



CREFC – Model Dispute Resolution & Remedies Language

March 2011

Section 12. Mediation.

- (a) Except as expressly provided in Subsections (b) and (e) of this Section, no litigation, administrative proceeding, arbitration or other proceeding (an “Action”) with respect to any dispute, claim or controversy (a “Dispute”) arising out of or relating to a request for cure, substitution, or repurchase under Section 2.03(b) (a “Request”) may be commenced until the Dispute has first been submitted to a recognized dispute mediation organization which has been certified by [Commercial Real Estate Finance Council] (the “Certifying Body”), or such other organization upon which the party making the Request (the “Requesting Party”) and Mortgage Loan Seller (either a “Mediation Party” or collectively the “Mediation Parties”) mutually agree (both such organizations, a “Mediation Agency”), to conduct a non-binding mediation of the Dispute (the “Mediation”). Either Mediation Party may commence Mediation by providing to the Mediation Agency and the other Mediation Party a written request for Mediation, setting forth in sufficient detail the subject matter of the Dispute and the specific relief being requested. Any statute of limitations, statute of repose or doctrine of laches shall be tolled as of the date that the Request is sent to the Mediation Agency, and the Mediating Parties waive any right to assert that the time prescribed by any statute of limitations, statute of repose or laches doctrine has run during the tolling period.
- (b) If a Special Servicer determines at any time either prior to or after sending a Request that it is in the best interest of the Certificateholders to proceed with a liquidation, workout or other resolution (a “Resolution”) of a Mortgage Loan or REO Property (any Resolution pursuant to which shall not constitute a defense against a repurchase) of a Mortgage Loan, the Special Servicer may proceed with such Resolution *provided*, that any such action is consistent with the Servicing Standard. In the event of such Resolution, the Mortgage Loan Seller will be liable for the difference between the aggregate of all Resolution proceeds, Insurance and Condemnation Proceeds, net REO Revenues and all other amounts previously received from the Resolution in respect of, such Mortgage Loan and the Purchase Price to the extent the repurchase claim is successful. Any Mediation Party may seek equitable relief prior to or during the Mediation in order to preserve the status quo and/or for other emergency relief pending the completion of the Mediation.
- (c) The Mediation Parties will cooperate with the Mediation Agency and with one another in (i) the selection of an individual neutral mediator (the “Mediator”) from the Mediation Agency’s panel of qualified neutral mediators pursuant to the Mediation Agency’s rules of procedure, (ii) the scheduling of the Mediation proceedings for a mutually acceptable date and location, (iii) attending the Mediation sessions, (iv) providing information and documents requested by the Mediator, and (v) working with the Mediator. The Mediation Parties covenant that they will fully participate in the Mediation in good faith, including making available for any Mediation a business person with full settlement authority, and will be responsible for their own costs in the Mediation. Each Mediation Party shall be responsible for paying their own fees and expenses, and the Mediation Parties shall share equally the costs, fees and expenses of the Mediation and Mediation Agency; provided, however, if the Seller is required to repurchase the Mortgage Loan or REO Property, the Mortgage Loan Seller shall reimburse the Special Servicer for all costs, fees and expenses incurred in connection with the Mediation.



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- (d) All offers, promises, conduct and statements, whether oral or written, made in the course or in connection with the Mediation by either of the Mediation Parties, their agents, employees, experts and attorneys, and by the Mediator and any of the Mediation Agency’s employees, are confidential, privileged, inadmissible and non-discoverable for any purpose, including impeachment, in any Action involving the Mediation Parties; provided that documents which are otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable solely as a result of the Mediation.
- (e) Except as expressly provided in Subsection (b) of this Section, no Mediation Party may commence an Action, with respect to the matters submitted to Mediation until the earlier to occur of the completion of (i) the initial Mediation session, which, if the Dispute is not therein resolved, shall include a 10-day “cooling off” period following the Mediation, and (ii) 90 days after the receipt of the initial written request for Mediation. A Mediation may continue after the commencement of an Action permitted by Subsection (e) if the Mediation Parties agree to do so. Any Mediating Parties may terminate the Mediation by written notice after the occurrence of the earlier of sub-paragraphs (i) and (ii) above, in which case, the tolling period set forth in Subsection (a) shall terminate three (3) business days after the date that the termination notice is sent.
- (f) The Mediation Parties agree that (i) all Mediations pursuant to this Section will be conducted in accordance with the official CMBS Mediation Guidelines promulgated by the Certifying Body, and (ii) the Mediator shall have the right to consult, from time to time during the Mediation, with neutral member(s) of the CMBS Mediation Advisory Board established by the Certifying Body to provide Mediators with experienced business and legal experts in the real estate finance and structured finance industries and markets.
- (g) The provisions of this Section may be enforced by any court of competent jurisdiction, and the Mediation Party successfully seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys’ fees resulting from the failure of a Mediation Party to comply with the provisions of this Section.
- (h) All notices provided herein shall be sent by electronic mail or overnight mail.