

ADMINISTRATIVE ORDER
NO. 2009-02-01

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

**AMENDED ADMINISTRATIVE ORDER GOVERNING MANDATORY CIRCUIT
COURT MEDIATION FOR OWNER-OCCUPIED RESIDENTIAL
MORTGAGE FORECLOSURES**

WHEREAS, residential mortgage foreclosure cases have significantly increased in Orange County, Osceola County, and the entire State of Florida throughout 2008 and continuing into 2009; and

WHEREAS, the judges in the Orange County Circuit Civil Division are routinely advised by both banks and owner-occupant litigants that due to high volumes, communication has been difficult between representatives of the lender and homeowners; and

WHEREAS, in many cases the first opportunity for the owner-occupant litigants to discuss potential resolution short of judicial sale is at a hearing on the lender's motion for summary judgment; and

WHEREAS, the failure of the parties to communicate effectively in a timely fashion results in unnecessary waste of judicial resources and court staff time, all of which could be obviated in whole or in part by mediation; and

WHEREAS, Florida Rule of Civil Procedure 1.700(a) provides that the judge may enter an order referring all or any part of a contested civil matter to mediation; and

WHEREAS, loan modification and foreclosure relief plans available to homeowners are rapidly evolving due to changes in bank policies and state and federal regulations, of which foreclosure counsel may be unaware; and

WHEREAS, board certified mediator members of the Orange County Bar Association have agreed to provide mediation services at reduced fees to lessen the cost of mediation in

owner-occupied foreclosure cases; and

NOW, THEREFORE, I, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, order the following, **effective February 25, 2009, as to only those cases filed prior to 12:01 a.m. on July 2, 2010* and Defendant-Debtor requested mediation prior to 12:01 a.m. on July 2, 2010:**

1. The Court shall have the option of referring a case to mediation at anytime, including at the time of any hearing on motion for summary judgment. Plaintiff-Lenders are encouraged to engage in pre-suit mediation to avoid the continued burden on the Clerk of the Court and the judiciary.

2. Plaintiff-Lenders in foreclosure proceedings will be required to deliver at the time of service of process on Defendant-Debtor, a Notice to Homeowners of contact information including phone numbers and addresses to their loan workout department and notice of homeowners' right to mediation attached hereto as Exhibit "A." In addition, if the Lender has a debt relief or home loan loss mitigation program in effect, it shall provide the Debtor with information and access to the program including any 1-800 numbers.

3. If the Defendant-Debtor has requested mediation, Counsel for the Plaintiff shall coordinate and schedule the case for mediation within 45 days of the answer or paper served or filed by the Defendant making such request.

4. A list of Board Certified Civil Mediators who are willing to provide mediation services at significantly reduced rates will be maintained by the Orange County Bar Association at their website: www.ocbanet.org. If the parties cannot secure a certified mediator from that

* Please refer to Administrative Order No. 2010-11 for all cases filed beginning 12:01 a.m. on July 2, 2010 and for all cases filed prior to 12:01 a.m. on July 2, 2010 where mediation was requested after 12:01 a.m. on July 2, 2010 until further notice from the Chief Judge.

list, or elsewhere, the presiding judge shall be notified by Plaintiff's counsel and compliance with this Order shall be temporarily excused until such time as a mediator is appointed by the court. The Plaintiff shall make a reasonable effort to coordinate the mediation with all parties and shall give the Defendant-Debtor and any non-defaulted inferior lien-holders reasonable advanced notice of the date, time, and place of the mediation.

5. Personal communication by the Plaintiff's counsel with the Defendant-Debtor is expected to occur within 30 days of answer to the Complaint. If counsel for the Plaintiff-Lender after diligent effort and personal communication with the Defendant-Debtor in person or by telephone, learns that the Defendant-Debtor does not have any ability or willingness to work with the Plaintiff-Lender and is unwilling to engage in any loss mitigation efforts, then the counsel for the Plaintiff-Lender may file a Notice of Good Faith Communication and may be excused from compliance with this Order. The Notice shall state:

The undersigned counsel for [Plaintiff/Lender] hereby certifies that he/she has personally communicated with [Defendant-Debtor] in connection with this residential foreclosure and the debtor has not demonstrated any willingness to work with the lender and in the opinion of counsel no useful purpose could be served by a mediation conference.

It is anticipated that the certification permitting the Plaintiff/Lender to forego compliance with mediation will be used sparingly and in light of the ever-evolving programs and forms of relief becoming available. Any attorneys who shall file certifications without personal communication, or who in bad faith engage in efforts to avoid compliance with this Order shall be sanctioned. Attorneys are expected to communicate in person or by telephone with the Defendant-Debtor and a certification may not be filed by an attorney based on communication between the attorney's staff or lender representatives and the debtor.

6. **The Mediation:** A representative of the Plaintiff-Lender with full authority to settle must participate in the mediation and attendance of the representative must be continuous throughout the mediation session. If the mediation representative for the Plaintiff-Lender is more than 25 miles from the proposed location for the mediation or outside this Circuit, attendance by telephone shall be permitted. However, the Plaintiff's counsel should be present in person at the mediation session if the Plaintiff's representative is attending by telephone. Notice of attendance by telephone must be given to the Defendant-Debtor or Defendant's counsel and a toll free number should be provided for use by the mediator or the parties as needed. Plaintiff's counsel, the Defendant (and Defense counsel if any for non-defaulted parties) must appear at the mediation in person or seek an order of relief. If the Defendant fails to appear at a properly notice mediation without good cause, or if the matter impasses after mediation, the matter may be promptly noticed for final or summary judgment providing all of the requirements of the rules of procedure have otherwise been met. If the Plaintiff fails to appear at mediation or if there is no representative with full settlement authority the action may be subject to dismissal or other sanctions may be imposed.

7. The Plaintiff-Lender shall provide a copy of this Order to the Defendant-Debtor and the Debtor is obligated to make good faith efforts to comply with reasonable requests for information concerning the Debtor's ability to pay, expenses, and income as a pre-requisite to mediation. By furnishing this information the Debtor may help the Lender identify potential programs or other means of assistance and potential workouts.

8. **Fees:** Initial costs of the mediation should be born by the Plaintiff-Lender at a rate of \$275.00 for 2 hours of mediation. One half of the mediator's fee may be claimed as costs and included within a final judgment. Unless otherwise agreed to with the mediator, any fee charged by the mediator shall be paid by the Plaintiff or Plaintiff's counsel within 20 days from the date

of the mediation. If mediation takes more than 2 hours, the fee to be applied shall be at a rate of \$100.00 for each hour thereafter. If a Plaintiff fails to appear at mediation, if the mediation cannot go forward at the scheduled time due to the Plaintiff or Plaintiff's counsel, or if the mediator is not notified 48 hours in advance that a mediation session has been cancelled or is unnecessary, then the mediator shall be entitled to a cancellation fee equal to 2 hours of mediation time payable by the Plaintiff.

Administrative Order No. 2009-02 is vacated and set aside and has been incorporated and/or amended herein.

DONE AND ORDERED at Orlando, Florida, this 2nd day of July, 2010.

_____/s/_____
Belvin Perry, Jr.
Chief Judge

Copies to:
Clerk of Courts, Orange County
Clerk of Courts, Osceola County
General E-Mail Distribution List
<http://www.ninthcircuit.org>

Exhibit "A"

Notice to Homeowner Lender Contact and Mediation Information

This Notice to Homeowner is required by Administrative Order of the Ninth Judicial Circuit Court for cases pending in Orange County. It is given to you at the time of service of process by the Plaintiff/ Lender, with the summons and complaint for foreclosure. The following contact information and phone numbers and addresses to their loan workout department is for your use. If the Lender has a debt relief or home loan loss mitigation program in effect, information and access to the program including any 1-800 numbers is provided below:

How to Contact your Lender (on the loan currently being foreclosed for non-payment):

Your Lender is:

You can call:

Right to Mediation

You may request that the court order mediation in your case before a final judgment or foreclosure sale of your property. You have been served with a complaint from your Lender, **TO WHICH YOU MUST FILE AN ANSWER WITHIN 20 DAYS**. That means send a copy of your answer to the complaint to the courthouse clerk's office and by mail to the other parties in the lawsuit. In that answer, or by separate pleading, you can request mediation. By requesting mediation you are not excused from filing an answer to the complaint being served on you. You must answer the complaint **WITHIN 20 DAYS** or you will be in default in the lawsuit.

Mediation is most appropriate where you have already tried to contact your Lender (or have been unable to) and still feel you have the financial ability to reinstate or modify your loan or come to some other mutually agreeable workout. In mediation, you will be required to meet with a representative of the Lender who has authority to discuss your loan and with a mediator who will try to facilitate a settlement. By electing to participate in this mediation program you are agreeing to bring your wage, bank account, credit card, and other financial information relating to your income and debts to the mediation and you are agreeing to disclose this information to the Lender. You may discuss: 1) reinstatement of the mortgage, 2) refinance, 3) sale of your home, or 4) foreclosure sale.

Additional information regarding mortgage foreclosures and landlord /tenant matters is available at the **Court Resource Center**, Room 365, 3rd Floor of the Orange County Courthouse located at 425 N. Orange Ave., Orlando, FL 32801. Information on how to find a lawyer is available from the Orange County Bar Association's **Lawyer Referral Service** by calling 407-422-4537.