

Foreclosure Mediation Packet

Packet Includes:

- Brochure on Foreclosure Mediation
- Department of Commerce Instructions
- Foreclosure Mediation Referral Form

Instructions:

- 1) Client needs to fill out the form
- 2) Attorney needs to sign the form, then give it to the clinic assistant to mail to NLC Staff. NLC will email it to ForeclosureMediation@commerce.wa.gov

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 homeowner lives.
- 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.
- 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



Department of Commerce

Innovation is in our nature.

REFERRAL TO FORECLOSURE MEDIATION - INSTRUCTIONS

The Department of Commerce (Commerce) accepts referrals for mediation **only from housing counselors and attorneys**, as specified by the Foreclosure Fairness Act (FFA), RCW 61.24.

Please note: Due to a 4-day, 10-hour work schedule, Commerce is closed on Fridays.

SUBMITTING THIS REFERRAL FORM

The form must be completely filled-out and hand-signed by the referring attorney or housing counselor. Do not leave blanks; if not applicable, enter N/A. We prefer that referrals are scanned (after being hand-signed) and emailed to us in an effort to speed up our processing and response time. Scanned referrals may be emailed to ForeclosureMediation@commerce.wa.gov. In the email Subject line, identify the last name(s) of the borrower(s) and state "New Referral" (e.g., Smith – New Referral). Referrals may also be faxed to (360) 586-0966. If the referral is faxed, **it is the responsibility of the referrer** to confirm the document was received by our staff. Mailing hard copies is no longer required.

The referrer must include an email address where they can receive notices from Commerce.

Commerce will send the "Referral for Foreclosure Mediation Notice" (as required by RCW 61.24.163(3)) **by email** to the referrer, mediator, and trustee, and **by mail** to the borrower(s) and the beneficiary.

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| <u>IMPORTANT!</u> INCOMPLETE OR INCORRECT REFERRALS WILL <u>NOT</u> BE REFERRED TO MEDIATION. Mediators will be assigned within ten days of receiving a <u>complete</u> referral to mediation. |
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CHECKLIST: **The referrer is responsible for verifying the eligibility of the borrower(s) before submitting the referral form to Commerce. Referrers may find the following checklist useful to ensure that their submittal is complete and accurate.**

- Owner-occupied residential real estate property:** The FFA applies ONLY to deeds of trust recorded against owner-occupied residential real property. "Owner-occupied" means property that is the principal residence of the borrower; "residential real property" means property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit (RCW 61.24.005). The property must have been owner-occupied as of the date of the initial contact under RCW 61.24.031 was made.
- Loan type:** The FFA does NOT apply to deeds of trust:
 - (a) Securing a commercial loan;
 - (b) Securing obligations of a grantor who is not the borrower or a guarantor; or
 - (c) Securing a purchaser's obligations under a seller-financed sale.

- Beneficiary exemption status:** The FFA does NOT apply to beneficiaries that are exempt from foreclosure mediation. Verify the exempt status of the beneficiary on our website at www.commerce.wa.gov/foreclosure.
- Association beneficiaries:** The FFA does NOT apply to association beneficiaries subject to chapter 64.32, 64.34, or 64.38 RCW.
- Timelines:** FFA recognizes a borrower's eligibility based on the following:
 1. Borrowers who received a Notice of Default prior to July 22, 2011, are eligible to be referred up to one day prior to the date of the Trustee Sale.
 2. Borrowers who received a Notice of Default after July 22, 2011, are eligible to be referred until 20 days after the date a Notice of Trustee Sale has been recorded.
- Notification dates:** You must include ALL notification dates that apply to the subject property. These are: Notice of Pre-Foreclosure Options, Notice of Default, and Notice of Trustee Sale recording date. If the borrower did not receive any of these notifications, enter N/A in the appropriate box(es). However, the borrower must have received a Notice of Default.
- Referrals during bankruptcy:** If a borrower meets all the FFA eligibility criteria and is currently in bankruptcy, Commerce will accept and process their referral if one of the following items accompanies the referral:
 1. Evidence of a relief from the stay; **OR**
 2. A consent letter from the debtor to the beneficiary pursuant to RULE 4001-2 (Federal Rules of Bankruptcy Procedure) meeting the following criteria: letter is in writing; letter is signed by either the debtor or their attorney; letter identifies beneficiary on the deed of trust; letter contains words to the effect that the debtor consents to the beneficiary participating in mediation under the FFA; and letter contains words to the effect that mediation is for purposes of negotiation of a modification of the debt secured by the deed of trust.
- Trustee contact information required:** Commerce is required by statute to notify the current Trustee that a referral for mediation has been received. A referral cannot be processed unless the Trustee information (name, address, etc.) is provided on the referral form.

NOTE: In order to notify a Trustee prior to a Friday sale, we must receive an eligible, complete referral by noon on the Thursday before the scheduled date of the trustee sale. Receiving the referral earlier increases the chance of notifying the Trustee before the sale. Ensure the referral is given immediate attention by also checking the box at the top of the referral application. Please note that Commerce has no control over a Trustee's decision to postpone a sale.
- Signature:** To ensure the validity of a referral for mediation, the signature of the referring attorney or housing counselor is required on the referral form. An electronic/scanned copy of the original-signed form transmitted by fax or PDF attachment to an email is acceptable.
- Attachments:** You may attach supporting documents you feel necessary and which may speed up the review process.
- Borrower's copy of the referral:** The statute requires the referring attorney or housing counselor to send a copy of the referral to the borrower(s) ([RCW 61.24.163\(2\)](#)).

REFERRAL TO FORECLOSURE MEDIATION

Expedite - Trustee Sale Within the Next 10 Days

| Law Firm or Counseling Agency: | | | |
|--|--|---------|--------------|
| Attorney/Counselor Name: | | | |
| Organization Name: | King County Bar Association Neighborhood Legal Clinics | | |
| Address: | 1200 5 th Ave, Suite 600 | County: | King |
| City: | Seattle | Zip: | 98101 |
| State: | Washington | Phone: | 260-267-7030 |
| Email: (Dept. of Commerce will send all correspondence and notices to this email) <input type="text" value="RianaN@kcba.org"/> | | | |

| Borrower(s) Contact Information: | |
|--|--|
| If more than two borrowers, use the Additional Information box on the next page. | |
| Name: | |
| Address: | |
| City: | |
| County: | |
| State, Zip: | |
| Email: | |
| Phone: | |
| Name: | |
| Address: | |
| City: | |
| County: | |
| State, Zip: | |
| Email: | |
| Phone: | |

| Property Secured by Deed of Trust: | |
|------------------------------------|--|
| Address: | |
| City: | |
| County: | |
| State, Zip: | |
| Parcel No(optional): | |
| Lot No(optional): | |

Is this Deed of Trust recorded against owner-occupied residential real property? The property must have been owner-occupied as of the date of the initial contact under [RCW 61.24.031](#) was made ([RCW 61.24.165](#)). See definitions in [RCW 61.24.005](#).

Yes No

Is (are) borrower(s) in bankruptcy (see instructions)?

Yes No

| Beneficiary (Holder of Note) Contact Information: | |
|--|--|
| See definitions in RCW 61.24.005 . | |
| Name of Beneficiary: | |
| Address: | |
| City: | |
| State, Zip: | |
| Email: | |
| Phone: | |
| Loan No (if known): | |
| Client ID (optional): | |

| Notice of Pre-Foreclosure Options Letter: | |
|--|--|
| Date: | |
| Notice of Default (required): | |
| Borrowers with NOD prior to 7/22/2011, may refer to mediation up to one day prior to the date of Trustee Sale. | |
| Borrowers with NOD after 7/22/2011, are eligible to refer until 20 days after the date a Notice of Trustee Sale has been RECORDED. | |
| Date: | |
| Recording of Notice of Trustee Sale: | |
| Date: | |
| Date of Trustee Sale: | |
| Date: | |

| Trustee Contact Information: | |
|------------------------------|--|
| Organization: | |
| Individual Contact Person: | |
| Address: | |
| City: | |
| State, Zip: | |
| Email: | |
| Phone: | |
| Trustee Ref. No: | |

| Servicer Contact Information (optional): | |
|--|--|
| Organization: | |
| Individual Contact Person: | |
| Address: | |
| City: | |
| State, Zip: | |
| Email: | |
| Phone: | |

| Additional information which may be helpful to the foreclosure mediation: |
|---|
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| | |
|---|-----------------------------------|
| This referral is being made in my capacity as a: | |
| <input type="checkbox"/> Housing Counselor | <input type="checkbox"/> Attorney |
| Name of HUD- or HFC-Approved Housing Agency: | WSBA #: |
| <input type="checkbox"/> I will <input type="checkbox"/> I will not be representing the borrower(s) during the foreclosure mediation. | |

I certify that I have reviewed the individual circumstance(s) of the borrower(s) and find that foreclosure mediation is appropriate.

Signature of referring attorney/housing counselor

Print name of referring attorney/housing counselor

Date

