

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

**ADMINISTRATIVE ORDER NO:
09-14-B 2nd AMENDED
SUPERSEDES 09-14-B AMENDED**

**IN RE: MEDIATION - MANDATORY MEDIATION CIRCUIT COURT BREVARD
 COUNTY OWNER OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURE**

WHEREAS: Residential mortgage foreclosure case filings have substantially increased in Brevard County; and,

WHEREAS: High owner occupied residential foreclosure rates are having a damaging impact on the economy of Brevard County, the State of Florida, and the financial community; and,

WHEREAS: Owner Occupied Residential foreclosures place increased strain on family relationships, leading to higher divorce rates, increased incidents of domestic violence, and adverse impacts on children; and,

WHEREAS: The Judges in the Brevard County Circuit Civil Divisions are routinely advised by litigants that it is difficult, if not outright impossible, to negotiate settlements due to the inability to communicate with appropriate representatives of the lender or the lender's attorneys after the complaint for foreclosure has been filed. In many of these cases, the first opportunity the parties have to discuss the issues and attempt to resolve their differences is at a hearing on the lender's motion for summary judgment, or later at the foreclosure sale. By that time in most cases, all judicial labor has been expended and the costs and attorney's fees have increased significantly. The failure of the parties to communicate in a timely fashion results in unnecessary waste of resources by the court, the court staff, and the clerk's office, and could be obviated by pre-judgment mediation; and,

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

WHEREAS: Foreclosure actions are equitable in nature, the law abhors a forfeiture, and the nature of an owner occupied residential foreclosure mandates that the court give full, fair and equitable consideration to all issues in these cases rather than deal with them in a summary fashion; and,

WHEREAS: The seven presiding Brevard Circuit Civil Division judges have determined that greater economy of limited judicial and clerk resources would occur if contested owner occupied residential foreclosure cases in Brevard County were required to undergo mediation before being set for final hearing;

NOW, THEREFORE, IT IS ORDERED:

1. For all owner occupied residential mortgage foreclosure actions filed in Brevard County, Florida, in which responsive pleadings or other filings seeking any form of relief by any owner occupant are filed, this order shall constitute an order of referral to mediation. Counsel for plaintiff shall coordinate and schedule the case for mediation prior to scheduling the matter for final or summary judgment hearing. The plaintiff may schedule mediation with any Supreme Court Certified Civil Mediator or may schedule mediation through the Brevard Civil Mediation Department for discounted mediation services with a member of the courts fixed fee panel. All scheduling information, procedures, forms and orders, using Brevard County's fixed fee panel can be found on the Brevard County website: www.flcourts18.org.
2. The fee for mediations scheduled through the mediation department shall be \$250, paid in advance, for a 1½-hour session. All mediation fees shall be borne in advance by the plaintiff. If the matter does not resolve at mediation, the mediation fee may be taxed by the court as a cost of litigation in the final judgment of foreclosure.
3. The plaintiff shall make a reasonable effort to coordinate the mediation with all parties and shall give the defendant homeowner(s) and any defaulted inferior lien holders reasonable advance notice of the date, time, and place of the mediation. When plaintiff gives notice of the mediation, plaintiff shall also give written notice, using the form attached as Addendum "A" hereto, identifying the lender's representative and attesting to the

representative's authority to participate in mediation and settle on behalf of the lender. Mediation may only be waived after hearing on a verified motion filed by the plaintiff asserting that all defendants have been defaulted. Upon filing said motion, Counsel for the plaintiff shall also certify that there has been no communication with any of the defendant(s) or any representative for any of the defendant(s) and that the foreclosure is truly uncontested.

4. A copy of the mediation agenda attached as Addendum "B" to this order shall be served upon the lender representative and homeowner and any undefaulted lien holders along with the notice of the mediation conference.
5. Nothing in this Order is intended to prevent the plaintiff from filing all pleadings necessary to proceed to final or summary judgment; however, hearing on a motion for summary judgment may not be scheduled prior to the conclusion of the scheduled mediation session or waiver of mediation as permitted under paragraph 3 above.
6. A representative of plaintiff with full authority to settle must participate in the mediation. The representative may attend the mediation by telephone, provided notice of such attendance is included in the mediation notice and a toll-free number is provided by plaintiff's counsel. If the representative attends by telephone, his/her attendance must be continuous throughout the mediation session. Plaintiff's counsel, Defendant(s), and defendant's counsel must appear at the mediation in person. Plaintiff's counsel must file with the court a certificate in substantially the same form as that attached hereto as Addendum "A," identifying the lender's representative, describing that representative's position or relationship with the lender, and specifically certifying that the representative has full authority to resolve the foreclosure suit without the need to seek other authorization.
7. If defendant(s) fail to appear at a properly noticed mediation or if the matter impasses after mediation, the matter may be promptly noticed for summary judgment, provided all requirements of F.R.C.P. 1.510 have been met. If plaintiff fails to appear for mediation or no representative with full settlement authority appears, the action shall be dismissed without prejudice.

8. Lenders are encouraged to enter into pre-suit mediation to expedite the process which may result in the filing of fewer foreclosure actions.

DONE AND ORDERED this 21st day of October, 2009.

J. PRESTON SILVERNAIL
J. PRESTON SILVERNAIL
CHIEF JUDGE

Distribution:

All Circuit and County Judges (Brevard County)
Court Administration (Brevard County)
Clerk of Court (Brevard County)
State Attorney (Brevard County)
Public Defender (Brevard County)
Sheriff (Brevard County)
Bar Association (Brevard County)
Law Library (Brevard County)
County Attorney (Brevard County)

ADDENDUM "A"

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR Brevard COUNTY, FLORIDA

(Name of Lender),

Plaintiff,

CASE NO: _____

vs.

**Name of Judge to Whom case is
assigned.(essential that this be
placed in the style)**

(Name of Defendant(s)),

Defendants.

_____/

CERTIFICATION OF SETTLEMENT AUTHORITY

THE UNDERSIGNED COUNSEL, as counsel of record in this cause and as an officer of the court, pursuant to the Administrative Order of the Chief Judge of the Eighteenth Judicial Circuit, does hereby certify as follows:

1. Mediation has been scheduled in this cause as ordered.
2. The plaintiff/lender will be represented by

by personal appearance.

by telephone at _____(toll free phone #)

3. The plaintiff's representative's relationship to the plaintiff/lender is:

4. The undersigned has personally spoken with the above designated representative and said representative has confirmed that the person has fully settlement authority.

Signature: _____

Printed Name: _____

Bar Number: _____

Address: _____

Tel. No. _____

ADDENDUM "B"

OWNER OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION AGENDA

The mediation conference shall include for consideration at least one of the following options:

A. Short term financial problems:

1. Repayment plan:

Description: This option involves a formal, written agreement between the homeowner, law firm, and lender which is reduced to a stipulation and, in some cases, a consent judgment. The agreement provides for temporary increase in monthly payments until the loan is brought current and may involve a cash down payment on the arrearage.

Benefit: The homeowner is given the opportunity to "make up" missed payments, rather than paying them all at once, and is allowed to remain in the home.

Detriment: Payments are higher than normal for the homeowner and may be unaffordable.

2. Home Saver Advance: (Fannie Mae insured loans only.)

Description: The lender agrees to advance funds to allow the homeowner to reinstate the mortgage. The homeowner signs a note at 5% interest payable over 15 years with no payments for the first six months for the amount advanced.

Benefit: The mortgage is brought current. Monthly payments are usually small and spread over a long period of time.

Detriment: Payments are larger than normal after the first six months.

3. Forbearance:

Description: A formal, written agreement between the homeowner, law firm, and the lender, often including a written stipulation and consent judgment.

Benefit: Under the agreement, monthly payments are reduced or suspended for a specified period of time. During that time, the homeowner either pays a lower monthly payment or no payment at all. At the end of the period, regular payments resume. The homeowner remains in the home.

Detriment: This option may not be affordable if the lender insists on a large lump sum payment.

B. Longer-term, more severe financial problems:

Modification:

Description: One or more of the terms of the note and mortgage may be changed to bring the loan current; for example, extending the term of the note or reducing the interest rate, temporarily or permanently. Alternatively, delinquent interest, escrow, taxes, and other costs could be added to the principal balance that is owed.

Benefit: The homeowner receives a fresh start and the loan remains a performing asset.

Detriment: Modifications take time to be reviewed by the various investors or mortgage insurance companies and the reductions may not be affordable.

C. Pre-foreclosure sale:

Description: The parties agree to sell the property at current fair market value, even if the proceeds will not cover the debt. The lender and homeowner agree to accept the proceeds of the sale in satisfaction of the debt or the lender agrees to accept a low interest note for the balance.

Benefit: The homeowner is relieved from the debt and avoids the stigma of foreclosure, and the lender is not required to take title to the property.

Detriment: Lender is not satisfied in full for the mortgage and note obligation.

D. Deed in lieu of foreclosure:

Description: The homeowner voluntarily deeds the property to the lender. This is generally a last choice option. The lender receives a consent judgment and waives any deficiency. This option is not available in some cases where there are junior mortgages or liens. The property must be vacated at the time of the deed transfer.

Benefit: The homeowner is relieved of the debt and the uncertainty of a sheriff's sale. May be beneficial for homeowner's future credit rating.

Detriment: Title issues can arise. Lender gains very little benefit other than taking title to the property.

E. Consent judgment to vacate:

Description: The homeowner agrees to vacate the property on a date certain and stipulates to a judgment of possession in any necessary eviction action.

Benefit: The homeowner retains possession of the property for the agreed period to allow the homeowner to solve school, day care, or commuting concerns.

Detriment: Lender suffers additional cost if homeowner fails to vacate. Lender may not be willing to agree to this option without a significant deposit to cover costs of eviction.

F. Reverse mortgage:

Description: Homeowner must be 62 years of age or older. Amount of reverse mortgage may be up to 60% of the value of the home. Reverse mortgage is used to pay off existing mortgage. There must be substantial equity in the property.

Benefit: Homeowner remains in possession.

Detriment: Homeowner may ultimately lose the property.

G. Other:

The parties may explore any other option or combination of options based upon the circumstances of the situation.