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COURT ADR CONNECTION

The eNewsletter of Resolution Systems Institute

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This month's Court ADR News section covers pending foreclosure mediation legislation in Maryland and Vermont. The Maryland House of Delegates and the Vermont House of Representatives have passed bills that would give homeowners the option of requesting mediation with their lenders; the bills are now up for consideration in the state senates.

The Research You Might Have Missed section highlights a chapter in *The Blackwell Handbook of Mediation: Bridging Theory, Research, and Practice* that reviews empirical research to identify factors that contribute to mediation success for a variety of case types. At the end of this edition, a selection from CourtADR.org's Recommended Resources includes an essay defining and explaining the goals of conflict transformation, a database of mediator ethics opinions from around the country, and a link to an organization that helps child protection and dependency courts create mediation programs.

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Court ADR News

Maryland House Passes Foreclosure Mediation Bill

The Maryland House of Delegates passed a bill in March that would establish a statewide court-related foreclosure mediation program. The bill requires lenders to send borrowers a notice of intent to foreclose at least 45 days before filing a foreclosure notice on a residential property. The first notice must include an application for loan mitigation analysis; if a borrower submits the application to his/her lender, the lender must review the borrower's eligibility for a loan modification or other alternative to foreclosure. If the borrower doesn't qualify for loan mitigation, or doesn't apply, and the lender files a notice to foreclose, the lender must send an application for mediation to the borrower along with the notice. A lender has the option of moving to strike a borrower's request for mediation, but if the court denies the lender's motion, the lender is required to

participate in mediation. Mediations must occur within 65 days of the court receiving a borrower's request to mediate. Housing counselors may attend mediation with borrowers. The new program would be funded by a new \$300 filing fee for foreclosure cases, as well as a \$50 fee that borrowers would have to pay when applying for mediation. According to the bill, the program would only be available for foreclosure cases filed after the bill takes effect. The State Senate is currently considering it.

To read the full text of the bill, click [here](#).



Vermont Legislature Considers Foreclosure Mediation Bill

The Vermont House of Representatives recently passed, and the State Senate is currently considering, a bill that would give homeowners facing foreclosure the option of mediation. The bill requires lenders to send borrowers a notice of their intent to foreclose, along with an application to request mediation. A borrower may apply for mediation at this stage by sending the application to the lender's counsel, who then arranges the mediation. If the borrower does not apply for mediation, the court is authorized to refer the case to mediation once the foreclosure is filed. The bill specifies that mediation participants must follow the guidelines of the federal Home Affordable Modification Program. Mediations would be conducted by members of the state bar who have completed a specialized continuing legal education course on foreclosure prevention.

To read the full text of the bill, click [here](#).

Research You Might Have Missed

The Role of Antecedent and Procedural Characteristics in Mediation: A Review of the Research

Roselle Wissler looks at empirical research on a variety of mediation programs to discern the factors contributing to the success of mediation in "The Role of Antecedent and Procedural Characteristics in Mediation: A Review of the Research," a chapter in *The Blackwell Handbook of Mediation: Bridging Theory, Research, and Practice* (Wiley-Blackwell, 2006). Her review includes research done for domestic relations, community, small claims, civil, and appellate civil mediation programs. She found that the relationship between parties and the level of conflict in the relationship affected the likely success in community and domestic relations mediation, but not in small claims or civil mediation. However, the intensity of the dispute affected success across all areas, with lower-intensity disputes being more likely to settle. Settlement was also more likely if the parties were cooperative during the process. The mediators most likely to settle cases were those who had the most experience mediating and those who were more active in the process. Success was not correlated with the case type or the mediators' training or educational background.

Wissler's research found that parties were more likely to see the process as fair if the parties were cooperative and less hostile during mediation. Satisfaction was greater when settlement was reached and compliance was related to ability to pay and the nature of the agreement.

Aside from these findings, Wissler found that studies were not in agreement on other factors that may relate to success in mediation. She hypothesized that this was due to the structure of both the studies and the programs that were

evaluated. For example, some studies involved too few cases to detect distinctions in outcomes between cases and different studies measured the same factors in different ways. Additionally, structural differences in mediation programs could have contributed to the disparate findings.

On CourtADR.org

Recommended Resources

» **“Conflict Transformation” by John Paul Lederach**

In this abridged version of his *Little Book of Conflict Transformation*, Lederach explains the theory behind conflict transformation and outlines its processes and goals.

» **National Clearinghouse for Mediator Ethics Opinions**

This searchable online database by the American Bar Association Section of Dispute Resolution provides information on hundreds of opinions on mediator ethics from 43 states. Each listing includes a brief summary of the opinion, citation information, and, when available, a link to the full opinion online.

» **National Council of Juvenile and Family Court Judges**

The Council provides technical assistance to child protection and dependency courts interested in establishing mediation programs. It also conducts research on mediation in these courts.

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