

## **PART 12. MANDATORY RESIDENTIAL FORECLOSURE MEDIATION RULES**

### **12.1 PURPOSE OF MEDIATION PROCESS**

The foreclosure mediation program is designed to alleviate the burden of costs and expenses to lenders, borrowers and taxpayers caused by Residential Mortgage Foreclosures. It is further designed to aid the administration of justice by reducing the backlog of court cases. It is also aimed at keeping families in homes to prevent vacant and abandoned houses that negatively affect property values and destabilize neighborhoods.

### **12.2 ACTIONS ELIGIBLE FOR MEDIATION**

From the effective date of this Rule, the parties in all residential foreclosures (as defined by the Illinois Mortgage Foreclosure Act 735 ILCS 15/1501 et seq.) and Supreme Court Rule 99.1 will be subject to mediation as set forth herein. Cases filed in Bureau County will not be subject to mediation.

### **12.3 MEDIATION PROCEDURE**

(a) Upon the filing of a complaint for foreclosure eligible for mandatory mediation, the clerk of court shall automatically set the case for a mandatory pre-mediation conference that is to be set on a date, time and at a location as designated by the Chief Judge, but in no event later than sixty (60) days from the filing of the complaint. The pre-mediation conference shall be attended by the plaintiff's counsel, the defendant borrowers and an outside mediator.

(b) The Clerk shall furthermore provide a form, to be included with the summons, notifying the defendant borrowers of the mandatory mediation program, which form must be served upon the defendants with the summons and evidenced by a proof of service the same as the summons.

(c) The form shall include a provision that the case will be evaluated by an outside mediator 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 his or her home, then mediation may still be used to assist the parties in discussing a consent foreclosure, short sale or deed-in-lieu of foreclosure in which the lender will waive any deficiency against the borrowers.

(d) The form shall include language advising the defendant borrower to bring certain financial information (such as the borrower's monthly income, work status and expenses) that may assist in discussions for a loan modification and should contain a list of local counseling agencies that may be available to assist borrowers in foreclosure.

(e) Lastly, the notice shall indicate that the financial information shall be held in strict confidence by the mediator and not disclosed to any other party without the consent of the defendant.

(f) At the pre-mediation hearing, an independent mediator shall have the defendant borrowers fill out a questionnaire to determine if the borrower meets 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 borrower does not meet the initial criteria, or if the defendant indicates in his/her response that he does not desire to keep the house, then the mediator may use the scheduled mediation conference to determine whether the borrower can deed the property to the lender or consent to a judgment waiving any deficiency judgment against the borrower. Alternatively, the mediator may assist the parties to determine whether the property can be sold to a third party that will result in the dismissal of the foreclosure action.

(g) At the pre-mediation conference, the mediator shall provide information to borrowers about assistance available from all HUD certified Housing Counselors in the 13<sup>th</sup> Circuit area. If no such HUD certified Housing Counselors are available in the 13<sup>th</sup> Circuit, then the mediator shall provide information about the nearest available Housing Counseling Agency. Further, if the mediator determines that some form of workout is possible, then the mediator shall refer the borrower to a HUD Certified Housing Counselor to aid in the preparation of the necessary forms required by the lender. The mediator shall provide an opportunity for borrower to talk to a HUD certified Housing Counselor at the pre-mediation or schedule a meeting for the form preparation and other housing counseling.

(h) At the pre-mediation conference, the mediator shall inform borrowers of their right to have counsel present during the mediation. The mediator shall also make available contact information for the LaSalle and Grundy County Bar Associations as well as Prairie State Legal Services, so that borrowers who are unable to afford counsel may have a meaningful opportunity to obtain counsel. Any borrower who requests additional time to obtain counsel prior to the mediation shall be given a reasonable opportunity to do so.

(i) The plaintiff's counsel and any defendant borrower must attend the pre-mediation conference. If the borrower meets the initial criteria, or expresses a desire to surrender the property in a deed-in-lieu, consent foreclosure or other arrangement, then the mediator shall set the matter for a mediation status conference on a date not more than 45 days thereafter. At the mediation status conference, the mediator shall inquire as to the status of required documents and if everything required for a meaningful mediation is completed, the mediator shall schedule a mediation conference within 30 days. At the mediation conference the defendant borrowers as well as a representative of the lender must appear with full settlement authority. Failure of the lender or its agent to attend at either the pre-mediation, status or the mediation conference will result in sanctions by the court, including possible dismissal of the action, with the lender unable to recoup its costs of re-filing in any subsequent new action. If the defendant borrower fails to appear, then the mediator shall terminate the mediation and refer the matter back to the trial court. If the defendant borrower can demonstrate that its failure to attend was excusable, then the circuit court may refer the matter back for a pre-mediation or mediation conference.

(j) Upon the conclusion of the mediation conference (or the pre-mediation or status conferences, if the defendant borrower fails to appear or does not meet any criteria for loan workout or resolution of the action), the mediator shall file a report with the court terminating mediation services and indicating the outcome of the conferences. If an agreement is reached,

it shall be reduced to writing and signed by the parties and their counsel, if any, and at the request of the parties, the circuit court may retain jurisdiction of the case to accommodate any "trial period" which the parties enter into prior to a loan modification being effective. If the lender notifies the circuit court within the "trial period" that the borrower has failed to successfully modify its loan, or, if no agreement is reached, the foreclosure action shall resume.

(k) The Chief Judge shall maintain statistical data on the results of the mediation, including but not limited to the number of cases where the initial criteria was met and the number of cases where the loans were modified or otherwise had workouts between the parties and shall report same to the Administrative Office of the Illinois Courts at such times and in such manner as may be required.

(l) The Borrower is responsible for costs associated with a translator. The Chief Judge's office maintains a list of translators that can be employed by the Borrower.

#### **12.4 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 mediators. For approval as a mediator, an individual must:

- (1) Be a retired judge; or
- (2) Be a member in good standing of the Illinois Bar with at least five years of litigation experience in foreclosures or at least ten years of real estate and/or litigation experience;
- (3) Demonstrate completion of mediation training approved by the Minimum Illinois Continuing Legal Education Board or such other program as approved by the Chief Judge;
- (4) Submit an application for approval by the Chief Judge. The eligibility of each mediator to retain its status shall be periodically reviewed by the Chief Judge. The mediators shall comply with general standards as may from time to time be established by the Chief Judge and failure to adhere to these general standards may be grounds for decertification of the mediator by the Chief Judge. The Chief Judge may contract with an outside mediation service (provided the mediators meet the above qualifications) to provide these services.

(b) The mediators shall be compensated \$150 per court file for each file that is subject to mandatory mediation. Effective March 1, 2014, the filing fee paid by plaintiffs in all foreclosure cases shall increase by \$150. The additional \$150 filing fee shall be placed in a fund for this mandatory foreclosure mediation program subject to disbursement by the Chief Judge in accordance with this Rule which program shall also begin on that date.

(c) The Chief Judge of the Circuit Court shall be empowered to enter into a contract with an entity to provide the mediation services subject to all Court Rules and Procedures. It is contemplated that the Mandatory Residential Foreclosure Mediation program is subject to quarterly review by the Administrative Office of the Illinois Courts (AOIC) and that contracting with an entity for Mediation Services will result in services being provided at neither cost to the taxpayers nor the expenditure of any Public Funds with the exception of the Filing Fee authorized by the Illinois Supreme Court.

## 12.5 DISCOVERY

Unless otherwise ordered by court, no discovery shall take place until after the mediation conference is held.


## 12.6 CONFIDENTIALITY


Unless otherwise authorized by the parties, all oral or written communications to the mediator or in the mediation conference, 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.

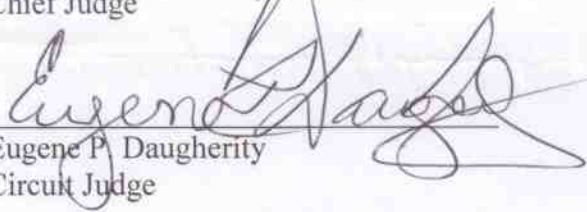
## 12.7 IMMUNITY


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.

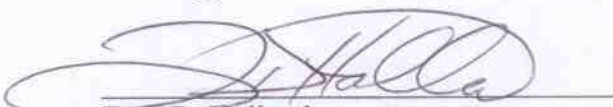
Entered: 2/19/14


  
H. Chris Ryan, Jr.  
Chief Judge

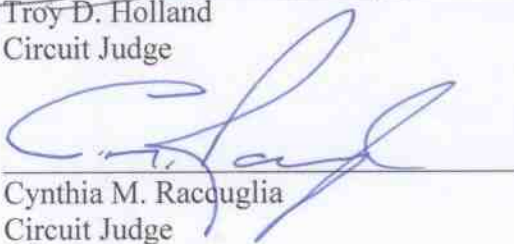
  
Marc P. Bernabei  
Circuit Judge

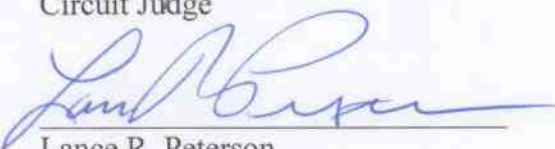
  
Eugene P. Daugherty  
Circuit Judge

  
Joseph P. Hettel  
Circuit Judge

  
Troy D. Holland  
Circuit Judge

  
Robert C. Marsaglia  
Circuit Judge

  
Cynthia M. Racuglia  
Circuit Judge

  
Lance R. Peterson  
Circuit Judge