

**MCLEAN COUNTY CIRCUIT COURT  
RESIDENTIAL MORTGAGE FORECLOSURE MANDATORY  
MEDIATION PROGRAM RULES  
AMENDED – October 9, 2012**

1. PURPOSE OF MEDIATION PROCESS

The foreclosure mediation program is designed to reduce the burden of expenses sustained by lenders, borrowers and taxpayers as a result of residential mortgage foreclosures. It is also designed to aid the administration of justice by reducing the number of court cases. Further, the program is aimed at keeping families in homes, if possible, and to prevent vacant and abandoned houses in McLean County that negatively affect property values and de-stabilize neighborhoods.

2. ACTIONS ELIGIBLE FOR MEDIATION

From the effective date of this rule, the parties in all residential real estate foreclosures (as defined by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1203, 15-1207 and 15-1219) filed in McLean County will be subject to mediation as set forth herein.

3. MEDIATION PROCEDURE

- A. In all McLean County cases where a complaint is filed to foreclose a residential real estate mortgage (as defined in 735 ILCS 5/15-1203, 15-1207, and 15-1219), the complaint shall clearly designate that the case is subject to mediation and the Circuit Clerk shall charge an additional \$25.00 filing fee to defray the cost of the Mandatory Residential Mortgage Foreclosure Mediation Program. The filing fee may be refunded by order of the Court pursuant to Section 8(B) of this Rule. The fees collected shall be forwarded to the McLean County Treasurer and maintained in a separate fund subject to disbursement on order of the Chief Judge of the Eleventh Judicial Circuit.
- B. The first page of every foreclosure complaint shall clearly and conspicuously designate whether or not the case is eligible for foreclosure mediation. If the plaintiff fails to designate mediation eligibility, the Circuit Clerk shall collect the mediation filing fee.
- C. Upon the filing of a complaint for mortgage foreclosure eligible for mandatory mediation, the Circuit Clerk shall set the case for a mandatory pre-mediation conference to be set on a date, time and at a location designated by the Chief Judge, but in no event later than sixty (60) days from the date of filing. The pre-mediation conference shall be attended by the defendant borrower(s), HUD Certified Counseling agency and pro bono counsel for the defendant.
- D. The Circuit Clerk shall provide a notice, to be included with the summons (or alias summons), notifying all of the defendants of the mandatory mediation program, which notice must be served upon each defendant borrower with the summons and evidenced on the proof of service.

- E. The notice shall include a provision that the case will be evaluated by the HUD certified counseling agency and/or pro bono counsel for the defendant (hereinafter “evaluators”) for possible loan modification or other loan workout. The notice shall further state that if such modification is not deemed feasible or the borrower does not desire to save the home from foreclosure, mediation may still be used to assist the parties with discussion of other options such as cash for keys, consent foreclosure or deed-in-lieu of foreclosure in which the lender may waive any deficiency against the borrowers.
- F. The notice shall advise the defendant borrower to bring certain financial information (including the borrower's income and expenses) to the pre-mediation conference that will enable the evaluators to determine if loan modification is feasible and shall contain a list of housing counselors certified by Housing and Urban Development that may be available to assist borrowers in foreclosure.
- G. The notice shall indicate that any financial information produced by the defendant shall be held in strict confidence by the evaluators and mediator and shall not be disclosed to any other party without the defendant's consent.
- H. At or before the pre-mediation conference, each participating defendant shall complete a questionnaire to determine if the defendant meets the initial criteria of having greater monthly income than expenses in order to qualify for a loan workout or modification. If the information provided shows that the defendant does not meet the initial criteria or if the defendant indicates no desire to save the home from foreclosure, then the evaluators may use the scheduled mediation conference to determine whether other options (such as cash for keys, consent foreclosure or deed-in-lieu of foreclosure in which the lender may waive any deficiency against the borrowers) may be available. Alternatively, the evaluators may assist the parties to determine whether they would agree that the property could be sold to a third party that would result in the dismissal of the foreclosure action.
- I. All defendant borrowers who have been served must attend the pre-mediation conference and provide the requested information. If the defendant borrower(s) meet the initial criteria for a loan modification or workout or express a desire to surrender the property to the lender, the evaluators shall provide a completed modification packet and/or settlement offer to plaintiff’s counsel. Plaintiff’s counsel shall provide to evaluators an itemized list of any missing information within fourteen (14) days of the packet being served. Once all information is received, Plaintiff’s counsel shall file a Certificate of Readiness to Engage in Mediation and mediation will be schedule within forty-five (45) days. In addition, Plaintiff’s counsel shall provide evaluators with a completed Plaintiff’s questionnaire within thirty (30) days of filing the Certificate. Representatives of the lender are not required to attend the pre-mediation conference.

At the mediation conference, the defendant borrowers must appear in person and the lender's representative with full settlement authority must appear either in person or by telephone and participate in good faith in the mediation process. Failure of the lender or its agent to attend the mediation conference or participate in good faith in the mediation process will result in sanctions by the Court, including possible dismissal of the action, with the lender unable to recover its costs of refiling in any subsequent foreclosure action. Failure of the defendant

borrower to appear may result in termination of the mediation and referral of the case back to the court. If the defendant borrower can demonstrate good cause to the court that his or her failure to attend the pre-mediation conference or mediation conference, the judge may refer the matter to pre-mediation or mediation conference.

- J. If the defendant fails to appear or participate in good faith at the pre-mediation conference, the evaluators shall file a report with the court terminating mediation services. Upon conclusion of the mediation conference, the mediator shall file a report with the court terminating mediation services and indicating the outcome. If an agreement is reached, it shall be reduced to writing and signed by the parties and their attorneys. The agreement shall be filed with the court and plaintiff shall promptly file the agreement with the McLean County Recorder's office and change the plaintiff's internal records to reflect the agreement terms. If the mediation does not result in an agreement, upon the filing of the mediator's report, the clerk shall send a notice to the defendant(s) informing them that the foreclosure case will proceed, that the stay is lifted, and that the defendant must file an answer within thirty (30) days or the case may proceed by default. At the request of the parties, the court may retain jurisdiction of the case to review any trial period which the parties may enter into prior to a loan modification becoming effective. If the lender notifies the court during the trial period that the defendant borrower has failed to successfully modify the loan or if no agreement was reached, the foreclosure action shall resume.

Foreclosures of non-residential or commercial property are not eligible for mediation. Cases involving defendant borrowers who have a pending bankruptcy case or who have obtained relief in bankruptcy court are not eligible for mediation.

- K. The Chief Judge shall maintain statistical data on the results of mediation, including the number of cases where the initial criteria was met and the number of cases where loans were modified or otherwise worked out between the parties and shall report the same to the Administrative Office of the Illinois Courts at such times and in such manner as required.

#### 4. QUALIFICATIONS, APPOINTMENT AND COMPENSATION OF MEDIATORS

- A. The Chief Judge shall maintain a list of mediators who have sought appointment and been certified for approval by the Court as foreclosure mediators. For approval as a mediator, an individual must:
  - i. Submit an application for approval by the Chief Judge;
  - ii. Demonstrate completion of the foreclosure mediation training as approved by the Chief Judge;
- B. Mediators approved for the Mandatory Residential Mortgage Foreclosure Mediation Program by the Chief Judge shall not participate in residential mortgage foreclosure proceedings in McLean County Circuit Court in any capacity as plaintiff, defendant, counsel for any party, or bidder at any Sheriff's sales. Upon approval, each mediator shall sign a certification acknowledging this prohibition. Violation of this provision will result in the mediator's removal from the Mandatory Residential Mortgage Foreclosure Mediation Program.

- C. A mediator shall not mediate a matter that presents a clear conflict of interest. A conflict of interest includes when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality.
- D. A mediator shall not be involved in any capacity other than mediator in any case to which the mediator is assigned. A mediator may not use any information obtained during the mediation process for any purpose outside of mediation unless required to do so by law.
- E. The eligibility of each mediator to retain his or her status shall be periodically reviewed by the Chief Judge. The mediators shall comply with general standards established by the Chief Judge. Failure to adhere to these general standards may be grounds for revocation of mediator approval by the Chief Judge.
- F. The mediator shall be compensated at the rate of \$100.00 per case for each file that reaches mediation. Effective March 1, 2012, filing fees paid to the Circuit Clerk for the filing of a mortgage foreclosure eligible for mediation in McLean County shall be increased by \$25. The additional \$25 filing fee shall be placed in a fund for this mandatory residential foreclosure mediation program, which program shall also begin on that date. The Chief Judge shall report quarterly to the Administrative Office of the Illinois Courts on the revenue and expenditures of the program in the manner directed by that office.
- G. The Chief Judge may enter into a contract with an entity to provide mediation services subject to all Court Rules and Procedures. It is contemplated that in its initial phase, the Mandatory Residential Foreclosure Mediation program is conducted on a trial basis and that contracting with an outside entity for mediation services will result in services being provided without additional cost to the taxpayers or the expenditure of any public funds, with the exception of the filing fee authorized herein.

5. DISCOVERY

Unless otherwise ordered by the court, discovery shall be stayed until after the conclusion of the mediation process.

6. CONFIDENTIALITY

Unless otherwise authorized by court or the parties, all oral and written communications to the mediation coordinator or the mediator, other than written agreements between the parties, shall be exempt from discovery and shall be confidential and inadmissible as evidence in the underlying cause of action.

7. IMMUNITY

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

8. STAY OF FORECLOSURE PROCEEDINGS

- A. No further action to pursue the foreclosure can occur during the mediation timeline (which begins on the date the summons is issued and ends on the date the mediator files a report). The defendant's obligation to answer the complaint and the court case are stayed for this period. No motions, except motions pertaining to mediation, can be filed during this time.
- B. Motions which may be filed during the mediation process are those related to a stay or termination of foreclosure proceedings for the following reasons:
  - i. Active Duty Military Service (735 ILCS 5/15-1501.5);
  - ii. Other objections to jurisdiction over the person (725 ICLS 5/15-1505.6);
  - iii. Stay of proceedings by the US Bankruptcy Court under 11 U.S.C. § 362 (a); or
  - iv. Foreclosure of non-residential or commercial property (not eligible for the program)

Any motion for stay must clearly state the reason that the case is not subject to the mediation process, must include supporting documentation, and must be verified pursuant to the Illinois Code of Civil Procedure (735 ILCS 5/1-109). The Motion must be presented to and approved by the Supervising Judge for Residential Mortgage Foreclosure Mediation.

9. COUNTERCLAIMS TO FORECLOSE A MORTGAGE

Where the complaint to foreclose a mortgage takes the form of a Counterclaim (i.e. the original complaint is a mechanics lien), any counterclaims to foreclose a mortgage must pay the extra \$25 filing fee. Any party in a counterclaim seeking to foreclose a residential mortgage may request mediation by contacting court scheduling to schedule a mediation date. The party requesting and scheduling said date must provide notice of any scheduled date to all other parties to the action.

10. SECOND LIEN HOLDERS - RIGHT TO PARTICIPATE

Any 2<sup>nd</sup> lien holders may attend any scheduled mediations. To the extent the mediators request that a 2<sup>nd</sup> lien holder be invited to attend, the plaintiff's counsel shall provide such notice to any other lien holders.