

IN THE CIRCUIT COURT
TWENTIETH JUDICIAL COURT

FORECLOSURE MEDIATION PROGRAM RULES

PURPOSE:

The Foreclosure Mediation Program (Program) is designed to alleviate the burden of costs and expenses to lenders, borrowers and taxpayers caused by residential mortgage foreclosures. The Program aims to keep families in homes and prevent vacant and abandoned homes that negatively impact property values and destabilize neighborhoods. The Program also promotes greater efficiency in the administration of justice by reducing the backlog of court cases in the lengthy foreclosure process.

ACTIONS ELIGIBLE FOR MEDIATION:

The Program is mandatory and limited to owner-occupied residential property that serves as the homeowner's primary residence. Foreclosures of non-residential, investment, or commercial properties are not eligible for the Program.

EFFECT OF THE PROGRAM RULES ON PENDING COURT CASE:

The borrower must file an answer and appearance in the foreclosure action if he or she wishes to litigate the case. The borrower does not have to file an answer and appearance to participate in the mandatory mediation program. No dispositive motions, including motion for default judgment, shall be allowed until mediation is completed. In addition, unless otherwise ordered by the court, no discovery shall take place until after the mediation is complete. If the case is subject to mandatory mediation, both parties are required to submit documents and provide information necessary for the mediation process and required by the mediation rules.

If a borrower fails to appear for the Initial Intake Conference for mandatory mediation, all motions shall be allowed, including but not limited to, a motion for default judgment.

The court retains jurisdiction to hear any and all motions relevant to mediation.

MEDIATION PROCEDURE:

1) ADMINISTRATION OF PROGRAM/KEY COURT PERSONNEL:

The Mediation Program will be managed by an Administrator. The Administrator refers to an individual or organization funded to oversee the project, or if no such person exists, to the Circuit Clerk.

2) GRANT FUNDING AND FILING FEES:

Funding has been secured from the Attorney General to provide mediator fees and administrative fees for a period of three years. The start date of the grant is 05/01/2013.

A) FILING FEES:

The effective date of the increased filing fee will be upon notification by the Illinois Supreme Court that these Rules have been adopted. As of 07/01/2013, the base filing fee is \$302.00, plus an additional \$50.00 fee to fund the Foreclosure Prevention Program Fund. There is a second fee, ranging from \$50.00, \$250.00, or \$500.00 pursuant to 735 ILCS 5/15/1504.1 Thus, the total filing fee would range from \$402.00 to \$852.00. The additional \$100.00 filing fee would raise the overall filing fee range to a range of \$502.00 to \$952.00.

B) MEDIATORS' FEES:

Combined funding from grant funds and additional filing fees: The Attorney General grant will fund 100 cases for mediation per grant year, at \$250.00 per case mediated. As there are approximately 1000 foreclosures filed in St. Clair County each year, additional funding must be available to ensure all homeowners opting into the programs can have their case mediated. To ensure continuation of mediators' fees after 100 mediations have been heard, in counties where the program is implemented, the Circuit Clerk shall charge an additional \$100.00 filing fee on residential foreclosure filings. Any unused fees will be kept in reserve to supplement the 100 mediations for each remaining year of the grant. After the completion of the grant, remaining funds will be used to independently fund the mediation program.

C) ADMINISTRATION COSTS:

The Attorney General grant will fund the Administration/Mediation Coordinator position for a period of three years. To ensure sustainability of the administration for this position after the grant expires, it is the intent of the program that any reserves from the additional \$100.00 filing fee on complaints filed to foreclose a real estate mortgage, will be used to support the cost of administration.

3) COMPLAINT AND SUMMONS :

COMPLAINT AND ATTACHMENTS:

The Complaint shall clearly designate whether the case is subject to mediation. Beneath the caption title "Complaint", the plaintiff shall include "Subject to Mandatory Mediation" or "Not Subject to Mandatory Mediation". All homeowner-occupied residential foreclosures are subject to mandatory mediation.

After the foreclosure complaint is filed, the homeowner is served with the summons, notice of mandatory mediation and the foreclosure mediation program initial questionnaire. The notice of mandatory mediation shall: advise the borrower to bring

certain documents to the Initial Intake Conference; contain a list of housing counselors certified by the Housing and Urban Development that may be available to assist the borrowers in foreclosure; advise the borrower of free legal assistance in the area, specifically, Land of Lincoln Legal Assistance Foundation; and advise the borrower that a language interpreter is available without cost upon contacting the Administrator.

In cases subject to mandatory mediation, in addition to the forms required by the Illinois Supreme Court Rules, plaintiff shall use the following forms: Summons (Exhibit A), Notice of Mandatory Mediation (Exhibit B), and Foreclosure Program Initial Questionnaire (Exhibit C).

SUMMONS:

In all mandatory mediation cases, the plaintiff shall select a date and time for the Initial Intake Conference from a list of dates issued by the Circuit Court, to be included in the Summons. The date shall be at least thirty (30) days from the issuance of the Summons.

If service is by Publication, the plaintiff shall pick a date from the Circuit Court list at least sixty (60) days from the date of first publication.

The Circuit Clerk will set the case to the Initial Intake Conference calendar on the date selected on the summons or the affidavit for publication, both of which shall contain an Initial Intake Conference date.

Where there is more than one homeowner subject to the mortgage, and at least one of the homeowners appears at the initial intake conference, the Mediation Administrator (Administrator) shall accept the case into the Program, which shall include each homeowner subject to the mortgage.

4) REQUIRED DOCUMENTS TO BE PROVIDED AT THE INITIAL INTAKE CONFERENCE AND PRE-MEDIATION CONFERENCES:

Initial Intake Conference

The lender or its representative shall provide the following at or before the initial intake conference:

The lender's current loan modification packet and information on the loan. The plaintiff may mail an assistance packet directly to the homeowner and send a copy to the Administrator, or the plaintiff may send an assistance packet to the Administrator to provide to the homeowner at the Initial Intake Conference. The plaintiff will provide a list of supporting documents and the plaintiff counsel's information for submissions by email or mail. The plaintiff shall notify the Administrator who is the owner of the loan and if there are any issues that prevent a loan modification or non-retention option.

Pre-Mediation Conference

The lender or its representative shall provide the following at the first pre-mediation conference:

- A) Proof of the Plaintiff's standing to file the foreclosure;
- B) Proof of the mortgage holder's standing and status as the real party in interest;
- C) Any pooling and servicing agreement;
- D) Loan origination documents;
- E) Appraisal at the time of the loan origination and any subsequent appraisal;
- F) Payment history records with respect to the mortgage, including all fees and costs incurred;
- G) An itemization of the amounts needed to cure and payoff the mortgage.

The homeowner shall provide the following at the first pre-mediation conference:

Proof of income, e.g. pay stubs or benefit statements.

5) PURPOSE AND GOALS OF THE INITIAL INTAKE CONFERENCE, PRE-MEDIATION CONFERENCES AND MEDIATION CONFERENCES:

The purpose of these conferences and the Program itself is to assist homeowners to reach mutually acceptable solutions with lenders regarding their homes. Solutions include but are not limited to a loan modification or other options that may be available in lieu of foreclosure.

INITIAL INTAKE CONFERENCES:

The Circuit Clerk and the Administrator shall work together to compile a list of available dates for Initial Intake Conferences. The Circuit Clerk shall notify the Administrator when Initial Intake Conferences are scheduled.

The location of the Initial Intake Conferences will be included in the Summons and will be held in the St. Clair County Courthouse Law Library, unless otherwise noted.

The Initial Intake Conference will not count for the purposes of Rule 7's limitation on the number of pre-mediation conferences.

During the Initial Intake Conference, the homeowner and the Administrator will discuss options available for the borrower through the Program. If the homeowner(s) fails to attend the Initial Intake Conference and have been properly served under the mediation rule, the mediation case will be terminated. Homeowners who are currently in bankruptcy or are not residing in the residence of which the mortgage is being foreclosed cannot proceed with mediation. When possible, housing counseling and legal service agencies will be present to present information to the borrowers, screen the

homeowner to see if they qualify for the services the agency provides, and answer questions on the foreclosure process. If the Administrator believes a loan modification or dignified exit option is feasible, the Administrator shall give the assistance packet, provided by the plaintiff prior to the conference, to the homeowner if the homeowner does not have one, and the homeowner will be given time to submit the packet to the plaintiffs' counsel. The Administrator shall set a first pre-mediation conference between the plaintiff, plaintiff counsel and the homeowner within 45 days of the Initial Intake Conference, and the Administrator will send notice of the first pre-mediation conference to the plaintiff and homeowner.

PRE-MEDIATION CONFERENCES:

At the first pre-mediation conference, the lender will provide the homeowner with all the required documents as listed in the rules. The homeowner will provide the information available regarding proof of income, if any. If the defendant did not submit the assistance packet before the pre-mediation conference, the mediation may be terminated unless otherwise agreed to by the parties. The Administrator will inquire as to the status of the assistance packet. Additional pre-mediation conferences to review the status of the case will be scheduled according to Rules 7, 8 and 9 or as agreed to by the parties. The time period between pre-mediation conferences will depend on the options for which the defendant is being reviewed, which may include: a loan modification; a deed in lieu of foreclosure; a consent to a judgment waiving any deficiency judgment against the homeowner; a shortsale; or any other agreement or settlement resulting in a dignified exit from the residence.

If the information provided by the borrower indicates a substantial loss of income so severe that a loan modification could not be feasible, and the homeowner desires to keep the house and will not accept another option resulting in a dignified exit from the resident, the Administrator shall terminate the premediation and remand the case back to court.

As noted in Rules 10 and 12, it is not acceptable for a lender as a matter of the lender's policies, to refuse to offer an option other than a loan modification or other workout. If a lender refuses to offer another option, the Administrator will set the case for mediation. The mediator will inquire further, as to why another feasible option is not available.

If a pre-mediation conference results in a temporary agreement or a permanent agreement, the Administrator will not send the case to mediation, but follow the steps as outlined in Rule 11.

MEDIATION CONFERENCES:

A mediator can set subsequent mediation conferences 30 or 45 days apart, depending on the progress of mediation and the likelihood that the case will be resolved by mediation.

At any time during these conferences, the mediator may refer a borrower to a housing counseling agency, an organization providing mortgage assistance, lawyer referral agency, or the local legal aid office.

6) PARTIES REQUIRED TO ATTEND INITIAL INTAKE, PRE-MEDIATION AND MEDIATION CONFERENCES:

The following persons must appear at the initial intake conference:

The homeowner

The following persons must participate in the pre-mediation and mediation conferences:

The homeowner; and

The homeowner's attorney if any;

The lender; (in person or by telephone) and

The lender's attorney with actual settlement authority.

Additional parties:

The mediator may include in the mediation any person the mediator determines would assist in the mediation.

7) NUMBER AND DURATION OF CONFERENCES:

There is a limit of two pre-mediation conferences and two mediation conferences unless one extension is granted as provided in these rules. Each conference is limited to two hours, but can be extended beyond the time limit if the mediator believes an agreement appears imminent.

8) CONTINUANCES:

Unless a temporary agreement has been reached as outlined in Rule 11, a party may, upon good cause shown, request a continuance of one pre-mediation or one mediation. If a party is requesting a continuance, the request must be sent to all parties and the Administrator. The Administrator will continue the conference and provide the parties and mediator (if applicable) with a new date.

9) EXTENSION REQUEST BEYOND THE FOUR CONFERENCES:

Unless a temporary agreement has been reached as outlined in Rule 11, a party may for good cause shown, request one extension of the conferences, resulting in a total of 5

conferences. The party must support the request for extension with substantial facts that the mediator believes will result in a successful mediation.

10) OBLIGATION TO MEDIATE IN GOOD FAITH:

Each mediation party or authorized representative of a mediation party shall make a good faith effort to mediate all issues, including production of all documents outlined in these rules to be produced.

A mediation party shall cooperate with the Administrator and mediator to produce the information requested to permit the mediation process to function effectively.

A good faith effort to mediate requires the lender to conduct the following loss mitigation analysis:

- A) Evaluate the borrower(s) eligibility for alternatives to foreclosure, including but not limited to reinstatement, loan modification, forbearance, short sale, and deed in lieu of foreclosure.
- B) Offer the borrower a loan modification at the best terms available for a loan modification if the borrower(s) is eligible for one.
- C) If the lender does not reach a loan modification with the borrower(s) during the mediation, the lender shall provide a written analysis of its position, demonstrating that the net present value of receiving payments pursuant to a modified mortgage loan is less than the anticipated net recovery following foreclosure.
- D) If the lender rejects a proposed settlement that offers an alternative to the foreclosure other than a loan modification or other renegotiated terms of the residential mortgage that would result in a lower cost than foreclosure to the lender, the lender shall provide a written explanation for the rejection of the proposal.

11) TEMPORARY AND PERMANENT AGREEMENTS:

A temporary or permanent agreement may be reached during mediation. A temporary agreement may include, but is not limited to: a trial loan modification, a deferment agreement or a forbearance agreement. During this time, the mediation case remains pending, and is not remanded back to court.

If a temporary agreement has been reached, and such agreement will result in a longer period between conferences than generally allowed by these rules, the parties can extend the mediation conference date out to a date that incorporates the end of the trial period. The Administrator or the mediator will file with the court notice that a temporary agreement has been reached, the terms of the agreement, and the date of the next conference.

If a permanent agreement is reached, a Summary of Agreement, outlining the terms of the agreement, shall be drafted by the mediator or the lender if the mediator directs.

The agreement shall be signed by the homeowner, the homeowners attorney or representative, the lender, (an attorney can sign for the lender) the lender's attorney, and filed in the mediation file and with the court, as outlined in Rule 14.

12) FAILURE TO MEDIATE IN GOOD FAITH:

Either mediation party will be deemed to not be acting in good faith if the party:

- A) Fails to provide the information and documentation as required by these rules;
- B) Fails to attend a pre-mediation or mediation as scheduled by the mediator.

A lender, and or the lender's attorney with actual settlement authority, will be deemed to not be acting in good faith if the lender:

- A) Fails to make a good faith effort to evaluate the borrower for a renegotiation of the terms of the residential mortgage, including a loan modification as outlined in these rules;
- B) Fails to provide a written explanation of the rejection of any possible renegotiation of the terms of the loan;
- C) Fails to make a good faith effort to evaluate the borrower for other alternatives available to the homeowner, such as deed in lieu or a short sale; or
- D) Fails to provide a written explanation of the rejection of other possible alternatives available to the homeowner.

13) TERMINATION OF MEDIATION CONFERENCE:

A mediator may terminate the Mediation at any time during the mediation process for the following reasons:

- A) A permanent agreement has been reached between the parties;
- B) In the mediator's opinion, no purpose would be served by continuing the Mediation; or
- C) A party has failed to mediate in good faith.

14) REPORT TO THE COURT AT THE TERMINATION OF MEDIATION:

The Administrator or a mediator will file with the trial court a certificate indicating the following:

- A) The parties came to a permanent agreement, and the nature of that agreement;
- B) There is no purpose served by continuing with the Mediation; or
- C) A party did not mediate in good faith, and the nature of the failure to mediate in good faith.

15) COURT STATUS DATE POST MEDIATION REPORT: The foreclosure case shall be set for a status date within 21 days after the Administrator's Report or the mediator's report is submitted to the court. If the parties were able to reach an agreement through the mediation process, the foreclosure case shall be dismissed at the status date unless the agreement includes a trial modification.

- A) If the agreement includes a trial modification, the court will retain jurisdiction and the case will be set for review at the end of the trial period. If a homeowner has successfully complied with all requirements for the modification or loss mitigation workout at the time of review, the foreclosure case shall be dismissed.
- B) If the parties mediated in good faith but could not reach an agreement, and there is no purpose in continuing with mediation, the court shall issue an order terminating mediation and allowing litigation to go forward.
- C) If the mediation was terminated for failure to mediate in good faith, the court shall review the nature of the mediator's complaint. The court may order sanctions including but not limited to the following:

The court may impose a fine against the lender, order the case back to mediation, order the terms of a settlement agreement to be honored, dismiss the foreclosure action against the homeowner, and/or waive all costs assessed by the lender against the borrower in the foreclosure action.

16) JUDICIAL REFERRAL TO MEDIATION AT ANY TIME PRIOR TO THE SALE OF THE RESIDENCE:

During the foreclosure case, if it comes to the court's attention that there are facts that warrant mediation, the court can stay the foreclosure proceedings further, and remand the case to the Program. Facts to consider may include:

- A) The homeowner had no opportunity to attend an Initial Intake Conference because service by publication or personal service was before the implementation of the mediation program, as updated.
- B) The homeowner has been working with the lender and has been placed in a loan modification, but the case has continued to move through the foreclosure process.
- C) The homeowner has actively engaged the lender with the possibility of a loan modification, but has met with insurmountable barriers such as being advised the documents have been lost, misplaced, or not received.
- D) The homeowner now has income with which to enter into a loan modification.
- E) Other circumstances the court find persuasive.

TRAINING OF JUDGES,
KEY COURT PERSONNEL AND VOLUNTEER MEDIATORS

1) JUDGES:

The Chief Judge shall select Associate and Circuit Judges to be trained in the Twentieth Judicial Court Foreclosure Mediation Program (Foreclosure Mediation Seminar).

2) ADMINISTRATION/KEY COURT PERSONNEL:

The Administrator shall review the Foreclosure Mediation Program Rules and will develop and implement a process for foreclosure mediation. After development and implementation, the Administrator will present on the relevant portion at the Foreclosure Mediation Seminar.

In addition, the Circuit Clerk shall assign individual clerks to attend the Foreclosure Mediation Seminar.

3) MEDIATORS:

Unless a retired judge or previously certified mediator, all individuals wanting to participate as mediators must attend a court approved mediation skills program to become certified. In addition, all individuals must attend the Foreclosure Mediation Seminar.

MEDIATORS

1) QUALIFICATIONS, APPOINTMENT, AND COMPENSATION:

Applicants shall be eligible for appointment to serve as mediators by filing with the Program Administrator an application form certifying the following:

- A) Is a retired judge, or;
- B) Is a certified mediator in any Illinois Circuit Court mediation program or any federal mediation program, and;
- C) Has attended a mandatory Foreclosure Mediation Seminar, and;
- D) Has read and is informed of the rules of Supreme Court relating to Mediation Programs, and the Foreclosure Mediation Program Rules of the Twentieth Judicial Circuit.

Each application must be reviewed and approved by the Chief Judge or his or her designee.

The Administrator shall maintain an alphabetical list of persons qualified to serve as mediators who shall be assigned on a rotating basis.

Mediators shall be compensated \$250.00 for each case that is subject to mediation.

Upon completion of the mediation process, the mediator will file a voucher with the Administrator. The Administrator shall process the vouchers for payment to the mediators.

2) CONFIDENTIALITY:

Unless otherwise authorized by the parties, all oral or written communications made in the course of mediation, other than written agreements between the parties and documents filed of record, shall be exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action.

3) IMMUNITY:

Any person approved to act as a mediator under these rules, while acting within the scope of his or her duties as a mediator, shall have judicial immunity in the same manner and to the same extent as a judge in the State of Illinois, as provided in Illinois Supreme Court Rule 99.

4) IMPARTIALITY:

A mediator shall conduct mediation in an impartial manner and avoid conduct that gives the appearance of partiality. Mediators shall not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or any other reason. If at any time a mediator is unable to conduct mediation in an impartial manner, the mediator shall withdraw.

5) CONFLICT OF INTEREST:

A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during the mediation process. A mediator shall not mediate a foreclosure case without both parties' consent if the mediator has any past or present personal or professional relationship with either party involved in the mediation that reasonably raises a question of a mediator's impartiality. A mediator shall disclose, as soon as possible, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.

CAPACITY TO PROVIDE LANGUAGE ASSISTANCE

For those individuals whose principal language is not English, or for individuals that are hearing impaired, the Judicial Case Coordinator will provide assistance using either local language interpreters, or level five certified deaf interpreters.

QUARTERLY AND ANNUAL REPORTING
TO THE ILLINOIS SUPREME COURT

The Administrator will capture specific case information on each residential foreclosure filed in St. Clair County. This information will include the number of homeowners that entered into the mediation program and the outcome of the mediation.

The information will be submitted to the Supreme Court on a quarterly basis. The report is to be received by the 30th day following the month the quarter has ended.

An annual report will be submitted to the Supreme Court by the 31st day of January, following the end of the previous fiscal year.