

## **FORECLOSURE MEDIATION: RESPONDING TO THE CURRENT CRISIS**

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### I. INTRODUCTION

When the foreclosure crisis hit Ohio, both the executive and judicial branches of government took action to counter the crisis. The governor's response to the crisis was to form a task force to study the crisis and make recommendations on how Ohio might stem it. The recommendations of the task force led to the creation of the Save the Dream Ohio initiative.

While the executive branch turned to task forces and initiatives, the judicial branch opted to develop foreclosure mediation programs to manage an increased caseload due to the increasing number of foreclosures. Chief Justice Thomas J. Moyer proposed that mediation be used to manage the increased caseload; the Supreme Court of Ohio then set about to create a model for the lower courts to follow when designing a local foreclosure mediation program. Several months later, the Chief Justice announced the Foreclosure Mediation Program Model (the Model); the Model is the first of its kind in the United States.

The Model developed in Ohio provides a model not only for Ohio courts but also for other states wishing to implement mediation in foreclosure cases. The Model consists of eleven steps and provides an efficient and thorough approach to designing a foreclosure mediation program. The Model considers who the stakeholders will be in the mediation, state laws and local rules, and provides a suggested timeline for the mediation program from pre- to post-mediation steps.

Nearly every county in Ohio now offers foreclosure mediation based on the Model developed by the Supreme Court of Ohio. As the counties

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implemented the Model, the Model's designers and implementers learned which aspects of the eleven-step Model and which general mediation concepts to emphasize in future implementations. Over time, the Model's designers developed a checklist to implement it successfully.

Section II of this article provides an in-depth look at the history behind the Model's creation. Section III discusses process and procedure of a mediation program. This section illustrates how local needs and state laws may affect foreclosure mediation processes; Ohio provides an example of these effects. After Section III discusses how local conditions may affect a foreclosure mediation process, Section IV discusses the need for a local court to standardize its own documents and forms. Though local conditions may affect not only the program design but also which documents and forms a program uses, the documents and forms should not vary from mediation to mediation within a local program.

Section V then tackles the issue of training and ongoing professional development for the mediators in a foreclosure mediation program. Section VI details the eleven steps of the Model. Section VII thoroughly discusses the aspects of the Model and general mediation concepts that implementers should emphasize, as well as the implementation checklist. Section VIII briefly discusses projected trends in measures designed to counter the foreclosure crisis.

## II. HISTORY OF FORECLOSURE MEDIATION IN OHIO

Former Governor Ted Strickland established the Foreclosure Prevention Task Force (Task Force) in March 2007 to provide a unified and coordinated statewide response to the dramatic increase in foreclosures in Ohio.<sup>1</sup> The Task Force issued its report in September 2007 with twenty-seven recommendations on how Ohio could stem the foreclosure crisis.<sup>2</sup> The number one recommendation of the Task Force was to create and conduct a public awareness campaign and conduct "borrower outreach events to encourage borrowers to contact their lender if they are facing an [adjustable rate mortgage] reset or if they are having trouble making their mortgage payment."<sup>3</sup> In March 2008, this recommendation led to Save

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<sup>1</sup> OHIO FORECLOSURE PREVENTION TASK FORCE, FINAL REPORT 1, 6 (2007), *available at* <http://www.com.ohio.gov/admn/docs/FPTFFinalReport.pdf> ("\$1 trillion in adjustable rate mortgages are expected to reset nationally, including an estimated \$14 billion in Ohio" from 2007–2012).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 4.

the Dream Ohio (SDO), a multi-media foreclosure prevention initiative that aims to help Ohioans save their homeownership dreams.<sup>4</sup>

In addition to the Task Force organized by the former governor, Chief Justice Thomas J. Moyer proposed in late 2007 that Ohio courts develop foreclosure mediation programs to manage the increasing number of foreclosure filings. Mediators in these foreclosure mediation programs use a facilitative approach, meaning that the mediator is a neutral third party rather than an advocate for either and serves as a guide to the parties. The mediator leads the parties through a party self-determination process to explore possible resolutions to the foreclosure and to see if the parties can reach a mutually acceptable agreement to resolve the foreclosure.<sup>5</sup>

Then, in February 2008, Chief Justice Moyer announced an innovative new model called the Foreclosure Mediation Program Model—the first of its kind nationally.<sup>6</sup> The Model contains eleven steps (outlined below) that were designed by a workgroup made up of stakeholders listed in Step One of the Model and led by the Dispute Resolution Section of the Supreme Court of Ohio.<sup>7</sup> The Model

follows the rules of civil procedure, consistent with all other civil cases, while giving borrowers the same access to mediation that has been regularly available for other case types for more than a decade. Ohio has learned that mutually beneficial agreements do not always result in keeping people in their homes. In some cases, an agreement that is both commercially reasonable and sustainable over time cannot be achieved. However,

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<sup>4</sup> See SAVE THE DREAM OHIO, SAVE THE DREAM 2009 ANNUAL REPORT, available at <http://savethedream.ohio.gov/docs/SVTDAnnualReport.pdf>.

<sup>5</sup> *Foreclosure Mediation Program Model Overview*, THE SUP. CT. OF OHIO, <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/overview.asp> (last visited Feb. 20, 2011) [hereinafter *Model Overview*].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* Step One of the Model describes “a meeting with stakeholders such as: judges; magistrates; lenders; attorneys for borrowers and lenders; community organizations; mediators; legal aid organization; clerk of courts; county auditor, treasurer and/or commissioners; local social service agencies; community organizations such as churches, homeowner’s and bank associations, etc.” to discuss foreclosure mediation. *Foreclosure Mediation Resources, Foreclosure Mediation Program Model*, THE SUP. CT. OF OHIO, <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/> (last updated Oct. 2009) [hereinafter *Foreclosure Mediation Resources*].

mediation has proven successful in resolving cases by creating a transition for borrowers to find alternate housing and avail themselves of other resources to manage a difficult situation . . . . [S]ome foreclosure cases[, however,] need to be resolved through litigation.<sup>8</sup>

One successful factor used includes housing counseling agencies approved by the U.S. Department of Housing and Urban Development (HUD) because they help borrowers compile and provide the lender<sup>9</sup> with the financial information necessary—prior to the mediation—to reach an agreement.<sup>10</sup> “The result is an efficient and effective use of state allocated resources because all parties are fully prepared for the mediation session, thereby minimizing the requirement for an additional session due to a lack of information. . . .”<sup>11</sup> In addition to all parties being fully prepared for the mediation, the mediator’s training also contributes to the potential success of the mediation program; the Supreme Court of Ohio recommends the mediator have a minimum of eighteen hours of training before mediating a foreclosure case.

Because prior exchange of all necessary information is so critical to the mediation’s success, some local courts may choose to conduct pre-mediation conference calls to confirm not only that the parties have exchanged all necessary information but also attendance on the scheduled date. In addition, to minimize the costs potentially charged to the borrower, some courts allow the lender to participate by telephone by designating “an individual with authority to settle (or having an individual with the required authority available for the duration of the mediation session),” especially when the lender is located in a different state or country.<sup>12</sup>

### III. PROCESS AND PROCEDURE

Successful programs start with a foundation that includes organized processes and procedures, as well as documents and forms for each aspect. The Model provides local courts with the tools necessary to build foreclosure mediation programs. These tools include a step-by-step

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<sup>8</sup> *Model Overview*, *supra* note 5.

<sup>9</sup> For purposes of this article, the term “lender” includes lenders and servicers.

<sup>10</sup> *Model Overview*, *supra* note 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

process, including procedures, forms, and other available resources.<sup>13</sup> One of the first goals for administrators is to define mediation so that participants know what to expect from the process. The Ohio Uniform Mediation Act (UMA) defines mediation as “any process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.”<sup>14</sup>

States process real estate foreclosures differently using judicial and non-judicial foreclosure processes.<sup>15</sup> The terms and time frames used within each system vary from state to state.<sup>16</sup> Ohio is a judicial foreclosure state. In other words, foreclosures take place through the courts in a judicial foreclosure process.<sup>17</sup> From a legal perspective, there are variations between judicial and non-judicial foreclosure processes used to finalize a case. However, once parties attend mediation, there are few variations.

As noted above, the Model is consistent with the Ohio Rules of Civil Procedure and the UMA, which governs mediation in Ohio. The UMA provides that mediation communications are privileged, yet also allows the mediator to disclose particular information.<sup>18</sup> Rule 16 of the Supreme Court of Ohio Rules of Superintendence also governs mediation processes and procedures in local courts in Ohio.<sup>19</sup> This rule governs local court rules providing for mediation including mediator qualifications.<sup>20</sup> Courts

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<sup>13</sup> See THE SUPREME COURT OF OHIO, FORECLOSURE MEDIATION PROGRAM MODEL (2008), available at <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/foreclosureMediation.pdf> [hereinafter MODEL].

<sup>14</sup> OHIO REV. CODE ANN. § 2710.01(A) (West 2006).

<sup>15</sup> See MORTG. BANKERS ASS'N, JUDICIAL VERSUS NON-JUDICIAL FORECLOSURE, available at <http://www.mbaa.org/files/ResourceCenter/ForeclosureProcess/JudicialVersusNon-JudicialForeclosure.pdf> (last visited Sept. 28, 2011).

<sup>16</sup> *Id.* See also *Foreclosure Laws and Procedures by State*, REALTYTRAC, <http://www.realtytrac.com/foreclosure-laws/foreclosure-laws-comparison.asp> (last visited Sept. 28, 2011); *State by State Foreclosure Procedures*, ALL FORECLOSURE, <http://www.all-foreclosure.com/procedures.htm> (last visited Sept. 28, 2011).

<sup>17</sup> See MORTG. BANKERS ASS'N, *supra* note 15.

<sup>18</sup> OHIO REV. CODE ANN. §§ 2710.03–2710.07 (West 2006).

<sup>19</sup> OHIO SUP. R. 16, available at <http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf>.

<sup>20</sup> *Id.*

will provide additional requirements using court orders and local rules of court.<sup>21</sup>

The design of the Model allows “courts [or other organizations] to modify the [process], documents and forms based on their local needs, resources and community, while balancing the needs of all stakeholders . . . .”<sup>22</sup> As a result, foreclosure mediation programs vary by county.<sup>23</sup> Local courts determine who is required to participate and by what means (i.e., telephone).<sup>24</sup> For example, a large county with full-time staff to manage the program might implement a formal process with standardized documents and forms; a small county might provide a contact person to provide an explanation of the process for that county. In fact, “successful mediation programs are due, in large part, to the intentional consistency between the Ohio Revised Code [(ORC)], court rules, and [court policies] and procedure[s that] ensure[] the efficient and effective operation of mediation programs throughout [the state].”<sup>25</sup>

#### IV. DOCUMENTS AND FORMS

Standardized documents and forms promote consistency and quality delivery of mediation services. Program administrators should determine what documents and forms are necessary to meet the goals and objectives of the program pursuant to policies, procedures, court rules, and statutory law. Local courts modify documents and forms, found on the Supreme Court of Ohio Dispute Resolution Section website, to meet various program requirements and available resources.<sup>26</sup>

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<sup>21</sup> See, e.g., *Foreclosure Mediation in Ohio: What You Need to Know*, THE SUP. CT. OF OHIO, <http://www.sconet.state.oh.us/jcs/disputeresolution/foreclosure/faq.asp> (last visited Feb. 18, 2012) [hereinafter *Foreclosure FAQ*].

<sup>22</sup> *Model Overview*, *supra* note 5.

<sup>23</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>24</sup> See generally *id.*

<sup>25</sup> Jacqueline C. Hagerott, Manager, The Supreme Court of Ohio Dispute Resolution Section, Testimony Before the Senate Finance and Financial Institutions Committee on the Topic of Foreclosure Mediation 2 (Feb. 2, 2010) (testimony available at <http://www.cohhio.org/pdf/Advocacy/Testimony%20Before%20the%20Seante%20Finance%20and%20Financial%20Institutions%20Committee%20020210.pdf>).

<sup>26</sup> *Foreclosure Mediation Program Model Documents, Resources and Training*, THE SUP. CT. OF OHIO, <http://www.sconet.state.oh.us/JCS/disputeResolution/foreclosure/documents.asp> (last visited Sept. 29, 2011) [hereinafter *Model Documents*].

## V. TRAINING AND ONGOING PROFESSIONAL DEVELOPMENT

Foreclosure mediation uses a unique terminology that is not common knowledge to individuals who have not worked in the field. In addition to learning the mediation process, it is important for mediators to understand the players, terminology, workout options, and federal and state policy considerations specific to foreclosure cases. Therefore, although local courts ultimately determine the training requirements, the Supreme Court of Ohio recommends and provides the following minimum training courses: “Basic Mediation” (minimum of twelve hours); “Foreclosure Mediation” (offered or approved by the Supreme Court of Ohio); and “The Uniform Mediation Act” (minimum of two hours).<sup>27</sup> The Supreme Court of Ohio provides both virtual and face-to-face professional development opportunities that allow mediators to discuss current issues, new legislation, best practices, mediation strategies, creative workout options,

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<sup>27</sup> *Foreclosure FAQ*, *supra* note 21. The Supreme Court of Ohio provides the following description for the Foreclosure Mediation course:

During this training course, participants will discuss the recent history and institutional changes that led to the foreclosure crisis, the importance and scope of the task at hand, learn the relevant terminology, players and the inter/intra party dynamics of the foreclosure servicing industry that will inform and limit settlement possibilities in home foreclosure and loan default situations. They will demonstrate thorough knowledge of the range of settlement options, limitations, advantages and disadvantages for the parties in foreclosure cases and the information required from the parties to come to an agreement under each option. They also will analyze the possibilities and limitations of mediation between pro se homeowners and lenders in foreclosure cases while also identifying when and how to terminate the mediation. Finally, participants will review relevant statutes and rules in order to recognize the legal framework applying to foreclosure cases and learn how to apply the local court foreclosure mediation program processes and procedures, if applicable, and be familiar with the Supreme Court [of Ohio] Foreclosure Mediation Program Model.

*Foreclosure Mediation Trainings and Roundtables*, THE SUP. CT. OF OHIO, <http://www.sconet.state.oh.us/JCS/disputeResolution/foreclosure/Training.pdf> (last updated July 17, 2009).

and other issues that allow them to improve their skills mediating and managing foreclosure mediation programs.<sup>28</sup>

#### VI. THE SUPREME COURT OF OHIO FORECLOSURE MEDIATION ELEVEN-STEP PROGRAM MODEL

The Model includes eleven steps. The first step of the Model discusses the foundational requirements necessary to build a program, including a meeting for stakeholders, available resources, training requirements, marketing, and relevant statutes and rules.<sup>29</sup>

Step Two outlines the initial step of the process—the filing of the complaint.<sup>30</sup> It also outlines the required and recommended components.<sup>31</sup>

Step Three highlights the next step of the foreclosure process—the summons.<sup>32</sup> Step Three also provides additional documents that may be included with the summons and the complaint, such as a Request for Foreclosure Mediation and a motion for extension of time.<sup>33</sup>

The fourth step includes marketing of the program with tools such as a brochure or postcard. The marketing material should provide information to educate the parties about the option of mediation in a foreclosure case as well as the mediation process itself.<sup>34</sup> Step Five of the Model outlines the requirement that the borrower file a responsive pleading to the foreclosure complaint and describes the various types of responsive pleadings.<sup>35</sup> Step Six is the point in the process where parties exchange critical information, such as questionnaires that include demographic and financial information from both the lender and the borrower, as well as process, procedure, and timeframes for which to submit the information.<sup>36</sup> The mediation program contacts both the plaintiff's attorney and the borrower by mail.<sup>37</sup> The plaintiff's attorney receives a "Plaintiff/Lender's Mediation Questionnaire

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<sup>28</sup> Hagerott, *supra* note 25, at 3.

<sup>29</sup> MODEL, *supra* note 13, at 15–17.

<sup>30</sup> *Id.* at 17.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 18.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

for Foreclosure Cases.”<sup>38</sup> The borrower receives a detailed “Request for Foreclosure Mediation” form.<sup>39</sup> The responses to the Questionnaire and the Request for Foreclosure Mediation provide information that the mediation program can review in the seventh step to determine if mediation is appropriate. The mediation program may also “send[] a status report to the court and the parties as to whether or not mediation will occur.”<sup>40</sup>

Step Eight provides details regarding the actual scheduling of the mediation, including process and procedure.<sup>41</sup> Courts may issue an order requiring parties to attend mediation with authority to settle.<sup>42</sup>

The mediation takes place in Step Nine in compliance with relevant state and local rules.<sup>43</sup> Step Nine also discusses the process and procedure that occurs if the parties reach an agreement. This process and procedure helps to maintain confidentiality and privilege, and to memorialize the agreement.<sup>44</sup>

An outcome report is filed in Step Ten.<sup>45</sup> Finally, Step Eleven provides for both qualitative and quantitative quality assessment using surveys and questionnaire forms.<sup>46</sup> Additional sample forms and best practice processes and procedures may be necessary depending on the size of the program.

## VII. LESSONS LEARNED

### A. Overview

Through building programs throughout the eighty-eight counties in Ohio and assisting other states to do the same, a checklist of factors to consider when building a foreclosure mediation program applicable to both

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<sup>38</sup> *Id.* See also *Plaintiff/Lender’s Mediation Questionnaire for Foreclosure Cases*, THE SUP. CT. OF OHIO, <http://www.sconet.state.oh.us/JCS/disputeResolution/foreclosure/PlaintiffLenderQuestionnaire.doc> (last visited Feb. 20, 2012).

<sup>39</sup> MODEL, *supra* note 13, at 18; *Request for Foreclosure Mediation*, THE SUP. CT. OF OHIO, <http://www.sconet.state.oh.us/JCS/disputeResolution/foreclosure/ForeclosureMediationReq.doc> (last visited Feb. 20, 2012).

<sup>40</sup> *Id.* at 17–18

<sup>41</sup> *Id.* at 18–19.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 19.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 20.

<sup>46</sup> *Id.*

judicial and non-judicial foreclosure states evolved over the last four years. Some factors may seem intuitive, but the key to a successful program is careful consideration by stakeholders that each factor, as obvious as it may seem, is not left to chance. Careful planning increases the probability of an efficient and effective program.

*1. Checklist for the Design and Implementation of a Foreclosure Mediation Program for Judicial and Non-judicial Foreclosure States*

*a. Identify Current Rules, Statutes, and Any Other Regulations that Will Control or Affect the Program*

These regulations might include court rules, rules of civil procedure, statutes, and other legislation. The Model should be consistent with respect to all current rules and statutes so that it will stand the test of time.

*b. Define Mediation*

Although the meaning behind each definition of mediation tends to be the same, mediation program staff should use the same definition. Ohio has adopted the UMA and follows the UMA's definition of mediation.

Foreclosure mediation cases are no different from any other mediation case. Mediators must remember to keep the core values of mediation at the forefront of their minds throughout the process. This includes, but is not limited to confidentiality, party self-determination, mediator neutrality, and "do no harm" (parties should be no worse off than they were before mediation),<sup>47</sup> at the forefront of their minds throughout the process.

*c. Define Goals and Objectives*

The goal in Ohio is to create mutually acceptable agreements that are commercially reasonable and sustainable.<sup>48</sup> Commercially reasonable has no formal definition because it varies based on the context in which it is

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<sup>47</sup> See Jacqueline Hagerott, Manager, The Supreme Court of Ohio Dispute Resolution Section, *Foreclosure Mediation: An Overview 6* (2011) (presentation on file with the Capital University Law Review).

<sup>48</sup> See *Foreclosure FAQ*, *supra* note 21 ("A successful mediation means a mutually acceptable agreement has been reached that is both commercial reasonable and sustainable over time.").

used.<sup>49</sup> Therefore, the parties determine what commercially reasonable means to them. If the program goal is to keep people in their homes, a major factor to consider should be whether that goal is truly neutral and equally beneficial to both sides. This goal could place the mediator in a biased position because it may not be the goal of the lender to keep borrowers in their homes if borrowers are unable to make reasonable payments on the mortgage. The mediator would thus breach neutrality if the mediator focused on the interest of the borrower (keeping the home), which may not be commercially reasonable for the lender based on the income of that borrower.

*d. Define Desired Outcomes*

Defining “success” is imperative for the program. In Ohio, success means the parties have reached a mutually acceptable, sustainable agreement.<sup>50</sup> These agreements often include keeping people in their homes and transition strategies, also known as graceful exits.<sup>51</sup> For borrowers that do not want to keep their homes, providing mediation as an option to foreclosure helps them by creating a way for them to exit their homes gracefully. Creating a plan that is unsustainable over time is not in either party’s best interest. If the borrower is facing foreclosure in the future, everyone loses.

*e. Develop Qualitative and Quantitative Program Assessment Tools*

As with any program, qualitative and quantitative assessments are important to measure achievement of the program goals. Implementation of the following forms and surveys is recommended: “Foreclosure Mediation Participant Survey,” “Contract Mediator Questionnaire” (if

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<sup>49</sup> *Commercially Reasonable Efforts Law & Legal Definition*, USLEGAL.COM, <http://definitions.uslegal.com/c/commercially-reasonable-efforts/> (last visited Feb. 20, 2012).

<sup>50</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>51</sup> See Alon Cohen, *Clearing the Foreclosure Crisis: Foreclosure Mediation Can Reduce Uncertainty*, CENTER FOR AM. PROGRESS (Oct. 25, 2010), [http://www.americanprogress.org/issues/2010/10/foreclosure\\_crisis.html](http://www.americanprogress.org/issues/2010/10/foreclosure_crisis.html) (noting that examples of graceful exits include a deed in lieu of foreclosure, a short sale, cash for keys, or a negotiated departure date instead of eviction).

applicable), and “Case Management Data and Quality Assessment Information Form.”<sup>52</sup>

*f. Identify and Engage Stakeholders*

A successful program will involve all stakeholders who are necessary for the implementation and sustainability of the program. Examples of possible stakeholders include judges, magistrates, attorneys for borrowers, community organizations, bank associations, mediators, legal aid organizations, clerks of courts, county auditors, county treasurers, commissioners, local social service agencies, borrowers’ associations, and community organizations such as churches and the local bar.

*g. Develop the Structure of the Program*

- *Marketing*

It is important that the parties know that mediation is an option in foreclosure cases. Information may be available at local court websites, local bar associations, law libraries, clerks of courts, local social service agencies, organizations such as churches and legal aid associations, bank associations, and the offices of county auditors, treasurers, and commissioners.

Methods to notify parties and potential parties about the mediation option include a statewide hotline, local task forces, language in the summons, postcards, flyers, brochures, word of mouth, radio, and television. The Foreclosure Mediation FAQ form—Foreclosure Mediation in Ohio: What You Need to Know—also provides commonly asked questions and answers for borrowers.<sup>53</sup>

- *Funding*

The best option for a sustainable program is funding at a local level. Proposed legislation in Ohio would establish a residential foreclosure filing fee up to five hundred dollars paid by the filing party (in addition to any other filing fees or court costs that would otherwise apply).<sup>54</sup> Other options may include costs charged directly to the lender or the borrower. Programs should consider a fee reduction or fee waiver for parties who

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<sup>52</sup> See *Model Documents*, *supra* note 26.

<sup>53</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>54</sup> See S.B. 197, 128th Gen. Assemb., Reg. Sess. (Ohio 2009). Although not passed, the legislation’s proposal remains a viable funding option and includes processes and procedures that programs could implement by local rule or otherwise.

demonstrate a financial hardship. Another option may include mandating a fee paid by the lender prior to mediation, and requiring the borrower to reimburse the lender for half of the fee upon reaching a resolution. Parties may not necessarily share costs equally. Courts also may impose penalties on parties who do not abide by court and program rules and guidelines.

- *Staffing*

The number of cases that the program will mediate is the controlling variable to determine staffing needs. Mediation sessions can last from thirty minutes to two hours.<sup>55</sup> The length of time and the number of sessions varies depending on the level of preparation completed before the mediation and the level of emotions involved in a case. Borrowers may need the opportunity to share their story and perhaps process the realization that they may need to let go of their home.

A questionnaire completed by parties before the mediation and pre-mediation conference calls is one resource to help determine how many times the parties will need to meet and for how long.<sup>56</sup> Mediations that take longer generally involve processing new information.<sup>57</sup> Some programs have mediators who do all of their own administrative work in addition to mediation.<sup>58</sup> Others have mediators and support staff.<sup>59</sup> Talking to similar existing programs can be a wonderful resource to know where to start with regard to staffing.<sup>60</sup>

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<sup>55</sup> See *Foreclosure FAQ*, *supra* note 21 (“Most foreclosure mediations take between one and two hours.”).

<sup>56</sup> See *Model Documents*, *supra* note 26.

<sup>57</sup> See *Foreclosure FAQ*, *supra* note 21 (“[Preparation] minimizes the requirement for an additional session due to a lack of information.”).

<sup>58</sup> See, e.g., BEVERLY DRAINE FOWLER ET AL., PLANNING MEDIATION PROGRAMS: A DESKBOOK FOR COMMON PLEAS JUDGES 6-7 (2000), available at <http://www.sconet.state.oh.us/Publications/pmd.pdf> [hereinafter DESKBOOK] (noting that Montgomery County and Clinton County, two of the three Ohio counties that took part in a pilot mediation program, utilized existing staff to support a mediator). Furthermore, the author is personally aware of a mediator who completes all of the administrative work for the foreclosure mediations he works on. For additional information, please contact the author.

<sup>59</sup> *Id.* (noting that Stark County hired an administrative assistant to help the mediator).

<sup>60</sup> E.g., Telephone Interview with Eileen Pruetz, Manager, Small Claims Div. & Dispute Resolution Dep’t, Franklin Cnty. Mun. Court, Columbus, Ohio (Sept. 13, 2010).

- *Referral Process*

Program administrators, courts, attorneys, parties, or housing counselors should refer a dispute to mediation as soon as possible to increase the likelihood of a resolution. In some cases, an automatic referral is triggered by a specific event. For example, a responsive pleading may be the trigger. When a responsive pleading (such as an answer to the complaint) is filed, then the case is automatically referred to mediation.<sup>61</sup> In Ohio, the borrower or the lender may request mediation by completing a Request for Foreclosure Mediation form.<sup>62</sup> Program guidelines should also include a process to address the situation where one party requests mediation and the other party objects.

The probability of a successful outcome may decrease the longer the foreclosure process goes on because the amount in arrears continues to increase, making it more difficult for the borrower to become current on the loan. However, even if the sheriff's sale has been scheduled, or even after the sale has taken place, a successful mediation is possible.<sup>63</sup> If there is a willing buyer and seller, the possibility of a successful outcome should not be a foregone conclusion. There may be times when parties do not fully realize the true value of the property until late in the process. A program should nevertheless have flexibility to allow the parties to negotiate at any stage in the foreclosure process.

- *Grace Period*

Program administrators should consider instituting a grace period after a referral to mediation regarding the status of the home (such as sale of the home), which covers time the case is in the mediation process. A court in a judicial foreclosure state may stay the case until the conclusion of the mediation. Proposed legislation in Ohio provided that all further proceedings would be stayed pending the filing of the mediation report with the court.<sup>64</sup> If the borrower did not attend a scheduled mediation, the mediator would be required to immediately report this to the court, and the foreclosure would proceed.<sup>65</sup> If the filing party did not attend the mediation, the court would dismiss the foreclosure action, subject to a

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<sup>61</sup> See DESKBOOK, *supra* note 58, at 7-11.

<sup>62</sup> See *Model Documents*, *supra* note 26.

<sup>63</sup> *Foreclosure FAQ*, *supra* note 21.

<sup>64</sup> S.B. 197, 128th Gen. Assemb., Reg. Sess. (Ohio 2009). This proposed legislation was not enacted.

<sup>65</sup> *Id.*

showing of good cause.<sup>66</sup> Factors to consider to determine the length of time for a grace period include the amount of time it takes to schedule mediation, time for the borrower to work with a housing counselor to gather the necessary financial information, how many mediation sessions are necessary for a final resolution, state and federal program guidelines, and any other obstacles that would delay the final outcome of the mediation.

- *Court Order*

Due to a lack of communication, the biggest challenge for parties in these cases is coming to the table. Therefore, a court order referring the parties to mediation provides an opportunity for the parties to begin discussing options. Mediators and program administrators confirm that once the parties are negotiating, the probability of reaching an agreement is very high, even when ordered into mediation by the court.<sup>67</sup> However, without a court order requiring them to attend mediation (where reaching an agreement is not mandatory), it is not likely that parties will communicate with each other to discuss options. Borrowers attempt, to no avail, to reach lenders, who have tried, to no avail, to reach the borrowers.<sup>68</sup> It is common that both are interested in trying to work out an agreement but, historically, have not been able to overcome the hurdle of finding a way to reach each other.<sup>69</sup>

Court orders referring cases to mediation solve this problem. The court will order the parties to mediation and may include other items in the court order such as authority to settle, participation in person (or via telephone with court approval), and documents and information necessary to have negotiations.<sup>70</sup> Some observers may argue that mediation is a voluntary process, and therefore, court-ordered mediation is inconsistent with the philosophy of mediation.<sup>71</sup> However, pursuant to the UMA, it is

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<sup>66</sup> *Id.*

<sup>67</sup> See DESKBOOK, *supra* note 58, at 7-29.

<sup>68</sup> See, e.g., Kimberly Miller, *Mediation Lets Lenders, Borrowers Negotiate*, PALM BEACH POST (July 7, 2010), <http://www.palmbeachpost.com/money/real-estate/mediation-lets-lenders-borrowers-negotiate-790387.html> (“Judges often hear from borrowers that they have been unable to reach bank representatives . . . . Lenders complain borrowers ignore them . . .”).

<sup>69</sup> See, e.g., *id.*

<sup>70</sup> See *Model Documents*, *supra* note 26.

<sup>71</sup> See DESKBOOK, *supra* note 58, at 7-33.

the agreements in mediation that are voluntary, not the process.<sup>72</sup> Orders that mandate parties to the table do not interfere with voluntary settlement. The mediator controls the process.<sup>73</sup> Therefore, parties may attend, listen to the introduction of the mediator, and leave without being in contempt of court. However, once parties attend the mediation, it is likely that they will reach an agreement or, at a minimum, gain a better understanding of the case. Both outcomes are valuable.

In non-judicial foreclosure process states where court orders are not an option, statutes can create authority to order parties to mediation.<sup>74</sup> Nevada is an example of one such state.<sup>75</sup>

- *Screening*

The amount of resources (such as staff) available to manage a program has a direct effect on the types of cases eligible for mediation.<sup>76</sup> When states have limited resources, criteria affecting the referral decision may include whether the borrower is currently in the home, whether the borrower wants to remain in the home, whether the home is the primary residence, and whether the borrower is employed.

Programs may consider referring all types of foreclosure cases into mediation,<sup>77</sup> including investment properties and other types of foreclosures, such as foreclosures due to unpaid taxes or condominium or homeowner association fees. There is great value in mediating cases for people who need a graceful exit from their home because they are no longer able to make payments due to job loss, medical catastrophes, change in family circumstances such as divorce or death of a spouse, or otherwise. These cases are ideal for mediation because of the range of available workout options.<sup>78</sup>

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<sup>72</sup> See OHIO REV. CODE ANN. § 2710.01 (West 2006).

<sup>73</sup> See MODEL, *supra* note 13, at 109.

<sup>74</sup> See MORTG. BANKERS ASS'N, *supra* note 15.

<sup>75</sup> See *Nevada Foreclosure Law Summary: Stop Nevada Foreclosure*, U.S. FORECLOSURE LAWS, [http://www.foreclosurelaw.org/Nevada\\_Foreclosure\\_Law.htm](http://www.foreclosurelaw.org/Nevada_Foreclosure_Law.htm) (last visited Feb. 16, 2012); FORECLOSURE MEDIATION RULES APPROVED BY THE SUPREME COURT OF NEVADA, effective June 30, 2009, and including amendments through July 21, 2010, [http://www.nevadajudiciary.us/images/foreclosure/adkt435\\_amendedrules.pdf](http://www.nevadajudiciary.us/images/foreclosure/adkt435_amendedrules.pdf) (last visited Feb. 16, 2012).

<sup>76</sup> See DESKBOOK, *supra* note 58, at 8-5.

<sup>77</sup> See *id.* at 8-3, 8-5.

<sup>78</sup> See *generally id.* at 3-13.

Another screening factor involves bankruptcy filings. In a judicial foreclosure state, if the party has filed bankruptcy they may still end up in mediation, but there must be a stay from the bankruptcy court in place before doing so.<sup>79</sup> Finally, some programs may further screen for situations where the homeowner did not abide by the terms of previous loan modifications and conclude that the borrower is ineligible for mediation, unless good cause is shown for the previous default.<sup>80</sup>

When deciding which screening factors to use, programs should be aware that creating eligibility criteria connected to income or the loan amount may omit borrowers who are truly in need of help. “More than one in seven [borrowers] with loans in excess of a million dollars are seriously delinquent, according to data compiled for The New York Times by the real estate analytics firm CoreLogic.”<sup>81</sup> If programs have resources that allow for referral of all types of foreclosure cases, it may be more efficient to start with select cases, such as those where the borrower is in the home and would like to stay in the home. This would allow time to test the program process, procedure, and forms, and it would allow time for the staff of the program to develop the skills necessary to manage multiple case types.

- *Notice and Timeline for Mediation*

The Model includes a sample summons (served with the complaint) that provides the borrower with notice that mediation is an option.<sup>82</sup> Proposed legislation in Ohio would have given the borrower twenty-eight days to answer or respond, which is consistent with current law.<sup>83</sup> If the borrower answered or responded, mediation would be mandatory.<sup>84</sup> There would be no mandatory mediation if the borrower failed to respond within

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<sup>79</sup> See, e.g., FORECLOSURE MEDIATION RULES APPROVED BY THE SUPREME COURT OF NEVADA, *supra* note 75, at R. 8.

<sup>80</sup> See, e.g., *Help with Mortgage Foreclosures*, IND. JUDICIARY, <http://www.in.gov/judiciary/selfservice/2359.htm> (last visited Feb. 20, 2012).

<sup>81</sup> David Streitfeld, *Biggest Defaulters on Mortgages Are the Rich*, N.Y. TIMES, July 8, 2010, at A1.

<sup>82</sup> See *Model Documents*, *supra* note 26.

<sup>83</sup> See S.B. 197, 128th Gen. Assemb., Reg. Sess. (Ohio 2009). This proposed legislation was not enacted.

<sup>84</sup> *Id.*

twenty-eight days from the date of service, and the filing party could seek default judgment.<sup>85</sup>

The total time for mediation to occur is a necessary component for a successful program. Parties need to know what to expect so the case can proceed in timely manner for failure to meet program guidelines. Factors to consider when establishing a timeline include service, whether housing counselors are involved, involvement of legal assistance, and processing of federal and state program resources.

- *Develop a Feedback and Grievance Process*

Receiving feedback from parties regarding the outcome of the mediation, process and procedure, or any other aspect of the mediation is important to develop long-term success. Creating a tool for reporting feedback anonymously is ideal. Ohio has an online feedback form that serves this purpose.<sup>86</sup> Parties have the option to submit this form anonymously or to include their name in addition to requesting a return call or email.<sup>87</sup>

In many cases, issues can be resolved by coaching the mediator. For example, one phone call that the author received indicated that a mediator was not being neutral. When contacted, the mediator expressed that the mediator's intent was to be neutral. Mediation programs should develop a feedback process to receive grievances and encourage people to report when things are working well. In other words, all feedback is good feedback.

- *Confidentiality and Privilege*

In Ohio, the UMA defines mediation communications, some of which are privileged by law.<sup>88</sup> Mediation communications are confidential to the extent the parties agree.<sup>89</sup> Maintaining the confidentiality of the parties through an Agreement to Mediate is of great importance, especially the

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<sup>85</sup> *Id.*

<sup>86</sup> See *Dispute Resolution Section Online Inquiry & Feedback Form*, THE SUP. CT. OF OHIO, <http://www.sconet.state.oh.us/JCS/disputeResolution/feedback/> (last visited Feb. 19, 2012).

<sup>87</sup> *Id.*

<sup>88</sup> OHIO REV. CODE ANN. § 2710.03 (West 2006).

<sup>89</sup> OHIO REV. CODE ANN. § 2710.07 (West 2006).

personal financial information of the borrower, of offer(s) made by the borrower and lender, and of the parties' discussions.<sup>90</sup>

*h. Determine the Role of the Parties and the Court*

- *Mediator*

Before implementation, the program must determine which type of mediation model it will follow. The Supreme Court of Ohio trains mediators to use the facilitative model of mediation for mediating foreclosure cases because it has worked for Ohio courts for almost two decades.<sup>91</sup> Therefore, the role of the mediator is to facilitate the process. If one party is represented and the other is not, this can be very challenging for the mediator.

One of the most important roles of the mediator—if not the most important role—is to be neutral.<sup>92</sup> Adhering strictly to neutrality is not as easy as one might think. The appearance of neutrality is the most important factor and can be extremely challenging, particularly when working with pro se litigants.<sup>93</sup> Mediators should receive additional training to work with this scenario.

The mediator should not be assessing whether the agreement is fair. Mediators need to keep in mind that what may seem fair or unfair to them is irrelevant. The agreement belongs to the parties; the role of the mediator is to assess whether the parties understand the terms of the agreement.<sup>94</sup> For those programs that promote evaluative mediation, where the mediator has subject matter expertise, the mediator's role is to provide an evaluation of the alternative resolutions.<sup>95</sup> In either case, the final decision is that of the parties.

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<sup>90</sup> See *Foreclosure Mediation Resources*, *supra* note 7.

<sup>91</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>92</sup> See generally *DESKBOOK*, *supra* note 58, at 3-13.

<sup>93</sup> See *id.* at 8-21.

<sup>94</sup> See Peter N. Thompson, *Enforcing Rights Generated in Court-Connected Mediation—Tension Between the Aspirations of a Private Facilitative Process and the Reality of Public Adversarial Justice*, 19 OHIO ST. J. ON DISP. RESOL. 509, 559 (2004).

<sup>95</sup> See Murray S. Levin, *The Propriety of Evaluative Mediation: Concerns About the Nature and Quality of an Evaluative Opinion*, 16 OHIO ST. J. ON DISP. RESOL. 267, 269-70 (2001).

- *HUD-approved Housing Counseling Agencies*

Housing counselors are a major contributor to successful outcomes in foreclosure mediation cases. In many cases, the long-term success of any agreement requires adjustments to other aspects of the borrower's budget, not just the mortgage.<sup>96</sup> Under the federal programs, housing counseling may be a requirement, depending on the results of the debt-to-income calculations.<sup>97</sup> Based on reports the author has received, the Franklin County Foreclosure Mediation Program requires borrowers to meet with housing counselors prior to the mediation so that the housing counselors can help them prepare all the documents that are necessary to reach an agreement.<sup>98</sup>

Foreclosure cases are about numbers. Trained housing counselors work with borrowers to assess their financial situation.<sup>99</sup> Housing counselors assist borrowers in gathering documentation to support the financial information they are submitting to the lender.<sup>100</sup> If the counselor attends the mediation, the counselor should attend not to assess whether the borrower should accept the offer, but rather to assist the borrower in analyzing how that offer works or does not work with the borrower's financial situation. Ideally, borrowers should work with an attorney as well as a housing counselor.

- *Attorneys*

Due to the complexity of foreclosure cases, it is beneficial for borrowers to have an attorney represent their interests. The role of the attorney is the same as it is in any other case. Ohio adopted a rule of

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<sup>96</sup> See *Speak with a Housing Expert*, MAKINGHOMEAFFORDABLE.GOV, <http://www.makinghomeaffordable.gov/get-started/housing-expert/Pages/default.aspx> (last visited Feb. 19, 2012).

<sup>97</sup> See *HASP—The Home Affordability & Stability Plan (aka Making Home Affordable)*, MONEY NATION – GOOD NEWS FOR OUR CHANGING TIMES, <http://moneynation.wordpress.com/the-bank-of-you-university-real-estate/hasp-the-home-affordability-stability-plan-aka-the-obama-mortgage-stimulus-plan/> (last visited Mar. 19, 2012).

<sup>98</sup> See *Model Overview*, *supra* note 5; FRANKLIN CNTY. FORECLOSURE MEDIATION PROJECT, REQUEST FOR FORECLOSURE MEDIATION AND EXTENSION OF TIME TO ANSWER, available at <http://www.franklincountyohio.gov/commissioners/homeowner-helpline/assets/pdf/request-for-mediation.pdf> (last visited Apr. 8, 2012). For additional information relating to these reports and her experience, please contact the author.

<sup>99</sup> See *Speak with a Housing Expert*, *supra* note 96.

<sup>100</sup> *Id.*

professional conduct that allows attorneys to represent borrowers for the limited purpose of mediation.<sup>101</sup> During this process, the attorneys may also work in collaboration with the housing counselors.

- *The Court*

The role of the court is to provide for the efficient resolution of disputes.<sup>102</sup> Special issues specific to foreclosure cases require courts to review standard process and procedure that may affect how courts manage these cases to fulfill this role.

One issue raised in foreclosure cases in Ohio is whether the filing party is the real party in interest.<sup>103</sup> Under the Federal Rules of Civil Procedure (FRCP), Rule 17(a) provides that every “action [shall] be prosecuted in the name of the real party in interest.”<sup>104</sup> Thus, the named plaintiff must have, under the governing substantive law, the right sought to be enforced. “The real party in interest is not necessarily the person who ultimately will benefit from the successful prosecution of the action.”<sup>105</sup> Another question raised relates to whether the courts or the defendant should ensure that the filing party is the real party in interest before filing the foreclosure action. If the courts decide to make this determination *sua sponte*, are they truly being fair and impartial, or have they become an advocate for the defendant? In Ohio, defendants need to raise this issue with the court through a motion, at which time the court will make a determination.<sup>106</sup>

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<sup>101</sup> See OHIO R. PROF’L CONDUCT 1.2; CHIEF JUSTICE THOMAS J. MOYER, SUPREME COURT OF OHIO, OHIO OFFERS COMPREHENSIVE RESPONSE TO FORECLOSURE PROBLEM 2 (2008), available at <http://www.ncsconline.org/WC/Publications/Trends/2008/ForeCIProblemTrends2008.pdf>.

<sup>102</sup> *Judicial System Structure*, THE SUP. CT. OF OHIO, <http://www.supremecourt.ohio.gov/JudSystem/> (last visited Feb. 20, 2012).

<sup>103</sup> See STEPHEN R. BUCHENROTH & GRETCHEN D. JEFFRIES, UPDATE: OHIO FORECLOSURE CASES: LENDERS BEWARE 1–2, available at [http://www.msfraud.org/law/lounge/UPDATE\\_OHIO%20FORECLOSURE%20CASES\\_LENDERS%20BEWARE.pdf](http://www.msfraud.org/law/lounge/UPDATE_OHIO%20FORECLOSURE%20CASES_LENDERS%20BEWARE.pdf) (last visited Apr. 8, 2012).

<sup>104</sup> FED. R. CIV. P. 17(a).

<sup>105</sup> *Real Party in Interest Law & Legal Definition*, USLEGAL.COM, <http://definitions.uslegal.com/r/real-party-in-interest/> (last visited Feb. 20, 2012).

<sup>106</sup> See, e.g., BUCHENROTH & JEFFRIES, *supra* note 103.

*i. Develop Processes and Procedures*

- *Documents and Forms*

Standardized documents and forms increase the efficiency and effectiveness of a program.<sup>107</sup> Common forms include: Agreement to Mediate, Request for Foreclosure Mediation, Questionnaires for Mediation Parties, court orders, and outcome reports.<sup>108</sup>

- *Party Expectations*

Parties must know what to expect during the mediation process. Common factors used by mediators to achieve this goal include specific processes and procedures such as an introduction, a description of the problem, and summaries where necessary.

An introduction, either in mediation or through brochures, would explain the entire process and differentiate it from litigation.<sup>109</sup> Parties obtain an “inherent desire to shorten the process,”<sup>110</sup> so it is valuable to include the underlying reasons for the mediation process so they can be patient and allow the process to work.

Further, a description of the problem would help with the parties’ expectations. Parties need sufficient time to tell their stories. During this process, it is the mediator’s responsibility to manage the emotions.<sup>111</sup> If a home has been in the family for generations and is now at risk of being lost, there will inevitably be strong emotions that need to be recognized.

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<sup>107</sup> See generally *Model Overview*, *supra* note 5.

<sup>108</sup> See *Model Documents*, *supra* note 26.

<sup>109</sup> See *Case Mediation Section FAQs*, THE SUP. CT. OF OHIO, <http://www.supremecourt.ohio.gov/Clerk/mediation/faq.asp> (last visited Mar. 19, 2012).

<sup>110</sup> Hagerott, *supra* note 47. See generally Michael Kasperzak, Jr., *Using Mediation to Reduce Litigation Costs*, DISP. RESOL. SPECIALISTS, <http://www.mediates.com/drsusingmed.html> (last visited Mar. 19, 2012) (noting that mediation can help parties avoid expensive, protracted litigation).

<sup>111</sup> Hagerott, *supra* note 47. See also Heather Scheiwe Kulp, *Foreclosure Mediation, Saving Homes, and Appropriate Dispute Resolution*, JUST COURT ADR (Jan. 23, 2012), <http://blog.aboutsi.org/2012/program-management/foreclosure-mediation-saving-homes-and-appropriate-dispute-resolution/>.

As with any other mediation, summarizing when necessary is important.<sup>112</sup> Strategies used by mediators may include clarification of questions, alternatives, and statements made by the parties.

- *Party Preparation for Mediation*

Foreclosure mediation has one distinct feature that sets it apart from other types of mediation: party preparation. The amount of preparation completed by the parties, particularly the borrower, before the mediation takes place will affect the quality of the mediation outcomes.<sup>113</sup>

Parties should exchange information before the mediation session to have adequate information, authority for settlement, and options for resolution to settle a case. For example, each lender requires specific information to proceed to settlement, such as bank statements, tax returns, and a hardship letter.<sup>114</sup> If the lender does not have the proper documentation, it is not able to proceed with final settlement authority, which will cause a delay in the settlement of the case.<sup>115</sup> A best practice shared by programs is the requirement that borrowers work with HUD-approved counseling agencies that assist the borrower in gathering the appropriate financial information and supporting documentation.<sup>116</sup> Ideally, the programs then send financial information to the lender at least fourteen days (some prefer thirty days) prior to the mediation so that the lender can determine workout options that fit within the pooling and servicing agreement for that particular loan.

Frequently requested documents may include questionnaire forms providing basic demographic information from both parties, financial information worksheets including income and expenses, hardship letters, pay stubs, bank statements, and tax returns.<sup>117</sup> Under the Federal

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<sup>112</sup> Hagerott, *supra* note 47. See also Jackie Omana & Norman R. Page, *Summarizing: An Under-Appreciated Mediator Skill*, *MEDIATE.COM* (Apr. 2006), <http://www.mediate.com/articles/pageOmana.cfm>.

<sup>113</sup> See Shana H. Khader, *Mediating Mediations: Protecting the Homeowner's Right to Self-Determination in Foreclosure Mediation Programs*, 44 *COLUM. J.L. & SOC. PROBS.* 109, 139 (2010); *Foreclosure FAQ*, *supra* note 21.

<sup>114</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>115</sup> See *id.*; Jacqueline Hagerott, *Foreclosure Mediation in Ohio*, ABA (Feb. 2009), <http://apps.americanbar.org/dch/committee.cfm?com=DR020500>.

<sup>116</sup> See, e.g., *Foreclosure FAQ*, *supra* note 21.

<sup>117</sup> See, e.g., *Foreclosure FAQ*, *supra* note 21; FRANKLIN CNTY. FORECLOSURE MEDIATION PROJECT, PRE-FILING REQUEST FOR FORECLOSURE MEDIATION, *available at* (continued)

Government Home Affordable Modification Program (HAMP), there is a specific list of necessary documents. If the mediation is continued, new documents may need to be submitted.<sup>118</sup>

Two additional strategies to consider include authorizing the housing counselor to work directly with the lender with regard to the financial information of the borrower and authorizing the lender to pull the borrower's credit report. These actions can greatly increase the efficiency of the process.

A pre-mediation conference call is also an effective strategy to ensure that all parties have the information, documents, and forms necessary for the mediation to take place. This information can be as basic as questions regarding parking on the day of the mediation.<sup>119</sup>

- *Prior Negotiations*

Some programs may want to consider requiring evidence of prior negotiations, such as mediation, before allowing a foreclosure case to proceed. For example, Assembly Bill 149, passed by the Nevada legislature, requires non-judicial mediation before foreclosure.<sup>120</sup>

- *Party Appearance and Participation*

Foreclosure mediations can take place when the borrower is present and the lender has local counsel with authority to settle present in the

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<http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/medRequestpreForeclosure.pdf> (last visited Apr. 8, 2012); COURT OF COMMON PLEAS, ASHTABULA CNTY., OHIO, REQUEST FOR FORECLOSURE MEDIATION, *available at* <http://courts.co.ashtabula.oh.us/Forms/CP/RFMQ.pdf> (last revised May, 2010).

<sup>118</sup> See *Request a Home Affordable Modification*, MAKINGHOMEAFFORDABLE.GOV, <http://www.makinghomeaffordable.gov/get-assistance/request-modification/Pages/default.aspx> (last visited Feb. 18, 2012). The required documents include a Request for Modification and Affidavit; either IRS Form 4506T-EZ or 4506-T; a verification of income; and a Dodd-Frank Certification Form. *Id.*

<sup>119</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>120</sup> NEV. REV. STAT. ANN. § 107.086 (LexisNexis 2009).

mediation while the lender participates via telephone.<sup>121</sup> Follow-up mediations may have some or both parties participate by phone as well.<sup>122</sup>

This practice has evolved over time. When foreclosure mediations first began, the stakeholders who worked on the Model were of the opinion that the probability of the parties reaching an agreement would be higher if everyone participated in person. These mediations, however, were not about relationships, but rather purely about the numbers. Allowing the lender to participate by telephone with counsel present in the mediation decreases the costs to the borrower by reducing hourly legal fees and travel costs of the lender.<sup>123</sup> Telephone mediation also provides added value because the lenders are able to access their financial systems to calculate the various workout options for the case.<sup>124</sup>

Further evolution of this concept has led to mediations where all parties are on the telephone. These mediations have resulted in the same rate of successful outcomes.<sup>125</sup> Therefore, this kind of telephonic mediation significantly reduces the cost to all parties and facilitates settlements.<sup>126</sup> The parties and their counsel seem to appreciate the option because most are not from the county where the foreclosure action is

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<sup>121</sup> See MODEL, *supra* note 13, at 19 (establishing a presumption that the lender should “attend in person with authority to settle” unless granted permission to participate via phone).

<sup>122</sup> SUPREME COURT OF OHIO, FORECLOSURE MEDIATION STANDING ORDER, *available at* <http://www.supremecourt.ohio.gov/JCS/disputeResolution/foreclosure/ForeclosureMedOrder.doc> (last visited Apr. 8, 2012) (noting that follow-up sessions will be conducted in the same manner as the original mediation session).

<sup>123</sup> *Model Overview*, *supra* note 5.

<sup>124</sup> See Hagerott, *supra* note 115.

<sup>125</sup> Telephone Interview with Tom McQuire, Mediator, Athens Cnty., Ohio (July 9, 2010) (notes on file with author). Specific mediation results include: ten cases reached an agreement during mediation; five cases reached agreement prior to mediation but after mediation was ordered by the court; one case where the borrowers did not contact the mediator to schedule the mediation (after mediation was ordered at their request); one case where the borrowers did not call in for the mediation; two cases where an agreement was reached after a mediation session and before the second or subsequent one was scheduled to take place; one case where mediation was ordered by the court but counsel for one of the parties informed the mediator that they were negotiating without mediating; one case removed from state court to federal court; and one case where no agreement was reached during mediation. *Id.*

<sup>126</sup> *Id.*

filed.<sup>127</sup> The travel time and expense is formidable, and attorney fees and costs may increase the amount the borrowers eventually owe. Of twenty-two tracked mediations facilitated with the borrower, borrower's counsel, the lender's representative, and lender's counsel participating, more than a majority reached a resolution.<sup>128</sup> Times are changing.

- *Agreement to Mediate*

Agreements to Mediate are included in many mediation programs. In Ohio, these Agreements are important because they outline the extent of the confidentiality required under the UMA, which is determined by the parties and unenforceable if not in writing.<sup>129</sup>

- *Memorializing the Mediation Agreement*

If the parties reach an Agreement, it is imperative to reduce it to writing.<sup>130</sup> In Ohio, if the parties reach a voluntary Agreement, the parties should memorialize their Agreement in compliance with the UMA. Acceptable methods to memorialize the Agreement include reducing it to writing, signed by all parties; reading into the record; or tape recording the Agreement with all parties identifying themselves and indicating their consent to the Agreement.<sup>131</sup>

- *Outcome Report*

After the mediation has concluded, the court or organization managing the program should determine what will be reported and to whom. All mediation communications and disclosures should be accurate and include as much detail as authorized by statute, rule, and the parties.

*j. Pro Se Litigants*

There is always risk in working with pro se litigants for both attorney mediators and non-attorney mediators. For attorney mediators, the risk is that of inadvertently establishing an attorney-client relationship by giving pro se litigants advice regarding their case.<sup>132</sup> For non-attorney mediators,

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> See MODEL, *supra* note 13, at 19.

<sup>130</sup> See *id.*

<sup>131</sup> See *id.*

<sup>132</sup> See David A. Hoffman & Natasha A. Affolder, *Mediation and UPL: Do Mediators Have a Well-Founded Fear of Prosecution?*, GP SOLO, Sept. 2000, at 20, 20.

the risk is the unauthorized practice of law.<sup>133</sup> In either case, mediator training should cover these topic areas and include strategies for mediators to avoid these pitfalls.

*k. Mediators*

- *Who Are They?*

Mediators include court staff, contract mediators, and volunteers. “Due to limited funding, rural counties may not be able to provide for mediation services without the help of volunteers.”<sup>134</sup> Their backgrounds vary from having mortgage industry expertise to having no substantive knowledge about foreclosure other than what they received during foreclosure mediation training.<sup>135</sup> Mediators are not required to be attorneys.<sup>136</sup> Because the Supreme Court of Ohio trains mediators to use the facilitative model of mediation, mediators are required to have process knowledge, not content knowledge.<sup>137</sup> However, mediators receive training regarding the basics of foreclosure law including terminology, players, and workout options so that they may ask appropriate questions that will lead the parties toward a resolution.<sup>138</sup> Mediators also receive training regarding which resources to recommend throughout the process, such as housing counseling and legal assistance.<sup>139</sup>

“The . . . Dispute Resolution Section fields requests for mediation and locates qualified mediators who are willing to [donate] their time so local courts are able to provide mediation for foreclosure cases.”<sup>140</sup> These volunteer mediators include individuals who have more than the minimum recommended training requirements.<sup>141</sup> Some have ten or more years of mediation experience, extensive mediation training, academic credentials, and licenses.<sup>142</sup> Some volunteer mediators also have both mediation

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<sup>133</sup> *Id.*

<sup>134</sup> Hagerott, *supra* note 25, at 3.

<sup>135</sup> *See Foreclosure FAQ, supra* note 21.

<sup>136</sup> *See id.*; OHIO SUP. R. 16, available at <http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf> (last visited Apr. 8, 2012).

<sup>137</sup> *See Foreclosure FAQ, supra* note 21.

<sup>138</sup> *See generally id.*

<sup>139</sup> *See generally id.*

<sup>140</sup> Hagerott, *supra* note 25, at 3.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

training and subject matter expertise in the mortgage industry.<sup>143</sup> “Volunteer mediators are achieving [same or similar] outcomes [as paid mediators] for parties in foreclosure cases.”<sup>144</sup>

- *Training and Experience*

Having basic mediation training is essential. Mediation programs should determine the foreclosure training and experience necessary for mediators to mediate these types of case successfully. Opinions vary regarding whether mediators should have specific training on the topic of foreclosure process and procedure. Ohio has decided that mediators should have training covering

the recent history and institutional changes that led to the foreclosure crisis, . . . the relevant terminology, players and the inter/intra party dynamics of the foreclosure servicing industry that will inform and limit settlement possibilities in home foreclosure and loan default situations[,] . . . knowledge of the range of settlement options, limitations, advantages and disadvantages for the parties in foreclosure cases and the information required from the parties to come to an agreement under each option. [Mediators] also analyze the possibilities and limitations of mediation between pro se [borrowers] and lenders in foreclosure cases while also identifying when and how to terminate the mediation. Finally, [mediators] . . . review relevant statutes and rules in order to recognize the legal framework [that] appl[ies] to foreclosure cases and learn how to apply the local court foreclosure mediation program processes and procedures, if applicable, and [are] familiar with the . . . Model.<sup>145</sup>

Another factor to consider is whether foreclosure mediators should have prior mediation experience. Due to the complexity of foreclosure cases and the inherent power imbalances that the mediator must manage, courts and mediation programs may require that only skilled mediators mediate foreclosure cases.<sup>146</sup> Even if a newly trained mediator has

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<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Foreclosure Mediation Trainings and Roundtables*, *supra* note 27 (emphasis added).

<sup>146</sup> *See Foreclosure FAQ*, *supra* note 21.

substantive knowledge of the mortgage industry, one should not assume that the mediator has the skills necessary to maintain the goals of mediation, specifically neutrality and party self-determination. At a minimum, newly trained mediators should observe or co-mediate with more experienced mediators before mediating foreclosure cases.

Finally, some programs may consider additional requirements for mediators, such as being a licensed attorney or a housing counselor; having subject matter expertise and knowledge of applicable local, state, and federal resources; or completing continuing education. Ultimately, Ohio maintains a directory of all mediators who meet the minimum requirements recommended by the Supreme Court of Ohio.<sup>147</sup>

### *1. Mediation Core Values*

Discussion of mediation issues was central to the way court-connected mediation developed in Ohio. In 1989, the Supreme Court of Ohio Advisory Committee on Dispute Resolution (Committee) began its work by considering the core or foundational principles of mediation.<sup>148</sup> They looked to research in the field<sup>149</sup> and the practical experience of mediators on the Committee.<sup>150</sup> Several Committee members had received mediation training in Ohio and other states.<sup>151</sup> The Committee proposed the following primary core values for court-connected mediation: confidentiality, mediator neutrality, and self-determination for the

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<sup>147</sup> See *Foreclosure Mediation Resources*, *supra* note 7.

<sup>148</sup> See DESKBOOK, *supra* note 58, at 10-4 to 10-6.

<sup>149</sup> See, e.g., Eileen P. Friedman, *Protection of Confidentiality in the Mediation of Minor Disputes*, 11 CAP. U. L. REV. 181 (1981) (Eileen Friedman nè Eileen Pruett).

<sup>150</sup> William A. Clark of Columbus, Ohio, and David A. Ward of Toledo, Ohio were original members of the Committee. Both held terms as chair of the Committee. *Dispute Resolution History*, THE SUP. CT. OF OHIO [http://www.supremecourt.ohio.gov/JCS/dispute Resolution/resources/history.asp](http://www.supremecourt.ohio.gov/JCS/dispute%20Resolution/resources/history.asp) (last visited Feb. 20, 2012).

<sup>151</sup> See generally CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* (3d ed. 2003); *Courses and Training*, PROGRAM ON NEGOTIATION HARV. L. SCH., <http://www.pon.harvard.edu/category/courses-and-training/> (last visited Feb. 20, 2012). Through her experience and conversations with Eileen Pruett, Franklin County Municipal Court Dispute Resolution Department Manager, the author has learned that the Columbus City Attorney Night Prosecutor Program began in 1978 and offered mediation training to law students and attorneys in Columbus. Members of the Committee had also participated in negotiation training at the Program of Instruction for Lawyers (PIL) at Harvard Law School and with Christopher Moore in Colorado.

parties.<sup>152</sup> These core values apply to both individual mediators and mediation programs.<sup>153</sup>

- *Confidentiality*

In addition to the discussion of confidentiality in terms of the UMA, the necessity and importance of confidentiality has become a hallmark of best practices in mediation. The standards of practice in the field place great emphasis on this concept.<sup>154</sup>

Foreclosure mediation program staff and mediators must maintain confidentiality of mediation communications.<sup>155</sup> Agreements to Mediate and program policies and procedures can address these requirements.

- *Party Self-determination*

The Model Standards of Conduct for Mediators (Model Standards) define party self-determination as follows:

Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.<sup>156</sup>

The Model Standards refer to mediation as a voluntary process.<sup>157</sup> A voluntary process may seem contradictory to reliance on court orders for mediation, but Ohio courts rely on established practice and research that

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<sup>152</sup> See DESKBOOK, *supra* note 58, at 10-4 to 10-6.

<sup>153</sup> See *id.*

<sup>154</sup> See, e.g., ASS'N FAM. & CONCILIATION COURTS, MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION (Aug. 2000), available at [http://www.afcnet.org/resources/resources\\_model\\_mediation.asp](http://www.afcnet.org/resources/resources_model_mediation.asp); MODEL STANDARDS OF CONDUCT FOR MEDIATORS (2005), available at <http://moritzlaw.osu.edu/programs/adr/msoc/pdf/standards-090805.pdf> (adopted by the American Arbitration Association, American Bar Association, and Association for Conflict Resolution) [hereinafter MODEL STANDARDS]; OR. MEDIATION ASS'N, CORE STANDARDS OF MEDIATION PRACTICE 4 (2005), available at <http://www.omediate.org/docs/2005CoreStandardsFinalP.pdf> (giving a detailed description of the mediator's duty to maintain confidentiality).

<sup>155</sup> See MODEL STANDARDS, *supra* note 154.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

treats the appearance at mediation as mandatory and resolutions as voluntary.<sup>158</sup> Each foreclosure mediation program should develop policies that promote self-determination. For example, if a party questions the voluntariness of mediation in the Franklin County Foreclosure Mediation Program, the response might be that the court order requires the party to attend mediation, but does not require that the party participate.<sup>159</sup>

- *Impartiality*

The duty to be impartial applies to both the individual mediator and the program.<sup>160</sup> The Model Standards of Conduct for Mediators discusses impartiality as follows:

A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.

B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.

1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.

2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.

C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.<sup>161</sup>

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<sup>158</sup> See DESKBOOK, *supra* note 58, at 7-3 to 7-4.

<sup>159</sup> See *Foreclosure FAQ*, *supra* note 21.

<sup>160</sup> See DESKBOOK, *supra* note 58, at 10-4 to 10-5.

<sup>161</sup> MODEL STANDARDS, *supra* note 154.

Mediator impartiality is a particularly troublesome area for foreclosure mediators and foreclosure mediation programs. Unless the parties agree to use of a partial mediator,<sup>162</sup> the impartial role of the mediator should be emphasized in the mediator's introduction and included in the Agreement to Mediate.

Processes designed to foster the perception that the mediation program operates without bias or favoritism include:

- When offering one party an opportunity, it is important to offer the same to the other party. For example, if the program allows the borrower to reschedule, the program should also allow the lender the same courtesy. These determinations are most appropriately made on a case-by-case basis, but neutral processes should be in place to let parties know what to expect. For example, if a party requests a continuance for "good cause," criteria that define "good cause" are necessary.
- Requirements for submission of documents should be the same for all parties.
- Programs (as well as the parties) should not engage in ex parte communications with the court.

- *Conflicts of Interest*

Under the UMA, mediators are required to disclose conflicts of interest as soon as they recognize them,<sup>163</sup> thereby ensuring the integrity of the process. Different schools of thought exist on this topic, but most experienced mediators will disclose that they have a bank account with the lender who is one of the parties in the mediation before them.<sup>164</sup> In doing this, the mediator builds trust in both the mediator and the mediation program where the mediation is taking place.

- *Ethics*

The American Bar Association Section of Dispute Resolution Web site provides information about mediator ethics.<sup>165</sup> Included on the site are

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<sup>162</sup> OHIO REV. CODE ANN. § 2710.08(G) (West 2006).

<sup>163</sup> *Id.* § 2710.08(A)(2).

<sup>164</sup> *E.g., id.* (maintaining a bank account with a party lender could fall within the scope of having "a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party").

<sup>165</sup> See *Dispute Resolution Ethics Resources*, ABA, [http://www.americanbar.org/groups/dispute\\_resolution/resources/Ethics.html](http://www.americanbar.org/groups/dispute_resolution/resources/Ethics.html) (last visited Feb. 20, 2012).

links to the ABA/AAA/ACR<sup>166</sup> Model Standards for the Conduct of Mediators, the National Clearinghouse for Mediator Ethics Opinions, and Ethics Helps for Neutrals and Advocates.<sup>167</sup>

*m. Mediation Termination*

Mediators must receive training to know if and when to terminate the mediation.<sup>168</sup> Ideally, both parties will have legal representation, but in reality, this is rarely the case.<sup>169</sup> Mediation parties can include an unrepresented borrower and a lender with counsel present. Mediators should not assume that the power imbalance lies in favor of the lender. There are many resources available to borrowers, so they may attend mediation very prepared. If the lender sends a new associate to the mediation, the borrower may know more than the new attorney, tipping the power imbalance in favor of the borrower.

No magic answer regarding the termination of foreclosure mediation, or any other type of mediation, exists. The skill and experience of the mediator is critical. If the mediator feels that the borrower or the lender does not fully understand the agreement, the mediator should terminate the mediation, refer the parties to appropriate resources, and, if necessary, reschedule the mediation to finalize the agreement. A mediator may schedule a follow-up mediation, which gives a borrower time to have counsel review the terms of an agreement or the lender time to receive the final approval from an investor.

*n. Other Resources*

Foreclosure mediation programs require a wide range of resources, preferably local resources since federal resources tend to be short-term.<sup>170</sup> Ideally, the individuals, organizations, and government entities that control these resources create programs that result in long-term, sustainable

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<sup>166</sup> American Bar Association, American Arbitration Association, and the Association for Conflict Resolution.

<sup>167</sup> *See id.*

<sup>168</sup> *See Foreclosure Mediation Trainings and Roundtables, supra* note 27.

<sup>169</sup> *See* OHIO FORECLOSURE PREVENTION TASK FORCE, *supra* note 1, at 17 (noting that homeowners are often unable to obtain legal representation in foreclosure cases).

<sup>170</sup> *See* Making Home Affordable, *available at* [https://www.hmpadmin.com/portal/programs/docs/hamp\\_servicer/mhahandbook\\_33.pdf](https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_33.pdf). <sup>171</sup> *See, e.g.,* OHIO RENTAL HOUSING LOCATOR, *supra* note 170; NO PAWS LEFT BEHIND, *supra* note 170 (last visited Feb. 11, 2012).

outcomes. These resources include legal aid, housing counselors, and assistance finding rental properties for individuals.<sup>171</sup>

#### VIII. WHAT DOES THE FUTURE HOLD?

There are four trends projected in the near future: the “robo-signing” scandal, unemployment, loan resets, and resets under HAMP. The first is a potential increase in the number of foreclosures resulting from the “robo-signing” scandal, because of the failure of lenders to follow procedures relating to the execution of foreclosure affidavits.<sup>172</sup> In late 2010, this scandal led some lenders to halt foreclosure filings temporarily.<sup>173</sup> As a result, The Office of the Comptroller of the Currency established an Independent Foreclosure Review.<sup>174</sup> A second trend relates to households with one or more individuals at risk of job loss due to the economy.<sup>175</sup> The third trend will be a result of projected loan resets on prime loans and “resets on loans to people with decent credit scores but special circumstances (stated income) are heading straight up through early 2012,” which will result in borrowers being unable to afford the new payments.<sup>176</sup> Finally, the fourth trend relates to individuals who received loan modifications under HAMP beginning in 2009, who may now or in the future be at risk of re-default because of the increase in the mortgage rate

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<sup>171</sup> See, e.g., OHIO RENTAL HOUSING LOCATOR, *supra* note 170; NO PAWS LEFT BEHIND, *supra* note 170 (last visited Feb. 11, 2012).

<sup>172</sup> See Pallavi Gogoi, *Robo-Signing Scandal May Date Back to Late '90s*, MSNBC.COM (Sept. 1, 2011, 8:15 PM), [http://www.msnbc.msn.com/id/44365184/ns/business-real\\_estate/t/robo-signing-scandal-may-date-back-late-s/#.T33OGxxa4zA](http://www.msnbc.msn.com/id/44365184/ns/business-real_estate/t/robo-signing-scandal-may-date-back-late-s/#.T33OGxxa4zA).

<sup>173</sup> *Id.*

<sup>174</sup> See *Independent Foreclosure Review Underway*, OFFICE OF THE COMPTROLLER OF THE CURRENCY, <http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-133.html> (last visited Feb. 19, 2012).

<sup>175</sup> See Brooke Adams, *Unemployment, Foreclosures Drive More Utah Families into Poverty*, THE SALT LAKE TRIB. (Aug. 16, 2011), <http://www.sltrib.com/sltrib/news/52390558-78/utah-bonnet-families-foundation.html.csp>.

<sup>176</sup> See Matthew Padilla, *Loan Reset Threat Looms Till 2012*, THE ORANGE COUNTY REG. (May 20, 2009), <http://mortgage.ocregister.com/2009/05/20/loan-reset-threat-looms-through-2012/10791/>.

under HAMP after the five-year fixed rate expires.<sup>177</sup> The good news is that many states now have processes in place, including mediation, as a resource for borrowers who may be facing foreclosure.<sup>178</sup>

Professionals representing twenty-two states have joined together, under the leadership of the Dispute Resolution Section of the Supreme Court of Ohio, to continue to work together to find new ways to respond to the ongoing foreclosure crisis.<sup>179</sup> The group meets regularly in online forums or via conference calls, using technology provided by the Supreme Court of Ohio. The group members work together to build programs, share best practices, ask questions of each other, receive training on new topics and issues, and brainstorm new ideas.<sup>180</sup> “Members are able to connect with judges and professionals in other states[,] which include court and non-court organizations.”<sup>181</sup>

#### IX. CONCLUSION

The foreclosure crisis creates terrible situations that need to be resolved as quickly as possible. Successful design and implementation of a foreclosure mediation program, for either a judicial or non-judicial foreclosure process, includes a thorough discussion of the factors discussed by stakeholders, combined with state and local leadership and resources. Ohio created a collaborative process to address the foreclosure crisis among the executive, judicial, and legislative branches of government followed by implementation at the local level. Non-profit agencies and grass roots organizations joined statewide organizations to develop creative and effective programs to address this crisis. These efforts model

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<sup>177</sup> See *Frequently Asked Questions*, MAKINGHOMEAFFORDABLE.GOV, <http://www.makinghomeaffordable.gov/faqs/homeowner-faqs/Pages/default.aspx> (last visited Feb. 19, 2012).

<sup>178</sup> See, e.g., U.S. DEP’T OF HOUS. & URBAN DEV. & U.S. DEP’T OF JUSTICE ACCESS TO JUSTICE INITIATIVE, EMERGING STRATEGIES FOR EFFECTIVE FORECLOSURE MEDIATION PROGRAMS 1 (2010), available at <http://www.justice.gov/atj/effective-mediation-program-strategies.pdf>.

<sup>179</sup> *Model Overview*, *supra* note 5.

<sup>180</sup> See *Foreclosure Mediation Trainings and Roundtables*, *supra* note 27.

<sup>181</sup> *Model Overview*, *supra* note 5. To become a member of this group, for documents that are referenced but not linked within the Model, for answers to questions, or if in need of assistance with implementing foreclosure mediation in your court or state, contact Dispute Resolution Section Manager Jacqueline C. Hagerott, [Jacqueline.Hagerott@sc.ohio.gov](mailto:Jacqueline.Hagerott@sc.ohio.gov), 614.387.9420.

mediation by bringing parties together to examine options for mutually beneficial resolutions. By facing this crisis, an unforeseen benefit arose in this cloud of foreclosure in that the mortgage industry is now looking inward at its processes and procedures to improve channels of communication with borrowers.