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**RICHARD CORDRAY**  
OHIO ATTORNEY GENERAL

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November 18, 2009

The Honorable Mike Foley  
The Ohio House of Representatives  
Riffe Center  
77 S. High Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215

Dear Chairman Foley et al:

I write to offer my support for House Bill 306, which mandates and provides a dedicated funding source to support court based mediation for foreclosure cases, a vital tool in the fight to keep families from losing their homes, and to preserve the quality of neighborhoods across Ohio.

As the home foreclosure crisis began to build, it became clear to me that many homeowners who were having difficulty making their mortgage payments found themselves in court threatened with foreclosure because they were unable to have any meaningful discussions with their lender. This occurred in part because convoluted Wall Street financing tools severed the personal link between borrower and lender. The local bank branch was replaced by an out-of-town loan servicing company that did not have connections or accountability to the local community.

In many cases, workouts could have been possible, and a home saved, if the two sides only had the opportunity for productive dialogue. Mediation, a tool used to resolve many legal disputes, offers a way to do this. With the leadership of Chief Justice Thomas Moyer, the Supreme Court of Ohio introduced the Foreclosure Mediation Program Model. It was the first of its kind in the nation. Today, there is a contact person in each county who can help to facilitate foreclosure mediation.

While foreclosure mediation is available across the state, the way in which it is offered differs from county to county. Depending on resources, some counties have formal programs with dedicated staff and paid mediators, while others rely on volunteers to provide these services. HB 306 would ensure that funds be available to offer the level of service necessary to meet the unique demands of each county mediation program. In addition, HB 306 must ensure that each county foreclosure mediation program is consistent with best practices to allow meaningful access. To this end, I offer for your consideration two provisions that I propose will make this new law even more effective.

The first provision recognizes the value that housing counselors bring to the mediation process. Some county courts, such as Franklin County, rely on housing counselors to work with all homeowners prior to mediation. The counselor works with the homeowner to make an assessment of the homeowner's financial situation, information that is vital in determining what type of loan modification or loss mitigation option is needed to achieve a sustainable solution. To ensure that homeowners in the counties that adopt this best practice have access to housing counselors, I suggest clarifying that the special foreclosure filing fee can be allocated and distributed for housing counseling services.

The second provision would make clear that for a mediation to be successful, the filing party's representative must provide requested documents, under the confidentiality of mediation, pertaining to the loan, and that the representative has the authority to negotiate and settle the case. For instance, the filing party, at a minimum, should provide the homeowner a document displaying its affordable loan modification calculation and net present value calculation, and also require that the filing party document that it has considered specific alternatives to foreclosure such as loan modifications, forbearance agreements, other workout agreements, short sales, deed-in-lieu etc.... I recommend that you consider amending proposed R.C. 2308.05(C) and R.C. 2308.05(D) to incorporate and clarify these additional requirements. Further, to stress the importance of these basic but vital requirements, proposed R.C. 2308.05(F) could be amended to require that compliance with these standards be reported in the mediator's final report to the court, and that a failure to comply with these standards could result in a dismissal of the foreclosure action.

Finally, it is my understanding that mediators have expressed concerns about the "good faith" reporting provision in proposed R.C. 2308.05(F). I suggest that you consider removing the "good faith" reporting provision, which may be ambiguous, and instead enumerate specific reporting items. For instance, R.C. 2305.05(F) could require the mediators to report the dates of all scheduled mediation meetings, whether the mediation was successful in resolving the issue, whether both parties attended scheduled mediation meetings with the appropriate authority to resolve the matter, whether both parties provided the documents as required by R.C. 2308.05(C), and any other information the mediator considers appropriate.

With robust foreclosure mediation programs in place, no longer will a courthouse be the last stop for a homeowner; it will become the opportunity for face-to-face negotiations that can lead to sustainable homeownership. I believe that any investment in mediation will provide an excellent return in terms of homes saved, more secure property values, a reduced burden on social service providers, and less strain on the court's docket.

Sincerely,



Richard Cordray  
Ohio Attorney General

Cc: The Honorable Peter Stautberg  
The Honorable Peter S. Ujvagi  
The Honorable Barbara Boyd  
The Honorable Denise Driehaus  
The Honorable Tracy Maxwell Heard  
The Honorable Clayton R. Luckie  
The Honorable John R. Otterman  
The Honorable Dan Stewart  
The Honorable Roland Winburn  
The Honorable Nan Baker  
The Honorable Terry Blair  
The Honorable Louis W. Blessing, Jr.  
The Honorable Matthew J. Dolan  
The Honorable Randy Gardner  
The Honorable Cheryl Grossman