

Disaster Recovery Claims Mediation Procedures

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Introduction to Disaster Recovery Claims Mediation

To meet the needs of natural disaster Insured and Insurers, the American Arbitration Association provides the AAA Disaster Recovery Claims Resolution Services to assist home, property and business owners, as well as their insurance providers (Insurers), in administering cases resulting from disputed insurance claim amounts.

The Disaster Recovery Claims Resolution Services includes procedures that govern the administration of disaster recovery claims cases. These AAA Disaster Recovery Claims Mediation Procedures offer the parties the opportunity to resolve their claims with the expert assistance of an AAA mediator. The AAA mediator's role is to facilitate resolution by guiding the parties to settlement. As a dispute resolution tool, mediation is well-known and is a process that is well-regarded for its high settlement rate.

As part of its Disaster Recovery Claims Resolution Services, the AAA provides access to a national panel of neutrals with significant expertise in disaster claims, as well as insurance, construction, commercial and general business matters. AAA mediators possess a high degree of expertise and adhere to the AAA's standards of integrity.

DM-1. Agreement of Parties

Parties to personal lines insurance claims, or businesses with insured losses of less than \$75,000, arising from a natural disaster may submit claims to mediation under these mediation procedures. When parties agree or stipulate to submit their insurance disaster claim to AAA mediation, they shall be deemed to have made these procedures, as amended and in effect as of the date of the submission of the dispute, as a part of their agreement. These procedures may be adopted by the agreement of the parties before or after a dispute has arisen.

DM-2. Initiation of Mediation, Deposits for Mediator Fee

An Insurer may initiate disaster claim mediation by filing with the AAA Mediation Submission Form (a written request for mediation) pursuant to these procedures by mail, fax or electronically using AAASWebFile® (available at www.adr.org) together with the appropriate nonrefundable case filing fee (Administrative Fees, Mediator Compensation, see below).

The Insurer shall also at filing, deposit with the AAA the required fees, as well as the mediator's compensation for the mediation session (Administrative Fees, Mediator Compensation, see below). The AAA will issue the compensation to the mediator after the appointment is confirmed. Further billing beyond two hours of mediation time will be issued by the mediator directly to the Insurer if the parties agree to continue the mediation session past the initial mediation period. Direct expenses associated with the mediation will be billed by the mediator to the Insurer.

A submission to mediation shall contain a brief statement of the nature of the dispute and the names, addresses, telephone numbers and email addresses (if available) of all parties to the dispute and those who will represent them, if any, in the mediation. The submission to mediation should also specify whether the parties want the AAA to directly appoint a mediator or whether the parties intend to select a mediator from a proposed list of mediators provided by the AAA. If the parties have not indicated a preference or cannot agree upon a method for the selection of a mediator, the AAA will appoint a qualified mediator to serve. The initiating Insurer shall simultaneously file two copies of the submission to mediation with the AAA and one copy with every other party to the dispute.

DM-3. Appointment of the Mediator

Upon receipt of a request for mediation, the AAA:

- will appoint a qualified mediator to serve, or

- submit a list of qualified mediators to the parties to rank in order of preference.

Upon receipt of the parties' rankings, the AAA will appoint a mediator.

DM-4. Qualifications of the Mediator

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the AAA shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the AAA will appoint another mediator. The AAA is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

DM-5. Vacancies

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

DM-6. Representation

Any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the mediator.

DM-7. Date, Time and Place of Mediation

Upon submission the parties must identify their preference for the conduct of the mediation session. Mediations may be conducted by telephone, email communication (if requested) or an in-person conference. The mediator shall contact the parties by fax, telephone or email to fix the date and the time of the mediation session. The mediation shall be held by telephone, email communication or in-person at any convenient time and location agreeable to the mediator and the parties, as the mediator shall determine. Time is of the essence in assisting in settling disputes. Therefore, the mediator and the parties will make every effort to try and resolve their dispute amicably and in a timely manner.

DM-8. Identification of Matters in Dispute

Each party shall cooperate in good faith with the mediator to advance the mediation. Prior to the scheduled mediation session, each party shall provide the mediator with a brief claim statement setting forth its position with regard to the issues that need to be resolved to the mediator by fax, mail or email address. The mediator will direct the exchange of this information. Prior to the mediation session, parties are encouraged to provide any other information to the mediator that is pertinent to the issues presented.

DM-9. Authority of the Mediator

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. The mediator is authorized to conduct joint and separate meetings by telephone conference or email with the parties or in-person.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

DM-10. Privacy

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

DM-11. Confidentiality

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. 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 proceedings:

- a. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b. admissions made by another party in the course of the mediation proceedings;
- c. proposals made or views expressed by the mediator; or
- d. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

DM-12. No Stenographic Record

There shall be no stenographic record of the mediation process.

DM-13. Termination of Mediation

The mediation shall be terminated:

- a. by the execution of a settlement agreement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

DM-14. Exclusion of Liability

Neither the AAA nor any mediator is a necessary or proper party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party in any action for

damages or injunctive relief for any act or omission in connection with any mediation conducted under these procedures.

DM-15. 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 AAA.

DM-16. Expenses

The expenses of any other persons appearing for either side shall be paid by the party producing such person(s). All other expenses of the mediation, including required travel and other expenses of the mediator shall be the responsibility of the Insurer.

Administrative Fees, Mediator Compensation

AAA's administrative fees and the mediator's compensation is due and payable at the time the submission is filed with the AAA.

Administrative Fees:

The nonrefundable case filing fee for AAA is:

Home Owner Disputes:

- \$150--Direct Appointment of Mediator by AAA
- \$300--Submission of a List of Mediators, followed by appointment

Business Disputes less than \$75,000

- \$150--Direct Appointment of Mediator by AAA
- \$300--Submission of a List of Mediators, followed by appointment

Mediator Compensation and Expenses:

Before the commencement of the mediation, the Insurer is responsible for depositing \$300 in mediator compensation for a two-hour telephonic conference, or for a conference conducted by email, with the AAA as a deposit for the mediator's services. If the conference will be conducted in-person, the Insurer is responsible for depositing \$400 in mediator compensation for a two-hour in-person conference. The AAA will submit the fee to the mediator at the time of the appointment so that the mediator can begin scheduling the case within 24 hours.

By agreement, the parties and the mediator can continue the mediation beyond two hours and the mediator can directly bill the Insurer at the rate of \$125 per hour for a telephonic conference or for a conference conducted by email, or \$175 per hour for in-person conferences for each additional hour. Mediators may require that deposits for this compensation be made with the mediator prior to continuing the sessions.

All direct expenses of the mediation sessions are the responsibility of the Insurer.

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