

## REPORT: FORECLOSURE MEDIATION PROGRAMS' POTENTIAL TO HELP HOMEOWNERS NOW IN JEOPARDY DUE TO LACK OF INDUSTRY ACCOUNTABILITY

***NCLC Looks at 25 Programs in 14 States: CA, CT, FL, IN, KY, ME, MI, NV, NJ, NM, NY, OH, OR and PA; Mediation Programs Seen as Faltering For Same Reasons as Struggling Federal Voluntary Foreclosure Modification Efforts.***

**WASHINGTON, D.C.//September 23, 2009//**A spate of new state and local programs that have emerged over the last year requiring mediations or conferences before foreclosure sales take place have great potential to help homeowners, but are suffering from the same lack of industry accountability that has plagued voluntary federal mortgage modification programs, according to a major new study from the nonprofit National Consumer Law Center (NCLC).

Titled *"State and Local Foreclosure Media Programs: Can They Save Homes?"*, NCLC's new review of 25 foreclosure mediation programs in 14 states -- California, Connecticut, Florida, Indiana, Kentucky, Maine, Michigan, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon and Pennsylvania --- warns: **"Our review raised concerns about the kind of expectations that these programs may be encouraging. For example, there is as yet no data to confirm that foreclosure mediation programs anywhere have led to a substantial number of affordable and sustainable loan modifications ... [W]e (also) found that the existing programs routinely fail to impose significant obligations on mortgage servicers. Without the imposition of these obligations, it is unlikely that mediations that will lead to fewer foreclosures. The programs we considered often lack mandatory rules and fail to impose sanctions for non compliance with what minimal rules exist. The programs do not require servicers to provide information substantiating a right to foreclose. They do not mandate analyses of loan modification alternatives. Many set unreasonable procedural barriers that restrict large numbers of homeowners from participating ..."**

Study author Geoffrey Walsh, a NCLC staff attorney, said: **"Under most of the existing foreclosure mediation programs, servicers have all the discretion and homeowners have little or no power. If the programs continue to demand little or no accountability from servicers, they will likely go the way of federal efforts to control foreclosures that have failed as a result of relying on voluntary compliance by the lending industry. It is unfortunate that the industry has so far prevailed in blocking Congressional action on court-ordered loan modifications, the one step that would level the playing field for consumers and ensure the necessary accountability from all parties."**

Amanda Masters, program director of the Center for New York City Neighborhoods (CNYCN) coordinated efforts of 30 volunteers who observed practices in 800 cases which went through New York's foreclosure conference system during June and July 2009. She has been analyzing data on what is actually happening to homeowners who through this new program.

The full text of the National Consumer Law Center Report – including a discussion of the 25 programs in 14 states – is available online at [www.consumerlaw.org](http://www.consumerlaw.org).

The NCLC report notes that the state and local mediation program have omitted the same crucial elements of industry accountability responsible for the weak showings from such voluntary federal including Hope Now, Hope for Homeowners and the Obama Administration's Home Affordable Modification Program (HAMP), which have ended up serving only a small percentage of eligible homeowners. NCLC points out that the industry has opposed state-level efforts to strengthen mediation programs, including such steps as requiring that servicers document of loan modification calculations.

The report points out: **"Mediation programs can play a vital role in ensuring that servicers comply with these federal obligations. The data released so far on servicers' compliance with HAMP guidelines reveals a pressing need for more oversight. Mediation programs should play an important role in this review. However, as most foreclosure mediation programs are structured today, few are capable of performing this role. Substantial changes are needed before they will be effective."**

Recommendations outlined in the report including the following:

- Require that the servicer give the homeowner a document showing its affordable loan modification calculation and net present value calculation.
- Require that the servicer produce specified documents, such as a pooling and servicing agreement, loan origination documents, an appraisal, and loan payment history.
- Require that servicers comply with all mediation obligations in good faith—negotiate in good faith and be subject to sanctions for the failure to do so
- Require that servicers establish proof of the mortgage holder's standing and status as the real party in interest.
- Require that the servicer document that it has considered specific alternatives to foreclosure, such as loan modifications, applications for state and federal financial assistance programs, workout agreements, short sales, etc.

In addition, foreclosure mediation programs should document and enforce compliance with these obligations by:

- Not permitting a judicial or non-judicial foreclosure to proceed unless a mediator or court has certified the servicer's compliance with the five basic requirements set forth above.
- Requiring documentation of all outcomes, including the nature of loan modifications arrived at through mediation.

The report outlines a number of steps to encourage wider participation in mediation programs, including establishing “**procedures for automatic participation by homeowners subject to foreclosure proceedings**” and imposing a “**stay (on) all foreclosure proceedings until a mediator or court determines that the servicer has complied in good faith with all participation obligations**”.

Mediation programs can help confused and rebuffed homeowners find and talk to individuals authorized to make loan modifications. To maximize their reach and effectiveness, mediation programs must make homeowner participation automatic, allow mediation requests up to the time of a foreclosure sale, postpone foreclosures until servicers meet mediation program obligations and shield homeowners from liability for servicers' attorneys' fees and other costs. In addition, strong mediation programs require court supervision enforceable by sanctions; adequate funding for outreach, counseling and legal representation for homeowners; and notification and participation provisions for junior lienholders.

## **ABOUT NCLC**

The National Consumer Law Center is a non-profit organization that seeks marketplace justice on behalf of low-income and vulnerable Americans. NCLC works with, and offers training to, thousands of legal-service, government and private attorneys, as well as community groups and organizations representing low-income families. Our legal manuals and consumer guides are standards of the field. Learn more at <http://www.consumerlaw.org>.

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**EDITOR'S NOTE:** A streaming audio replay of the news event will be available on the Web at <http://www.consumerlaw.org> as of 6 p.m. EDT/3 p.m. PDT on September 23, 2009.