

# Kane County Local Rules

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## **ARTICLE 5: MANDATORY RESIDENTIAL FORECLOSURE MEDIATION PROGRAM**

### **5.00 PURPOSE OF MANDATORY 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 promoting judicial efficiency. Further, the program is aimed at keeping families in homes, if possible, and to prevent vacant and abandoned houses in Kane County that negatively affect property values and de-stabilize neighborhoods.

### **5.01 ACTIONS ELIGIBLE FOR MEDIATION**

From the effective date of this rule, the parties in all residential real estate foreclosure (as defined by the Illinois Mortgage Foreclosure Law, [735 ILCS 5/15-1203 and 15-1219](#)) filed in Kane County are subject to the mediation program as set forth herein. Foreclosures of non-residential or commercial property are not eligible for mediation.

### **5.02 STAFF AND TRAINING**

- (a) The Mandatory Residential Mediation Program is established as and remains under the sole authority of the Sixteenth Judicial Circuit Court through the Chief Judge and the Judge presiding over the foreclosure court call as provided within these rules.
- (b) All mortgage foreclosure judges, the Program Coordinator, key court personnel and volunteers designated by the Chief Judge shall complete training regarding mortgage foreclosure mediation as approved by the Chief Judge.
- (c) The position of Program Coordinator is established to oversee the daily operations of the Program, and whether or not a direct employee of the Sixteenth Judicial Circuit, serves only with the approval of the Chief Judge and the Judge presiding over the foreclosure court call.
- (d) With the approval of the Chief Judge after consultation with the Judge presiding over the foreclosure court call, the designated duties of the Program Coordinator as set out within these rules may be assigned, delegated, or referred to other court employees, housing counseling agencies, legal aid organizations, bar associations, or other third parties as recognized by the court.
- (e) The Program Coordinator, and any other employee working in the Mandatory Residential Mediation Program, serves at the pleasure of the Chief Judge.

### **5.03 MEDIATION PROCEDURE**

- (a) The first page of every foreclosure complaint shall clearly designate whether the property is residential in nature and therefore falls within the mediation program.
- (b) A party may file a motion asking the Court to reconsider whether the property is residential in nature and falls within the mediation program.

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- (c) A First Notice describing the mediation program along with a checklist and questionnaire must be served on the defendant in residential foreclosure case with the summons (or alias summons). The First Notice shall inform the defendant that to participate in the mediation program, he must comply with the pre-screening process and file an appearance. The First Notice shall describe mediation and the pre-screening process. The First Notice shall include referral information to local HUD-certified housing counseling services, local pro bono legal counseling services through legal aid agencies and the [Kane County Bar Association](#), and the [Kane County Law Library and Self-Help Legal Center](#). If the plaintiff serves the defendant by publication, the clerk shall mail the First Notice to the defendant along with the publication notice.
- (d) Within fourteen (14) days of receipt of the First Notice, the defendant must contact the Program Coordinator to complete the Initial Conference. If the defendant fails to contact the Program Coordinator within fourteen (14) days of receipt of First Notice, the Program Coordinator shall send the Second Notice by mail providing the deadline for completion of the Initial Conference. If the defendant does not contact the Program Coordinator within forty-five (45) days of confirmation of service, the Program Coordinator shall send a report of non-participation to Court. The Court may remove the case from mediation on its own motion or on the plaintiff's motion.
- (e) Promptly upon service of process on the defendant, the plaintiff shall provide to the Program Coordinator confirmation of service. The Program Coordinator shall prescribe the manner and content of confirmation of service. The plaintiff shall provide the Program Coordinator any particularized checklist necessary for its loss mitigation program.
- (f) The Program Coordinator shall send the Second Notice scheduling an Initial Conference with the defendant for a specific date and time. Failure to receive this Second Notice does not relieve the defendant of the responsibility to contact the Program Coordinator within forty-five (45) days as described in paragraph (d) above.
- (g) The Initial Conference may be held by telephone.
- (h) In order to participate further in the foreclosure mediation process, the defendant must have an appearance on file.
- (i) If the defendant is eligible and interested in mediation, the Program Coordinator shall begin the Pre-screening Phase. The Program Coordinator will inform the plaintiff's attorney that the defendant is interested in mediation and that a Pre-screening Meeting has been scheduled.
- (j) The defendant shall complete the Pre-screening Phase within thirty (30) days of the Initial Conference (or by entry into the program as described in paragraph (p) following). During this phase, the Program Coordinator shall determine if the defendant has collected the documents listed on the checklist appropriate for the defendant (either the standard

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checklist or the checklist plaintiff has specifically provided for the defendant). If the defendant has not collected the required information, the program Coordinator shall have the discretion to extend the Pre-screening Phase an additional thirty (30) days. The Program Coordinator shall inform the parties of the extension. In addition, the Program Coordinator shall advise both parties of the progress of the Pre-screening Phase and facilitate the exchange of documentation. If the defendant fails to provide the required documents listed on the checklist appropriate for the defendant within the allotted time for the Pre-screening Phase, the Program Coordinator shall send a report of non-participation to the Court. The Court may remove the case from mediation on its own motion or on the plaintiff's motion.

- (k) After receiving the defendant's documents, the plaintiff will have forty-five (45) days to complete and send a plaintiff's questionnaire to the Program Coordinator. The plaintiff can request an additional fifteen (15) days if necessary.
- (l) Upon the completion of all required forms and questionnaires by both parties, the Program Coordinator shall schedule a mediation session to occur within sixty (60) days.
- (m) Alternatively, for good cause shown on motion of a party to the Court, or in the discretion of the Program Coordinator, the Program Coordinator may schedule a pre-mediation meeting to be conducted by a mediator. Said mediator will be assigned to the case for the mediation session and all subsequent sessions if any.
- (n) The defendant and the defendant's counsel, if any, are required to attend the mediation (or pre-mediation meeting described in paragraph (m) above). Plaintiff's counsel is also required to appear in person at the mediation session (or pre-mediation meeting described in paragraph (m) above). A plaintiff's representative with full settlement authority must participate in the mediation or pre-mediation meeting described in paragraph (m) above either in person or by teleconference. If any party fails to participate in good faith, the Court may impose appropriate sanctions.
- (o) Upon the conclusion of the mediation session, the Program Coordinator and the mediator shall file a report with the Court indicating the outcome. If the parties reach an agreement, the parties and their attorneys shall sign a summary of the terms of the agreement. At the request of the parties, the Court may retain jurisdiction of the case to review any trial period that the parties may enter prior to a loan modification becoming permanent. If the parties reach no agreement, the foreclosure action shall resume.
- (p) For good cause shown and at the discretion of the presiding judge, any party may motion the Court for entry into the mediation program. Defendants will have seven (7) days from the Order of entry to contact the Program Coordinator.

### **5.04 QUALIFICATION, APPOINTMENT, AND COMPENSATION OF MEDIATORS**

- (a) The Program Coordinator shall recommend mediators who have been certified as eligible for approval by the Chief Judge to act as foreclosure mediators. To be eligible as a mediator, an individual must:

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- (1) Be a member in good standing of the Illinois bar or a retired judge; and
  - (2) Demonstrate completion of foreclosure mediation training approved by the Chief Judge; and
  - (3) Submit an application in the required form; and
  - (4) Be recommended by the Program Coordinator
- (b) The Chief Judge is granted the authority under this rule to expand the eligibility requirement for mediators under (a) above to include licensed real estate professionals in good standing.
- (c) Final and/or continued approval of any eligible mediator is at the discretion of the Chief Judge.
- (d) The Program Coordinator shall prepare and maintain a list of approved mediators for assignment to foreclosure mediation on an annual basis.
- (e) The Program Coordinator has the discretion to determine the frequency and order of assignment of foreclosure mediations to any mediator on the list of approved mediators.
- (f) A mediator shall not mediate a matter that presents a clear conflict of interest. A conflict of interest arises 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.
- (g) 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.
- (h) A mediator shall be compensated at the rate of a minimum of fifty dollars (\$50.00) for a pre-mediation meeting, if any. For a mediation session, a mediator shall be compensated at the rate of one hundred dollars (\$100.00) per case. It is contemplated that under the design of this program, only one mediation session will be necessary. For good cause shown, including, but not limited to, an unexpected change in circumstances, the mediator may determine that a second mediation session is necessary and appropriate to aid the parties in achieving resolution. In such a case, the mediator will be compensated an additional minimum fifty dollars (\$50.00) for the additional mediation session. In no event will the mediator's compensation exceed two hundred dollars (\$200.00) per case, unless otherwise provided by general order entered by the Chief Judge.
- (i) All professional rules of conduct applicable to the respective profession of the mediator apply to the mediators in this program.

### **5.05 DISCOVERY**

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

### **5.06 CONFIDENTIALITY**

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Unless otherwise authorized by the Court or the parties, all oral and written communications to the Program 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.

## **5.07 IMMUNITY**

The Program Coordinator and any person approved to act as a mediator under these rules, while acting within 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 99.1](#).

## **5.08 LANGUAGE ACCESS**

It is the policy of this Program to provide meaningful language access to limited English proficient (LEP) program participants at all stages of participation. Written materials originated by the Program shall be readily available in English, Spanish, Polish, and Laotian and other language translations shall be reasonably made available upon request. Phone translation service shall be available for all phone and in-person communications, and in person-translators shall be available for mediation hearings. Language Access services shall be provided at no additional cost to the participants.

## **5.09 FILING FEES AND SUSTAINABILITY FUNDING**

- (a) Effective on a date certain as set by General Order of the Chief Judge, filing fees paid by the plaintiff for all foreclosures in Kane County shall be increased fifty dollars (\$50.00). The additional fifty dollars (\$50.00) filing fee shall be placed in a fund for this mandatory foreclosure mediation program, which shall begin on that date.
- (b) It is contemplated that the program will be sustained as needed and be self-sufficient as a result of the filing fee. The program will be re-assessed by the Chief Judge for financial viability at least annually, and/or immediately if any of the resources provided for funding are reduced or discontinued.

## **5.10 REPORTS**

- (a) The Chief Judge shall report quarterly to the Administrative Office of Illinois Courts on the revenues and expenditures of the program in the manner directed by that office.
- (b) The Chief Judge shall maintain statistical data on the participation in the Foreclosure Mediation Program including the number of residential foreclosures, the number of defendants who participate in the initial conference with the Foreclosure Mediation Program Coordinator, the number of defendants who complete the Pre-screening Meeting, and the number of mediation sessions. The Chief Judge shall also maintain statistical data on the results of participation in the pre-mediation and/or formal mediation phases of the Foreclosure Mediation Program, including the number of loans modified or otherwise worked out between the parties and other foreclosure alternatives, such as short sale or deed in lieu of foreclosure. The Chief Judge shall report this data to the Administrative Office of the Illinois Courts at such times and in such manner as required.