

Foreclosure Action Coalition: Cuyahoga County “foreclosure time out” plan

We propose a step-by-step “time out” on owner-occupant foreclosures, in order to save every home that can be saved by combining court mediation with community-based outreach, counseling and negotiation. Here's how it would work:

Step 1: Triage. Common Pleas Court would announce that all active and newly filed foreclosure cases, including those awaiting sheriff's sale, will be stayed while the Mediator determines whether or not each property was, at the time of filing, the principal residence of its owner. In addition, the Mediator would identify all landlord-owned properties still occupied by tenants who are not parties to the foreclosure cases.

- Cases whose defendants are determined not to be owner-occupants would be allowed to proceed normally.
- The addresses and case information for occupied rental properties would be provided to an appropriate organization, such as CTO, for outreach to the tenants regarding their legal rights and resources.

Step 2: Referral to mediation; cases stayed pending mediation process. All owner-occupied foreclosures, including active cases and those awaiting sheriff's sale, would be automatically referred for possible mediation and the cases would be stayed pending the completion of the outreach and mediation processes.

Step 3: Outreach . The Court would make all reasonable efforts to notify owner-occupant defendants in active foreclosure cases that their cases have been referred for mediation and that they must either: a) contact the Mediator to proceed with the mediation process, or b) authorize a qualified community counseling agency to contact the Mediator for them.

At the same time, contact information for all referred defendants would be provided by the Mediator to the County Foreclosure Prevention Office, which would work with governments, community organizations, etc. to conduct separate community outreach efforts.

- Cases whose defendants fail to respond to this outreach within a specified time after being notified would be removed from the Mediator's list and allowed to proceed normally.

Step 4: Mediation.

a) Counseling. Each owner-occupant who has requested mediation through the process described above would be referred by the Mediator to a housing counseling agency. The housing counseling agency would attempt to negotiate a workout. There would be a reporting process from the counseling program to the Mediator.

If the defendant failed to show up for counseling, his/her right to mediation would end.

At the same time, if the plaintiff failed to meet some standard of cooperation with the counseling program, the case would be on hold until the plaintiff cooperates. Standards of plaintiff cooperation would include:

- The plaintiff must provide the counseling agency a direct contact number for the plaintiff's agent who is empowered to negotiate the defendant's case. Failure to do so with specifics would be a bad-faith effort.
- The plaintiff must provide all documentation on the client's loan to the counseling agency.

b) Court mediation. If the housing counseling agency reported that good-faith negotiation had occurred but failed to resolve the case, the defendant could request court mediation and the Mediator would determine if such mediation would be appropriate. Mediation would then proceed as outlined in the Court's original proposal.

Coalition “foreclosure time-out” plan	Common Pleas mediation plan (6/24/08)
<p>Step 1: Triage. Common Pleas Court would announce that all active and newly filed foreclosure cases, including those awaiting sheriff's sale, will be stayed while the Mediator determines whether or not each property was, at the time of filing, the principal residence of its owner. In addition, the Mediator would attempt to identify all landlord-owned properties still occupied by tenants who are not parties to the foreclosure cases.</p> <p>Cases whose defendants are determined not to be owner-occupants would be allowed to proceed normally.</p> <p>The addresses and case information for occupied rental properties would be provided to an appropriate organization (e.g. Cleveland Tenants Organization) for outreach to the tenants regarding their legal rights and resources.</p>	<p>There is no general stay of cases for purposes of triage. All foreclosure cases proceed as usual except those in which the defendant requests mediation and the Mediator agrees to grant it.</p> <p>There is no identification or referral of tenants in rental properties undergoing foreclosure.</p>
<p>Step 2: Referral to mediation; cases stayed pending mediation process. All owner-occupied foreclosures, including active cases and those awaiting sheriff's sale, would be automatically referred for possible mediation and the cases would be stayed pending the completion of the outreach and mediation processes.</p>	<p>Mediation may be requested by</p> <ul style="list-style-type: none"> a) defendants during 28-day answer period after initial foreclosure notice, and b) other defendants in active cases prior to judgment. Cases are accepted for mediation at the Mediator's sole discretion. <p>Accepted cases are stayed pending the mediation process (60 days).</p>
<p>Step 3: Outreach. The Court would make all reasonable efforts to notify owner-occupant defendants in active foreclosure cases that their cases have been referred for mediation and that they must either:</p> <ul style="list-style-type: none"> a) contact the Mediator to proceed with the mediation process, or b) authorize a qualified community counseling agency to contact the Mediator for them. <p>At the same time, contact information for all referred defendants would be provided by the Mediator to the County Foreclosure Prevention Office, which would work with governments, community organizations, etc. to conduct separate community outreach efforts.</p> <p>Cases whose defendants fail to respond to this outreach within a specified time after being notified would be removed from the Mediator's list and proceed normally.</p>	<p>The only <i>direct</i> communication to defendants specified by the plan is in connection with the initial notice in a new foreclosure case – i.e. a postcard notifying the new defendant of mediation and County counseling assistance, plus material accompanying the actual foreclosure notice.</p> <p>Mediator is responsible for general marketing about the mediation option and working with the community to this end,</p> <p>There is no obligation for other Court officers to communicate the mediation option to defendants in active cases. Magistrates may refer defendants they consider appropriate.</p> <p>No extra time is set aside, in either new or existing cases, for outreach by either the Court or community agencies.</p>

Coalition foreclosure time-out plan	Common Pleas mediation plan (6/24/08)
<p>Step 4: Mediation in two stages.</p> <p>a) Counseling. Each owner-occupant who has requested mediation through the process described above would be referred by the Mediator to a local HUD-certified housing counseling agency. The housing counseling agency would attempt to negotiate a workout. There would be a reporting process from the counseling program to the Mediator. If the defendant failed to show up for counseling, his/her right to mediation would end. At the same time, if the plaintiff failed to meet a standard of cooperation with the counseling program, the case would be on hold until the plaintiff cooperates. Standards of plaintiff cooperation would include:</p> <ul style="list-style-type: none"> -- The plaintiff must provide the counseling agency a direct contact number for the plaintiff's agent who is empowered to negotiate the defendant's case. Failure to do so with specifics would be a bad-faith effort. -- The plaintiff must provide all documentation on the client's loan to the counseling agency. <p>b) Court mediation. If the housing counseling agency reported that good-faith negotiation had occurred but failed to resolve the case, the defendant could request court mediation and the Mediator would determine if such mediation would be appropriate. Mediation would then proceed as outlined in the Court's original proposal.</p>	<p>One stage: Court mediation only.</p> <p>The Mediator (or a volunteer mediator) conducts two mandatory meetings with the defendant and a decision-making representative of the plaintiff. The first meeting (Pre-Mediation Conference) is a review of the ground rules and the adequacy of case information provided by the parties. The actual attempt at mediation and settlement is the agenda of the second and final meeting.</p> <p>After the Pre-Mediation Conference, each party has thirty days to complete a questionnaire and submit it to the Mediator with other documentation. The Mediator may refer the defendant to a housing counseling agency for assistance in preparing this information. Also, counseling agency staff may accompany the defendant to either of the meetings.</p> <p>However, the Court's mediation plan provides neither time nor encouragement for counseling agencies to help these defendants to resolve their cases directly, through the agencies' standard workout negotiating procedures.</p>

The Foreclosure Action Coalition plan: Endorsing organizations, 7/18/08

Association of Community Organizations for Reform Now (ACORN)
Cleveland Neighborhood Development Coalition
Cleveland Tenants Organization
Community Housing Solutions
Empowering and Strengthening Ohio's People (ESOP)
Home Repair Resource Center
Housing Research & Advocacy Center
Neighborhood Housing Service of Greater Cleveland
Neighborhood Progress, Inc.
North Shore Federation of Labor, AFL-CIO
Spanish-American Committee

(Additional endorsements are currently pending from other participating organizations in the Foreclosure Action Strategy Group.)