



By Paul Sakuma, AP

For sale: A foreclosed house in East Palo Alto, Calif., in February. As foreclosures march on, homeowners get more help. Some states have passed measures requiring mediation on foreclosures.

More states pass foreclosure rules

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Millions of working and middle-class homeowners are facing a similar predicament. An estimated 10% of all home loans are delinquent by 60 days or more, the Mortgage Bankers Association reported this month. In Florida and Nevada, two of the states where the housing crisis has hit hardest, the rate was over 20%, the MBA said.

Court-ordered mediation may be the best last option for thousands of homeowners in the foreclosure pipeline, as programs targeting the estimated 6 million delinquent home loans have been slow to put a dent in the crisis.

"Foreclosure mediations hold out the hope of removing major obstacles that have hindered efforts to slow the spread of the foreclosure epidemic," says Geoff Walsh, a staff attorney specializing in housing, foreclosure and bankruptcy issues for the National Consumer Law Center (NCLC) in Washington, D.C.

The Home Affordable Modification Program, President Obama's \$75 billion initiative to prevent foreclosures begun last March, has granted 300,000 permanent modifications through April, according to the program's latest report, released May 17. The report also estimates 3.275 million delinquent loans are eligible for the program.

In addition, HOPE NOW, an alliance of 38 private lenders started in 2007, reported in April that 2.9 million permanent home loan modifications had been offered since the program began.

While foreclosure starts dropped 5% in the past year, the number of home loans that were delinquent by 60 days or more increased 40%, from 2.85 million to 3.99 million, says Faith Schwartz, executive director at HOPE NOW.

The biggest hurdle to getting a loan modified has been getting the loan servicer or lender to actually sit down and negotiate with the homeowner, says Sean DeVries, an Orlando-based loan workout specialist.

► Maine started a foreclosure diversion program in January, setting guidelines for scheduling sessions, granting stays of proceedings and determining good-faith participation. It also authorizes sanctions on the lenders if they don't follow the newly imposed rules, including dismissal of the lawsuit.

► The New York Legislature in November amended its mandatory settlement conference law "to include all foreclosures of loans secured by borrowers' residences."

It also requires the lender to bring documents to the conferences, including payment history and itemization of the amounts needed to catch up on and pay off the loan.

Florida is consistently in the top five states for foreclosure filings, with 350,000 a year. The Florida Supreme Court issued an administrative order in December requiring all its 20 circuit courts to adopt rules for mandatory mediation on all residential foreclosures, based on a task force's recommendations.

The 18th Circuit Court in Brevard County, Fla., made mediation mandatory in March 2009, before the state Supreme Court's order. In the ensuing 12 months, 59 of the 317 cases referred to mediation have reached a modified loan payment plan, said Ollie Lyons, the manager of the mediation program there.

"The main thing we've done is, people are able to sit down at the table and actually talk to other people," she said.

But it's stressful, she said. The state hasn't added money to the mediation programs, and there are not a lot of mediators for the overwhelming number of foreclosures, she said. "I am overwhelmed and burned out, like all mediation supervisors," Lyons said.

Eric Hammonds, a Fort Lauderdale attorney representing Weeks, said mediation forces the lenders to the table. "That's a good thing, because what happens in mediation (is) we get the actual contact person."

Cover story

Photo: J. Nasa

"There is no established path to get a good, sustainable modification," he says, noting that he went through nine fax numbers for a recent SunTrust client.

Sen. Bill Nelson, D-Fla., introduced legislation in December that would require any lender receiving federal insurance to go into mediation. It has been assigned to a committee, but no further action has been taken.

Many states have already passed similar measures.

"It's been very mixed, because it depends on the way the state mediation program is set up," says Walsh.

NCLC looked at 12 new or pending state statutes, he says, and "The range is incredible." Some require nothing more than the servicer checking a box on a form that says they attempted to contact the borrower. Others require servicers to show on paper their calculations comparing what they'd lose by foreclosing on a house vs. modifying the loan, he says.

"That gives the homeowner the basis for challenging whether it's a reasonable foreclosure," he says.

According to a January NCLC report:

► The Nevada Assembly approved a mediation program that took effect July 1, allowing homeowners to request mediation on non-judicial foreclosures and appointing more than 150 mediators for the program. It requires the servicer to produce several documents, including evidence that it has the right to sue and documents showing how they calculated eligibility for a loan modification.

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