

All-Foreclosure Mediator Event—November 2, 2015

SESSION 3: CASE STUDY

MEDIATION STAGE/TIMELINE

Mediator convenes mediation session(s), including continuances.

DISCUSSION FOCUS (based on May 2015 survey)

#2 Federal guidelines (HAMP, CFBP, etc.)

#4 NPV inputs & test

#5 Continuances and additional sessions

Beneficiary's authority to settle (based on survey comments)

Borrowers poorly or not represented (based on survey comments)

CASE BACKGROUND

The borrower shows up at the mediator's office with an incomplete packet of documents for the mediator and the beneficiary. She tells the mediator that she is following her representative's instructions. When asked if the borrower's representative could help, the borrower is very unsure of what her representative was doing for her.

After several months of struggles, the borrower submits most of the documents to the beneficiary and the mediator, saying that this is all she has. The beneficiary requests more documents, but the borrower cannot produce them. Since the referral was months ago, the mediator chooses to hold a first mediation session with the goal of determining what the beneficiary needs and what will complete the packet for a review.

At the session, it appears the borrower representative had not met their client prior to mediation and is unfamiliar with the client's circumstances. A document list is created with deadlines and both parties ask to have another session. They select a date when the mediator is available.

Borrower sends the additional documents to the beneficiary and the mediator. She also sends documents that show additional income from the new job that she just started. According to the borrower representative, the loan is now eligible for a HAMP modification due to the new income. Two weeks later, denial for loan modification is received, but without sufficient or clear explanation.

In the second session, the beneficiary brings the new NPV inputs but not an NPV analysis. The borrower's representative does not provide an NPV analysis either. As the session progresses, it appears there would still be no agreement on a modification. The parties start an argument about the beneficiary's authority. The beneficiary representative on the phone argues that he has authority to settle, but does not provide sufficient information as to why he can't offer the modification. He says a modification would require "investor approval" and would need to "go to underwriting." He also cannot confirm whether the borrower is even HAMP eligible. An NPV analysis is not run by anyone. The beneficiary attorney requests that the mediator close the case, because two sessions occurred, and he commits to work with the borrower outside of the mediation process. The mediator certifies the case.

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.