney and by New Jersey Legal Services. Judge William C. Todd, III, Presiding Judge of the Chancery Division's General Equity Part, expressed the court's thanks to the mediators and addressed issues raised during the session.

This week, I will outline how the Foreclosure Mediation program works within the foreclosure process. In following weeks, I will discuss the foreclosure process itself, as well as some of the issues that may arise in foreclosure mediation, in particular some of the defenses that borrowers can use.

The Foreclosure Mediation program requires that the property must be in foreclosure, meaning that the lender must have filed a foreclosure complaint. To be eligible for participation in the Foreclosure Mediation program, the property must be a one to three family primary residence of a homeowner-borrower.

Foreclosure actions filed after November 17, 2008 require a specific foreclosure notification process. This includes homeowner notice that free Foreclosure Mediation is available to them, but that mediation will not stop the foreclosure process.

Homeowners may receive free housing

counseling from a housing counselor certified by HUD and the New Jersey Housing and Mortgage Finance Agency (HMFA) if the foreclosure complaint is filed after January 1, 2008 and they meet certain minimal qualifications. Homeowners whose foreclosure action was commenced before January 1, 2008 must complete a financial worksheet and request mediation without the benefit of the involvement of a HUD/NJHMFA-certified housing counselor. After January 5, 2009, Homeowners can be put in contact with a counselor by calling 1-888-989-5277, to determine if they qualify.

The homeowner will provide biographical and financial information, as well as mortgage-related documents to the Housing Counselor, including details about their assets, income and monthly expenses. The counselor will review the homeowner's tax returns, pay stubs bank statements and additional information to analyze why they are delinquent in their payments. From that information, a housing counseling will work with the homeowner and the lender to determine if a workout, without the need for a mediation session, is possible. If a workout is not arranged, then the financial worksheet with attachments and a request for mediation is prepared and submitted to the Administrative Office of the Courts, Office of Foreclosure.

If the homeowner files an answer, the case jacket is sent from the Office of Foreclosure in Trenton to the appropriate judge's chambers in the county where the property is located. The judge will schedule a case management conference and will likely discuss the availability of mediation during the conference. The homeowner will be required to contact the toll free number to see if he or she qualifies for a housing counselor. The homeowner with or without the assistance of a housing counselor must complete the financial worksheet and submit the request for mediation to the Office of Foreclosure.

In both contested and uncontested foreclosures, the legal process will continue and the lender may request a foreclosure judgment, but the court will stay the sheriff sale until the

mediation is complete. Even if a foreclosure complaint was filed before November 17, 2008, a pending foreclosure action that has not yet gone to sheriff's sale may be eligible for Foreclosure Mediation. If the court has entered the foreclosure judgment and issued a writ of execution, the homeowner must file a motion with the court for an order to stay the sheriff's sale and direct the case to mediation. When a homeowner files a motion to stay the sheriff sale to allow for mediation the judge will likely require an expedited schedule for assistance from a housing counselor and the scheduling of mediation. The material will be returned to the vicinage CDR point person or other person designated by the judge in the order staying the sheriff sale.

When a case is directed to mediation, the court will schedule mediation within 90 days of receipt of the financial worksheet by the Office of Foreclosure. The homeowner and lender will have at least 45 days to prepare for the mediation.

The Foreclosure Mediation notice will advise the parties of the time and place for the mediation in the courthouse for the county where the property is located. The notice will tell the homeowner that they may bring an attorney or another advocate to assist them in their negotiations. Housing counselors are always encouraged to participate in the mediation proceedings. The lender's attorney will be told that the lender must have a representative available in-person or by telephone, with the authority to authorize a settlement.

Over the next few weeks, we'll talk about the details of the foreclosure process itself and then Foreclosure Mediation issues. This will include issues facing the parties as well as issues facing the mediators.

Dennis Scardilli practices as an attorney-at-law in the Atlantic City area. The information in this article has been provided only for informational and educational purposes and is not intended to provide legal advice. For legal advice on this, or any other, topic contact a qualified attorney.