

FORECLOSURE MEDIATION REQUIREMENTS

For more information about the Oregon Foreclosure Avoidance Program, visit http://doj.state.or.us/consumer/pages/foreclosure_mediation.aspx or the official program website at <http://www.foreclosuremediationor.org>.

What Is the OFAP Program?

In 2012 the legislature passed SB 1552, which required beneficiaries to request mediation with grantors of residential trust deeds after recording a notice of default. SB 1552 did not apply to judicial foreclosures. In 2013 the legislature passed SB 558A (Or Laws 2013, ch 304), which expanded the program to include judicial foreclosures and streamlined the process. SB 558A became effective August 4, 2013. The mediation requirements are codified at ORS 86.726 to 86.744, ORS 88.010(2) and OAR 137-110-0010, *et. seq.*

When Must a Beneficiary Request a Resolution Conference?

A non-exempt beneficiary must submit a request for a resolution conference and receive a certificate of compliance or a notice of noncompliance prior to commencing a judicial or nonjudicial foreclosure of a residential trust deed.

When May a Grantor Request a Resolution Conference?

A grantor may request a resolution conference with a non-exempt beneficiary if all of the following are true: (1) the beneficiary has not yet requested a resolution conference, (2) the beneficiary has not yet recorded a notice of default or filed a complaint for judicial foreclosure, and (3) a housing counselor certifies that the grantor is 30+ days delinquent or has a financial hardship that the counselor believes may qualify the grantor for a foreclosure alternative.

When Is a Beneficiary Exempt?

The requirement to request or participate in a resolution conference does not apply to a beneficiary who submits to the Attorney General an affidavit stating that the beneficiary did not commence, or cause an affiliate, subsidiary or agent to commence, more than 175 judicial and nonjudicial foreclosures of residential trust deeds in the previous calendar year. The requirement also does not apply to trust deeds for which the Oregon Department of Veterans' Affairs is the beneficiary.

What Fees Apply?

The grantor must pay a \$175 fee within 25 days after the initial notice of resolution conference. Low-income grantors may be eligible for a reduced fee of \$50.

The beneficiary must pay a \$200 processing fee at the time the request for a resolution conference is submitted. If the grantor timely pays the grantor's fee and submits required documents, the beneficiary must pay an additional fee of \$325. Special payment arrangements for volume filers are available through the service provider.

How Do I Submit a Request for Resolution Conference?

Beneficiary requests may be submitted through the online portal. You must obtain a system account from the service provider to gain access to the portal. The portal allows beneficiaries

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and their agents to submit new cases and manage their existing cases as well as receive notifications when key events occur. To open a system account, send an email to MSP@ForeclosureMediationOR.org.

Grantors who want to request a resolution conference should visit a state-approved housing counseling agency. If the grantor is eligible to participate, the housing counselor can submit the request online. For a list of approved counseling agencies, visit www.oregonhomeownersupport.gov.

What Happens After a Request for Resolution Conference is Submitted?

After a grantor or beneficiary submits a request for resolution conference, the service provider mails the beneficiary and grantor an initial notice with instructions and a date range for the resolution conference. If the grantor fails to pay the required fee within 25 days, the conference is canceled and the service provider issues a certificate of compliance to the beneficiary.

If the grantor timely pays the required fee, the service provider sends a scheduling notice to all parties with the exact date, time, and location for the resolution conference. Unless a postponement is granted, the conference will be scheduled within 75 days of the initial notice.

Prior to the conference, the grantor must consult with a housing counselor unless the grantor cannot obtain an appointment. The grantor also must submit typical workout documents through the service provider's online portal. Within 25 days after the service provider makes the documents available online, the beneficiary must submit documents required by statute, including copies of the note and trust deed; the name and contact information for the note owner; a payment history; and an itemized statement of all fees, charges and payments owing.

The resolution conference is conducted by a facilitator trained in mediation and basic foreclosure issues. The beneficiary (or an agent) must appear in person and must have complete authority to negotiate and commit to a foreclosure alternative or must also have a person available by telephone with such authority. Any agreement reached must be reduced to writing and signed by the parties.

If the beneficiary complies with the program requirements, within 5 days after the conference concludes the service provider will issue a certificate of compliance that expires after one year. If the beneficiary does not comply, the service provider will issue a notice explaining the noncompliance.

What Are the Post-Resolution Conference Requirements?

A beneficiary foreclosing nonjudicially must record either a valid and unexpired certificate of compliance or affidavit of exemption with the notice of default. A beneficiary who receives a notice of noncompliance must foreclose judicially.

A beneficiary foreclosing judicially must attach a copy of the certificate of compliance, notice of noncompliance or affidavit of exemption to the complaint. If the beneficiary fails to comply or files a notice of noncompliance, the defendant or the court may move to abate or dismiss the foreclosure.

Courtesy of Kelly L. Harpster | Harpster Law, LLC.

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