



**Procedures for the New York State Department of Financial Services
Mediation Program for Insurance Claims Arising Out of Riot or Civil Commotion
Filed on or after May 30, 2020
(the “Civil Commotion Mediation Program”)**

Introduction

The Civil Commotion Mediation Program was established by the New York State Department of Financial Services (“Department”) as a voluntary program for claimants who are individuals or small business owners; who have insurance claims against a New York-licensed insurer for loss of or damage to real or personal property or other liabilities for loss of, damage to, or injury to persons or property; and who have had their claims denied in whole or part, are disputing the settlement amount offered by the insurer where the difference in position between the claimant and the insurer is \$1,000 or more, or where the insurer has not offered to settle within 45 days after it has received all the documentation that it requires from the claimant. For the purpose of this program, “small business” means any business that is resident in the State of New York, is independently owned or operated, and employs 100 or fewer individuals. In addition, for a claim to be eligible for the mediation program, the subject loss or damage must have resulted from riot or civil commotion occurring within the State of New York, and the claimant’s claim must have been filed on or after May 30, 2020. Other eligibility requirements are set forth below.

The Superintendent of Financial Services (“Superintendent”) has designated the American Arbitration Association® (“AAA”) to administer the mediation program under procedures and standards approved by the Superintendent. This document sets forth the procedures approved by the Superintendent that govern the mediation program.

Rights and Responsibilities of Insurers and Claimants

This voluntary mediation program entails certain rights and responsibilities for insurers and claimants, including:

- Both parties may be represented by an attorney or other designated individual, including a relative or friend of the claimant.
- The insurer is obligated to notify eligible claimants of the right to mediate.
- Both parties are obligated to participate in the mediation in good faith.
- The insurer is obligated to pay for the cost of the mediation, except in the circumstances outlined below.
- The insurer’s representative at the mediation must be knowledgeable about the particular claim. The representative must bring to the session an electronic copy of the policy and the entire claims file, including all relevant documents and correspondence with the claimant.
- The insurer’s representative at the mediation also must have authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer.
- The insurer and the claimant may elect to bring their own translator to the mediation.
- The insurer and the claimant do not have to agree to any settlement proposal; the mediation is a nonbinding process.
- Participation in the mediation is voluntary for the claimant.



- A mediation session may be cancelled or rescheduled if the mediator determines that either the claimant or the insurer is not participating in good faith. If the claimant wishes to have another session, the party that the mediator determined was not participating in good faith will be responsible for the cost of a rescheduled mediation session, which shall be no more than \$400 per additional session.
- If a mediation session is rescheduled because of a finding that the insurer was not participating in good faith, the insurer must send a different representative to the rescheduled mediation session.
- A mediation session will be rescheduled for no additional administrative fee if the claimant or insurer is unable to attend the scheduled mediation for good cause, but a cancellation fee covering the mediator’s compensation may apply.
- If a mediation session is cancelled less than three business days in advance of the scheduled mediation session, a cancellation fee shall be paid by the insurer if the cancellation is caused by the insurer or if the cancellation is caused by a claimant showing good cause. If the cancellation is caused by a claimant without good cause shown, then the cancellation fee shall be paid by the claimant.
- Prior to and during the scheduled mediation conference session(s), a claimant, insurer, and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.
- Both parties to the mediation shall not continuously disrupt the mediation process, become unduly argumentative or adversarial, or otherwise inhibit the negotiations.

Costs Paid by Insurers

The fee structure for the Civil Commotion Mediation Program is based on the assumption that a successful mediation can in many cases be accomplished with one mediation session of two hours. Accordingly, the reasonable program fees for the managed mediation, including the filing fee, the mediator’s fee for one two-hour session, and the fee for administration of the program, are a total of \$750.00, unless additional mediation session time is scheduled. Additional sessions as recommended by the mediator and agreed to by the parties may be scheduled in half-hour increments if it is determined that additional time would assist in successfully mediating a claim. The mediator may reschedule a session if the mediator determines that a party is not participating in good faith and the insured wishes to continue the mediation. Cancellation fees for the mediator’s time may apply. No additional administrative fees are charged for additional or rescheduled sessions. There are no dedicated charges for video conference or telephonic hearings; however, should in-person hearings become available, in-person hearings that take place outside of an AAA facility may incur additional fees. The fee structure for insurers is as follows:

Insurer’s Staged Fees	Fees	Refunds, Credits, or Additional Costs
Filing and case administration fee (per case)	\$350	Cases that the insurer knows or has reason to believe involve a fraudulent insurance act must be reported by the insurer to the Department. Such cases will be closed, and the insurer will be credited \$175. Cases closed immediately following the filing of a claim (such as claims rejected for ineligibility) will also result in a credit of \$175 to the insurer.



Mediator Compensation for two-hour session	\$400 (\$200 per hour)	If the parties settle a matter before the mediation is scheduled to occur, the insurer shall be provided with a full refund of the mediator compensation that it paid unless cancellation fees as noted below are applicable.
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Mediator Compensation for additional time or sessions	\$100 for each additional 30-minute period of time	Examples of situations that may require additional mediator time and thus additional mediator compensation include cases involving complex issues or any case in which the mediator determines that additional time may result in a successful mediation.
Cancellation fees	\$200	A cancellation fee of \$200 for mediator compensation is required if a session is cancelled less than three business days in advance of the scheduled mediation session, to be paid by the insurer if the insurer cancels or if the claimant cancels for good cause shown; and to be paid by the claimant if the claimant cancels without good cause shown.

Filing Information and Contact Information

To request mediation, a claimant must complete a Mediation Request Form and send it either to the AAA or to the insurer for transmittal to the AAA. Application forms are available at www.adr.org, by calling the toll-free numbers below, or by writing to AAACivComNY@adr.org. A request for mediation can be filed directly online via the AAA's webfile system at www.adr.org. Additionally, a request for mediation can be emailed or faxed to the contact information below. Finally, a request for mediation can be mailed to the insurer for electronic transmission to the AAA.

The AAA's contact information is as follows:

Telephone:

**Toll-Free 855-366-9767, 855-366-9768
or 917-438-1660**

Email:

AAACivComNY@adr.org

Fax:

646-845-1958

Webfile:

www.adr.org



Eligibility – Types of Claims

The mediation program is available only for certain types of claims. Specifically, the program is available for claims filed by an individual or small business owner (“small business” is defined in the introduction of this document) with a New York-licensed insurer for loss of or damage to real or personal property, or other liabilities for loss of, damage to, or injury to persons or property. The loss or damage must have resulted from riot or civil commotion occurring within the State of New York, and the claimant’s claim must have been filed on or after May 30, 2020.

The mediation program is not available for:

- 1) a dispute in property valuation that has been submitted to an appraisal process, unless the insurer and the claimant agree otherwise;
- 2) a claim that is the subject of a civil action filed by the claimant against the insurer, unless the insurer and the claimant agree otherwise; or
- 3) a claim that the insurer has reason to believe or knows is a fraudulent insurance act. Assertions that a claim is a fraudulent insurance act must be submitted in writing and supported by substantial evidence.

Eligibility – Status of Claims

To be eligible for the mediation program, claims meeting the “type” requirement also must be in a certain status. Specifically, the mediation program is available:

- 1) when an insurer has denied a claim in whole or in part;
- 2) when the insurer has received notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is \$1,000 or more; or
- 3) within two business days after the date that is 45 days after the insurer has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, provided that the insurer has not offered to settle the claim prior to such date.

Initiation of Mediation

For claims that meet the above type and status requirements, an insurer must provide notice to the claimant that the mediation program is available. The notice must inform the claimant of the right to request mediation and provide instructions on how the claimant may request mediation, including the name, webfile address, phone number, email address, and fax number of the AAA.

The mediation process begins once the claimant submits a request for mediation to the AAA, or if the claimant has submitted its request for mediation directly to the insurer, once the insurer forwards the request to the AAA.



The AAA shall schedule a mediation to occur within 20 business days of receiving an application for mediation from a claimant (or an insurer transmitting a claimant's request). If the claimant and/or insurer are unavailable on the date scheduled by the AAA, the AAA shall schedule the mediation for the earliest date that the insurer and claimant are available. The AAA shall notify the Department if the AAA frequently has difficulty scheduling mediations with a particular insurer.

Mediators' Qualifications

The AAA will maintain at its discretion the list of mediators available for the Civil Commotion Mediation Program. For each case, the AAA will appoint a mediator using a random rotation system. After a mediator is notified and has accepted the appointment, the AAA will notify the claimant and the insurer of the time and place of the mediation session.

The mediators are neutral individuals who have completed at least 35 hours of mediation training and have been mediating for a minimum of five years. They may include members of the AAA New York Roster of Mediators, members of the New York State Court Roster, members of the New York Federal Court Roster, members of the New York State and City Bar Association Roster of Mediators, and others at the AAA's discretion. The AAA retains the right to set minimum qualifications for the mediators who serve on this panel, may establish training and continuing education requirements, and retains the discretion to appoint individuals to and remove individuals from this mediation panel as required.

Mediator's Impartiality and Duty to Disclose

Mediators appointed to Civil Commotion mediations are required to comply with the AAA/ABA/ACR Model Standards of Conduct for Mediators. In the event of a conflict between the Model Standards and any provision of these Procedures, the Procedures shall govern. Among other things, the Model 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.

To that end, prior to accepting an appointment, Civil Commotion 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. Civil Commotion 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. A mediator may not mediate any case for which the mediator cannot be impartial, whether based upon a conflict of interest or 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 is authorized to conduct separate or ex parte meetings during the mediation session and to have other communications with the parties and/or their representatives, before, during, and after any scheduled mediation



conference. These communications may be conducted via online platform, telephone, letter, email, text, or otherwise. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a mutually satisfactory resolution of their dispute. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

The Mediation Sessions

At present, mediations will be conducted by video conference. Due to COVID-19 concerns and restrictions, in-person mediations will not be available until further notice.

In each mediation, the mediator will attempt to help the claimant and the insurer reach a negotiated settlement of their own making. The mediator may not decide who “wins” or “loses” or who is “right” or “wrong.” The mediator’s duty is to help the parties look at the dispute objectively, listen to each side privately, seek alternative solutions, and help the parties find a mutual solution.

In the event that the insurer and claimant reach a settlement agreement during the mediation, the mediator shall record the settlement agreement on a form provided by the AAA that has been reviewed and approved by the Superintendent. The mediator will provide electronically to each party a copy of the settlement agreement. Each party in turn will read and review the settlement agreement, and the mediator will make any corrections needed and agreed to by the insurer and the claimant. Once the settlement agreement has been recorded in a manner that is acceptable to the insurer and the claimant, that copy of the agreement will be provided electronically to the insurer and the claimant, and both the insurer and the claimant shall provide confirmation to the mediator, via DocuSign, that they agree to the settlement.

Attendance Requirements and Good Faith

Claimants and insurers are required to attend mediation sessions and participate in good faith.

If the mediator determines that either the insurer or the claimant is not participating in the mediation in good faith, or if after good faith efforts a settlement cannot be reached, the mediator may terminate a mediation session.

Good faith for the insurer means, at a minimum, that the insurer sends a representative to the mediation who is knowledgeable with respect to the particular claim and who has authority to make a binding claims decision and payment on behalf of the insurer. As noted above, the insurer’s representative must bring an electronic copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

The AAA may determine good faith only with respect to determining whether to schedule additional mediation sessions or to report conduct of an insurer to the Superintendent.

An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

Neither the parties nor their representatives shall disrupt the process, become unduly argumentative or adversarial, or otherwise inhibit the negotiations.



The AAA may schedule additional mediation sessions, without additional administrative charge, if it determines that one or more additional sessions may result in a settlement. The AAA may require the insurer to send a different representative to a rescheduled mediation session if the mediator determines that the representative has not participated in good faith. In such a case, the mediator's fee for the rescheduled mediation shall not exceed \$400 and shall be paid by the insurer.

The AAA may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the mediator's fee for the rescheduled session, which shall not exceed \$400.

Each party may be represented by an attorney or other designated individual at the mediation. A party who will be represented at the mediation by an attorney must provide the other party and the AAA with the name of, and contact information for, the attorney prior to the mediation session.

Exclusion of Liability

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

Confidentiality

Mediation sessions are held in strict confidentiality and statements made during the mediation sessions are not admissible into evidence in any civil litigation concerning the claim, except with respect to any proceeding concerning an investigation of insurance fraud. Prior to the first mediation session, the insurer and claimant shall sign a written agreement on a form provided by the AAA and approved by the Superintendent indicating that each of them agrees that such statements are confidential and that the mediator and/or the AAA or any AAA employee will not be called as a witness or to provide discovery by any party to the mediation in any litigation with regard to the claim, except with respect to any proceeding concerning an investigation of insurance fraud. The statement of the claimant is included within the Mediation Request Form. The insurer may provide a blanket statement that it agrees to these provisions for all mediations under this program, but if it does not, it will be required to provide a separate written agreement for each mediation.

AAA Reporting Requirements

The AAA will maintain records on each application for mediation (including details about the mediation process, such as the date of application, date of mediation, date of settlement or case closing, and the outcome of each matter).

Every Monday, the AAA will provide a report to the Superintendent containing such data about the mediation program as the Superintendent shall prescribe, including: the number of new applications for mediation filed with the AAA during the prior week, the number of mediations held during the prior week, the number of matters that settled pursuant to mediation during the prior



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week, the number of mediations that were resolved by settlement outside mediation during the prior week, and the cumulative number of outstanding cases that the AAA is overseeing.