

Foreclosure Mediation

House Bill 472

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Foreclosure Process in MD

- Default
- **Notice of Intent** to Foreclose (NOI)
- Foreclosure filing – **Order to Docket** (OTD)
- Personal service of OTD
- Homeowner's defense: **Motion to Stay** (MTS)
- Foreclosure sale if permitted by court
- Ratification of Sale by court
- Auditor's accounting

NEW **NOI** will include:

- Recommendation for counseling
- Contact information for government foreclosure assistance programs
- Explanation of Maryland foreclosure process with timeline
- Loss mitigation application with instructions and contact information
- Properly addressed envelope for submitting application

Foreclosure Mediation

“means a conference at which the parties in a foreclosure action, their attorneys, additional representatives, or a combination of those persons appear before an impartial individual to discuss the positions of the parties in an attempt to reach agreement on a loss mitigation program for the mortgagor or grantor.”

NEW OTD will include:

- Affidavit stating that loss mitigation has not been completed and another application packet
- Affidavit stating that loss mitigation has been completed and the outcome
- Notice of the right to request mediation within 15 days of affidavit stating that loss mitigation has been denied
- If denied, Request form and properly addressed envelopes to court and foreclosing attorney
- (DENIAL MAY NOT BE BASED ON INABILITY TO REACH HOMEOWNER OR INCOMPLETE DOCUMENTS/INFORMATION)

Loss Mitigation Program

means an option for a homeowner that avoids foreclosure:

- Mortgage payment Forbearance
 - repayment plan
- Mortgage Loan Modification
 - HAMP

- or “other alternatives that are intended to simplify the homeowner’s relinquishment of ownership of the property”
- or “lessens the harmful impact of foreclosure” on the homeowner

Other Foreclosure Alternatives

- Regular Sale

 - if not under water

- Mortgage assumption

- Short sale

- Deed in lieu

- Occupied conveyance

- Cash for keys

Important Timelines

Final Affidavit required 30 days before foreclosure sale – not before 28 days after service

Request for Mediation must be filed within 15 days of service or mailing

– Must have \$50 fee which can be waived by court

- Lender can file motion to strike mediation request within 15 days but only for “good cause”
- Homeowner can respond within 15 days
- Court may rule without hearing
- If granted, Homeowner can still file 14-211 MTS

Motion to Stay – Rule 14-211

– PreSale Hearing

- Procedural failures
- Loss Mitigation Review

HAMP

New Maryland Law

- Legal/Factual Defenses to Foreclosure
 - e.g. wrong parties, incorrect debt, accounting errors, statutory violations, PHIFA, etc.
- Collateral Proceedings
 - e.g. divorce, estate, administrative process
- Equitable defenses

Mediation

- Will be conducted by Office of Administrative Hearings
 - Must occur within 60 days, one time extension of 30 days for “good cause”
 - Persons required to attend:
 - Homeowner
 - Counselor or lawyer for homeowner
 - Lender or representative with authority to settle or direct contact with same
 - Mediator
- Report within 5 days

- If no settlement, homeowner may file MTS within 15 days of mediation
- Must list specific reasons why loss mitigation should have been granted
- All other remedies/legal defenses remain available to homeowner
- Foreclosure sale may not occur until 45 days after service of OTD with final affidavit

Or

- 30 days after mailing final affidavit

Or

- 15 days after the mediation

New Timeline to Foreclosure Sale

Notice of Intent - 45 days after default

Order to Docket - 45 days after NOI

Personal service

with Preliminary Affidavit:

28 days → Final Affidavit with request form

15 days → Request for Mediation

with Final Affidavit:

15 days → Request for Mediation

Request for Mediation

15 days → Lender's Motion to Strike Request

15 days → Homeowner's Response

15 days → Sale if Court grants Motion

Mediation → 60-90 days from successful Request

15 days → Motion to Stay if Mediation fails

specific reasons and/or legal defenses

Foreclosure Sale

45 days from OTD with Final Affidavit & no Request or MTS

60 days from OTD with Final Affidavit & unsuccessful Request

75 days from OTD with unsuccessful Mediation & no MTS

90+ days from OTD with substantive MTS

PRESUMPTION

“THERE IS A PRESUMPTION THAT A MORTGAGOR OR GRANTOR (HOMEOWNER) IS ENTITLED TO FORECLOSURE MEDIATION UNLESS GOOD CAUSE IS SHOWN WHY FORECLOSURE MEDIATION IS NOT APPROPRIATE.”