

All-Foreclosure Mediator Event—November 2, 2015

SESSION 2: CASE STUDY

MEDIATION STAGE/TIMELINE

Document exchange through pre-session check-in, incl. cancellation by mediator (RCW 61.24.163(11))

DISCUSSION FOCUS (based on May 2015 survey)

#8 Facilitating the document exchange

#10 Mediator's authority to cancel the mediation

#11 Pre-session check-in with parties, readiness for session

Borrowers poorly or not represented (based on survey comments)

CASE BACKGROUND

Borrower's primary language is Spanish and his attorney speaks only English, so communication is through a friend. The borrower's attorney has only handled one previous FFA case. Both borrower and beneficiary have been very late sending the required documents. Many of the submissions from both parties are incomplete. The beneficiary does not submit the NPV inputs, despite repeat requests from the borrower's attorney. Ninety days into the mediation process, the representatives argue via emails about incomplete and stale documents. They eventually agree on final document submissions and deadlines. At some point, the beneficiary representative included Commerce in the email thread. Commerce responded and asked the parties to work with the mediator. The mediator had been copied on all the back and forth correspondence. Three days prior to the session date, the mediator sends a reminder and asks the parties if they are prepared for mediation. The borrower representative does not respond. The beneficiary representative responds the next day that the borrower did not send all of the documents that they agreed to submit. He asks the mediator to cancel the session, close the mediation, and determine the borrower is non-responsive and not acting in good faith. The mediator attempts one more time to contact the borrower representative. The borrower representative still does not respond. The mediator cancels the case and certifies it the day before the scheduled session.

ACTIVITY [Group Work 11:30-12:15; Lunch 12:15-12:45; Gather in Ballroom 12:45]

1. **Required by RCW:** What are the relevant provision(s) of the FFA for this case? Brainstorm with the group and record.

2. **Expected by Commerce:** What is the relevant guidance from Commerce for this case? Brainstorm with the group and record.
3. **Mediator Discretion, Best/Effective Practices:** What best/effective practices could the mediator have used in this case (strategies, skills, responses)? Brainstorm with the group and record on the flip chart.
4. **Good Faith:** What, if anything, in this case would you take into consideration when determining good faith participation? Brainstorm with the group and record on the flip chart.