

ADMINISTRATIVE ORDER
NO. 2009-10-01

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

**AMENDED ADMINISTRATIVE ORDER GOVERNING CIRCUIT COURT MEDIATION
FOR OWNER-OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURES AND
MOTIONS FOR CONCILIATION, OSCEOLA COUNTY**

WHEREAS, pursuant to Article V, Section 2(d) of the Florida Constitution and Section 43.26, Florida Statutes, the chief judge of each circuit is charged with the authority and power to promote the prompt and efficient administration of justice; 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, given the large volume of residential mortgage foreclosure actions filed in Osceola County throughout 2008 and continuing into 2009; and

WHEREAS, the judges in the Osceola County Circuit Civil Division are routinely advised by both banks and owner-occupant litigants that due to the high volume of cases, 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, 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 circuit civil mediators in Osceola County have agreed to provide mediation services at reduced fees to lessen the cost of mediation in owner-occupied foreclosure cases; and

WHEREAS, in an effort to expedite the implementation of mediation of mortgage foreclosure actions involving homestead properties, the Ninth Judicial Circuit and Osceola County have collaborated to develop a foreclosure mediation program;

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 October 12, 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 and Defendant/Debtors are encouraged to engage in pre-suit mediation.

2. Plaintiff/Lenders in foreclosure proceedings will be required to file as an exhibit to the complaint, and deliver at the time of service of process on Defendant/Debtors, a copy of this Order with a completed "Notice to Homeowners Lender Contact and Mediation Information" notice, attached hereto as Exhibit "A," which includes Lender's phone numbers and addresses to their loan workout department, and "Defendant/Debtor Financial Information Statement," attached hereto as Exhibit "B" (to be completed by Defendant/Debtor). 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 toll free numbers.

3. If the Defendant/Debtor has requested mediation, the case shall be referred to the Dispute Resolution Services Office and an Order of Referral to Mediation shall be entered. The Dispute Resolution Services Office shall coordinate and schedule the case for mediation within seventy-five (75) days of the answer or paper served or filed by the Defendant making such request. All parties named in the foreclosure action shall be noticed of the date, time, and place of the mediation.

4. Alternatively, Defendant/Debtors may file a motion for a free telephone conciliation conference along with their answer. The form motion for telephone conciliation conference is

* Please refer to Administrative Order No. 2010-12 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.

attached hereto as Exhibit “C” and shall be filed by Defendant/Debtor with a completed “Defendant/Debtor Financial Information Sheet,” attached hereto as Exhibit “B.” Defendant/Debtors shall make only one election, either to engage in mediation, or to motion for a free telephone conciliation conference. If a Defendant/Debtor chooses to motion for a telephone conciliation conference, the following procedures shall be followed:

- a. It shall be the responsibility of the Plaintiff/Lender to arrange the telephone conciliation conference within forty-five (45) days of receipt of the Order Granting Telephonic Conciliation Conference and to have a representative of the Plaintiff/Lender with full settlement/modification authority in attendance. All parties and counsel may attend by phone.
- b. Within ten (10) days of the conciliation conference, counsel for Plaintiff/Lender is to file a Conciliation Report with the court as to the status of the case.
- c. No motion for Summary Judgment may be filed prior to the Conciliation Report.
- d. After the Conciliation Report is filed, the Defendant/Debtor may also file a Motion for Mediation stating appropriate grounds for mediation.
- e. Upon consideration of the Motion for Mediation, the court may refer the case to the Dispute Resolution Services Office which shall coordinate and schedule the mediation within seventy-five (75) days.

5. The Dispute Resolution Services Office shall maintain a list of board certified circuit civil mediators who are willing to provide mediation services in Osceola County, at significantly reduced rates. The Dispute Resolution Services Office will assign on a rotating basis a board certified circuit civil mediator.

6. 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.

7. The Mediation: A representative of the Plaintiff/Lender and/or counsel with full authority to settle must participate in the mediation and attendance of the representative and/or counsel must be continuous throughout the mediation session. If the representative of the Plaintiff/Lender with full authority to settle is more than twenty-five (25) miles from the proposed location of the mediation, or outside this Circuit, attendance by telephone shall be permitted. However, Plaintiff's counsel shall 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. Defendant and defense counsel, if any, must appear at the mediation in person.

8. 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, provided 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 without prejudice or other sanctions may be imposed as the court deems appropriate including, but not limited to, attorney fees and costs if the Defendant/Debtor is represented by an attorney.

9. The certified mediator shall file a report with the court of the result of the mediation within two (2) business days after the completion of the mediation.

10. The Defendant/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, including but not limited to, providing useful and necessary financial data to the Lender ten (10) days prior to the scheduled mediation. Useful and necessary financial data includes wage, bank account, credit card, and other financial information relating to Debtor's income and debts. By furnishing this information, the Debtor may help the Lender identify potential programs or other means of assistance and potential workouts.

11. The Defendant/Debtor is required to bring the fully executed "Defendant/Debtor Financial Information Statement" form, Exhibit "B," to the mediation conference.

12. Fees: The initial cost of the first two (2) hours of mediation shall be borne by the Plaintiff/Lender at a rate of \$275.00 for two (2) hours of mediation. Unless otherwise agreed to with the mediator, any fee charged by the mediator shall be paid by the Plaintiff or Plaintiff's counsel at mediation. If mediation takes more than one (1) hour, the fee to be applied shall be at a rate of \$100.00 for each hour thereafter, the cost of which shall be borne equally by Plaintiff/Lender and Defendant. The mediator's fee attributable to Plaintiff may be claimed by the Plaintiff/Lender as costs and included in any final judgment.

13. If a Plaintiff/Lender or their counsel fails to appear at mediation, or if the mediator is not notified forty-eight (48) hours in advance by the Plaintiff/Lender or Plaintiff's Counsel that a mediation session has been cancelled or is unnecessary, then the mediator shall be entitled to a cancellation fee equal to two (2) hours of mediation time payable by the Plaintiff, within twenty (20) days of the scheduled mediation date.

14. If Defendant or Defendant's counsel fails to appear at mediation, or the mediator is not notified forty-eight (48) hours in advance by Defendant or Defendant's counsel that the mediation session has been cancelled or is unnecessary, the mediator shall be entitled to a cancellation fee equal to two (2) hours of mediation time payable by the Plaintiff, within twenty (20) days of the scheduled mediation date; however, Plaintiff/Lender may claim said cancellation fee as costs in any final judgment against Defendant.

15. A one-time, non-refundable administrative fee in the amount of \$50.00 shall be paid by the Plaintiff or Plaintiff's counsel and shall be delivered no later than five (5) days prior to the scheduled mediation to the Osceola County Clerk of the Court, 2 Courthouse Square, Suite 1200, Kissimmee, Florida 34741. The Osceola County Clerk of the Court shall collect said fee and designate same for the Osceola County Mediation Trust Fund. The administrative fee attributable to Plaintiff may be claimed by the Plaintiff/Lender as costs and included in any final judgment.

16. Pursuant to the Mediation Confidentiality and Privilege Act, with the exception of the parties' signed financial affidavits and any other documents which are required or permitted by law to be filed in the public record, all communications, verbal or written, between the parties and from the parties made during the mediation session, shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless both parties agree otherwise, or unless disclosure is required or permitted by law.

Administrative Order No. 2009-10 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 Osceola 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 toll free numbers is provided below:

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

Your Lender is:

You can call:

Address of record for foreclosure property:

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 deliver or send your answer to the complaint to the Office of the Clerk of the Court, Civil Division, 2 Courthouse Square, Suite 1200, Second Floor, Kissimmee, Florida 34741 and send a copy to Plaintiff/Lender's counsel any 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. The answer to the complaint must include the court case number.

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 disclose, **at least 10 days prior to the scheduled mediation session**, useful and necessary financial information to the Lender and/or the Lender's legal representative including but not limited to: your wage, bank account, credit card, and other financial information relating to your income and debts to the mediation. It is the Debtor's obligation to continue to supplement all financial information so provided. In order to effectively prepare for mediation and negotiate in good faith, the Lender may further specify other useful and necessary financial information to be provided to Lender prior to the mediation session when completing and sending this Exhibit to the Debtor. You may discuss: 1) reinstatement of the mortgage, 2) refinance, 3) sale of your home, or 4) foreclosure sale. If you require an interpreter, it is your duty to secure an interpreter for the mediation session.

Additional information regarding mortgage foreclosures and landlord/tenant matters is available at the **Family Court Programs Office**, Room 3100, 3rd Floor of the Osceola County Courthouse located at 2 Courthouse Square, Kissimmee, FL 34741. Information on how to find a lawyer is available from the Florida Bar Association's Lawyer Referral Service by calling 1-800-342-8011.

Exhibit "B"

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

Case No.: _____

Plaintiff,

vs.

Defendant,

DEFENDANT/DEBTOR FINANCIAL INFORMATION STATEMENT

I, {full legal name}, _____ being sworn, state that the following information is true:

1. My Occupation is: _____.
2. I am ()employed ()unemployed ()retired ()disabled ()other _____
3. Name of Employer: _____
Address: _____

SECTION II. CURRENT MONTHLY REVENUE/INCOME:

TYPE OF MONTHLY INCOME:

- | | |
|---|----------|
| 1. Salary or wages | \$ _____ |
| 2. Bonuses, commissions, overtime tips and/or similar payments | \$ _____ |
| 3. Business income from sources such as self-employment, partnerships, corporations, and/or independent contractors | \$ _____ |
| 4. Disability Benefits/SSI | \$ _____ |
| 5. Worker's Compensation | \$ _____ |
| 6. Pension, retirement, or annuity payments | \$ _____ |
| 7. Social Security Benefits | \$ _____ |
| 8. Interest & Dividends | \$ _____ |
| 9. Rental Income | \$ _____ |
| 10. Other income _____ | \$ _____ |
| 11. Other income _____ | \$ _____ |

TOTAL MONTHLY INCOME.....\$ _____

SECTION III. AVERAGE MONTHLY EXPENSES:

A. HOUSEHOLD:

Mortgage or Rent	\$ _____
Equity Loan/Line	\$ _____
Home Insurance	\$ _____
Property Taxes	\$ _____
Electricity	\$ _____
Water & Sewer	\$ _____
Gas	\$ _____
Telephone	\$ _____
Cellular #1	\$ _____
Cellular #2	\$ _____
Cable	\$ _____
Waste removal	\$ _____
Repairs	\$ _____
Food	\$ _____
Other	\$ _____
Sub Total	\$ _____

B. AUTOMOBILE:

Vehicle #1 Payment	\$ _____
Vehicle #2 Payment	\$ _____
Vehicle #3 Payment	\$ _____
Insurance(s)	\$ _____
Gasoline	\$ _____
Repairs	\$ _____
Other	\$ _____
Sub Total	\$ _____

B. INSURANCE:

Health Insurance	\$ _____
Dental Insurance	\$ _____
Life Insurance	\$ _____
Disability Insurance	\$ _____
Other Insurance	\$ _____
Sub Total	\$ _____

C. LOANS/CREDITORS:

Personal Loan	\$ _____
Personal Loan	\$ _____
Student Loan	\$ _____
Credit Card #1	\$ _____
Credit Card #2	\$ _____
Credit Card #3	\$ _____
Other	\$ _____
Sub Total	\$ _____

D. LEGAL:

Alimony payments	\$ _____
Child support payments	\$ _____
Liens or Judgments	\$ _____
Other	\$ _____
Sub Total	\$ _____

E. CHILDREN:

Child/Day Care	\$ _____
School Tuition	\$ _____
School Supplies	\$ _____
Lunch Money	\$ _____
Clothing	\$ _____
Grooming	\$ _____
Toys/Educational	\$ _____
Other	\$ _____
Sub Total	\$ _____

F. GIFTS & DONATIONS:

Religious organizations	\$ _____
Other Charity	\$ _____
Other Charity	\$ _____
Other	\$ _____
Sub Total	\$ _____

G. SAVINGS OR INVESTMENTS:

Retirement Account	\$ _____
Investment Account	\$ _____
College-Pre Paid	\$ _____
Other	\$ _____
Sub Total	\$ _____

H. OTHER EXPENSES:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Sub Total	\$ _____

TOTAL MONTHLY EXPENSES.....\$ _____

SECTION IV: ASSETS AND THEIR VALUE

TYPE OF ASSETS

Cash on hand	\$ _____
Cash (in banks, credit unions)	\$ _____
Stocks, Bonds, Notes	\$ _____
Any other real estate	\$ _____
Other personal property	\$ _____
Retirement plan: (Profit sharing, IRA, 401(k)s, etc)	\$ _____
Other _____	\$ _____
Other _____	\$ _____
TOTAL ASSETS.....	\$ _____

SECTION V: CONTINGENT ASSETS AND LIABILITIES

TYPE OF CONTINGENT ASSETS

Income potential	\$ _____
Accrued Vacations	\$ _____
Bonuses	\$ _____
Inheritance	\$ _____

Pending Lawsuit Claims \$ _____
Other _____ \$ _____

TOTAL OF CONTINGENT ASSETS.....\$ _____

TYPE OF CONTINGENT LIABILITIES

Possible lawsuit \$ _____
Tax liabilities \$ _____
Debts assumed \$ _____
Other _____ \$ _____

TOTAL OF CONTINGENT LIABILITIES..\$ _____

I certify that a copy of this document was (check one) ___mailed ___faxed or ___hand delivered to the person(s) listed below on (date) _____.

Petitioner or his/her attorney:

Name: _____
Address: _____
City, State, Zip: _____
Fax Number: _____

I understand that I am swearing or affirming under oath to the truthfulness of the statements made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of the Debtor
Print Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Fax Number: _____

STATE OF FLORIDA
COUNTY OF OSCEOLA

Sworn to or affirmed and signed before me by _____ on _____.

NOTARY PUBLIC OR DEPUTY CLERK

Personally known
Produced identification
Type of identification produced

Exhibit "C"

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

CASE NO.:
DIVISION:

_____,
Plaintiff/Lender,

vs.

_____,
Defendant/Debtor.

_____ /

MOTION FOR TELEPHONIC CONCILIATION CONFERENCE

COMES NOW the Defendant/Debtor and moves the Court for an Order for Telephonic Conciliation Conference. In support of this motion, movant states:

(1) That movant has attached a completed "Defendant/Debtor Financial Information Sheet" to this motion.

(2) That if movant fails to appear for a properly noticed conciliation conference without good cause, or if the matter impasses after the conciliation conference, the matter may be promptly noticed for summary judgment in accordance with the Florida Rules of Civil Procedure if final summary judgment has not already been entered.

WHEREFORE, movant prays that the Court enter an Order for Telephonic Conciliation Conference requiring the parties to conciliate the disputed issues.

Signed: _____
Defendant/Debtor

print name

Defendant/Debtor's Address: _____

Defendant/Debtor's Phone No.: _____

Certificate of Service

I hereby certify that a true and correct copy of the foregoing motion has been furnished via U.S. Mail this _____ day of _____, 20__, to the Plaintiff/Lender

_____,
(Name of Plaintiff/Lender) (Address of Lender)

Signed: _____
Defendant/Debtor