

# IMPORTANT NOTICE

## Provisions for the implementation of the compulsory mediation process in cases of foreclosure on mortgages

Law No. 184-2012, passed on August 17, 2012 and known as the “Law for Compulsory Mediation and Preservation of your Home in Processes of Mortgage Foreclosure on a Principal Residence”, sets forth the duty of the court to refer parties to mediation, whenever it deems necessary, in cases of mortgage foreclosure or court-ordered sale involving the principal residence of the debtor. The provisions of this law come into effect on July 1, 2013. Alternative dispute resolution methods, including mediation, are regulated by the Judiciary through the Alternative Dispute Resolution Regulations, administrated by the Alternative Dispute Resolution Office. The mediation process is governed by Law No. 19 of September 22, 1983, as amended, and the Alternative Dispute Resolution Regulations, as amended. In compliance with the duty imposed upon the Judiciary by Law No. 184-2012, and with the aim of facilitating its uniform and effective implementation, the following is established:

- Referrals to mediation covered by Law No. 184-2013 and by the regulations adopted for these purposes are limited to cases of mortgage foreclosure or court-ordered sale where the property that serves as mortgage guarantee is a residential property that constitutes the principal dwelling of the mortgagor or of the mortgagor and his/her immediate family, which, for tax purposes, is subject to the legally established tax exemption.
- Referral to mediation of a case of foreclosure on the mortgage on the residential property that constitutes the mortgagor’s principal dwelling shall not be admissible if a default judgment has been entered against the mortgagor, or if for any reason or disciplinary measure the mortgagor’s claims have been expunged by the court.
- In cases where the court determines that a referral to compulsory mediation is justified under Law No. 184-2012, within sixty (60) days of filing of the rejoinder by the defendant-mortgagor and before a date for the pre-trial conference is set, the Judge shall schedule a conference to coordinate the details related to the referral to compulsory mediation. Once the rejoinder has been received, there is no impediment to the Judge immediately scheduling the conference to refer the matter to mediation immediately, without having to wait until the maximum period indicated above has passed.

At the aforementioned hearing, the presiding Judge shall instruct the creditor or the creditor’s representative to indicate to the mortgagor the information or documentation that he/she must have on hand at the compulsory mediation session in order to assess the alternatives for which he/she qualifies. Moreover, the Judge shall offer the parties the option of the Conflict Mediation Center operated by the Judiciary or the option of a private mediator chosen by the parties.

In the latter case, the parties shall have access to the Registry of Private Certified Mediators maintained by the Alternative Dispute Resolution Office so that they may make their choice. The Judge shall inform the parties that in cases of referrals to private mediators, the costs of the mediation process are to be paid in equal parts, unless otherwise agreed. If the parties choose a private mediator, that mediator must notify the Judge by means of a motion that he/she has accepted the case for mediation.

- Mediation processes referred to a Conflict Mediation Center operated by the Judiciary shall be conducted at the office of the relevant Judicial Region. Conversely, mediation processes referred to private mediators shall be conducted at the place chosen by the parties in agreement with the appointed mediator, excluding the offices of the mortgagee or the mortgagee’s attorneys, legal representatives or advisors.
- In cases of mortgage foreclosure that should be referred to mediation pursuant to Law No. 184-2012, the presiding Judge shall issue an order for the compulsory mediation meeting. To this end, the court shall use form OAT 1698, Order of Referral to the Conflict Mediation Center in Cases of Mortgage Foreclosure, or form OAT 1697, Order of Referral to a Private Mediator in Cases of Mortgage Foreclosure, as applicable.

The compulsory mediation meeting shall constitute a jurisdictional requirement for the continuation of court proceedings, and if this meeting is not held the Judge shall be unable to issue a judgment, and/or the Bailiff shall be unable to hold the court-ordered sale of the property encumbered by the mortgage whose foreclosure has been requested.

The Judge shall inform the parties that any person who appears on their behalf at the compulsory mediation meeting must have decision-making authority. The representatives of both parties must give proof of their status as representatives, and their decision-making authority on behalf of the party they represent. In cases referred to a Conflict Mediation Center operated by the Judiciary, this shall be done by submission to the mediator of form OAT 1351, Authorization for Representation in Mediation for Individuals, or form OAT 1360, Authorization for Representation in Mediation for Organizations, duly completed as applicable.

- In cases referred to mediation under Law No. 184-2012, the mediator shall hold a compulsory mediation meeting, under penalty of contempt, as immediately as possible within the sixty (60) days established in Rule 3.06 of the Alternative Dispute Resolution Regulations. The mediation process may extend to several meetings if necessary, subject to the conditions set forth in Rule 7.10 of the aforementioned Regulations. The mortgagor shall be entitled only to one mediation procedure in a civil action brought for foreclosure on the mortgage on the residential property that constitutes his/her principal dwelling.
- At the compulsory mediation meeting, the mortgagee shall notify the mortgagor of all the alternatives available in the market for which he/she qualifies in order to prevent foreclosure on the mortgage or the court-ordered sale of a residential property that constitutes the mortgagor’s principal dwelling.
- Once the compulsory mediation process has been completed, the mediator shall report the outcome of the referral to the Judge so that the court may act accordingly as required by law. If one of the parties fails to attend the mediation process, the mediator shall likewise inform the Judge responsible for the case so that the relevant actions can be taken.
- The compulsory nature of an initial mediation session does not imply any obligation upon the parties to reach an agreement as a result of the process.
- In view of its procedural nature and its essentially remedial purpose, the provisions of Law No. 184-2012 and of these rules cover both cases of mortgage foreclosure on principal dwellings that are pending as of July 1, 2013 for which a pre-trial conference has not yet been scheduled, and court actions of the same nature submitted as of the aforesaid date.
- The Alternative Dispute Resolution Office shall issue the guidelines it deems necessary in accordance with the powers conferred upon it by Rule 6.03 of the Alternative Dispute Resolution Regulations, *supra*, to ensure the viability of this process.
- The services of the Judiciary’s Conflict Mediation Center are offered free of cost.



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