

Appendix N

Parameters for Managed Mediation

PARAMETERS FOR PROVIDERS OF MANAGED MEDIATION SERVICES

Purpose: To define the parameters of managers directing mediation services for parties involved in residential mortgage foreclosure litigation.

A. Characteristics of Mediation Manager

1. Compliant with ADR principles as promulgated by the supreme court, ADR statutes and rules;
2. Non-profit entity, or associated with a reputable organization of proven competence, autonomous and independent of the judicial branch;
3. Capable of efficient administration of large case loads;
4. Sensitive to cultural, diversity and ADA issues;
5. Politically and professionally neutral;
6. Knowledgeable of court procedures, current trends, laws, rules, and regulations affecting residential foreclosures;
7. Fiscally transparent and accountable;
8. Quickly adaptable to a dynamic and rapidly evolving legal environment;
9. Financially stable;
10. Capable of sustained operation without fiscal impact on the courts;
11. Capable of effectively implementing information technology systems and web-based programs;
12. Alert to ethical and confidentiality issues;
13. Agreeable to acting as Manager for voluntary pre-suit mediation;

B. Services to be provided by Mediation Manager

1. Receive mediation referrals, and within designated time limits schedule and coordinate mediation conferences: date, place and time; reserve and provide venues for mediation and caucus; manage continuances and re-scheduling;
2. Maintain financial books and records to insure transparency and accuracy of receipts and expenditures;
3. Prepare financial statements, financial and performance reports, for example, attendance and failure to attend mediation reports;

4. Establish and maintain performance standards for staff and mediators, including maintaining a roster of mediators comprised of persons who are properly trained in accordance with the standards attached, and who are otherwise qualified, and effective in foreclosure mediation;
5. Assist in specialized training of mediators for workout options and resources;
6. Arrange and pay for interpreters;
7. Bill, collect, deposit and disburse mediation fees and refunds; pay for necessary services and costs incidental to mediation managing as required to implement mediation administrative order;
8. Establish procedures for managing and communicating with *pro se* litigants and attorneys. This includes implementing a process for prompt outreach to borrower-owners immediately after suit has been filed; the goal of the outreach is to inform mortgagors about the mediation program, invite their participation, and to start the process of referral to mortgage foreclosure counseling and the collection of required financial information;
9. Establish procedures for complying with confidentiality rules;
10. Establish a system for managing mediators that:
 - a. provides for the impartial assignment of mediators, for example, by the use of a rotating list; and
 - b. is open to qualified supreme court certified mediators who are capable of providing effective services in the residential foreclosure setting;
 - c. allows for more than one Mediation Managing entity in the circuit if approved by the chief judge;
11. Monitor or supervise the preparation of mediation settlement agreements;
12. In accordance with the Administrative Order establish the schedule for division of fees between mediators, managers and others;
13. Prepare operational reports as required by the chief judge, re number of cases mediated, impasse or successful mediations, etc.;
14. Solicit qualified mediators and maintain current list of mediators available for residential foreclosure cases;
15. Establish procedures for disqualifying and replacing mediators with ethical or other conflicts;
16. Coordinate the referral of mortgagors to certified foreclosure counselors pre-mediation;
17. Refer unrepresented parties to legal aid, or panels of pro bono or reduced fee attorneys;

18. Facilitate the exchange of documents between the parties, pre and post mediation, including the establishment and maintenance of a secure web-based internet communication system between the mediation manager and all parties to mediation using a platform capable of transmitting financial data, email, mediation forms and attachments, and able to track participant payments and refunds;
19. Maintain for dissemination to owner-borrowers a list of approved foreclosure counselors willing to perform services at the rates established by the court;
20. Answer inquiries from mediators and parties re the mediation process and forms;
21. Establish a system for resolving complaints against mediators and other persons involved in the Mediation Manager Program;
22. Establish procedures for participant evaluation of mediation program services, including satisfaction surveys; and
23. Develop the forms and procedures necessary to verify compliance with the residential foreclosure mediation program by lender/servicer representatives, their attorneys and borrowers.
24. Using judicial disqualification criteria as a model, disclose to the chief judge any direct or indirect financial ties to lenders/servicers (including any immediate family members), whether present or within the past 3 years, with a continuing obligation to disclose.