**ALABAMA DEPARTMENT OF INSURANCE**
**INSURANCE REGULATION**
**ADMINISTRATIVE CODE**

# CHAPTER 482-1-135
# MEDIATION ALTERNATIVE PROCEDURES FOR RESOLUTION OF DISPUTED PERSONAL LINES INSURANCE CLAIMS ARISING FROM HURRICANE, TROPICAL STORM, TORNADOS AND OTHER DISASTERS DAMAGE

## TABLE OF CONTENTS


**482-1-135-.01 Authority**
**482-1-135-.02 Purpose And Scope**
**482-1-135-.03 Definitions**
**482-1-135-.04 Notification Of Right To Mediate**
**482-1-135-.05 Request For Mediation**
**482-1-135-.06 Scheduling Of Mediation**
**482-1-135-.07 Mediation Conference**
**482-1-135-.08 Post Mediation**
**482-1-135-.09 Insurer Mediation Program**
**482-1-135-.10 Severability**
**482-1-135-.11 Effective Date**


## 482-1-135-.01 Authority.

This chapter is promulgated by the Commissioner of Insurance pursuant to Section 27-2-17, Code of Ala. 1975.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History: New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

## 482-1-135-.02 Purpose And Scope.

This chapter implements a non- adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by hurricanes, tropical storms, tornados, and other disasters. The Commissioner will issue a bulletin indicating when the provisions of this Chapter apply. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible. The procedure established by this chapter is available to all first party claimants prior to engaging counsel, or commencing either litigation or the appraisal process, who have residential

property lines claims resulting from damage occurring in the State of Alabama. This chapter does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in insurance policies.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History:** **New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

**482-1-135-.03 Definitions.**

The following definitions apply to the terms of this chapter as used herein:

(1) CLAIM. Any matter on which there is a dispute or for which the insurer has denied payment due to claim arising out of damages to residential property caused by hurricanes and tropical storms, tornados, and other disasters. Unless the parties agree to meditate a claim involving a lesser amount, a "claim" involves the insured requesting $500 or more to settle the dispute or the difference between the positions of the parties is $500 or more, in either case notwithstanding any applicable deductible. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer, to the Department.

(2) DEPARTMENT. The Alabama Department of Insurance.

(3) INSURER. An insurer, as defined in Section 27-1-2, authorized to provide property insurance on risks located in the State of Alabama.

(4) MEDIATOR. An individual selected by the Department and approved by the parties to meditate disputes pursuant to this chapter. The mediators will be selected from a panel of mediators approved by the Alabama Department of Insurance.

(5) PARTY OR PARTIES. The insured and his or her insurer, including the Alabama Insurance Underwriting Association (Beach Pool), the National Flood Insurance Program and insurers who write flood insurance in conjunction with the National Flood Insurance Program, when applicable.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History:** **New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

**482-1-135-.04 Notification Of Right To Mediate.**

Within sixty (60) days of the time an insurer receives a first-party claim, and provided the claim has not been resolved, the insurer shall mail to the insured a mediation notice of the right to mediate disputed claims. Mediation notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type. The notice shall contain the following statement: "The Commissioner of Insurance for the State of Alabama, has adopted regulations to facilitate the fair and timely handling of residential property insurance claims arising out of the hurricanes, tropical storms, tornados, and other disasters. The regulations give you the opportunity to attend a mediation conference with your insurer in order to settle any dispute you may have with your insurer about your hurricane or tropical storm claim. You can start the mediation process 21 days after the date of this mediation notice by calling the Alabama Department of Insurance at the Consumer Services Division, 334-241-4143; by faxing a request to the Alabama Department of Insurance at 334-240-4409; or by mail directed to: Consumer Services Division, 201 Monroe Street, Suite 1700, Montgomery, Alabama 36130-3351. An independent mediator selected by the Alabama Department of Insurance and approved by you and the insurance company, who has no connection with the insurance company, will be in charge of the mediation conference."
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
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**482-1-135-.05 Request For Mediation.**

If the claim has not been resolved within 21 days from the date of the Mediation Notice as required in Rule 482-1-135-.04, an insured or the insurer may request mediation by calling the Alabama Department of Insurance Consumer Services Division at 334-241-4143; by faxing a request to the Department at 334-240-4409; or by mail directed to: Consumer Services Division, 201 Monroe Street, Suite 1700, Montgomery, Alabama 36130-3351. The Department shall notify the insurer within 48 hours of the Department's receipt of a request. The insured will provide the following information to the Department, if known:

(a) Name, address, and daytime telephone number of the insured and location of the property if different from the address given.

(b) The claim and policy number for the insured.

(c) A brief description of the nature of the dispute.

(d) The name of the insurer and the name, address and phone number of the contact person for scheduling mediation.

(e) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History:** **New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

## 482-1-135-.06 Scheduling Of Mediation.

The Department will select a mediator and schedule the mediation conference, both subject to the approval of the parties. The Department will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The Department shall confer with the mediator and obtain the approval of all parties prior to scheduling a mediation conference. The conference shall be scheduled on a mutually convenient date for the parties, not greater than 60 days from the date the Department received the request for the mediation unless the parties agree to a later date. The Department shall notify each party in writing of the agreed upon date, time and place of the mediation conference at least 10 days prior to the date of the conference. The insurer shall notify the Department as soon as possible after settlement of any claim that is scheduled for mediation pursuant to this chapter.

**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History:** **New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

## 482-1-135-.07 Mediation Conference.

(1) The insurer will produce at the conference a copy of the policy and will bring the entire claims file. The insurer is not required to allow the insured to review or copy the claims file. The representative of the insurer attending the conference must be familiar with and know the facts and circumstances of the claim and have authority to settle the claim on behalf of the insured. The insurer will be deemed to have failed to appear if the

insurer's representative lacks authority to settle the claim and the ability to disburse the settlement amount at the conclusion of the conference. Insurer's representative satisfies the requirements of this Paragraph if he or she has immediate access to a person who has authority to settle the claim.

(2) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Department if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, that the mediator is unable to handle the conference competently, or other reasons that would reasonably be expected to impair the conference. Upon a showing of good cause, the Department will appoint a new mediator pursuant to the procedure set out in Chapter 482-1-135-.06.

(3) On or before the date set for the conference, the insurer shall pay $350 to the Alabama Department of Insurance to defer the Department's costs which includes the mediator's fee. If the mediation is cancelled for any reason within 48 hours of the scheduled mediation time and date, the party canceling the mediation will pay the mediator $175 and the other party will not owe the mediator's fee. If either party fails to appear at the conference, without good cause as determined by the Department, that party shall pay the other party's actual expenses incurred in attending the conference, shall pay the mediator's $350 fee, and the conference shall be rescheduled at a mutually convenient time upon the non-showing party's payment of an additional mediator's fee of $350. If the insurer fails to appear at the conference, without good cause as determined by the Department, the insurer shall pay the insured's actual expenses incurred in attending the conference and in any event shall pay the mediator's fee. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, may include the inability to attend due to handling other hurricane-related or tropical storm-related claims and whose non-attendance could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise.

(4) Upon request of the insured or the mediator, a representative or attorney of the Department will be available to help insureds prepare for the mediation conferences. A representative or attorney of the Department will be present at the conference if requested by a party or the mediator to offer guidance and assistance to the parties. Representatives attending the conference shall not assume an advocacy role but shall be available to provide legal and technical insurance information. Any request for assistance shall be submitted in writing to the Department at least 14 days prior to the scheduled mediation conference.

(5) The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Mediators shall conduct the conference in accordance with the standards of professional conduct for mediation. Each will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjustors, appraisers or contractors, to address the mediator, with each party bearing their own expenses in providing said documents and individuals. Attorneys are not permitted to attend or participate in a mediation conference held pursuant to this chapter, except for the attorney or representative of the Department. The mediator may meet with the parties separately, encourage meaningful communications and negotiations and otherwise assist the parties to arrive at a settlement. Both parties must negotiate in good faith. A party will be determined to have not negotiated in good faith if they, or a person participating on their behalf, continuously disrupts or otherwise inhibits the negotiations as determined by the mediator. For purposes of this claims settlement process, mediators shall be deemed agents of the Department and shall have immunity from suit. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation, shall not be public records, and shall not be subject to discovery or admissible in a civil action.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
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**482-1-135-.08 Post Mediation.**

Within 5 days of the conclusion of the conference the mediator shall file with the Department a mediator's status report indicating whether or not the parties reached a settlement. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report. The insured shall have 3 business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference. In order to rescind the settlement, the insured must return the check or draft to the insurer. Any other rights the insured or insurer may have under the policy or at law shall not be effected by the insured's decision not to participate in this claims resolution process or by the parties lack of success in resolving the claim under this process.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.

**History: New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

**482-1-135-.09 Insurer Mediation Program.**

In place of the mediation required by this Chapter, an insurer may submit its own alternative dispute resolution program to the Commissioner for approval. If approved the insurer would not otherwise be subject to this Chapter.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History: New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

**482-1-135-.10 Severability.**

If a court holds any paragraph or portion of a paragraph of this chapter or the applicability thereof to any person or circumstance invalid, the remainder of the chapter shall not be affected thereby.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History: New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.

**482-1-135-.11 Effective Date.**

This chapter shall become effective ten (10) days from the date of certification that the properly executed chapter was delivered to the Secretary of State.
**Author:** Commissioner of Insurance
**Statutory Authority:** Code of Ala. 1975, §27-2-17.
**History: New Rule:** December 21, 2005; effective December 31, 2005. Filed with LRS December 21, 2005. Rule is not subject to the Alabama Administrative Procedure Act.