



# Model Mortgage Mediation Procedures

## Introduction

In response to the growing number of home foreclosures in the United States, the American Arbitration Association® (AAA®) has developed Model Mortgage Mediation Procedures (MMMP) that may be adapted by courts or governmental agencies to apply in residential foreclosure actions either before or after the lender files in court to foreclose.

The MMMP creates an opportunity for Borrowers and Lenders to reach a mutually agreed upon resolution, possibly avoiding foreclosure, with the assistance of a mediator. The benefits of foreclosure mediation are many:

- Parties control the outcome;
- There is no cost to the Homeowner/Borrower;
- The parties have sixty (60) days to prepare for the mediation;
- Borrowers have access to a free foreclosure counselor who can provide valuable information on a variety of foreclosure avoidance options and help prepare Borrowers for the mediation;
- Borrowers will receive information from the Lenders regarding the mortgage at issue;
- Borrowers have an opportunity for direct communication with the Lenders to discuss their current financial situation and engage in settlement negotiations;
- A mediator will assist the parties in exploring alternatives to foreclosure.

## Mediation

Mediation is a non-binding process where the parties, the Borrower and Lender, attempt to find a mutually acceptable resolution to their dispute with the help of a neutral person called the Mediator. These procedures will apply in residential mortgage foreclosure mediations that are filed prior to or after a lawsuit filing to foreclose on the mortgage. Lenders and Borrowers may mediate voluntarily before a suit is filed following these procedures. Once the Lender and Borrower have completed mediation under these procedures, the Lender may certify that Lender and Borrower have mediated in accordance with the MMMP, in which case the Lender and Borrower will not be required to participate in mediation again unless ordered to do so by the presiding judge.

## The Program Manager

The American Arbitration Association (AAA) is a not-for-profit and neutral dispute resolution service provider organization designated as the Program Manager to handle administration of foreclosure mediation cases.



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### Borrower or Lender Participation

Upon receipt of the Mediation Request Form and the required filing fee, the Program Manager will contact the non-filing party and attempt to obtain their agreement to participate in the mediation program.

If the non-filing party does not want to participate in the mediation program, or if the Borrower fails to complete foreclosure counseling, or if the Program Manager is unable to contact the non-filing party, the MMMP Program case will be closed and notice provided to the parties.

### Attorney Representation

Both parties are entitled, but not obligated, to have representation by an attorney at the mediation. The parties must provide each other and the Program Manager with the name and contact information of their attorney.

### Foreclosure Counseling and Borrower Disclosures to Lender

Borrowers participating in mediation are required to meet with a foreclosure counselor and complete the required Borrower's Financial Disclosure for Mediation, which must be provided to the Program Manager prior to the mediation session. The Program Manager will schedule the mediation session for a date at least 30 days after the Borrower's Financial Disclosures have been made available to the Lender. The Program Manager will provide the Financial Disclosures to the Lender on a secure web-enabled information platform.

### Lender Disclosures to Borrower

Borrowers are entitled to request in writing disclosures from the Lender, no later than 25 days prior to the scheduled mediation session. Lender's Disclosures must be returned to the Program Manager not later than five (5) business days prior to the mediation session. The Program Manager will transmit the Lender's Disclosures to the Borrowers and to the electronic case site.

These disclosures consist of:

- Documentary evidence the Lender is the owner and holder in due course of the note and mortgage sued upon.
- A history showing the application of all payments by the Borrower during the life of the loan.
- A statement of the Lender's position on the present net value of the mortgage loan.
- The most current appraisal of the property available to the Lender.

### MMMP Mediator Appointment

A list of mediators trained in mediating residential mortgage foreclosure matters is maintained by the Program Manager and one will be appointed for each case unless the parties jointly select a qualified mediator.



## Mediation Process and Timeline

Mediation sessions will be held at a suitable location(s). The mediation is not scheduled in the first 60 days, to allow the parties to prepare and to give the Borrower an opportunity to meet with a foreclosure counselor. If the parties cannot settle at the initial mediation, the parties may agree to negotiate further on their own, or may ask the Program Manager and mediator to schedule a second session if they believe it will help. If the parties do not settle the matter in mediation, the MMMP case will be closed.

## Attendance Requirements

Certain persons are required to be physically present at the mediation session: the Lender's attorney; the Borrower; and the Borrower's attorney, if any, and the mediator. The Lender's representative must also attend the mediation but may appear at mediation through the use of communication equipment.

When the Lender's representative will appear at mediation through the use of communication equipment, the Lender must file with the Program Manager and serve a Notice that Lender's Representative Will.

Appear Through the Use of Communication Equipment and Designation of Authority to Sign Settlement Agreement at least five (5) days prior to the mediation. When attending mediation by use of communication equipment, the Lender's representative must attend the entire mediation.

When a mediation results in an impasse and following attendance at mediation through the use of communication equipment, Lender must file with the Program Manager and serve a Certification Regarding Attendance at Mediation Through the Use of Communication Equipment within five (5) days of the mediation session. If necessary, this Notice and Certification will be available to the Court if a suit is filed.

Junior lien holders and counsel, if any, may also appear at mediation by a representative with full settlement authority.

## Mediator's Impartiality and Duty to Disclose

MMMP mediators are required to abide by the Model Standards of Conduct for Mediators in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model Standards and any provision of the MMMP, the MMMP shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, 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.

Prior to accepting an appointment, MMMP mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. MMMP mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the Program Manager shall immediately communicate the disclosures to the parties for their comments.



The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

### Vacancies

If any mediator shall become unwilling or unable to serve, the Program Manager will appoint another mediator, unless the parties agree otherwise.

### Duties and Responsibilities of the Mediator

The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

The mediator is not a legal representative of any party and has no fiduciary duty to any party.

### Confidentiality

Subject to applicable law, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- Admissions made by a party or other participant in the course of the mediation proceedings;
- Proposals made or views expressed by the mediator; or
- The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.



No Stenographic Record

There shall be no stenographic record of the mediation process.

Exclusion of Liability

Neither the Program Manager nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the Program Manager nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator’s duties and responsibilities. All other procedures shall be interpreted and applied by the Program Manager.

Sample Fee Schedule\*

A \$400 administrative filing fee is to be paid by the lender at the time it files either its Request to Mediate or Agreement to Mediate form with the AAA.

The mediator’s fee(s) is to be paid by the lender to the AAA prior to the scheduling of any mediation session.

| LENDER’S FEES             | FEE AMOUNT   | REFUNDS OR CREDITS   |
|---------------------------|--|--|
| Administrative Filing Fee | \$400 administrative filing fee (includes initial outreach and foreclosure counseling).  | <p>\$175 refunded to lender if within 15 days of Receipt of the Request to Mediate Form or Agreement to Mediate Form the filing party withdraws the case or the non-filing party indicates it is not interested in participating in the Program; or if the case is closed within 15 days (from receipt of the request or agreement forms) due to inability to contact Borrower.</p> <p>\$100 is refunded if Borrower chooses not proceed with foreclosure counseling once Borrower is contacted.</p> |
| Mediator Fee              | Generally, falls within a range of \$500 to \$600 for a 2 hour mediation session. The mediator fee will vary depending on the location of the mediation. | <p>Full refund to lender if cancelled in writing 6 or more calendar days before the scheduled mediation conference.</p> <p>No refund if cancelled within 5 calendar days prior to the scheduled mediation conference.</p>  |

\* This is a sample fee schedule. The actual fees will vary depending on the program parameters.