

**Identities of First Judicial Circuit personnel and judiciary:**

Chief Judge Terry Terrell

Robin Wright, Trial Court Administrator

Janet Gilbert, Family Court Manager

Keri Igney, Administrative Assistant to Chief Judge Terrell

Judge Keith Brace, Division W - Walton and Okaloosa Counties

Judge John Parnham, Division W - Santa Rosa and Escambia Counties

Amanda Bailey, Foreclosure Case Coordinator

Mark Lehmann, Foreclosure Case Coordinator

SEARCH PARAMETERS:

“Mortgage”

“Foreclosure”

“Economic”

“Recovery”

“Mortgage Foreclosure”

“Economic Recovery”

Training materials were reviewed for those utilized in preparing judges to serve in foreclosure matters.

Electronic mail archives were searched for the above-referenced terminology.

All written agendas were reviewed for foreclosure subject matter entries. No minutes are taken at weekly Chief Judge Administrative meetings.

**IN THE FIRST CIRCUIT OF THE STATE OF FLORIDA  
IN AND FOR THE COUNTIES OF ESCAMBIA, SANTA ROSA,  
OKALOOSA AND WALTON**

**ADMINISTRATIVE ORDER NUMBER 2009 -18**

**IN RE:        MEDIATION  
              **CASE MANAGEMENT ORDER AND MANDATORY  
              REFERRAL OF RESIDENTIAL MORTGAGE  
              FORECLOSURE CASES TO MEDIATION****

**WHEREAS**, pursuant to Article V, Section 2(d) of the Florida Constitution and Section 43.26, *Florida Statutes*, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and Rule 2.215(b)(3), *Fla. R. Jud. Admin.*, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;” and

**WHEREAS**, Rule 2.545 of the *Rules of Judicial Administration* requires that the trial courts “...take charge of all cases at an early stage in the litigation and ... control the progress of the case thereafter until the case is determined...”, which includes “... identifying cases subject to alternative dispute resolution processes;” and

**WHEREAS**, Chapter 44, *Florida Statutes*, and Rules 1.700-1.750, *Florida Rules of Civil Procedure*, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by Rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

**WHEREAS**, residential mortgage foreclosure case filings have increased substantially in the First Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the First Judicial Circuit to manage these cases in a timely manner; and

**WHEREAS**, high residential mortgage foreclosure rates are damaging the economies of the counties in the First Judicial Circuit; and

**WHEREAS**, high residential mortgage foreclosure rates place an increased strain on the citizens and families in the First Judicial Circuit who have lost jobs or who are otherwise suffering from the current downturn in the nation's economy. "A family which loses its home to foreclosure not only loses a stable place to live, but risks permanently ruining its credit and faces substantial barriers to buying a home in the future." See, Report of the Joint Economic Committee of Congress, "Sheltering Neighborhoods from the Subprime Foreclosure Storm," June 22, 2007; and

**WHEREAS**, the Joint Economic Committee of Congress; report estimates that the total average cost of a foreclosure to the homeowner (\$7,000), lender (\$50,000), local government (\$19,000), and neighboring home values (\$75,000) is \$151,000.00. By contrast, the report states that preventing the foreclosure would cost \$3,300.00 per home, on average; and

**WHEREAS**, residential foreclosure actions filed in Florida's courts are equitable in nature and should provide all parties full, fair and equitable opportunities for self determination of the outcome, and to be heard on all issues rather than to have them dealt with in an adjudicatory and summary manner in a court proceeding when the parties generally are not in an equal bargaining position; and

**WHEREAS**, the Chief Judge of the First Judicial Circuit has determined that mandatory mediation of residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring the cases to mediation will also facilitate and provide a more efficient use of limited judicial resources in a court system that is already overburdened; and

**WHEREAS**, the Collins Center for Public Policy is an independent, nonpartisan, nonprofit organization serving the people of the State of Florida and has demonstrable ability including resources and expertise to assist the courts with managing the huge influx of residential mortgage foreclosure actions that recently have been filed in the First Judicial Circuit.

**IT IS, THEREFORE, ORDERED THAT:**

**SCOPE:**

1. Upon the expiration of fifteen days from the date of this Administrative Order (said later date hereinafter referred to as the "implementation date") all mortgage foreclosure actions filed by institutional, investment or commercial lenders (not individuals) in each county of the First Judicial Circuit involving residential property shall comply with the certification requirement of paragraph 4 below as to whether the property is an owner-occupied residence as defined below. All mortgage foreclosure actions involving an owner-occupied residence shall be referred for mediation to the program managed by the Collins Center for Public Policy.

An "owner-occupied residence" means a primary residential dwelling (not a second home, rental home or vacation home) owned by one of the defendant(s) and occupied by one of the defendant(s) or an immediate family member of one of the defendant(s), including, but not limited to: spouse, children, parents, grandparents or siblings.

At the discretion of the presiding judge (with or without motion by any party), compliance with this administrative order may also be required for residential mortgage foreclosure cases filed prior to the "implementation date" as herein above defined provided that sufficient resources are available through the Collins Center to manage such cases.

2. This Order constitutes a formal referral to mediation pursuant to the *Florida Rules of Civil Procedure* in cases involving the mortgage foreclosure of an owner-occupied residence. Unless, by stipulation in writing filed with the Clerk of Court within (5) working days of service of process, the plaintiff and "owner-occupant" defendant have agreed to the use of an alternate mediator the parties and the presiding judge are deemed to have stipulated to referral of the mediation to the Collins Center pursuant to Rule 1.720(f), *Fla. R. Civ. P.* Referral to the Collins Center is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the

panel of available certified circuit civil mediators. Such mediators are deemed assigned by the Court and are entitled to all privileges and immunities available to mediators under the law.

3. The mediation process must be completed and the results transmitted to the presiding judge as required by the *Florida Rules of Civil Procedure* before a default or summary final judgment is entered or a final hearing is set in an action to foreclose a mortgage on an owner-occupied residence.
4. Until such time as alternative site arrangements can be made all mediations for each county of this circuit shall occur at the Collins Center mediation center in Pensacola located at 236 West Garden Street.

**PROCEDURE:**

5. At the time a complaint for foreclosure on an “owner-occupied” residential property is filed, counsel for plaintiff must file with the complaint a completed “Form A” (attached hereto). Further within one business day after the complaint is filed with the Clerk of Court counsel for plaintiff shall electronically transmit a copy of “Form A” to the Collins Center at the email address or fax number provided at the Collins Center’s website (<http://www.CollinsMediation.org>). The plaintiff must also file with the complaint a copy of the promissory note and mortgage for the property and any pooling or servicing agreements (“PSA”) with investors maintaining an interest in the property that may affect the plaintiff’s ability to mediate and completely settle the foreclosure actions. A copy of the note, mortgage and “PSA” must also be brought to the mediation session by the plaintiff or plaintiff’s counsel.

In “Form A” plaintiff’s counsel must affirmatively certify whether the property is an “owner-occupied residence” as defined above. Plaintiff’s counsel is not permitted to respond to the certification with “unknown,” “unsure,” “not applicable,” or similar non-responsive statements. If the property is certified as an “owner-occupied” residence, plaintiff’s counsel shall further certify the identity of plaintiff’s representative that has full and complete authority to mediate and settle the action. Further, the venue and court case number must appear on “Form A” (This is absolutely critical).

If the plaintiff certifies that the property is not an "owner-occupied" residence at filing and the time for a responsive pleading has passed, the matter may be brought to final judgment in accordance with the *Florida Rules of Civil Procedure* and without any requirement to attend mediation.

At the time of filing a foreclosure action involving an owner-occupied residence, the plaintiff, in addition to paying the Clerk's filing fee shall (concurrent with the transmission of "Form A") pay direct to the Collins Center the managed mediation fee as provided in paragraph 10 of this Order. The check shall be made payable to the Collins Center and shall contain the venue of the court and the case number (this is absolutely critical) and shall be sent by regular U.S. Mail to the: Collins Center, ATTN: CFO, 150 S.E. 2<sup>nd</sup> Ave., Suite 709, Miami, FL 33131.

6. Within five (5) days of the date plaintiff's counsel transmits "Form A" to the Collins Center, counsel for the plaintiff shall contact the Collins Center and all defendants (except the owner-occupant) to coordinate potential scheduling dates for mediation. Once scheduled, notice of mediation shall be sent to all parties by plaintiff's counsel. Mediation shall be conducted within a reasonable time with particular consideration given to the availability of the owner-occupant. Mediation sessions shall be held at suitable locations secured by the Collins Center which locations are to be used solely for the purpose of foreclosure mediation.
  
7. Unless prior arrangements have been made with the Collins Center all parties shall attend the scheduled mediation in person with full and complete authority to settle on behalf of themselves or their principals. If there are any changes to the information provided initially in "Form A," counsel for the plaintiff, must electronically transmit an "amended Form A" to the Collins Center before commencement of the mediation. Unless stipulated in writing and signed by the parties or changed by order of the presiding judge, the following participants/parties are deemed to have appeared "in person" at a mediation proceeding if physically present or immediately available by telephone:

- (a) Any individual party.

- (b) A party's counsel of record, if any.
- (c) A representative of the plaintiff who has been certified as having full and complete authority to settle all issues.

The representative with full settlement authority attending mediation may consult on the telephone during the mediation with other representatives of the plaintiff if needed to reach a settlement.

8. Once the time for mediation is scheduled, the Collins Center shall send to the owner-occupant a list of contact information for agencies which are experienced in the areas of mortgage delinquency and default resolution counseling, specifically: the U.S. Department of Housing and Urban Development (HUD) and/or the National Foreclosure Mitigation Counseling Program (NFMCC). These lists and/or the contact information provided are intended to assist the defendant(s) in preparation for the mediation session.

The counseling agency the owner-occupant uses may request that he/she meet in person with a representative to assist in the preparation of the financial affidavit provided by the Collins Center and to also gather and prepare and other documents the Collins Center requests or deems necessary for advancement of the mediation process. The owner-occupant shall certify in the financial affidavit that he/she or an immediate family member, including but not limited to a spouse, child, parent, grandparent or sibling is residing at the property. In addition, a representative of the counseling service may accompany the owner-occupant to the mediation session to serve as a resource for the defendant during the mediation process.

9. Any owner-occupant not represented by an attorney, will be given by the Collins Center a list of all agencies which may be in a position to advise or undertake representation. If representation is obtained, the attorney shall file a notice of appearance with the Clerk of the Court and provide a copy to the attorney for the plaintiff and the Collins Center. The appearance may be limited to representation only through the conclusion of the mediation process.
10. If the plaintiff's representative with full and complete settlement authority



designated in "Form A" or "amended Form A" fails to appear or if any non-owner occupant defendant fails to appear at a properly noticed mediation, the Collins Center shall notify the presiding judge of who appeared and failed to appear at mediation without making further comment. If the owner-occupant(s) fails to appear or if the mediation results in an impasse and if the owner-occupant(s) has been lawfully served with a copy of the complaint and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the *Florida Civil Rules of Procedure* without any further requirement to attend mediation. Either the presiding judge or any other judge designated by the presiding judge or chief judge may enter final judgment of foreclosure. If the plaintiff or representative with full and complete settlement authority fails to appear, the presiding judge may dismiss the action without prejudice, order the plaintiff to appear at mediation or impose such other sanctions as it may deem appropriate including, but not limited to, attorney fees and costs if the owner-occupant is represented by an attorney.

If a non-owner occupant defendant fails to appear at mediation the court may impose such sanctions as it deems appropriate, including, but not limited to, attorney fees and costs if the owner-occupant is represented by counsel.

11. Pursuant to Rule 1.720(g), *Fla. R. Civ. P.*, the reasonable fee for each managed mediation is determined by the Court to be \$750.00, which shall be non-refundable and paid directly to the Collins Center by the plaintiff concurrent with the electronic transmission of "Form A." The fee shall be used for:
  - (a) The mediator's fee.
  - (b) A portion of the cost for the owner-occupant to attend a consumer credit counseling session with an approved consumer credit counseling agency representative, if they choose to do so.
  - (c) Costs associated with the ongoing administration of the managed mediation program, including, but not limited to, providing neutral meeting and caucus space, scheduling, telephone lines and instruments and other related expenses

incurred in managing the mediation program.

If the case is not resolved through the mediation process, the presiding judge or other designated judge may tax the mediation fee as a cost or apply it as a set off in the final judgment of foreclosure.

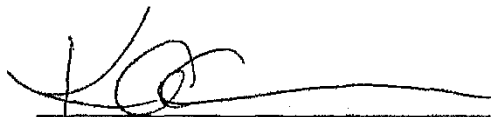
12. Pursuant to Rule 1.370, *Fla.R.Civ.P.*, within (10) days after completion of mediation, the mediator or the Collins Center on behalf of the mediator, shall notify the Court in writing of the result of the mediation and file the original notification with the Clerk of Court. The Court shall be advised only that the parties have reached a mediated settlement agreement or that the mediation resulted in an impasse. In the case of an impasse, the notification shall advise the Court who attended mediation, and a copy of "Form A" or any "amended Form A" shall be attached to the notice for the Court to determine if the plaintiff representative named in "Form A" appeared for mediation. The notice shall also advise the Court if the mediation fee was paid prior to mediation.
13. In the event of a breach or failure to perform under an agreement reached by the parties at the mediation, the Court may impose sanctions pursuant to Rule 1.730, *Fla.R.Civ.P.*
14. In all foreclosure actions to which this administrative order applies, counsel for plaintiff may not file a notice for trial, default final judgment or motion for summary judgment until filing with the Clerk a certificate of compliance with this administrative order.
15. All mediation communications occurring as a result of this referral order shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, *Florida Statutes*, the *Florida Rules of Civil Procedure*, and the *Florida Rules for Certified and Court-Appointed Mediators* unless otherwise provided for by law and by order of court.
16. This Administrative Order only applies to actions that are filed in the counties of the First Judicial Circuit. However, mortgage lenders, whether private, commercial, institutional, or mortgage servicing companies, are encouraged to seek assistance, including mediation, before filing a mortgage

foreclosure lawsuit with the Clerk of the Court. Lenders are encouraged to contact the Collins Center to arrange for entry into a pre-suit mediation process with their borrowers prior to filing foreclosure actions in the First Judicial Circuit to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such cases being filed across the state and, in particular, in the First Judicial Circuit. In the event of pre-suit mediation impasse, the Collins Center shall provide a "Notice of Impasse" to the potential plaintiff who upon filing of that Notice with the Complaint for Foreclosure shall be excused from further compliance with the terms of this administrative order.

17. The failure of a party to fully comply with the provisions of this order may result in the imposition of any sanctions available to the Court, including dismissal of the cause of action.

This Administrative Order shall become effective upon execution, with implementation fifteen days thereafter and shall remain in full force and effect unless and until otherwise ordered.

**DONE AND ORDERED** in Chambers, at Pensacola, Escambia County, Florida, this 17<sup>th</sup> day of March, 2009.



**KIM A. SKIEVASKI, Chief Judge**  
**First Judicial Circuit of Florida**

Copies furnished to:

All Judges, First Judicial Circuit  
All Clerks, First Judicial Circuit  
*The Summation*, Escambia/Santa Rosa Bar Association  
Okaloosa/Walton Bar Association

Please complete this form online at <http://www.CollinsMediation.org/Form A>  
**IN THE CIRCUIT COURT IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA**

CASE NO. \_\_\_\_\_

**Form "A"**

**Certificate of Plaintiff's Regarding Status of Residential Property**

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court pursuant to 1st Judicial Circuit Administrative Order 2009-\_\_\_\_ certifies as follows:

The property \_\_\_\_\_ IS or \_\_\_\_\_ IS NOT an owner-occupied residence. An "owner-occupied residence" means a residential property owned by one of the defendant(s) and occupied by one of the defendant(s) or an immediate family member of one of the defendant(s), including spouse, children, parents, grandparents or siblings.

*If the residential property is an owner-occupied residence, complete the following:*

**Certificate of Plaintiff Regarding Representative at Mediation**

\*Please print clearly or type

| Plaintiff       |  | Defendant(s) |  |
|-----------------|--|--------------|--|
| Company:        |  | Name:        |  |
| Contact Person: |  | Case Number: |  |
| Telephone:      |  | Telephone:   |  |
| Fax:            |  | Fax:         |  |
| Email:          |  | Email:       |  |

| Property Location |  |         |       |
|-------------------|--|---------|-------|
| Address:          |  | County: | City: |
|                   |  | State:  | Zip:  |

**Lender Representative with Full Authority to Settle**

|  |  |          |  |
|--|--|----------|--|
| Name:  |  | Address: |  |
| Telephone:   |  | City:    |  |
| Email:   |  | State:   |  |
| Fax:   |  | Zip:     |  |
| The representative's relationship to the plaintiff is: |  |          |  |

The individual named above will represent the plaintiff in mediation. This individual has full authority to modify the existing loan and mortgage and to settle the foreclosure case. The plaintiff understands the Collins Center may report to the court who appears at mediation and if the representative with full settlement authority named above does not appear at mediation, sanctions may be imposed by the court for failure to appear. The undersigned has personally spoken with the designated representative who confirmed that he or she will have full and complete modification and settlement authority at mediation. The plaintiff understands that the court may order sanctions for any false certification or failure to comply with the court's Order.

If the property is an owner-occupied residence, in addition to Form A, the plaintiff must file with the complaint a copy of the promissory note and mortgage for the property and any pooling or servicing agreements with investors in the property that may affect the plaintiff's ability to settle and to resolve the foreclosure suit and bring a copy of those documents to the mediation

|               |        |        |  |
|---------------|--------|--------|--|
| Signature:    |        |        |  |
| Printed Name: |        |        |  |
| Address:      | Bar #: | Phone: |  |
| Email:        | Fax:   | Date:  |  |

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IN THE FIRST JUDICIAL CIRCUIT OF FLORIDA

ADMINISTRATIVE ORDER NUMBER 2010-01

**ADMINISTRATIVE ORDER FOR CASE MANAGEMENT OF  
RESIDENTIAL FORECLOSURE CASES AND MANDATORY REFERRAL  
OF MORTGAGE FORECLOSURE CASES INVOLVING HOMESTEAD  
RESIDENCES TO MEDIATION**

Whereas, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3), Florida Rules of Judicial Administration, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;” and

Whereas, rule 2.545 of the Rules of Judicial Administration requires that the trial courts “...take charge of all cases at an early stage in the litigation and...control the progress of the case thereafter until the case is determined...”, which includes “...identifying cases subject to alternative dispute resolution processes;” and

Whereas, Chapter 44, Florida Statutes, and rules 1.700-1.750, Florida Rules of Civil Procedure, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

Whereas, residential mortgage foreclosure case filings have increased substantially in the First Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the First Judicial Circuit to manage these cases in a timely manner; and

Whereas, high residential mortgage foreclosure rates are damaging the economies of the counties in the First Judicial Circuit; and

Whereas, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication,

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facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

Whereas, the Collins Center For Public Policy, Inc. is an independent, nonpartisan, nonprofit organization that has demonstrable ability to assist the courts with managing the large number of residential mortgage foreclosure actions that recently have been filed in the First Judicial Circuit.

**NOW, THEREFORE, IT IS ORDERED:**

**Definitions**

As used in this Administrative Order, the following terms mean:

"RMFM Program" (Residential Mortgage Foreclosure Mediation Program) means the mediation program managed by the Collins Center For Public Policy, Inc. to implement and carry out the intent of this Administrative Order.

"The Program Manager" means the Collins Center For Public Policy, Inc., qualified in accordance with parameters attached as Exhibit 14. Also referred to as the "Mediation Manager."

"Plaintiff" means the individual or entity filing to obtain a mortgage foreclosure on residential property.

"Plaintiff's representative" means the person who will appear at mediation who has full authority to settle without further consultation and resolve the foreclosure suit.

"Borrower" means an individual named as a party in the foreclosure action who is a primary obligor on the promissory note which is secured by the mortgage being foreclosed.

"Homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

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“Form A” means the certifications required herein in the format of Exhibit 1 attached.

“Plaintiff’s Disclosure for Mediation” means those documents requested by the borrower pursuant to paragraph 7 below.

“Borrower’s Financial Disclosure for Mediation” means those documents described in Exhibit 5 attached.

“Foreclosure counselor” means a counselor trained in advising persons of options available when facing a mortgage foreclosure, who has no criminal history of committing a felony or a crime of dishonesty, and who is certified by the United States Department of Housing and Urban Development (HUD) or National Foreclosure Mitigation Counseling Program (NFMC) as an agency experienced in mortgage delinquency and default resolution counseling.

“Communication equipment” means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of the participants is audible to all persons present.

### **Scope**

1. ***Residential Mortgage Foreclosures (Origination Subject to TILA)***. This Administrative Order shall apply to all residential mortgage foreclosure actions filed in the First Judicial Circuit in which the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z.<sup>1</sup> However, compliance with this Administrative Order varies depending on whether the property secured by the mortgage is a homestead residence.

Upon the effective date of this Administrative Order, all newly filed mortgage foreclosure actions filed against a homestead residence shall be referred to the RMFM Program unless the plaintiff and borrower agree in writing otherwise or unless pre-suit mediation was conducted in accordance to paragraph 23. The parties to the foreclosure action shall comply with the

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<sup>1</sup> Condominium association and homeowner’s association fee foreclosures and mechanics lien and construction lien foreclosures are not included in the RMFM Program.

conditions and requirements imposed by this Administrative Order. In actions to foreclose a mortgage on a homestead residence, the plaintiff and borrower shall attend at least one mediation session, unless the plaintiff and borrower agree in writing not to participate in the RMFM Program or the Program Manager files a notice of borrower nonparticipation.

Upon the effective date of this Administrative Order, all newly filed residential mortgage foreclosure actions involving property that is not a homestead residence shall comply with the requirements of filing a Form A as required by paragraph 5 below and the requirements of paragraph 18 below (plaintiff's certification as to settlement authority).

At the discretion of the presiding judge, compliance with this Administrative Order may also be required for homestead residential mortgage foreclosure actions filed prior to the effective date of this Administrative Order, to residences which are not homestead residences, and any other residential foreclosure action the presiding judge deems appropriate. A party requesting that the case be sent to mediation with the RMFM Program at the discretion of the presiding judge shall make the request in format of Exhibit 3 attached.

2. ***Referral to Mediation.*** This Administrative Order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure in actions involving a mortgage foreclosure of a homestead residence. The plaintiff and borrower are deemed to have stipulated to mediation by a mediator assigned by the Program Manager unless pursuant to rule 1.720(f), Florida Rules of Civil Procedure., the plaintiff and borrower file a written stipulation choosing not to participate in the RMFM Program. Referral to the RMFM Program is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the panel of available certified circuit civil mediators. Mediators used in the RMFM Program shall be trained in accordance with the standards stated in Exhibit 13 attached. Mediation through the RMFM Program shall be conducted in accordance with Florida Rules of Civil Procedure and Florida Rules for Certified and Court-Appointed Mediators.

Processing of residential mortgage foreclosure cases referred to mediation pursuant to Administrative Order 2009-18 shall not be delayed while the



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specific mediation training requirements of this administrative order are satisfied during the 90 days following the effective date of this order.

3. ***Compliance Prior to Judgment.*** The parties must comply with this Administrative Order and the mediation process must be completed before the plaintiff applies for default judgment, a summary judgment hearing, or a final hearing in an action to foreclose a mortgage on a homestead residence unless a notice of nonparticipation is filed by the Program Manager.
4. ***Delivery of Notice of RMFM Program with Summons.*** After the effective date of this Administrative Order, in all actions to foreclose a mortgage on residential property the clerk of court shall attach to the summons to be served on each defendant a notice regarding managed mediation for homestead residences in the format of Exhibit 2 attached.

#### **Procedure**

5. ***Responsibilities of Plaintiff's Counsel; Form A.*** When suit is filed, counsel for the plaintiff must file a completed Form A with the clerk of court. If the property is a homestead residence, all certifications in Form A must be filled out completely. Within one business day after Form A is filed with the clerk of court, counsel for plaintiff shall also transmit in the electronic format approved by the Chief Judge a copy of Form A to the Program Manager along with the case number of the action and contact information for all of the parties. The contact information must include at a minimum the last known mailing address and phone number for each party. The Program Manager shall notify plaintiff's counsel of any incomplete or seemingly inaccurate information and plaintiff's counsel shall provide correct information promptly. The Program Manager website address is <http://www.collinscenter.org>. The website address can also be obtained at <http://www.FirstJudicialCircuit.org>.

In Form A, plaintiff's counsel must affirmatively certify whether the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. In Form A, plaintiff's counsel must also affirmatively certify whether the property is a homestead residence. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar nonresponsive statements.

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If the property is a homestead residence and if the case is not exempted from participation in the RMFM Program because of pre-suit mediation conducted in accordance with paragraph 23 below, plaintiff's counsel shall further certify in Form A the identity of the plaintiff's representative who will appear at mediation. Plaintiff's counsel may designate more than one plaintiff's representative. At least one of the plaintiff's representatives designated in Form A must attend any mediation session scheduled pursuant to this Administrative Order. Form A may be amended to change the designated plaintiff's representative, and the amended Form A must be filed with the court no later than five days prior to the mediation session. All amended Forms A must be electronically transmitted to the Program Manager via a secure dedicated e-mail address or on the web-enabled information platform described in paragraph 8 no later than one business day after being filed with the clerk of court.

6. ***Responsibilities of Borrower.*** Upon the Program Manager receiving a copy of Form A, the Program Manager shall begin efforts to contact the borrower to explain the RMFM Program to the borrower and the requirements that the borrower must comply with to obtain a mediation. The Program Manager shall also ascertain whether the borrower wants to participate in the RMFM Program.

The borrower must do the following prior to mediation being scheduled: meet with an approved mortgage foreclosure counselor, and provide to the Program Manager the information required by the Borrower's Financial Disclosure for Mediation. The borrower must meet in person or by telephone with an approved mortgage foreclosure counselor no later than 30 days after the borrower is initially in contact with the Program Manager. The borrower's legal counsel may also attend foreclosure counseling, but attendance by legal counsel without the borrower does not satisfy the requirement. If the borrower fails to timely schedule a meeting with a foreclosure counselor, such failure shall be grounds for the Program Manager to file a notice of nonparticipation as provided in paragraph 9 below. Completion of the Borrower's Financial Disclosure for Loan Modification referenced in Exhibit 5A is mandatory in every case so that the borrower's basic financial condition can be assessed by the plaintiff. As applicable, the borrower's financial disclosure for alternative workout options, short sale and a deed in lieu of foreclosure referenced in Exhibit 5B and 5C, should be submitted or made available to plaintiff's counsel and plaintiff's representative designated in Form A.

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It shall be the responsibility of the Program Manager to transmit the Borrower's Financial Disclosure for Mediation to plaintiff's counsel and the plaintiff's representative designated in Form A via a secure dedicated e-mail address or to upload same to the web-enabled information platform described in paragraph 8. If the information is uploaded, the Program Manager shall notify plaintiff's counsel and the plaintiff's representative that the borrower's financial disclosure for mediation is available. The Program Manager is not responsible or liable for the accuracy of the borrower's financial information. The transmission of the Borrower's Financial Disclosure for Mediation to plaintiff's counsel and the plaintiff's representative shall occur no later than 60 days after the Program Manager receives the electronic transmission of Form A from plaintiff's counsel.

7. *Plaintiff's Disclosure for Mediation.* Within the time limit stated below, prior to attending mediation the borrower may request any of the following information and documents from the plaintiff:

Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.

A history showing the application of all payments by the borrower during the life of the loan.

A statement of the plaintiff's position on the present net value of the mortgage loan.

The most current appraisal of the property available to the plaintiff.

The borrower must deliver a written request for such information to the Program Manager in the format of Exhibit 6 attached no later than 25 days prior to the mediation session. The Program Manager shall promptly electronically transmit the request for information to plaintiff's counsel.

Plaintiff's counsel is responsible for ensuring that the Plaintiff's Disclosure for Mediation is electronically transmitted via a secure dedicated e-mail address or to the web-enabled information platform described in paragraph 8 below no later than three (3) business days before the mediation session. The Program Manager shall promptly deliver a copy of Plaintiff's Disclosure for Mediation to the borrower.

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8. ***Information to Be Provided via Secure Dedicated E-mail Address or Web-Enabled Information Platform.*** All information to be provided to the Program Manager to advance the mediation process, such as Form A, Borrower's Financial Disclosure for Mediation, Plaintiff's Disclosure for Mediation, as well as the case number of the action and contact information for the parties, shall be submitted electronically in a format approved by the Chief Judge via a secure dedicated e-mail address or in a web-enabled information platform with XML data elements.
9. ***Nonparticipation by Borrower.*** The Program Manager shall have 30 days after electronically receiving contact information for the borrower (as required by paragraph 5 above) to contact the borrower. If the borrower does not want participate in the RMFM Program, or if the borrower fails or refuses to cooperate with the Program Manager, or if the Program Manager is unable to contact the borrower, the Program Manager shall file a notice of nonparticipation in the format of Exhibit 4 attached. The notice of nonparticipation shall be filed no later than 10 days after the borrower advises that he or she does not want to participate in the program, or fails to cooperate with requirements of this Administrative Order. If the Program Manager is unable to contact the borrower within 30 days after electronically receiving contact information for the borrower, the notice of nonparticipation shall be filed within 40 days after the borrower contact information is electronically received by the Program Manager. A copy of the notice of nonparticipation shall be served on the parties by the Program Manager.
10. ***Referral to Foreclosure Counseling.*** The Program Manager shall be responsible for referring the borrower to a foreclosure counselor prior to scheduling mediation. Selection from a list of foreclosure counselors certified by the United States Department of Housing and Urban Development shall be by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending. The borrower's failure to participate in foreclosure counseling shall be cause for terminating the case from the RMFM Program.
11. ***Referrals for Legal Representation.*** In actions referred to the RMFM Program, the Program Manager shall advise any borrower who is not represented by an attorney that the borrower has a right to consult with an attorney at any time during the mediation process and the right to bring an

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attorney to the mediation session. The Program Manager shall also advise the borrower that the borrower may apply for a volunteer *pro bono* attorney in programs run by lawyer referral, legal services, and legal aid programs as may exist within the circuit. If the borrower applies to one of those agencies and is coupled with a legal services attorney or a volunteer *pro bono* attorney, the attorney shall file a notice of appearance with the clerk of the court and provide a copy to the attorney for the plaintiff and the Program Manager. The appearance may be limited to representation only to assist the borrower with mediation but, if a borrower secures the services of an attorney, counsel of record must attend the mediation.

12. ***Scheduling Mediation.*** The plaintiff's representative, plaintiff's counsel, and the borrower are all required to comply with the time limitations imposed by this Administrative Order and attend a mediation session as scheduled by the Program Manager. No earlier than 60 days and no later than 90 days after suit is filed, the Program Manager shall schedule a mediation session. The mediation session shall be scheduled for a date and time convenient to the plaintiff's representative, the borrower, and counsel for the plaintiff and the borrower, using a mediator from the panel of Florida Supreme Court certified circuit civil mediators who have been specially trained to mediate residential mortgage foreclosure disputes. Mediation sessions will be held at a suitable location(s) within the circuit obtained by the Program Manager for mediation. Mediation shall be completed within the time requirements established by rule 1.710(a), Florida Rules of Civil Procedure.

Mediation shall not be scheduled until the borrower has had an opportunity to meet with an approved foreclosure counselor and the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff via a secure dedicated e-mail address or uploaded to the web-enabled information platform described in paragraph 8. Mediation shall not be scheduled earlier than 30 days after the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff.

Once the date, time, and place of the mediation session have been scheduled by the Program Manager, the Program Manager shall promptly file with the clerk of court and serve on all parties a notice of the mediation session.

13. ***Attendance at Mediation.*** The following persons are required to be physically present at the mediation session: a plaintiff's representative

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designated in the most recently filed Form A; plaintiff's counsel; the borrower; and the borrower's counsel of record, if any. However, the plaintiff's representative may appear at mediation through the use of communication equipment, if plaintiff files and serves at least five (5) days prior to the mediation a notice in the format of Exhibit 7 attached advising that the plaintiff's representative will be attending through the use of communication equipment and designating the person who has full authority to sign any settlement agreement reached. Plaintiff's counsel may be designated as the person with full authority to sign the settlement agreement.

At the time that the mediation is scheduled to physically commence, the Program Manager shall enter the mediation room prior to the commencement of the mediation conference and, prior to any discussion of the case in the presence of the mediator, take a written roll. That written roll will consist of a determination of the presence of the borrower; the borrower's counsel of record, if any; the plaintiff's lawyer; and the plaintiff's representative with full authority to settle. If the Program Manager determines that anyone is not present, that party shall be reported by the Program Manager as a non-appearance by that party on the written roll. If the Program Manager determines that the plaintiff's representative present does not have full authority to settle, the Program Manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by this Administrative Order. The written roll and communication of authority to the Program Manager is not a mediation communication.

The authorization by this Administrative Order for the plaintiff's representative to appear through the use of communication equipment is pursuant to rule 1.720(b), Florida Rules of Civil Procedure (court order may alter physical appearance requirement), and in recognition of the emergency situation created by the massive number of residential foreclosure cases being filed in this circuit and the impracticality of requiring physical attendance of a plaintiff's representative at every mediation. Additional reasons for authorizing appearance through the use of communication equipment for mortgage foreclosure mediation include a number of protective factors that do not exist in other civil cases, namely the administration of the program by a program manager, pre-mediation counseling for the borrower, and required disclosure of information prior to mediation. The implementation of this Administrative Order shall not create any expectation that appearance through the use of communication

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equipment will be authorized in other civil cases.

If the plaintiff's representative attends mediation through the use of communication equipment, the person authorized by the plaintiff to sign a settlement agreement must be physically present at mediation. If the plaintiff's representative attends mediation through the use of communication equipment, the plaintiff's representative must remain on the communication equipment at all times during the entire mediation session. If the plaintiff's representative attends through the use of communication equipment, and if the mediation results in an impasse, within five (5) days after the mediation session, the plaintiff's representative shall file in the court file a certification in the format of Exhibit 8 attached as to whether the plaintiff's representative attended mediation. If the mediation results in an impasse after the appearance of the plaintiff's representative through the use of communication equipment, the failure to timely file the certification regarding attendance through the use of communication equipment shall be grounds to impose sanctions against the plaintiff, including requiring the physical appearance of the plaintiff's representative at a second mediation, taxation of the costs of a second mediation to the plaintiff, or dismissal of the action.

Junior lienholders may appear at mediation by a representative with full settlement authority. If a junior lienholder is a governmental entity comprised of an elected body, such junior lienholder may appear at mediation by a representative who has authority to recommend settlement to the governing body. Counsel for any junior lienholder may also attend the mediation.

The participants physically attending mediation may consult on the telephone during the mediation with other persons as long as such consultation does not violate the provisions of sections 44.401-406, Florida Statutes.

14. ***Failure to Appear at Mediation.*** If either the plaintiff's representative designated in the most recently filed Form A or the borrower fails to appear at a properly noticed mediation and the mediation does not occur, or when a mediation results in an impasse, the report of the mediator shall notify the presiding judge regarding who appeared at mediation without making further comment as to the reasons for an impasse. If the borrower fails to appear, or if the mediation results in an impasse with all required parties present, and if

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the borrower has been lawfully served with a copy of the complaint, and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation. If plaintiff's counsel or the plaintiff's representative fails to appear, the court may dismiss the action without prejudice, order plaintiff's counsel or the plaintiff's representative's to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorney's fees and costs if the borrower is represented by an attorney. If the borrower or borrower's counsel of record fails to appear, the court may impose such other sanctions as the court deems appropriate, including, but not limited to, attorney's fees and costs.

15. ***Written Settlement Agreement; Mediation Report.*** If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Pursuant to rule 1.730(b), Florida Rules of Civil Procedure, if a partial or full settlement agreement is reached, the mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days after completion of the mediation. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. In the case of an impasse, the report shall advise the court who attended the mediation, and a copy of Form A or any amended Form A shall be attached to the report for the court to determine if at least one of the plaintiff's representative named in Form A appeared for mediation. The mediator's report to the court shall be in the format of Exhibit 9 attached.
16. ***Mediation Communications.*** All mediation communications occurring as a result of this Administrative Order, including information provided to the Program Manager that is not filed with the court, shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law.
17. ***Failure to Comply with Administrative Order.*** In all residential foreclosure actions, if a notice for trial, motion for default final judgment, or motion for summary judgment is filed with the clerk of court, no action will be taken by the court to set a final hearing or enter a summary or default final judgment



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until the requirements of this Administrative Order have been met. In cases involving a homestead residence, the presiding judge shall require that copies of either 1) the most recently filed Form A and the report of the mediator, or 2) the most recently filed Form A and the notice of borrower's nonparticipation be sent to the presiding judge by the plaintiff or plaintiff's counsel prior to setting a final hearing or delivered with the packet requesting a summary or default final judgment. Unless otherwise ordered by the court, a certificate of compliance in the format of Exhibit 12 attached shall be filed with a motion for default final judgment, a motion for summary judgment, or a notice for trial. A copy of the certificate of compliance must accompany the submission of any proposed order for a default final judgment, summary judgment, or final judgment of foreclosure.

The failure of a party to fully comply with the provisions of this Administrative Order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.

18. ***Mediation Not Required If Residence Is Not Homestead.*** If the plaintiff certifies in Form A that the property is NOT a homestead residence when suit is filed, plaintiff's counsel must file and serve with the complaint a certification identifying the agent of plaintiff who has full authority to settle the case without further consultation. The certification shall be in the form of Exhibit 10 attached.

If the plaintiff certifies in Form A that the property is NOT a homestead residence, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation, unless otherwise ordered by the presiding judge.

#### **RMFM Program Fees**

19. ***RMFM Program Fees.*** The fee structure for the RMFM Program is based on the assumption that a successful mediation can be accomplished with one mediation session. Accordingly, pursuant to rule 1.720(g), Florida Rules of Civil Procedure, the reasonable program fees for the managed mediation, including foreclosure counseling, the mediator's fee, and administration of the managed mediation program, is a total of \$750.00 payable as follows:

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- 1) \$400.00 paid by plaintiff at the time suit is filed for administrative fees (\$275.00) of the RMFM Program, including outreach to the borrower and foreclosure counseling fees (\$125.00); and
  - 2) \$350.00 paid by plaintiff within 10 days after notice of the mediation conference is filed for the mediation fee component of the RMFM Program fees

If more than one mediation session is needed, the total program fee stated above will also cover a second mediation session. However, if an additional mediation session is needed after the second session, the plaintiff shall be responsible for the payment of the program fees for such additional mediation sessions, unless the parties agree otherwise. The program fees for the third and each subsequent mediation session shall be \$350.00 per session.

All program fees shall be paid directly to the Program Manager. If the case is not resolved through the mediation process, the presiding judge may tax the program fees as a cost or apply it as a set off in the final judgment of foreclosure.

If the borrower cannot be located, chooses not to participate in the RMFM Program, or if the borrower does not make any contact with the foreclosure counselor, the plaintiff shall be entitled to a refund of the portion of the Program fees attributable to foreclosure counseling. If mediation is scheduled and the borrower announces an intention not to participate further in the RMFM Program prior to the mediation session, or if the case settles and the Program Manager has notice of the settlement at least five (5) days prior to the mediation session, the plaintiff shall be entitled to a refund of the Program fees allocated for the mediation session. If notice of settlement is not received by the Program Manager at least five (5) days prior to the scheduled mediation session, the plaintiff shall not be entitled to any refund of mediation fees.

The total fees include the mediator's fees and costs; the cost for the borrower to attend a foreclosure counseling session with an approved mortgage foreclosure counselor; and the cost to the Program Manager for administration of the managed mediation program which includes but is not limited to providing neutral meeting and caucus space, scheduling, telephone lines and instruments, infrastructure to support a web-enabled information

platform, a secure dedicated email address or other secure system for information transmittal, and other related expenses incurred in managing the foreclosure mediation program.

**Program Manager to Monitor Compliance and Satisfaction**

**20. *Monitoring Compliance Concerning Certain Provisions of This Administrative Order, Satisfaction with RMFM Program, and Program Operation.*** The Program Manager shall be responsible for monitoring whether Form A has been filed in all residential foreclosure actions that commence after the effective date of this Administrative Order and whether the RMFM Program fees have been paid if the residence is a homestead residence. The Program Manager shall send compliance reports to the chief judge or the chief judge's designee in the format and with the frequency required by the chief judge.

The Program Manager may assist with enforcing compliance with this Administrative Order upon filing a written motion pursuant to rule 1.100(b), Florida Rules of Civil Procedure, stating with particularity the grounds therefor and the relief or order sought. Example orders are attached as Exhibit 11.

The Program Manager shall also provide the chief judge with periodic reports as to whether plaintiffs and borrowers are satisfied with the RMFM Program.

The Program Manager shall also provide the chief judge with reports with statistical information about the status of cases in the RMFM Program and RMFM Program finances in the format and with the frequency required by the chief judge.

The Program Manager shall provide to the Clerk of the Courts all original compliance reports, together with the activity report; all original mediator's reports; and any original motions submitted to the Program Manager.

**21. *Designation of Plaintiff Liaisons with RMFM Program.*** Any plaintiff who has filed five (5) or more foreclosure actions in the First Judicial Circuit while this Administrative Order is in effect shall appoint two RMFM Program liaisons, one of whom shall be a lawyer and the other a representative of the entity servicing the plaintiff's mortgages, if any, and, if

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none, a representative of the plaintiff. Plaintiff's counsel shall provide written notice of the name, phone number (including extension), email, and mailing address of both liaisons to the chief judge and the Program Manager within 30 days after the effective date of this Administrative Order, and on the first Monday of each February thereafter while this Administrative Order is in effect.

The liaisons shall be informed of the requirements of this Administrative Order and shall be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff's cases through the RMFM Program. Plaintiff's counsel shall promptly inform the chief judge and Program Manager of any changes in designation of the liaisons and the contact information of the liaisons. The liaisons shall act as the court's point of contact in the event the plaintiff fails to comply with this Administrative Order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.

**List of Participating Mediators and Rotation of Mediators**

22. ***List of Participating Mediators and Rotation of Mediators.*** The Program Manager shall post on its website the list of Florida Supreme Court certified mediators it will use to implement the RMFM Program and will state in writing the criteria, subject to approval by the chief judge, the program will use in selecting mediators. The Program Manager shall also state in writing the procedure, subject to the approval by the chief judge, the program will use to rotate the appointment of mediators, and maintain a list as to which mediation site(s) in the First Circuit the mediators designate their willingness to mediate. The RMFM Program shall encourage the use of mediators who have been trained to mediate mortgage foreclosure cases, reflecting the diversity of the community in which it operates. Assignment of mediators shall be on a rotation basis that fairly spreads work throughout the pool of mediators working in the RMFM Program, unless the parties mutually agree on a specific mediator or the case requires a particular skill on the part of the mediator.

Mediators who are on the list of approved mediators maintained by the Program Manager on the date this Administrative Order is signed may

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continue to mediate cases referred to the RMFM Program, however, such mediators shall not continue working in the RMFM Program if they have not completed the training requirements imposed by paragraph 2 above within 90 days after the effective date of this Administrative Order.

**Pre-Suit Mediation Encouraged**

23. *Pre-Suit Mediation.* Mortgage lenders, whether private individuals, commercial institutions, or mortgage servicing companies, are encouraged to use any form of alternative dispute resolution, including mediation, *before* filing a mortgage foreclosure lawsuit with the clerk of the court. Lenders are encouraged to enter into the mediation process with their borrowers *prior* to filing foreclosure actions in the First Judicial Circuit to reduce the costs to the parties for maintaining the litigation and to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such actions being filed across the state and, in particular, in the First Judicial Circuit.


If the parties participated in pre-suit mediation using the RMFM Program or participated in any other pre-suit mediation program having procedures substantially complying with the requirements of this Administrative Order, including provisions authorizing the exchange of information, foreclosure counseling, and requiring use of Florida Supreme Court certified circuit civil mediators specially trained to mediate residential mortgage foreclosure actions, the plaintiff shall so certify in Form A, in which case the plaintiff and borrower shall not be required to participate in mediation again unless ordered to do so by the presiding judge. A borrower may file a motion contesting whether pre-suit mediation occurred in substantial compliance with the RMFM Program.

Nothing in this paragraph precludes the presiding judge from sending the case to mediation after suit is filed, even if pre-suit mediation resulted in an impasse or there was a breach of the pre-suit mediation agreement.

This Administrative Order shall be recorded by the clerk of the court in each county of the First Judicial Circuit, takes effect on March 29, 2010, and will remain in full force and effect unless and until otherwise ordered, and it amends and replaces Administrative Order 2009-18.

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**ORDERED** on February 26, 2010.



**TERRY D. TERRELL, Chief Judge**  
**First Judicial Circuit, State of Florida**

## RMFM PROGRAM TIMELINES

### TIMELINE FROM DATE SUIT FILED:

#### **Suit is filed**

Form A filed with Complaint  
RMFM Program fees paid by Plaintiff  
Notice of RMFM Program attached to Summons

#### **1 business day after suit is filed**

Form A electronically transmitted to Program Manager by Plaintiff's counsel

#### **60-120 days after suit is filed**

Borrower meets with foreclosure counselor  
Borrower's Financial Disclosure for Mediation is transmitted to IT platform  
Mediation session is scheduled  
Borrower requests Plaintiff's Disclosure for Mediation, if desired

#### **120 days after suit is filed**

Notice of Nonparticipation filed by Program Manager, if applicable

### TIMELINE WITH MEDIATION SESSION AS POINT OF REFERENCE

#### **Prior to mediation being scheduled**

RMFM Program fees paid by Plaintiff  
Borrower must contact Program Manager  
Borrower must meet with foreclosure counselor  
Borrower must complete and submit Borrower's Financial Disclosure for Mediation packet to Program Manager

#### **30 days prior to mediation session**

Program Manager electronically transmits Borrower's Financial Disclosure for Mediation to the IT platform

#### **25 days prior to mediation session**

Borrower makes written request for Plaintiff's Disclosure for Mediation if desired

#### **5 days prior to mediation session**

Any amended Form A designation of the plaintiff's representative must be filed with the Clerk

#### **3 business days prior to mediation session**

Plaintiff's counsel transmits Plaintiff's Financial Disclosure for Mediation to the IT platform

#### **1 day prior to mediation session**

Any amended Form A designation of the plaintiff's representative must be uploaded to the IT platform

#### **10 days after mediation session**

Program Manager/Mediator files mediator's report with the clerk of court and serves copies on the parties

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## INDEX OF EXHIBITS

1. FORM A
2. NOTICE OF RMFM PROGRAM TO BE SERVED WITH SUMMONS
3. BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM
4. NOTICE OF BORROWER'S NONPARTICIPATION
5. BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION
6. BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION
7. PLAINTIFF'S NOTICE OF ATTENDING MEDIATION BY TELEPHONE
8. PLAINTIFF'S CERTIFICATION REGARDING ATTENDING MEDIATION BY TELEPHONE
9. MEDIATOR'S REPORT
10. CERTIFICATION REGARDING SETTLEMENT AUTHORITY (Residence Not Homestead)
11. ORDERS FOR REFERRALS, COMPLIANCE, AND ENFORCEMENT
12. CERTIFICATE OF COMPLIANCE WITH ADMINISTRATIVE ORDER 2010-01
13. MEDIATION TRAINING STANDARDS
14. PARAMETERS FOR MANAGED MEDIATION
15. RMFM PROGRAM FLOWCHART



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# EXHIBIT 1

FORM A

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*Please complete online at <http://www.CollinsMediation.org> and file original with the Clerk of Court*

IN THE CIRCUIT COURT IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

[Name of Plaintiff]  
Plaintiff,

Case No.:

vs.

[Names of Defendant(s)]  
Defendant(s)

**Form "A"**

(Certifications Pursuant to First Judicial Circuit Administrative Order 2010-01)

**Certificate of Plaintiff's Counsel Regarding Origination of Note and Mortgage**

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the origination of the note and mortgage sued upon in this action \_\_\_ WAS or \_\_\_ WAS NOT subject to the provisions of the federal Truth in Lending Act, Regulation Z.

**Certificate of Plaintiff's Counsel Regarding Status of Residential Property**

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the property that is the subject matter of this lawsuit \_\_\_ IS or \_\_\_ IS NOT a homestead residence. A "homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

*If the residential property is a homestead residence, complete both of the following:*

**Certificate of Plaintiff's Counsel Regarding Pre-Suit Mediation**

The following certification \_\_\_ DOES or \_\_\_ DOES NOT apply to this case:

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies that prior to filing suit a plaintiff's representative with full settlement authority attended and participated in mediation with the borrower, conducted by the Collins Center For Public Policy, Inc., and the mediation resulted in an impasse or a pre-suit settlement agreement was reached but the settlement agreement has been breached. The undersigned further certifies that prior to mediation the borrower received services from a HUD or NFMC approved foreclosure counselor, Borrower's Financial Disclosure for Mediation was provided, and Plaintiff's Disclosure for Mediation was provided.

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**Certificate of Plaintiff's Counsel Regarding Plaintiff's Representative at Mediation**

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the following is a list of the persons, one of whom will represent the plaintiff in mediation with full authority to modify the existing loan and mortgage and to settle the foreclosure case, and with authority to sign a settlement agreement on behalf of the plaintiff (*list name, address, phone number, facsimile number, and email address*):

Plaintiff's counsel understands the mediator or the RMFM Program Manager may report to the court who appears at mediation and, if at least one of plaintiff's representatives named above does not appear at mediation, sanctions may be imposed by the court for failure to appear.

As required by the Administrative Order, plaintiff's counsel will transmit electronically to the RMFM Program Manager the case number of this action, the contact information regarding the parties, and a copy of this Form A, using the approved web-enabled information platform.

Date:

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*(Signature of Plaintiff's Counsel)*  
[Printed name, address, phone number and  
Fla. Bar No.]

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# EXHIBIT 2

NOTICE OF RMFM PROGRAM  
TO BE SERVED WITH SUMMONS

IN THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT  
IN AND FOR [COUNTY], FLORIDA

**A NOTICE FROM THE COURT REGARDING LAWSUITS TO FORECLOSE  
MORTGAGES ON HOMES**

If you are being sued to foreclose the mortgage on your primary home and your home has a homestead exemption and if you are the person who borrowed the money for the mortgage, you have a right to go to "mediation." At "mediation," you will meet with a Florida Supreme Court certified mediator appointed by the court and also a representative of the company asking to foreclose your mortgage to see if you and the company suing you can work out an agreement to stop the foreclosure. **The mediator will not be allowed to give you legal advice or to give you an opinion about the lawsuit.** The mediator's job is to remain neutral and not take sides, but to give both sides a chance to talk to each other to see if an agreement can be reached to stop the foreclosure. If you and the company suing you come to an agreement, a settlement agreement will be written up and signed by you and the company suing you. With some limited exceptions, what each side says at the mediation is confidential and the judge will not know what was said at mediation.

**You will not have to pay anything to participate in this mediation program.** To participate in mediation, **as soon as practical**, you must contact the Collins Center For Public Policy, Inc. by calling 877-352-2004 between 9:00 a.m. and 5:00 p.m., (Eastern Time) Monday through Friday.

To participate in mediation, you must also provide financial information to the mediator and meet with an approved foreclosure counselor prior to mediation. You will not be charged any additional amount for meeting with a foreclosure counselor. You may also request certain information from the company suing you before going to mediation.

The Collins Center will explain more about the mediation program to you when you call.

If you have attended mediation arranged by Collins Center prior to being served with this lawsuit, and if mediation did not result in a settlement, you may file a motion asking the court to send the case to mediation again if your financial circumstances have changed since the first mediation.

**AS STATED IN THE SUMMONS SERVED ON YOU, YOU OR YOUR LAWYER MUST FILE WITH THE COURT A WRITTEN RESPONSE TO THE COMPLAINT TO FORECLOSE THE MORTGAGE WITHIN 20 DAYS AFTER YOU WERE SERVED. YOU OR YOUR LAWYER MUST ALSO SEND A COPY OF YOUR WRITTEN RESPONSE TO THE PLAINTIFF'S ATTORNEY. YOU MUST TIMELY FILE A WRITTEN RESPONSE TO THE COMPLAINT EVEN IF YOU DECIDE TO PARTICIPATE IN MEDIATION.**

*[Signature of Chief Judge]*  
CHIEF JUDGE, First Judicial Circuit

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# EXHIBIT 3

BORROWER'S REQUEST TO PARTICIPATE  
IN RMFM PROGRAM

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Plaintiff(s), Case No(s):  
\_\_\_\_\_

vs.

Defendant(s).  
\_\_\_\_\_

**BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM**

\_\_\_\_\_, (*printed name*), as the borrower on the mortgage sued upon in this case, hereby requests that this case be referred by the court to mediation using the RMFM Program. The undersigned states, under penalty of perjury, that he or she is currently living on the property as a primary residence and the property has a homestead tax exemption.

Signed on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(*Signature*)

\_\_\_\_\_  
(*Printed Name*)

[Certificate of Service on the parties]

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# EXHIBIT 4

NOTICE OF BORROWER'S NONPARTICIPATION



IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Plaintiff(s), Case No(s):  
\_\_\_\_\_

vs.

Defendant(s).  
\_\_\_\_\_

**NOTICE OF BORROWER NONPARTICIPATION  
WITH RMFM PROGRAM**

*[Name of Program Manager]* hereby gives notice to the court that \_\_\_\_\_,  
(Borrower) will not be participating in the RMFM Program because:

- The RMFM Program has been unable to contact Borrower;
- Borrower has advised that [he/she] does not wish to participate in mediation for this case;
- Borrower has failed or refuses to meet with a foreclosure counselor;
- Borrower has failed or refuses to comply with the Borrower's Financial Disclosure for Mediation;
- Borrower did not appear at scheduled mediation.

Signed on \_\_\_\_\_, 20\_\_.

*[Name of Program Manager]*

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

[Certificate of Service on the parties]

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# EXHIBIT 5

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION

EXHIBIT 5A: LOAN MODIFICATION

EXHIBIT 5B: SHORT SALE

EXHIBIT 5C: DEED IN LIEU OF FORECLOSURE

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# EXHIBIT 5A

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION  
(LOAN MODIFICATION)

## FORECLOSURE MEDIATION FINANCIAL WORKSHEET

Case No.:

v.

Plaintiff's Name

First Defendant's Name

### SECTION 1: PERSONAL INFORMATION

|  |  |  |  |
|--|--|--|--|
| Borrower's Name                            |  | Co-Borrower's Name                         |  |
| Social Security Number                     | Date of Birth (mm/dd/yyyy)                                     | Social Security Number                     | Date of Birth (mm/dd/yyyy)                                     |
| <input type="checkbox"/> Married           | <input type="checkbox"/> Civil Union/ Domestic Partner         | <input type="checkbox"/> Married           | <input type="checkbox"/> Civil Union/ Domestic Partner         |
| <input type="checkbox"/> Separated         | <input type="checkbox"/> Unmarried (single, divorced, widowed) | <input type="checkbox"/> Separated         | <input type="checkbox"/> Unmarried (single, divorced, widowed) |
| Dependents (Not listed by Co-Borrower)     |  | Dependents (Not listed by Borrower)        |  |
| Present Address (Street, City, State, Zip) |  | Present Address (Street, City, State, Zip) |  |

### SECTION 2: EMPLOYMENT INFORMATION

|  |  |                    |  |
|--|--|--------------------|--|
| Employer                                   | <input type="checkbox"/> Self Employed | Employer           | <input type="checkbox"/> Self Employed |
| Position/Title                             | Date of Employment                     | Position/Title     | Date of Employment                     |
| Second Employer                            |  | Second Employer    |  |
| Position/Title                             | Date of Employment                     | Position/Title     | Date of Employment                     |
|  | <b>Borrower</b>                        | <b>Co-Borrower</b> | <b>Total</b>                           |
| Gross Salary/Wages                         |  |                    |  |
| Net Salary/Wages                           |  |                    |  |
| Unemployment Income                        |  |                    |  |
| Child Support/Alimony                      |  |                    |  |
| Disability Income                          |  |                    |  |
| Rental Income                              |  |                    |  |
| Other Income                               |  |                    |  |
| <b>Total (do not include Gross income)</b> |  |                    |  |

| <b>SECTION 3: EXPENSE AND LIABILITIES</b> |                  |             |
|---|------------------|-------------|
|   | Monthly Payments | Balance Due |
| First Mortgage                            |                  |             |
| Second Mortgage                           |                  |             |
| Other Liens/Rents                         |                  |             |
| Homeowners' Association Dues              |                  |             |
| Hazard Insurance                          |                  |             |
| Real Estate Taxes                         |                  |             |
| Child Care                                |                  |             |
| Health Insurance                          |                  |             |
| Medical Charges                           |                  |             |
| Credit Card/Installment Loan              |                  |             |
| Credit Card/Installment Loan              |                  |             |
| Credit Card/Installment Loan              |                  |             |
| Automobile Loan 1                         |                  |             |
| Automobile Loan 2                         |                  |             |
| Auto/Gasoline/Insurance                   |                  |             |
| Food/Spending Money                       |                  |             |
| Water/Sewer/Utilities                     |                  |             |
| Phone/Cell Phone                          |                  |             |
| Other                                     |                  |             |
| <b>Total</b>                              |                  |             |

| <b>SECTION 4: ASSETS</b>     |                 |
|------------------------------|-----------------|
|                              | Estimated Value |
| Personal Residence           |                 |
| Real Property                |                 |
| Personal Property            |                 |
| Automobile 1                 |                 |
| Automobile 2                 |                 |
| Checking Accounts            |                 |
| Saving Accounts              |                 |
| IRA/401K/Keogh Accounts      |                 |
| Stock/Bonds/CDs              |                 |
| Cash Value of Life Insurance |                 |
| Other                        |                 |
| <b>Total</b>                 |                 |

Reason for Delinquency/Inability to Satisfy Mortgage Obligation:

|  |   |   |
|--|---|---|
| <input type="checkbox"/> Reduction in income           | <input type="checkbox"/> Medical issues       | <input type="checkbox"/> Death of family member   |
| <input type="checkbox"/> Poor budget management skills | <input type="checkbox"/> Increase in expenses | <input type="checkbox"/> Business venture failed  |
| <input type="checkbox"/> Loss of income                | <input type="checkbox"/> Divorce/separation   | <input type="checkbox"/> Increase in loan payment |
| <input type="checkbox"/> Other: _____                  |   |   |

**SECTION 4: ASSETS CON'T**

Further Explanation:

I / We obtained a mortgage loan(s) secured by the above-described property.  
I / We have described my/our present financial condition and reason for default and have attached required documentation.  
I / We consent to the release of this financial worksheet and attachments to the mediator and the plaintiff or plaintiff's servicing company by way of the plaintiff's attorney.  
By signing below, I / we certify the information provided is true and correct to the best of my / our knowledge.

|                          |       |       |
|--------------------------|-------|-------|
| _____                    | _____ | _____ |
| Signature of Borrower    | SSN   | Date  |
| _____                    | _____ | _____ |
| Signature of Co-Borrower | SSN   | Date  |

- Please attach the following:
- ✓ Last federal tax return filed
  - ✓ Proof of Income (e.g. one or two current pay stubs)
  - ✓ Past two (2) bank statements
  - ✓ If self-employed, attach a copy of the past six month's profit and loss statement

**This is an attempt to collect a debt and any information obtained will be used for that purpose.**

---

## Fannie Mae Hardship Form 1021

### Home Affordable Modification Program Hardship Affidavit

Borrower Name (first, middle, last): \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Co-Borrower Name (first, middle, last): \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Property Street Address: \_\_\_\_\_  
Property City, State, Zip: \_\_\_\_\_  
Servicer: \_\_\_\_\_  
Loan Number: \_\_\_\_\_

In order to qualify for \_\_\_\_\_'s ("Servicer") offer to enter into an agreement to modify my loan, I/we am/are submitting this form to the Servicer and indicating by my/our checkmarks the one or more events that contribute to my/our difficulty making payments on my/our mortgage loan:

**My income has been reduced or lost. For example: unemployment, underemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. I have provided details below under "Explanation."**

Borrower: Yes \_\_\_ No \_\_\_      Co-Borrower: Yes \_\_\_ No \_\_\_

**My household financial circumstances have changed. For example: death in family, serious or chronic illness, permanent or short-term disability, increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members). I have provided details below under "Explanation."**

Borrower: Yes \_\_\_ No \_\_\_      Co-Borrower: Yes \_\_\_ No \_\_\_

**My expenses have increased. For example: monthly mortgage payment has increased or will increase, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, increased real property taxes. I have provided details below under "Explanation."**

Borrower: Yes \_\_\_ No \_\_\_      Co-Borrower: Yes \_\_\_ No \_\_\_

**My cash reserves are insufficient to maintain the payment on my mortgage load and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts). Cash**

reserves do not include assets that serve as an emergency fund (generally equal to three times my monthly debt payments). I have provided details below under "Explanation."

Borrower: Yes  No  Co-Borrower: Yes  No

**My monthly debt payments are excessive, and I am overextended with my creditors. I may have used credit cards, home equity loans or other credit to make my monthly mortgage payments.** I have provided details below under "Explanation."

Borrower: Yes  No  Co-Borrower: Yes  No

**There are other reasons I/we cannot make our mortgage payments.** I have provided details below under "Explanation."

#### INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

#### BORROWER:

##### Ethnicity:

Hispanic/Latino  
 Not Hispanic/Latino

##### Race:

American Indian/Alaska Native  
 Asian  
 Black/African American  
 Native Hawaiian/Other Pacific Islander  
 White

I do not wish to furnish this information

#### CO-BORROWER:

##### Ethnicity:

Hispanic/Latino  
 Not Hispanic/Latino

##### Race:

American Indian/Alaska Native  
 Asian  
 Black/African American  
 Native Hawaiian/Other Pacific Islander  
 White

I do not wish to furnish this information



---

## TO BE COMPLETED BY INTERVIEWER

Interviewer's Name (print or type): \_\_\_\_\_  
Name/Address of Interviewer's Employer: \_\_\_\_\_  
\_\_\_\_\_

Face-to-face interview  
Interviewer's Signature/Date \_\_\_\_\_ / \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone (include area code) \_\_\_\_\_  
Internet address \_\_\_\_\_

**BORROWER/CO-BORROWER ACKNOWLEDGEMENT**

1. Under penalty of perjury, I/we certify that all of the information in this affidavit is truthful and the event(s) identified above has/have contributed to my/our need to modify the terms of my/our mortgage loan.
2. I/we understand and acknowledge the Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate Federal law.
3. I/we understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this Hardship Affidavit, or if I/we do not provide all of the required documentation, the Servicer may cancel the Agreement and may pursue foreclosure on my/our home.
5. I/we certify that my/our property is owner-occupied and I/we have not received a condemnation notice.
6. I/we certify that I/we am/are willing to commit to credit counseling if it is determined that my/our financial hardship is related to excessive debt.
7. I/we certify that I/we am/are willing to provide all requested documents and respond to all Servicer communication in a timely manner. I/we understand that time is of the essence.
8. I/we understand that the Servicer will use this information to evaluate my/our eligibility for a loan modification or other workout, but the Servicer is not obligated to offer me/us assistance based solely on the representations in this affidavit.
9. I/we authorize and consent to Servicer disclosing to the U.S. Department of Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided by me/us or retained by Servicer in connection with the Home Affordable Modification Program.

\_\_\_\_\_  
Borrower Signature                      Date  
E-mail Address: \_\_\_\_\_  
Cell phone # \_\_\_\_\_  
Home Phone # \_\_\_\_\_  
Work Phone # \_\_\_\_\_  
Social Security # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_\_  
Co-Borrower Signature                      Date  
E-mail Address: \_\_\_\_\_  
Cell phone # \_\_\_\_\_  
Home Phone # \_\_\_\_\_  
Work Phone # \_\_\_\_\_  
Social Security # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

---

**EXPLANATION:**

*(Provide any further explanation of the hardship making it difficult for you to pay on your mortgage.)*

---

# EXHIBIT 5B

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION  
(SHORT SALE)

---

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Signed purchase contract for the homestead residence

Listing agreement for sale of the homestead residence

Preliminary HUD-1

Written permission from the borrower authorizing the plaintiff or any agent of the plaintiff to speak with the real estate agent about the borrower's loan

Borrowers should be reminded that the sale MUST be an arm's length transaction, and the property cannot be sold to anyone with close personal or business ties to the borrower.

---

EXHIBIT 5C

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION  
(DEED IN LIEU OF FORECLOSURE)

---

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Current title search for the homestead residence

---

# EXHIBIT 6

BORROWER'S REQUEST FOR  
PLAINTIFF'S DISCLOSURE FOR MEDIATION



IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Plaintiff(s),

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

vs.

Defendant(s).

---

**NOTICE OF BORROWER'S REQUEST FOR PLAINTIFF'S  
DISCLOSURE FOR MEDIATION**

\_\_\_\_\_, (*printed name*), as the borrower on the mortgage  
sued upon in this case, hereby requests the following information and disclosure  
from the plaintiff pursuant to Administrative Order 2010-01 entered in the First  
Judicial Circuit (*mark the information and documents requested*):

- \_\_\_ Documentary evidence the plaintiff is the owner and holder in due  
course of the note and mortgage sued upon.
- \_\_\_ A history showing the application of all payments by the borrower  
during the life of the loan.
- \_\_\_ A statement of the plaintiff's position on the present net present value  
of the mortgage loan.
- \_\_\_ The most current appraisal of the property available to the plaintiff.

Signed on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

[Certificate of Service on the parties]

---

EXHIBIT 7

PLAINTIFF'S NOTICE OF ATTENDING MEDIATION  
THROUGH THE USE OF COMMUNICATION EQUIPMENT

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

Plaintiff(s),

vs.

Defendant(s).

---

**NOTICE THAT PLAINTIFF'S REPRESENTATIVE WILL APPEAR  
THROUGH THE USE OF COMMUNICATION EQUIPMENT AND  
DESIGNATION OF AUTHORITY TO SIGN SETTLEMENT  
AGREEMENT**

Plaintiff gives notice of exercising the option to allow plaintiff's representative designated in Form A filed in this case to attend mediation through the use of communication equipment, and designates *[name of person]* as the person who will be physically present at mediation with full authority on behalf of plaintiff to sign any settlement agreement reached at mediation.

On the date of the mediation, plaintiff's representative can be reached by calling the following telephone number: *[telephone number, including area code and extension]*.

Signed on \_\_\_\_\_, 20\_\_\_\_.

*[Name of Plaintiff]*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

[Certificate of Service by Plaintiff's Counsel]

---

**EXHIBIT 8**

**PLAINTIFF'S CERTIFICATION REGARDING  
ATTENDANCE AT MEDIATION THROUGH THE USE OF  
COMMUNICATION EQUIPMENT**

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

Plaintiff(s),

vs.

Defendant(s).

---

**CERTIFICATION REGARDING ATTENDANCE AT MEDIATION  
THROUGH THE USE OF COMMUNICATION EQUIPMENT**

*[Name]*, who was designated as Plaintiff's Representative in Form A filed herein, under penalty of perjury, states to the court that [he][she] (*mark as appropriate*)

- Attended mediation through the use of communication equipment, and was on the communication equipment at all times during the entire mediation.
- Attended mediation, through the use of communication equipment but was not on the communication equipment at all times during the mediation.

Signed on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

---

**EXHIBIT 9**  
**MEDIATION REPORT**

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Plaintiff(s), Case No(s):  

|  |  |
|--|--|
|  |  |
|--|--|

vs.

Defendant(s).

---

**MEDIATION REPORT**  
(RMFM Program)

Pursuant to the Court's Order, a Mediation Conference was conducted by  
*[name of mediator]*, Certified Circuit Civil Mediator, on *[date]*.

1. The following were present:
  - a) The Plaintiff's Representative, *[name]*, and Plaintiff's attorney,  
*[name]*.
  - b) The Defendant[s], *[name(s)]*, and his/her/their attorney[s],  
*[name(s)]*.
2. The result of the Mediation Conference is as follows (*Mediator selects only one*):

\_\_\_\_\_ A signed **SETTLEMENT AGREEMENT** was reached during  
this Conference.

\_\_\_\_\_ The parties have reached a total **IMPASSE**.

\_\_\_\_\_ The parties have agreed to **ADJOURN** the mediation to *[date]*.

\_\_\_\_\_ Mediation has been **TERMINATED**.

As required by Administrative Order 2010-01 a copy of the most recently  
filed Form A is attached.

[Certificate of Service]

---

EXHIBIT 10

CERTIFICATION REGARDING SETTLEMENT  
AUTHORITY  
(RESIDENCE NOT HOMESTEAD)



IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

Plaintiff(s),

vs.

Defendant(s).

**PLAINTIFF'S CERTIFICATION SETTLEMENT AUTHORITY**  
(Residence Is Not Homestead)

In compliance with Administrative Order 2010-01, the undersigned attorney certifies that following person or entity has full authority to negotiate a settlement of this case with the borrower without further consultation:

*(All of the following information must be provided)*

Name:

Mailing Address:

Telephone Number (including area code and extension):

Fax Number:

Email Address:

Loan/File Number:

***Notice to Defendants: Because of privacy laws and rules, the plaintiff will only be able to negotiate a modification of the loan with the named borrower on the underlying debt.***

I certify a copy of this certification was served on defendants with the summons.

Date:

[Signature, Address, Phone Number of Plaintiff's Counsel]

---

EXHIBIT 11

ORDERS FOR REFERRALS, COMPLIANCE,  
AND ENFORCEMENT

---

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

Plaintiff(s),

vs.

Defendant(s).

---

**ORDER TO SHOW CAUSE**

(Plaintiff's Failure to Comply with Administrative Order 2010-01)

It appearing to the court that Plaintiff has failed to comply with the requirements of Administrative Order 2010-01 in regards to the following (*as marked*):

**Form A**

Plaintiff failed to file Form A.

Plaintiff failed to electronically submit Form A to the Program Manager using the approved web-based information platform.

**Payment of RMFM Program Fees**

Plaintiff failed to pay the portion of the RMFM Program fees payable at the time suit is filed.

Plaintiff failed to pay the portion of the RMFM Program fees payable within 10 days after the notice conference is filed.

**Electronic Transmittal of Case Number and Borrower Contact Information**

Plaintiff failed to electronically submit the case number and contact

information to the borrower to the Program Manager using the approved web-based information platform.

**Failure to File and Serve Certification Regarding Settlement Authority**

\_\_\_ Plaintiff failed to file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order).

**Attendance at Mediation**

\_\_\_ Plaintiff's counsel failed to attend mediation.

\_\_\_ Plaintiff's representative designated in the most recent Form A filed in the court file failed to attend mediation.

\_\_\_ Plaintiff's agent with full authority to sign a settlement agreement failed to attend mediation.

\_\_\_ Plaintiff's representative failed to attend by telephone at all times during the mediation session.

\_\_\_ After the mediation resulted in an impasse, plaintiff's representative failed to file the certification regarding attendance at mediation by telephone at all times (Form Exhibit 7 attached to the Administrative Order).

IT IS ORDERED that Plaintiff shall appear before the court at the *[designation of courthouse/courtroom]* on *[date]* at *[time]* to show cause why sanctions for noncompliance the Administrative Order 2010-01 should not be imposed. Plaintiff is cautioned that failure to appear at the show cause hearing may result in the case being dismissed and the imposition of other appropriate sanctions.

Signed on *[date]*

*[signature block for judge]*

[Certificate of Service]

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

Plaintiff(s),

vs.

Defendant(s).

---

**ORDER AFTER SHOW CAUSE HEARING**  
(Plaintiff's Failure to Comply with Administrative Order 2010-01)

The court having determined that Plaintiff has failed to comply with the requirements of Administrative Order 2010-01, it is ORDERED and ADJUDGED (as marked):

**Form A**

\_\_\_\_ Within 10 days from the date of this order, Plaintiff shall file and electronically submit Form A to the Program Manager using the approved web-based information platform.

**Payment of RMFM Program Fees**

\_\_\_\_ Within 10 days from the date of this order, Plaintiff shall pay \$ \_\_\_\_\_ of the RMFM Program fees to the Program Manager.

**Electronic Transmittal of Case Number and Borrower Contact Information**

\_\_\_\_ Within 10 days from the date of this order, Plaintiff shall electronically submit the case number and contact information to the borrower to the Program Manager using the approved web-based information platform.

---

**Failure to File and Serve Certification Regarding Settlement Authority**

\_\_\_ Within 10 days after the date of this order, Plaintiff shall file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order).

**Attendance at Mediation**

\_\_\_ Plaintiff's counsel shall attend the next scheduled mediation in this case.

\_\_\_ \_\_\_\_\_ (Name), as plaintiff's representative designated in the most recent Form A filed in the court file, shall physically attend the next scheduled mediation in this case.

\_\_\_ \_\_\_\_\_ (Name), as plaintiff's agent with full authority to sign a settlement agreement shall attend the next scheduled mediation in this case.

**Dismissal**

\_\_\_ This case is dismissed without prejudice.

**Additional Sanctions**

\_\_\_ The court determines \_\_\_\_\_ is entitled to an award of attorney's fees and cost, the amount of which shall be determined at a subsequent hearing.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed on [date]

[signature block for judge]

[Certificate of Service]

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s):

|  |  |
|--|--|
|  |  |
|--|--|

Plaintiff(s),

vs.

Defendant(s).

---

**ORDER REFERRING CASE TO RMFM PROGRAM**  
(Case Filed Prior to February 26, 2010)

It appearing to the court that the residence which is the subject of this action to foreclose a mortgage is a "homestead residence" to which Administrative Order 2010-01 applies and that Defendant \_\_\_\_\_ (Borrower) has requested that the case be referred to mediation, it is ORDERED:

The case is referred to the RMFM Program for mediation, and the plaintiff and borrower shall comply with Administrative Order 2010-01. Within 10 days from the date of this order, the plaintiff shall pay that portion of the RMFM Program fees payable at the time suit is filed, file a properly filled out Form A in the manner required by the administrative order, and electronically transmit Form A to the Program Manager using the approved web-based information platform.

The plaintiff and borrower are to cooperate with the Program Manager and must attend any mediation scheduled by the Program Manager.

The plaintiff is advised and cautioned that failure to comply in a timely manner with the requirements of this order will result in dismissal of the cause of action without further order of the court.

Signed on *[date]*

*[signature block for judge]*

[Certificate of Service]

---

EXHIBIT 12

CERTIFICATION OF COMPLIANCE WITH,  
ADMINISTRATIVE ORDER 2010-01



IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

Case No(s): \_\_\_\_\_

Plaintiff,

vs.

Defendant(s).

**CERTIFICATE OF COMPLIANCE WITH  
ADMINISTRATIVE ORDER 2010-01**

(Must Be Submitted With Request For Final Or Summary Judgment)

The undersigned attorney certifies *(mark as appropriate)*:

\_\_\_\_\_ This action was filed before April 1, 2009, and compliance with Administrative Order 2010-01 (and previous Administrative Order 2009-18) was not ordered by the court.

\_\_\_\_\_ This action was filed after April 1, 2009, and Plaintiff and Plaintiff's counsel have fully complied with the requirements of Administrative Order 2010-01 (and previous Administrative Order 2009-18), and a true and accurate copy of the most recently filed Form A and the mediators report or notice of borrower's nonparticipation is attached to this certificate.

Signed on [date].

[signature block for certifying attorney]

[certificate of service]

---

EXHIBIT 13  
MEDIATION TRAINING STANDARDS

## **Residential Mortgage Foreclosure Training Standards**

### **Introduction**

Achieving an informed and committed workforce of Residential Mortgage Foreclosure Mediators requires not only a grasp of the obvious mediation skills, but an extension of those skills into practical and substantive knowledge areas including, but not limited to, mortgage loan products, securities, loan servicers, court processes, and resolution options. A training model which includes both a preliminary online modular dissemination of information followed by live classroom training will provide this knowledge. Participants' completion of online training modules prior to a one-day live class will facilitate better discussion and greater comprehension. Post training access to online practice resources can improve, develop statewide practice and provide real time content updates.

Development of this training model is not only feasible, but also can be developed in a timely way. We recommend that each training provider maintain a needs-based approach to training, reflect on and respond to the participants' needs, and clearly state a training rationale that will serve as a methodological and ethical touchstone. It is our hope that this outline for Residential Mortgage Foreclosure Mediation Training Objectives and Standards will lead to quality mortgage foreclosure mediation training and practice throughout the State of Florida.

#### **1. Mortgage Foreclosure Mediation Training Goals**

At the conclusion of the training, the participants shall be able to:

- Recognize Basic Legal Concepts in Mortgage Foreclosure Mediation
- Identify Negotiation Dynamics in Mortgage Foreclosure Mediation
- Identify Mediation Process and Techniques in Mortgage Foreclosure Mediation
- Recognize Financial Issues in Mortgage Foreclosure Mediation
- Identify Communication Skills in Mortgage Foreclosure Mediation
- Recognize Ethical Issues in Mortgage Foreclosure Mediation

---

## 2. Learning Objectives

- a. Basic Legal Concepts in Mortgage Foreclosure Mediation
  - 1) Recognize basic legal concepts in mortgage foreclosures.
  - 2) Explain the process of, and timelines in, mortgage foreclosure and in the mortgage foreclosure mediation process.
  - 3) Identify the state rules, state and federal statutes, servicing guidelines, and local procedures and forms governing mortgage foreclosure mediation.
  - 4) Identify the protections, constraints, and exceptions of the Florida Confidentiality and Privilege Act in the context of Mortgage Foreclosure Mediation.
  
- b. Negotiation Dynamics in Mortgage Foreclosure Mediation
  - 1) Recognize the issues of settlement authority as they relate to the stakeholders in Mortgage Foreclosure Mediation.
  - 2) Recognize the impact of physical, telephonic, videoconference, on line or other electronic means of appearance at the mediation conference on the negotiation.
  - 3) Recognize the role(s) of the following in the Mortgage Foreclosure Mediation process:
    - i. lender
    - ii. loan servicer
    - iii. investor
    - iv. mortgage broker
    - v. mortgage pool
    - vi. second mortgagee
    - vii. condominium association
    - viii. homeowners' association
    - ix. lien holders (i.e., municipal, mechanics lien)
    - x. MERS

- 
- xi. appraiser
- 4) Recognize techniques for assessing risks and incentives in a mortgage foreclosure case.
  - 5) Recognize concept of "good faith" and distinguish it from state court appearance requirements.
  - 6) Recognize basic mortgage nomenclature and sources, types and structure of mortgages.
  - 7) Identify options for resolution such as:
    - i. modification of mortgage terms
    - ii. partial loan forgiveness
    - iii. placement of delinquent payments at the end of the loan term
    - iv. short sale
    - v. deed in lieu of foreclosure
    - vi. waiver of deficiency judgment
    - vii. stipulation to modify (i.e., if mortgagor makes X number of payments, then the loan will be modified)
    - viii. principal set aside
    - ix. repayment plan
    - x. loan reinstatement
    - xi. "right to rent" (i.e., the bank owns the property and rents it to the former borrower at the market rental rate)
- c. Mediation Process and Techniques in Mortgage Foreclosure Mediation
- 1) Identify procedural elements which should be addressed prior to the parties' entry into the mediation room including telephonic and other electronic equipment.
  - 2) Identify information which needs to be exchanged prior to mediation (i.e., Pooling and Servicing Agreement; life of loan history; mortgagee current financial disclosure; different loss mitigation, loan modification and other resolution options).

- 
- 3) Identify issues which are appropriate for mortgage foreclosure mediation and those that are not appropriate.
  - 4) Identify individuals who are essential participants in mortgage foreclosure mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.
  - 5) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are presented by counsel.
  - 6) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.
  - 7) Discuss the dynamics of mediating when one or more parties, participants, or representatives frequently participate in mediation.
  - 8) Discuss how emotions affect mortgage foreclosure issues and a party's ability to effectively mediate.
  - 9) Identify the role and procedures of the Program Manager
- d. Financial Issues in Mortgage Foreclosure Mediation
- 1) Understand the Net Present Value Model of the Making Home Affordable Program.
  - 2) Understand debt-to-income ratios and guidelines and potentials for re-defaults.
  - 3) Identify Fannie Mae, Freddie Mac, FHA, VA, and other loan servicer and investor issues and options.
- e. Communication Skills in Mortgage Foreclosure Mediation
- 1) Identify appropriate questions to assist the parties see their own and the other party's issues.

- 
- 2) Identify resources for foreign language interpreters and when and how to use them.

f. Ethical Issues in Mortgage Foreclosure Mediation

- 1) Recognize power imbalances and when a mediator shall advise the parties of the right to seek independent legal counsel.
- 2) Understand that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- 3) Memorializing the parties' agreement.

3. **Training Parameters**

a. Training Provider

- 1) Training may be provided by the Program Manager(s) OR by independent training providers.

b. Funding

- 1) Fees would be paid by mediators to training provider(s) and may include entire training process.

c. Structure

- 1) A series of self – study web based modules corresponding to the six categories of learning objectives outlined in these recommendations – each followed by an online quiz; completed at participant's own pace.
- 2) Final online test for pass code entry to live class.
- 3) Live classroom training

- i. Length of Training. An instructional hour is defined as 50 minutes.
  - ii. Span of Training. Live mortgage foreclosure mediation training shall be presented over a period of one (1) day.
- 4) Certificate of Completion of Advanced Course on Florida Residential Mortgage Foreclosure Mediation given to participant. Access to web-based modules terminates.
- 5) Optional Online Learning Forum - for continued learning provided by Program Manager(s) OR by independent training providers -- additional monthly fee for access

**4. Recommended Course Content Requirements**

Required Training Materials. At a minimum, training providers shall provide each of their attendees with a training manual that includes:

- a. An agenda annotated with the learning objectives to be covered in each section and the intended method of instruction;
- b. Sample mortgage foreclosure mediated settlement agreements;
- c. Sample federal government forms, i.e. HAMP Program Hardship Affidavit, HAMP Trial Period Plan, HAMP FAQs, IRS Form 4506-T, Foreclosure Mediation Financial Worksheet;
- d. Suggested readings including:
  - i. Chapter 44, Florida Statutes – Mediation Alternatives to Judicial Action
  - ii. Florida Rules for Certified and Court-Appointed Mediators
  - iii. Rules 1.510 and 1.700 - 1.750, Florida Rules of Civil Procedure
  - iv. Chapter 697, Florida Statutes – Instruments Deemed Mortgages and the Nature of a Mortgage
  - v. Chapter 701, Florida Statutes – Assignment and Cancellation of Mortgages
  - vi. Chapter 702, Florida Statutes – Foreclosure of



- vii. Mortgages, Agreements for Deeds, and Statutory Liens  
Chapter and/or sections pertaining to Condominiums and Homeowner Associations
- viii. Section 55.10(1), Florida Statutes (2004) pertaining to judgment liens
- ix. Federal statutes (i.e. Bankruptcy; Truth in Lending Act, Hope for Homeowners Act of 2008, Fair Debt Collection Practices Act, Service Members Civil Relief Act of 2003, and others to be identified and defined more specifically)
- x. Homeowner Affordability and Stability Plan, Home Affordable Modification Program (HAMP), and guidelines for servicers
- xi. Glossary of Terms
- xii. List of local, state and federal resources for borrowers
- xiii. Internet Links to useful on line resources
- xiv. Current Supreme Court of Florida Administrative Order, In Re Task Force on Residential Mortgage Foreclosure Cases
- xv. Local Judicial Circuit Administrative Order on Residential Mortgage Foreclosure Cases
- xvi. Additional reading resources provided by the Mediation Manager

**5. Training Methodology**

- a. Pedagogy. Residential mortgage foreclosure mediation training programs shall include, but are not limited to, the following: lecture, group discussion, and a mortgage foreclosure mediation demonstration.
  - 1) Use of subject matter specialists, i.e. lender, borrower, loan servicer, investor, plaintiff and defense counsel, mortgage foreclosure counselor, community resources.
  - 2) A subject matter specialist shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the residential mortgage foreclosure mediation process.

- 
- b. Residential Mortgage Foreclosure Mediation Demonstration. All mortgage foreclosure mediation training programs shall present a residential mortgage foreclosure role play mediation demonstration either live (including video conferencing) or by video/DVD presentation.
  - c. Web-Based Methodologies. Web-based technologies may be used as an optional delivery method or as a post-training forum for continued learning and discussion for mediators. An online version of the training may provide a repository for the rapidly changing residential mortgage foreclosure training information.
  - d. Assessment. Post-training assessment by participants, using post-training surveys combining a Likert scale with narrative response components, should inform content development and methodologies and provide quality assurance for training providers. The post-training survey would give the participants the opportunity to evaluate the effectiveness of the trainer(s), the substantive content of the program, and the practical value of the training, and to offer additional suggestions or comments.

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## EXHIBIT 14

### PARAMETERS FOR MANAGED MEDIATION

**PARAMETERS FOR PROVIDERS OF MANAGED MEDIATION SERVICES**

**Purpose: To define the parameters of managers directing mediation services for parties involved in residential mortgage foreclosure litigation.**

**A. Characteristics of Program Manager**

1. Compliant with ADR principles as promulgated by the supreme court, and ADR statutes and rules;
2. Non-profit entity or associated with a reputable organization of proven competence, autonomous and independent of the judicial branch;
3. Capable of efficient administration of large case loads;
4. Sensitive to cultural, diversity, and Americans with Disabilities Act issues;
5. Politically and professionally neutral;
6. Knowledgeable of court procedures, current trends, laws, rules, and regulations affecting residential foreclosures;
7. Fiscally transparent and accountable;
8. Quickly adaptable to a dynamic and rapidly evolving legal environment;
9. Financially stable;
10. Capable of sustained operation without fiscal impact on the courts;
11. Capable of effectively implementing information technology systems and web-based programs;
12. Alert to ethical and confidentiality issues; and
13. Agreeable to acting as manager for voluntary pre-suit mediation.

**B. Services to be Provided by Program Manager**

1. Receive mediation referrals and, within designated time limits, schedule and coordinate mediation conferences: date, place and time; reserve and provide venues for mediation and caucus; manage continuances and re-scheduling;
2. Maintain financial books and records to insure transparency and accuracy of receipts and expenditures;

3. Prepare financial statements, financial and performance reports (for example, attendance and failure to attend mediation reports);
4. Establish and maintain performance standards for staff and mediators, including maintaining a roster of mediators comprised of persons who are properly trained in accordance with the standards attached, and who are otherwise qualified, and effective in foreclosure mediation;
5. Assist in specialized training of mediators for workout options and resources;
6. Arrange and pay for interpreters;
7. Bill, collect, deposit, and disburse mediation fees and refunds; pay for necessary services and costs incidental to mediation managing as required to implement mediation administrative order;
8. Establish procedures for managing and communicating with *pro se* litigants and attorneys. This includes implementing a process for prompt outreach to borrower-owners immediately after suit has been filed; the goal of the outreach is to inform mortgagors about the mediation program, invite their participation, and to start the process of referral to mortgage foreclosure counseling and the collection of required financial information;
9. Establish procedures for complying with confidentiality rules;
10. Establish a system for managing mediators that:
  - a. Provides for the impartial assignment of mediators, for example, by the use of a rotating list,
  - b. Is open to qualified supreme court certified mediators who are capable of providing effective services in the residential foreclosure setting, and
  - c. Allows for more than one Mediation Managing entity in the circuit if approved by the chief judge.

11. Monitor or supervise the preparation of mediation settlement agreements;
12. In accordance with the Administrative Order establish the schedule for division of fees between mediators, managers and others;
13. Prepare operational reports as required by the chief judge, regarding the number of cases mediated, impasse or successful mediations, etc.;
14. Solicit qualified mediators and maintain current list of mediators available for residential foreclosure cases;
15. Establish procedures for disqualifying and replacing mediators with ethical or other conflicts;
16. Coordinate the referral of mortgagors to certified foreclosure counselors pre-mediation;
17. Refer unrepresented parties to legal aid, or panels of pro bono or reduced fee attorneys;
18. Facilitate the exchange of documents between the parties, pre- and post-mediation, including the establishment and maintenance of a secure web-based communication system between the Program Manager and all parties to mediation using a platform capable of transmitting financial data, email, mediation forms and attachments, and able to track participant payments and refunds;
19. Maintain for dissemination to owner-borrowers a list of approved foreclosure counselors willing to perform services at the rates established by the court;
20. Answer inquiries from mediators and parties re the mediation process and forms;
21. Establish a system for resolving complaints against mediators and other persons involved in the Managed Mediation Program;
22. Establish procedures for participant evaluation of mediation program services, including satisfaction surveys;

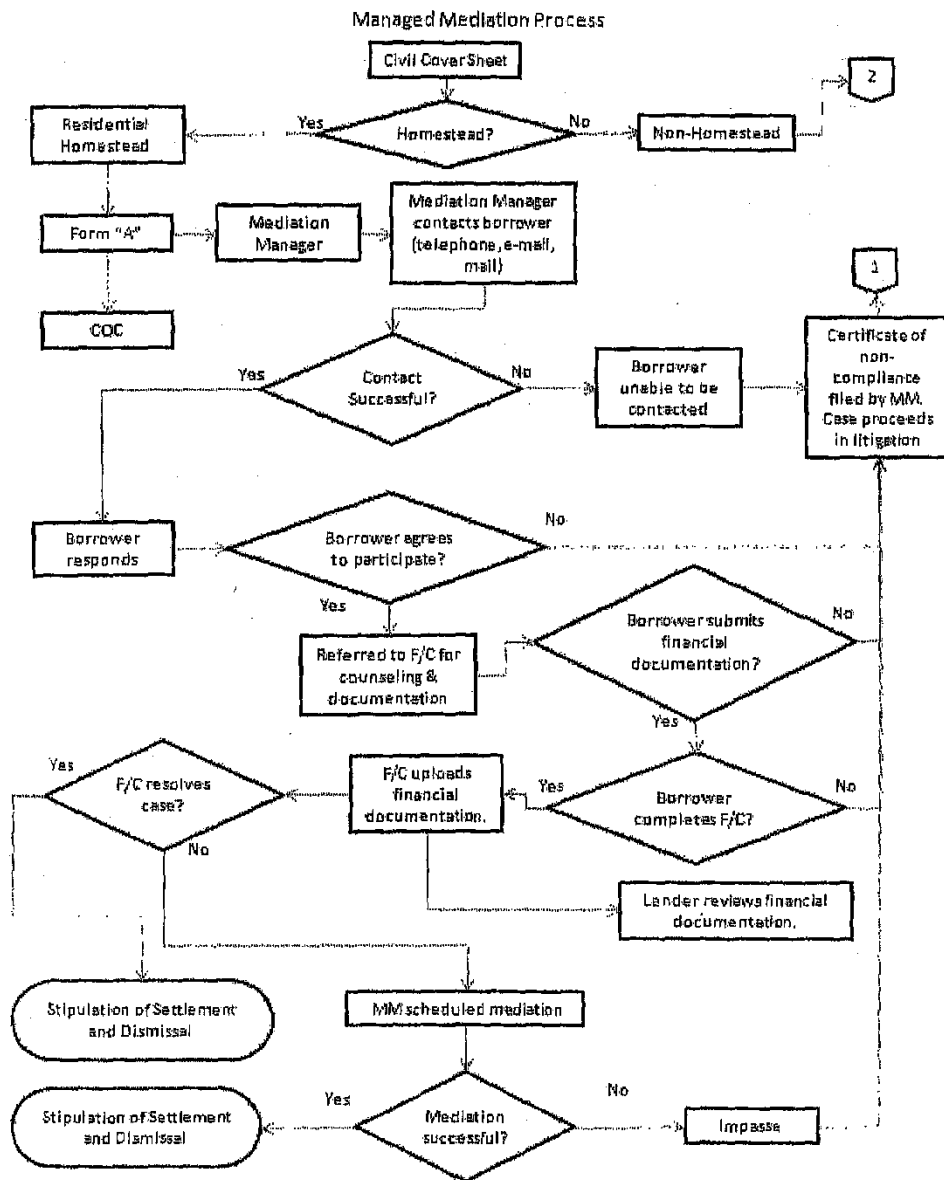
- 
23. Develop the forms and procedures necessary to verify compliance with the residential foreclosure mediation program by lender/servicer representatives, their attorneys, and borrowers; and
  24. Using judicial disqualification criteria as a model, disclose to the chief judge any direct or indirect financial ties to lenders/servicers (including any immediate family members), whether present or within the past three (3) years, with a continuing obligation to disclose.

---

EXHIBIT 15

RMFM PROGRAM FLOWCHART





IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR THE STATE OF FLORIDA

ADMINISTRATIVE ORDER NO. 2010-32

IN RE:       **Foreclosure**

*Foreclosure and Economic Recovery Program;  
Creation of Division "W"*

**ORDER**

WHEREAS, the Legislature, pursuant to a recommendation from the Supreme Court of Florida, recognizes the need to address the backlog of foreclosure actions across the State and has established the *Foreclosure and Economic Recovery Program* for statewide implementation; and

WHEREAS, the First Judicial Circuit qualifies for funding under the *Foreclosure and Economic Recovery Program* due to a backlog of foreclosure actions; it is,

**ORDERED** that:

1. In each county within the First Judicial Circuit a Division will be created to address backlogged foreclosure actions filed in the First Judicial Circuit.
2. The division created in each county to address those foreclosure actions as identified in this order shall be designated "Division W."
3. With the exception of cases in which the Motion for Summary Judgment hearing or a final hearing has been scheduled, foreclosure actions filed on or before

December 31, 2009, shall be reassigned to Division "W" as of the effective date of this order.

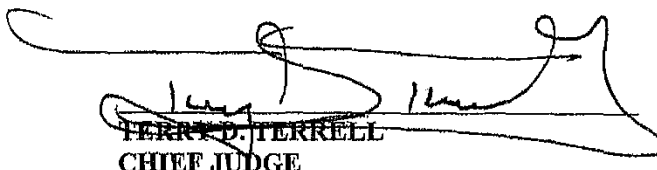
4. The Clerk in each county shall propose a procedural mechanism for reassigning qualified foreclosure cases to Division "W" and shall obtain approval from the Chief Judge for implementation of that procedural mechanism. The Clerks in the First Judicial Circuit shall create the reassignment mechanism with the understanding that should funding for the *Foreclosure and Economic Recovery Program* cease, the cases reassigned under this order shall, under a subsequent order, be reassigned consistent with then existing civil division structure.
5. The creation of a Division "W" in each county creates the need for judicial assignments. The judicial assignments for the First Judicial Circuit are as follows:

|                                |   |                             |
|--------------------------------|---|-----------------------------|
| Escambia County Division "W"   | - | Senior Judge John Parnham   |
| Okaloosa County Division "W"   | - | Senior Judge A. Keith Brace |
| Santa Rosa County Division "W" | - | Senior Judge John Parnham   |
| Walton County Division "W"     | - | Senior Judge A. Keith Brace |
6. Court Administration of the First Judicial Circuit shall employ a half time case manager (supported by other court administration staff) for services to both Escambia and Santa Rosa counties and one full-time case manager for services to both Okaloosa and Walton counties. Every effort shall be expended to facilitate circuit-wide best practices, uniformity, communication, and coordination of case management services to Division "W".
7. This order does not amend, vacate or supersede the content and/or directives in either First Judicial Circuit Administrative Orders 2009-18 or 2010-01.

8. The judges assigned to Division "W" shall have full authority as permitted by law to adopt case management orders and case management techniques to facilitate uniformity and coordination of processes across the First Judicial Circuit to avoid scheduling conflicts. That authority shall extend to other issues expected because of the unique challenges presented by foreclosure cases to include scheduling of cases handled by the large law firms which predominantly represent Plaintiffs in foreclosure actions.
9. Personal appearance by Plaintiff's attorney (or local counsel retained by plaintiff's attorney to appear) is required.
10. Urgent motions and proposed orders must be hand delivered to the assigned Division "W" judge, if available, or the duty judge for signature when requesting cancellation of sales. The Clerk is not required to deliver to the division judge "urgent" or "emergency" motions when plaintiff is requesting the cancellation of a sale. The Clerk has authority to cancel sales upon a defendant filing a copy of a Notice of Bankruptcy in the foreclosure action in which the sale is scheduled.
11. Payment of the required \$70.00 Foreclosure Sale Fee is required to be made at the time the Final Judgment of Foreclosure is submitted to the court for signature. The Clerk will hold the funds until the day prior to the sale.
12. Compliance with a completed checklist is required prior to setting any Final Hearing before the Court.
13. The Division "W" judge will hear any motions involving lack of prosecution in all qualifying foreclosure cases filed prior to December 31, 2009.

14. The effective date of this order is July 1, 2010, through June 30, 2011, unless extended.

**DONE AND ORDERED** in Pensacola, Escambia County, Florida this 30<sup>th</sup> day of June, 2010.



TERRY D. TERRELL  
CHIEF JUDGE

Copies furnished to:

Honorable A. Keith Brace, Senior Judge  
Honorable John Parnham, Senior Judge  
All Judges, First Judicial Circuit  
All Clerks, First Judicial Circuit  
Robin Wright, Trial Court Administrator  
Escambia/Santa Rosa Bar Association, for publication  
Okaloosa/Walton Bar Association, for publication  
Craig VanBrussel, CTO, *First Judicial Circuit Website*

IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR THE STATE OF FLORIDA

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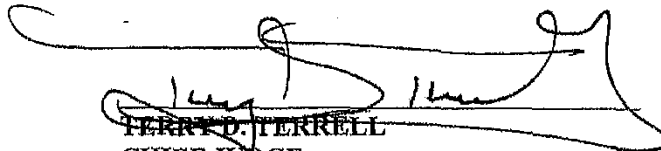
|                                |   |                             |
|--------------------------------|---|-----------------------------|
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| Okaloosa County Division "W"   | - | Senior Judge A. Keith Brace |
| Santa Rosa County Division "W" | - | Senior Judge John Parnham   |
| Walton County Division "W"     | - | Senior Judge A. Keith Brace |
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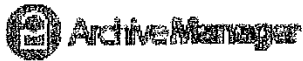
**DONE AND ORDERED** in Pensacola, Escambia County, Florida this 30<sup>th</sup> day of June, 2010.

  
**TERRELL**  
**CHIEF JUDGE**

Copies furnished to:

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Honorable John Parnham, Senior Judge  
All Judges, First Judicial Circuit  
All Clerks, First Judicial Circuit  
Robin Wright, Trial Court Administrator  
Escambia/Santa Rosa Bar Association, for publication  
Okaloosa/Walton Bar Association, for publication  
Craig VanBrussel, CTO, *First Judicial Circuit Website*

Amanda Bailey, Foreclosure Case Coordinator



**From:** [Amanda Bailey](#)

**Sent:** Wed, 24 Nov 2010 13:05:00 GMT

**To:** [RJohansen@flaforeclosureattorneys.com](mailto:RJohansen@flaforeclosureattorneys.com)

**Subject:** Foreclosure checkllst

 **FORECLOSURE CHECKLIST 1ST CIRCUIT (3).rtf (41Kb)**

Hi Mr. Johansen,

I have included a link and attached the actual form, just incase. Please let me know if I can do anything else.

Thanks!

<http://www.firstjudicialcircuit.org/zones/org1/uploads/Foreclosure%20Checklist%20for%20Final%20Hearing.pdf>

*Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329*

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FIRST JUDICIAL CIRCUIT, \_\_\_\_\_ COUNTY, FLORIDA

**FORECLOSURE CHECKLIST FOR FINAL HEARING**

PLAINTIFF \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

vs.

Please enter the docket entry # (DE#) if known; otherwise, insert date for the action.

| DEFENDANT(S) | ANSWER<br>(DATE FILED) | RETURN OF<br>SERVICE FILED/<br>DATE SERVED | DEFAULT OR<br>PUBLICATION<br>DATE FILED | PARTIES<br>DROPPED OR<br>VOL. DISMISSED |
|--------------|------------------------|--|---|---|
|              |                        |  |   |   |
|              |                        |  |   |   |
|              |                        |  |   |   |
|              |                        |  |   |   |
|              |                        |  |   |   |
|              |                        |  |   |   |
|              |                        |  |   |   |
|              |                        |  |   |   |

Date Motion for Summary Judgment FILED: \_\_\_\_\_

Have the following documents been filed?

- 1. Original Promissory Note:      YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 2. Substantial Copy of Note:      YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 3. Original Mortgage:            YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 4. Certified Copy of Mortgage:   YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 5. Assignment (if any):            YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 6. Affidavit of Lost Instrument:
  - a. Note                                YES    NO    N/A      DATE FILED: \_\_\_\_\_
  - b. Mortgage                           YES    NO    N/A      DATE FILED: \_\_\_\_\_

**AFFIDAVITS**

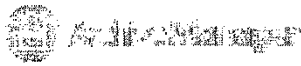
- 1) Amounts Due:                    YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 2) Costs:                              YES    NO    N/A      DATE FILED: \_\_\_\_\_
- 3) Attorney's Fees:                YES    NO    N/A      DATE FILED: \_\_\_\_\_
  - a. Expert Affidavit:                YES    NO    N/A      DATE FILED: \_\_\_\_\_
  - b. Plaintiff's Attorney's        YES    NO    N/A      DATE FILED: \_\_\_\_\_  
 Affidavit (time and fee  
 arrangement with client)

I, the undersigned, certify that I have reviewed the file and verified the information provided herein to be true and correct.

\_\_\_\_\_  
Signature of Attorney for Plaintiff

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name of Attorney

**From:** Amanda Bailey**Sent:** Wed, 20 Oct 2010 12:05:00 GMT**To:** Judge Keith Brace**Subject:** FW: Emailing: Servicerstatementandframework101310 [Servicerstatementandframework101310.pdf \(274Kb\)](#)

Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329

**Attention: The information contained in this E-mail message may be privileged and confidential under Fla. R. Jud. Admin. 2.420 and information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Thank you.**

**From:** Judge Terrell**Sent:** Wednesday, October 20, 2010 10:17 AM**To:** Judge Allen; Judge Bell; Judge Bergosh; Judge Bilbrey; Judge Boles; Judge Brace; Judge Brown; Judge Dannheisser; Judge Geeker; Judge Green; Judge Grinsted; Judge Heflin; Judge Hilliard; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Kinsey; Judge Laporte; Judge Maney; Judge MGoodman; Judge Miller; Judge Nickinson; Judge Nobles; Judge Parnham; Judge Rasmussen; Judge Remington; Judge RGoodman; Judge Rimmer; Judge Santurri; Judge Shackelford; Judge Simon; Judge Stone; Judge Swanson; Judge Ward; Judge Wells**Cc:** ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's; Robin Wright; Janet Gilbert**Subject:** FW: Emailing: Servicerstatementandframework101310

This is the recommendation from a federal agency relating to certain foreclosure issues that was mistakenly mentioned as the FHA position during the conference call yesterday. As you can see, it is from the FHFA.

The e-mails addressing the various concerns on "robo-signers" and non-record information out on the internet are spot on with the concerns and discussions of the Chief Judges and the Chief Justice last Monday. We will all be interested to see whether the Supreme Court provides any direction beyond what current statutes and rules suggest or require next week.

TDT

**From:** Lee Haworth [mailto:LHaworth@jud12.flcourts.org]**Sent:** Monday, October 18, 2010 9:24 AM**To:** trialcourtchiefjudges@flcourts.org**Subject:** FW: Emailing: Servicerstatementandframework101310

This may be useful for our noon meeting.

Lee E. Haworth  
Chief Judge  
12th Judicial Circuit of Florida  
Sarasota, Desoto, Manatee Counties  
941-861-7950

Emails to and from this address are public record. Please include "confidential" in subject line if an exemption is claimed.

**From:** Bailey, Jennifer [mailto:JBailey@jud11.flcourts.org]  
**Sent:** Monday, October 18, 2010 7:51 AM  
**To:** Laura Rush; Lee Haworth  
**Subject:** Emailing: Servicerstatementandframework101310

Lee, Laura:  
Folks on the call today may need this in advance. This is the national blueprint as to how the servicers will be approaching the affidavit issues.

\*\*\*\*\*  
This e-mail has been scanned by Verizon Business Managed Email Content Service, using Skeptic(tm) technology powered by MessageLabs.

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# FEDERAL HOUSING FINANCE AGENCY



## STATEMENT

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For Immediate Release  
October 13, 2010

**Contact:** Corinne Russell (202) 414-6921  
Stefanie Mullin (202) 414-6376

### **Statement By FHFA Acting Director Edward J. DeMarco On Servicer Financial Affidavit Issues**

“On October 1, FHFA announced that Fannie Mae and Freddie Mac are working with their respective servicers to identify foreclosure process deficiencies and that where deficiencies are identified, will work together with FHFA to develop a consistent approach to address the problems. Since then, additional mortgage servicers have disclosed shortcomings in their processes and public concern has increased.

Today, I am directing the Enterprises to implement a four-point policy framework detailing FHFA’s plan, including guidance for consistent remediation of identified foreclosure process deficiencies. This framework envisions an orderly and expeditious resolution of foreclosure process issues that will provide greater certainty to homeowners, lenders, investors, and communities alike.

In developing this framework, FHFA has benefitted from close consultation with the Administration and other federal financial regulators.

The country’s housing finance system remains fragile and I intend to maintain our focus on addressing this issue in a manner that is fair to delinquent households, but also fair to servicers, mortgage investors, neighborhoods and most of all, is in the best interest of taxpayers and housing markets.”

(Attachment follows)

###

*The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.*

## FEDERAL HOUSING FINANCE AGENCY



### Four-Point Policy Framework For Dealing with Possible Foreclosure Process Deficiencies

1. **Verify Process** -- Mortgage servicers must review their processes and procedures and verify that all documents, including affidavits and verifications, are completed in compliance with legal requirements. Requests for such reviews have already been made by FHFA, the Enterprises, the Federal Housing Administration, and the Office of the Comptroller of the Currency, among others. In the event a servicer's review reveals deficiencies, the servicer must take immediate corrective action as described below.
  
2. **Remediate Actual Problems** -- When a servicer identifies a foreclosure process deficiency, it must be remediated in an appropriate and timely way and be sustainable. In particular, when a servicer identifies shortcomings with foreclosure affidavits, whether due to affidavits signed without appropriate knowledge and review of the documents, or improperly notarized, the following steps should be taken, as appropriate to the particular mortgage:
  - a. **Pre-judgment foreclosure actions:** Servicers must review any filed affidavits to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to take appropriate remedial actions, which may include preparing and filing a properly prepared and executed replacement affidavit before proceeding to judgment.
  
  - b. **Post-judgment foreclosure actions (prior to foreclosure sale):** Before a foreclosure sale can proceed, servicers must review any affidavits relied upon in the proceedings to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures. Potential remedial measures could include filing an appropriate motion to substitute a properly completed replacement affidavit with the court and to ratify or amend the foreclosure judgment.



c. **Post-foreclosure sale (Enterprise owns the property):**

- **Eviction actions:** Before an eviction can proceed, servicers with deficiencies must confirm that the information contained in any affidavits relied upon in the foreclosure proceeding was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures before the eviction proceeds. Potential remedial measures could include seeking an order to substitute a properly prepared affidavit and to ratify the foreclosure judgment and/or confirm the foreclosure sale.
- **Real Estate Owned (REO):** With respect to the clearing of title for REO properties, servicers must confirm that the information contained in any affidavits relied upon in the foreclosure proceeding was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures and take actions as may be required to ensure that title insurance is available to the purchaser for the subject property in light of the facts surrounding the foreclosure actions.

d. **Bankruptcy Cases:** Servicers must review any filed affidavits in pending cases to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with bankruptcy counsel to take appropriate remedial actions.

3. **Refer Suspicion of Fraudulent Activity** -- Servicers are reminded that in any foreclosure processing situation involving possible fraudulent activity, they should meet applicable legal reporting obligations.

4. **Avoid Delay** -- In the absence of identified process problems, foreclosures on mortgages for which the borrower has stopped payment, and for which foreclosure alternatives have been unsuccessful, should proceed without delay. Delays in foreclosures add cost and other burdens for communities, investors, and taxpayers. For Enterprise loans, delay means that taxpayers must continue to support the Enterprises' financing of mortgages without the benefit of payment and neighborhoods are left with more vacant properties. Therefore, a servicer that has identified no deficiencies in its foreclosure processes should not postpone its foreclosure activities.

FHFA will provide additional guidance should it become necessary.



**From:** [Beth Moran](#)  
**To:** [Amanda Bailey](#)  
**Subject:** RE: 11/4/10 HEARING CANCELLATION

**Sent:** Wed, 03 Nov 2010 10:12:07 GMT

[image001.gif \(OKb\)](#)

Thank you Amanda, I'll speak with my supervisor.

Thank you,  
Beth Moran X 1216

**From:** Amanda Bailey [mailto:[amanda.bailey@flcourts1.gov](mailto:amanda.bailey@flcourts1.gov)]  
**Sent:** Wednesday, November 03, 2010 11:08 AM  
**To:** Beth Moran  
**Subject:** RE: 11/4/10 HEARING CANCELLATION

Good Morning Beth,

It is best to have local counsel appear for the hearing and present Judge Brace with the Motion and order to cancel. Otherwise, Judge Brace may find that your office is in violation of the administrative order and it could be cause for dismissal of the foreclosure action.

Thank you,

*Amanda Bailey  
Court Program Specialist II  
Foreclosure and Economic Recovery Program  
Okaloosa and Walton Counties  
101 East James Lee Boulevard  
Crestview, FL 32536*

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**From:** Beth Moran [mailto:[bmoran@KASSLAW.com](mailto:bmoran@KASSLAW.com)]  
**Sent:** Wednesday, November 03, 2010 10:00 AM  
**To:** Amanda Bailey  
**Subject:** 11/4/10 HEARING CANCELLATION

Good morning Amanda,

I left you a voicemail yesterday, trying to see if we can cancel the below referenced hearing, set for tomorrow at 11:00am CST.

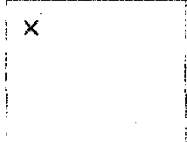
HSBC V. MARK SHEA      2007-CA-001104

286750.070724A

I've prepared a Motion and Order to Cancel the hearing. Please advise how best to proceed.

Thank you,

Beth Moran  
Hearings Specialist  
Kass, Shuler, Solomon,  
Spector, Foyle & Singer, PA  
1505 N. Florida Ave.,  
Tampa FL 33602  
813-229-0900 Ext:1216  
888-229-0905 Ext:1216  
Fax: 813-229-3323  
[bmoran@kasslaw.com](mailto:bmoran@kasslaw.com)



**~Freddie Mac Designated Counsel (Florida)~**

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

\*\*\*\*\*

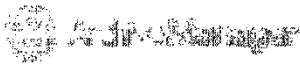
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**From:** Amanda Bailey

**To:** [Redacted]

**Subject:** FW: Question

*Judge  
Brace*

**Sent:** Fri, 05 Nov 2010 10:27:00 GMT

[09-24782 NOH.PDF \(110Kb\)](#)

Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329

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**From:** smarstelle@defaultlawfl.com [mailto:smarstelle@defaultlawfl.com]  
**Sent:** Friday, November 05, 2010 9:24 AM  
**To:** Amanda Bailey  
**Subject:** RE: Question

Amanda,  
Please pass this on to Judge Brace, if he is interested, it was a NOH prepared by another judge; just as information as to what other judges are doing...

Shayna Parrish Marsteller, Esq.  
Florida Default Law Group, PL  
813-342-2200 ext. 3662 phone  
850-291-5546 cell phone  
813-251-1541 fax  
[smarstelle@defaultlawfl.com](mailto:smarstelle@defaultlawfl.com)

Please be advised that this law firm may be acting as a debt collector and is attempting to collect a debt and any information provided will be used for that purpose.

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**From:** Amanda Bailey [mailto:amanda.bailey@fcourts1.gov]  
**Sent:** Friday, November 05, 2010 7:55 AM  
**To:** Shayna Marsteller  
**Subject:** Question

Hi Shayna,

I'm sorry that I have to ask, but can you tell me what happened with case number 2008 CA 000687 – Bank of America v. Forrester? My notes are blank and I need to know what happened with that case.

Thank you so much!

*Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329*

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IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA

1/2

CASE # 05-20 09 -CA- 29550 -XXXX-XX  
MORTGAGE FORECLOSURE DIVISION

INDYMAC

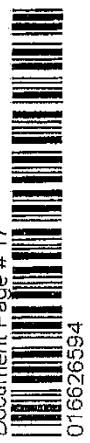
Plaintiff(s),

v  
BARRY MITTELBERG, et al

Defendant(s)

FILED IN VIF 2A-06  
CLERK'S OFFICE  
2010 OCT -1 P 11 40  
SCOTT ELLIOTT

Case # 05 2009 CA 029550-XXXX XX  
Document Page # 17



**NOTICE OF HEARING**

The Motion To Dismiss filed in this action will be heard on the 5th day of November, 2010, along with many others, at the Moore Justice Center, 2825 Judge Fran Jameson Way, Viera, Florida 32940, in Courtroom 3C, starting at 9 00 am and Courtroom 3C, starting at 1 30 pm The cases will be heard by Senior Mortgage Foreclosure Judge, Charles M Holcomb Personal appearance is **Required** as the telephone system will not accommodate the volume of cases scheduled

Many of the motions attack standing of Plaintiff to bring the action A brief overview of the law follows When a motion to dismiss is heard, all well pled allegations of the complaint are taken as true Therefore, an allegation that Plaintiff owns or holds the mortgage and note and has the right to enforce it is taken as true unless there are conflicting exhibits The fact that an endorsement is not shown on the copy of the note does not create a standing issue as the note copy is usually taken from the closing file before it is transferred to another lender, etc Other than the originator, no "proof" is shown in the complaint- proof is for trial

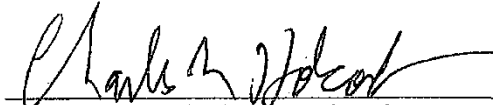
The Plaintiff must prove that it was the owner, holder or had the right to enforce the note as of the date of filing the Complaint *Jeff-Ray Corp v Jacobson* 566 So 2d 885 (Fla 4<sup>th</sup> DCA 1990) The holder of a negotiable instrument means the person in possession of the instrument payable to bearer (blank endorsement) or to an identified person or entity §671 201(21) Fla Statutes (2010) and *Riggs v Aurora Loan Services, LLC*, 36 So 3d 932 (Fla 4<sup>th</sup> DCA 2010) The holder may be the owner or a nominee, such as a servicer, assignee or a collection or litigation agent Rule 1 210(a), Fla R Civ P (2010) provides that an action may be prosecuted in the name of an authorized person without joinder of the party for whose benefit the action is brought See also, *Kumar Corp v Nopal Lines Ltd* 462 So 2d 1178, 1184 (Fla 3<sup>rd</sup> DCA 1985) Plaintiff's nominee has standing to maintain foreclosure based on the real party in interest rule *Mortgage Electronic Registration Systems, Inc v Revoredo* 955 So 2d 33

2/2

(Fla 3<sup>rd</sup> DCA 2007), *Mortgage Electronic Registration Systems, Inc v Azize*, 965 So 2d 151 (Fla 2<sup>nd</sup> DCA 2007), *Phlogene v ABN AMRO Mortgage Group, Inc* 948 So 2d 45 (Fla 4<sup>th</sup> DCA 2006)


It is better practice to plead assignment of the note and mortgage but absent formal assignment of the mortgage or delivery, the mortgage in equity passes as an incident of the debt *Perry v Fairbanks Capital Corp*, 888 So 2d 725 (Fla 5<sup>th</sup> DCA 2004), *Johns v Gillian*, 134 Fla 575, 579 (Fla 1938) There is no requirement of a written and recorded assignment of the mortgage to maintain a foreclosure action where the evidence establishes Plaintiff as owner and holder of the note on the date the action was filed See *Perry supra* and *WM Specialty Mortgage, LLC v Salomon* 874 So 2d 681 at 682 (Fla 4<sup>th</sup> DCA 2004), *Chemical Residential Mortgage v Rector* 742 So 2d 300 (Fla 1<sup>st</sup> DCA 1998) However, if an assignment is attached as an exhibit and it has defects, standing may be challenged *BAC Funding Consortium Inc ISAOA/ATIMA v Jean Jacques* 28 So 3d 936 (Fla 2<sup>nd</sup> DCA 2010)

If this brief overview of the law causes you to believe the Motion To Dismiss is premature or that the issues should be raised by affirmative defenses instead, the Defendant may withdraw the Motion in writing with a copy to the Plaintiff's Counsel, at least seven (7) days before the hearing If not withdrawn, counsel must appear in person for the hearing scheduled for the Motion

  
Charles M. Holcomb  
Senior Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Notice of Hearing was sent to the Parties names on the attached list by deposit in the U S Mail, this 30 day of September, 2010

  
Trish Matarazzo  
Executive Secretary/Judicial Assistant

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance Please contact the ADA Coordinator at Court Administration, 2825 Judge Fran Jamieson Way, 3rd floor, Viera, Florida, 32940-8006, (321) 633-2171 ext 2 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days, if you are hearing or voice impaired, call 711**

#10



**From:** Amanda Bailey

**Sent:** Wed, 17 Nov 2010 08:21:00 GMT

**To:** [REDACTED]

**Subject:** FW: Letter to Chief Justice Canady

*Judge Brace*

[Ltr to Chief Justice Canady.FINAL.pdf \(197Kb\)](#)

Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329

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**From:** Judge Terrell

**Sent:** Tuesday, November 16, 2010 5:25 PM

**To:** Judge Allen; Judge Bell; Judge Bergosh; Judge Bilbrey; Judge Boles; Judge Brace; Judge Brown; Judge Dannheisser; Judge Geeker; Judge Green; Judge Grinsted; Judge Heflin; Judge Hilliard; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Kinsey; Judge Laporte; Judge Maney; Judge MGoodman; Judge Miller; Judge Nickinson; Judge Nobles; Judge Parnham; Judge Rasmussen; Judge Remington; Judge RGoodman; Judge Rimmer; Judge Santurri; Judge Shackelford; Judge Simon; Judge Stone; Judge Swanson; Judge Ward; Judge Wells

**Cc:** ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's; Robin Wright; Keri Igney; Janet Gilbert

**Subject:** FW: Letter to Chief Justice Canady

This is forwarded for informational purposes.

If memory serves correctly and unless the law has been revised recently, the only proceedings that are closed by statute are termination of parental rights cases and adoption cases. Of course, the parties can waive closure if the court accepts waiver.

There are certain cases where the courtroom can be cleared of spectators (with the exception of designated individuals, including the press) during testimony of sex battery victims, or during testimony concerning sex offenses by children under 16 years of age or by persons with mental retardation pursuant to § 918.16, Florida Statute (2010).

No information has been provided regarding whether any judge in the First Circuit has conducted an unauthorized closed hearing or proceeding.

It is incumbent on all judges to inform themselves on the requirements and restrictions relating to any request to close a hearing. As with so many other issues, don't do it unless absolutely necessary, and be sure to do it in compliance with law.

TDT



**From:** Lisa Goodner [mailto:goodnerl@flcourts.org]  
**Sent:** Monday, November 15, 2010 8:51 AM  
**To:** Trial Court Chief Judges; Trial Court Administrators  
**Cc:** OSCA-MANAGERS  
**Subject:** FW: Letter to Chief Justice Canady

FYI.

Lisa

**From:** Larry Schwartztol [mailto:lschwartztol@aclu.org]  
**Sent:** Friday, November 12, 2010 7:07 PM  
**To:** Craig Waters  
**Subject:** Letter to Chief Justice Canady

Craig,

I hope this email finds you well. As I mentioned earlier today, the ACLU is working with a coalition of organizations representing members of the Florida news media to protest barriers to access to foreclosure proceedings around the state of Florida. The attached letter will be delivered by UPS to the Chief Justice on Monday morning, and we expect to issue a press release that afternoon. In order to give the Chief Justice advance notice, we wanted to send this to you now. If you wouldn't mind forwarding this to the Chief Justice, I would greatly appreciate it.

Best,

Larry

Larry Schwartztol | Staff Attorney  
*Racial Justice Program*  
**The American Civil Liberties Union**  
 125 Broad Street, 18<sup>th</sup> Floor | New York, NY 10004  
 Phone: 212-519-7849

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**Florida Press Association**  
336 E. College Avenue, Suite 203  
Tallahassee, FL 32301  
(850) 521-1199  
Fax (850) 577-3629

Chief Justice Charles T. Canady  
Florida Supreme Court  
500 South Duval Street  
Tallahassee, FL 32399-1925

November 12, 2010

Dear Chief Justice Canady,

We write to express our concern that the right to open access to judicial proceedings is being unduly impeded in foreclosure proceedings around the state. Our organizations have received numerous reports that extraordinary barriers to access are preventing members of the general public, as well as representatives of the news media, from observing foreclosure proceedings in judicial circuits around the state. We believe these barriers undercut the transparency of the judicial process; they also violate the strong presumption of open access to judicial proceedings under Florida law. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

The reports we have received come from all around the state, and although the precise nature of the barriers to access varies, a troubling pattern emerges: foreclosure divisions recently established by the judicial circuits have been operating under a presumption of closure to members of the general public, rather than the presumption of openness mandated by Florida law. An illustrative, but not exhaustive, list of encounters that have been reported to our organizations since August 2010 follows:

- A court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public.
- A pro se defendant in Duval County was told by a member of court security that she could not access foreclosure proceedings because only attorneys were permitted.
- A court observer called the Orange County courthouse to ask about attending foreclosure proceedings. She was informed that foreclosure hearings were held "in private chambers" and therefore not open to the public.

- In Citrus County, an individual preparing to mount a pro se defense in his own foreclosure case attempted to attend foreclosure hearings in advance of his own so that he could know what to expect when his case was heard. He was told that foreclosure hearings are “private” and take place in judges’ chambers, and that he would not be permitted to observe them.
- Most recently, a legal aid attorney in Jacksonville attended a foreclosure proceeding accompanied by a reporter from Rolling Stone Magazine. Neither the attorney nor the reporter did anything disruptive to the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard. Later that day, the judge sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while “attorneys are welcome in Chambers at their leisure,” members of the media are “permitted” entry only upon “proper request to the security officer.” He further informed the attorney that she “did not have authority to take anyone back to chambers without proper screening” and stated that her “apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview” may be “sited [sic] for possible contempt charges in the future.”<sup>1</sup>

In raising our concerns about this pattern of exclusion, we rely on the extensive body of case law that has made Florida a model for open government. Systematically excluding members of the press and public from judicial foreclosure proceedings violates the robust guarantee of open access to courts provided by Florida law. This Court has held that “both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records.” *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). *Barron* articulated this right of access in forceful terms. It emphasized that “a strong presumption of openness exists for all court proceedings” and outlined the carefully circumscribed exceptions to this broad rule:

[C]losure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

---

<sup>1</sup> Since the incident in Duval County was particularly egregious, we have also asked that Chief Judge Moran consider appropriate action.

*Id.*, at 118. Even in these exceptional circumstances, “before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.” *Id.*

The protection of public access to judicial proceedings serves fundamental constitutional values. In particular, the “value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)). “A trial courtroom is a public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B v. Francis*, No. 5:08-cv-79, 2010 WL 503067, \*2 (N.D. Fla. Feb. 5, 2010). Foreclosure proceedings are currently a matter of intense public interest. Indeed, the media has, in recent months, scrutinized them for possible procedural deficiencies. See, e.g., Gretchen Morgenson and Geraldine Fabrikant, *Florida's High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 14, 2010; Polyana da Costa, *Before Foreclosing, Judges Must Hear Out Homeowners*, MIAMI DAILY BUS. REV., Oct. 14, 2010.

As the examples outlined above show, Florida’s presumption of openness is being inverted in the context of foreclosure proceedings: courts across the state are effectively imposing a presumption of closure, which may be overcome only by special permission to observe proceedings. In effect, only those who actively assert their right of access in the face of initial barriers, and then ultimately receive permission, may exercise their right to observe foreclosure hearings.

Under Florida law, there are few justifications that can counterbalance the right to access. Even when those exceptional circumstances exist, the court must still determine that no more narrowly tailored alternative is available. *Barron*, 531 So. 2d at 118; see also *Globe Newspaper Co. v. Super. Ct. for the County of Norfolk*, 457 U.S. 596 (1982) (invalidating statute closing trials for certain sex offenses involving minors where state had a “compelling” interest in protecting minors’ privacy but where the court “offered no empirical support” that closure would effectively further that interest). There is no indication that closure of foreclosure courts occurs only when such rigorous analysis has taken place. Indeed, the opposite appears to be true: by choosing to conduct foreclosure hearings in “private” conference rooms or judicial chambers and treat those as closed proceedings, the burden shifts to members of the press or public to convince the court to allow access.

We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical

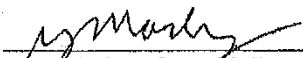
setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.

This Court has noted that the press plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the indulgence of the presiding judge to allow them to observe important judicial proceedings.

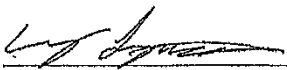
It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.<sup>2</sup>


Accordingly, we respectfully urge you to take corrective action to ensure citizen and press access as guaranteed by Florida's right-of-access jurisprudence. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action to ensure that both the public and media may observe proceedings consistent with Florida law and subject only to ordinary security measures

We thank you for your attention to this important matter.

  
Sam Morley, General Counsel  
The Florida Press Association

  
Talbot D'Alemberte, Bar No. 0017529  
The Florida Press Association

  
Larry Schwartz, Staff Attorney  
The American Civil Liberties Union

  
Randall Marshall, Legal Director  
The American Civil Liberties Union of Florida

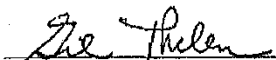
<sup>2</sup> The incident in Duval County occurred on October 26<sup>th</sup>. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29<sup>th</sup>.



James Parker Rhea, Director & General Counsel  
The First Amendment Foundation



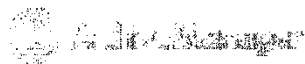
C. Patrick Roberts, President & CEO  
Florida Association of Broadcasters



Gil Thelen, Executive Director  
The Florida Society of Newspaper Editors



James Denton, Editor  
The Florida Times-Union



**From:** [Amanda Bailey](#)  
**To:** [mviolette@earthlink.net](mailto:mviolette@earthlink.net)  
**Subject:** PreTrial Order

**Sent:** Wed, 17 Nov 2010 09:44:00 GMT

[PreTrial Order - Edited.doc \(34Kb\)](#) [Pretrial order final OKALOOSA.docx \(19Kb\)](#)

Mr. Violette,

Attached please find the PreTrial Orders we discussed. You may need to edit them slightly, as the certificate of compliance will not apply in this situation. Please let me know if you need anything else or if you have any questions.

Thanks!

Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329

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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR WALTON COUNTY, FLORIDA**

**ORDER SCHEDULING PRETRIAL CONFERENCE (or Plaintiff's Motion for Summary Judgment)**

This Case is scheduled for a Pretrial Conference (or Plaintiff's Motion for Summary Judgment) in accordance with Rule 1.200(a), Florida Rules of Civil Procedure and Administrative Order# 2010-32 for the First Judicial Circuit. The pretrial conference (or Motion for Summary Judgment) is scheduled for December 9, 2010 at 8:30 A.M. CST at the Walton County Courthouse, 571 US Highway 90 East, DeFuniak Springs, Florida, before the Honorable Keith Brace. **(ALL TIMES CONTAINED HEREIN ARE CENTRAL STANDARD TIMES)**

This case is designated a "backlog" case because of the length of the time it has been pending and the purpose of this Order is to identify and resolve outstanding issues and determine what action is necessary to move the case fairly and expeditiously to resolution. *All requirements contained herein are hereby ordered by this court and are mandatory. Failure of any party to comply with the terms and requirements contained herein may result in the imposition of sanctions*, including but not limited to dismissal of claims and counterclaims, attorney fees and costs.

The parties are hereby notified that ALL PENDING MOTIONS will be considered at the Pretrial Conference.

**Appearance at Pretrial Conference**

All attorneys shall appear in person at the conference. Telephonic appearance is not permitted. Each attorney shall have specific knowledge of the case and the ability to answer questions by the Court. **Failure to appear by either party or failure to appear with requisite knowledge shall be grounds for dismissal, striking of pleadings, entry of default and/or other sanctions as the Court deems appropriate.**

**Pretrial Report**

A Pretrial Report shall be filed by the Plaintiff and any appearing Defendant in the case, except that the Parties may file the following, and only the following in lieu of the Pretrial Report:

1. A Stipulation of Voluntary Dismissal and Proposed Order of Dismissal agreed to by parties.



2. A Stipulation of Settlement or Forbearance signed by all parties of record who have not been previously defaulted, with a Proposed Order of Dismissal reserving jurisdiction to enforce the settlement of forbearance.

3. **A Motion for Summary Judgment has been filed along with all supporting affidavits**

The Pretrial Report shall be filed by each party with the Clerk of Court, served on opposing parties.

**This report shall be filed and delivered no later than ten (10) days prior to the scheduled Pretrial Conference.**

The Pretrial Report shall include:

1. Date of filing of complaint and status of complaint, including any lost note count.
2. Status of pleadings of each defendant.
3. List of all pending Motions.
4. Status of the Property: Whether owner-occupied, tenant-occupied, or vacant.
5. Status of Documents: Is Plaintiff in possession of the original note / mortgage? If not, what is the chain of ownership of the note / mortgage?
6. **Status for Trial: If a Motion for Summary Judgment has been filed the provisions of this paragraph are not applicable.**

If summary judgment has been denied, or no summary judgment will be sought, is the case ready for trial? The Court may schedule the trial date at the pretrial conference.

- a. Parties must list known witnesses and exhibits on the Pretrial Report.
- b. Motions which must be resolved prior to trial.

**The information contained in the report must be accurate as to the status of the case. The attorney must sign the report and certify that the information contained therein is accurate. The attorney signing the report should be the attorney appearing at the Pretrial Conference.**

**IF THE PARTIES OR COUNSEL FAIL TO ATTEND THIS CONFERENCE, THE COURT MAY DISMISS THE ACTION, STRIKE PLEADINGS, LIMIT PROOF OF WITNESSES OR TAKE ANY OTHER APPROPRIATE ACTION AS PROVIDED IN RULE 1.200.**

**THIS PRETRIAL CONFERENCE MAY BE CANCELLED ONLY BY THE COURT. Rescheduling should be sought through a Motion to Continue for Good Cause.**

If any provision of this order conflicts with a provision of orders (including the court's policy for Summary Judgment) previously entered by this judge, the provision contained herein shall be the effective provision.

#### **Certificate of Service Compliance**

The Certificate of Service Compliance **must** be completed by the designated attorney and mailed to the Clerk of Court **within 14 days from the date of this order** with a courtesy copy provided to Amanda Bailey, Foreclosure Division Case Manager, 571 US Highway 90 East, DeFuniak Springs, Florida 32433.

DONE and ORDERED in Walton County, Florida, on this \_\_\_\_\_ day of October, 2010.

---

Keith Brace  
Circuit Judge

**If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Shelia Sims, 190 Governmental Center, 5<sup>th</sup> Floor, Pensacola, FL 32502 (850) 595-4400 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.**

IN THE CIRCUIT COURT  
OF THE FIRST JUDICIAL CIRCUIT  
IN AND FOR OKALOOSA COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

Case Nos. \_\_\_\_\_ Case Nos. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ORDER SCHEDULING PRETRIAL CONFERENCE (or Plaintiff's Motion for Summary Judgment)**

This Case is scheduled for a Pretrial Conference (or Plaintiff's Motion for Summary Judgment) in accordance with Rule 1.200(a), Florida Rules of Civil Procedure and Administrative Order# 2010-32 for the First Judicial Circuit. The pretrial conference (or Motion for Summary Judgment) is scheduled for December 8, 2010 at 1:00 P.M. **CST** in Chambers, at the Okaloosa County Courthouse, 101 East James Lee Boulevard, Crestview, Florida, before the Honorable Keith Brace. **(ALL TIMES CONTAINED HEREIN ARE CENTRAL STANDARD TIMES)**

This case is designated a "backlog" case because of the length of the time it has been pending and the purpose of this Order is to identify and resolve outstanding issues and determine what action is necessary to move the case fairly and expeditiously to resolution. *All requirements contained herein are hereby ordered by this court and are mandatory. Failure of any party to comply with the terms and requirements contained herein may result in the imposition of sanctions*, including but not limited to dismissal of claims and counterclaims.

The parties are hereby notified that all pending (including all motions for summary judgment) will be considered at the Pretrial Conference, provided the Motion for Summary Judgment is filed in accordance with the Rule 1.510, Florida Rules of Civil Procedure. All opposition to any such motion must be filed and served in accordance with Rule 1.510 (c), Florida Rules of Civil Procedure, with a courtesy copy to **Amanda Bailey, Foreclosure Division Case Manager, 101 East James Lee Boulevard, Crestview, Florida, 32536**. Attorneys should appear having first attempted to resolve those issues with opposing counsel and fully prepared to argue the motion for summary judgment. (Any other pending motions not previously set or heard at this hearing will be deemed abandoned, waived or otherwise withdrawn.)

### Appearance at Pretrial Conference

All attorneys shall appear in person at the conference. Telephonic appearance is **not** permitted.

For the Plaintiff, appearance shall be by a person with specific knowledge of the case and the ability to answer questions by the Court, including but not limited to the status of loss mitigation efforts, knowledge and consent of investors as to settlement, vacancy/tenancy of the property, and diligent search for borrowers. **Failure to appear by either party or failure to appear with requisite knowledge shall be grounds for dismissal, striking of pleadings, entry of default and/or other sanctions as the Court deems appropriate.**

### Pretrial Report

A Pretrial Report as detailed in this order shall be filed by the Plaintiff and any appearing Defendant in the case as required below, except that the Parties may file the following, and only the following in lieu of the Pretrial Report:

1. A Stipulation of Voluntary Dismissal and Proposed Order of Dismissal agreed to by parties.
2. A Stipulation of Settlement or Forbearance signed by all parties of record who have not been previously defaulted, with a Proposed Order of Dismissal reserving jurisdiction to enforce the settlement of forbearance.
3. A Motion and Order to Administratively Close the File. (A form copy of the motion and order is enclosed herein as Attachment No. 1 and Attachment No. 2)
4. In a situation in which the case has been finalized, but remains open on the court's docket, a Motion for Case Closure and Proposed Order to Close Case. A photocopy of the order which finalized the case shall be attached as an exhibit to the motion. This category is for cases that should have been closed, but are still listed as open due to some error. The proposed order should state that this case shall be closed due to *{state specific grounds}*\_\_\_\_\_.

5. In cases which are stayed or abated due to bankruptcy, a Motion Advising of Bankruptcy Status, which attaches a current bankruptcy case docket and an indication when relief from stay will be sought or has been previously approved by the bankruptcy court.
6. **A Motion for Summary Judgment has been filed along with all supporting affidavits**

The Pretrial Report shall be filed by each party with the Clerk of Court, served on opposing parties, with a courtesy copy delivered to Amanda Bailey, Foreclosure Division Case Manager, 101 East James Lee Boulevard, Crestview, Florida 32536. **This report shall be filed and delivered no later than ten (10) days prior to the scheduled Pretrial Conference.**

The Pretrial Report shall include:

1. Date of filing of complaint and status of complaint, including any lost note count.
2. Status of pleadings of each defendant. An accurate statement as to:
  - a. Service, method of service, non-military affidavit
  - b. Response filed:
    - i. Motion to Dismiss, pending or resolved
    - ii. Motions for Extension of Time, pending or resolved
    - iii. Answers from Defendants identified by name
    - iv. Motions to Strike Affirmative Defenses, pending or resolved
    - v. Copies of all outstanding motions and responses shall be attached to the Pretrial Report
3. Status of the Property: Whether owner-occupied, tenant-occupied, or vacant. If vacant, Plaintiff must advise whether they will seek an expedited sale date if available.
4. Status of Documents: Is Plaintiff in possession of the original note? What is the chain of ownership of the note? Are there assignments of mortgage? **The original documents should be brought to the Pretrial Conference for examination by the Court.**

If the case is a lost note case, an adequate lost note affidavit that complies with Florida Statute should be filed separately in the case and a copy provided with the Pretrial Report.

5. Status of Mediation: Has a **“Form A”** been filed? If not, state the reasons why? If yes, attach a copy and state whether mediation has been ordered an/or completed?
6. Status of Loss Mitigation:
  - a. Has the foreclosure been put on hold at any time?
  - b. Are there any current active loss mitigation efforts, including short sale?
  - c. What if anything, is delaying a loss mitigation determination?
7. Status of the Case:
  - a. Has Plaintiff sought summary judgment?
    - i. Was the motion set for hearing, when, what result? If the hearing was canceled, advise as to reasons for cancellation.
    - ii. If the motion was not set for hearing, advise as to reasons and whether it is ripe for summary judgment.
    - iii. If all affidavits have been filed, is the matter ready for determination of the Motion for Summary Judgment at the time of the Pretrial Conference?
  - b. What discovery, if any, has occurred or is outstanding?
    - i. If there is discovery outstanding, has a motion to compel been filed?
    - ii. If objections have been filed, was a discovery hearing held and an order entered by the Court?
    - iii. What reasons exist for delays in discovery?
    - iv. Indicate outstanding objections to discovery that are pending and the basis for those objections.
    - v. Counsel/parties are directed to confer on any outstanding discovery between the time of the filing of the report and the Pretrial Conference, in an attempt to narrow the issues. Failure to do so will result in sanctions.
    - vi. Courtesy copies of all outstanding discovery and responses thereto shall be attached to the Pretrial Report.

**8. Status for Trial: If a Motion for Summary Judgment has been filed the provisions of this paragraph are not applicable.**

If summary judgment has been denied, or no summary judgment will be sought, is the case ready for trial?

- a. Parties must list known witnesses and exhibits on the Pretrial Report.
- b. Parties must list what discovery is necessary to prepare the case for trial.
- c. Motions which must be resolved prior to trial.
- d. List any other issues which may affect trial status should be brought to the court's attention.
- e. Coordinate with all opposing counsel of appearing defendants the course of the case, including:
  - (a) Allocation of time for trial;
  - (b) Scheduling disclosure of final witness lists, discovery and exhibits;
  - (c) Discussion of evidence and affirmative defenses to claim;
  - (d) Setting of trial thirty (30) days from case Pretrial conference;
  - (f) Require filing of preliminary stipulations if issues can be narrowed.

**The information contained in the report must be accurate as to the status of the case. The attorney must sign the report and certify that the information contained therein is accurate. The attorney signing the report should be the attorney appearing at the Pretrial Conference.**

**Scheduling of Dates**

Parties must bring their calendars to the Pretrial Conference to schedule remaining court events and court-related events. **The Court cautions Counsel that it is the objective of this Court Division to promptly and fairly provide resolutions to outstanding foreclosure cases.** Counsel shall be prepared to schedule those events according to priorities established by administrative order of this Court.

IF THE PARTIES OR COUNSEL FAIL TO ATTEND THIS CONFERENCE, THE COURT MAY DISMISS THE ACTION, STRIKE PLEADINGS, LIMIT PROOF OF WITNESSES OR TAKE ANY OTHER APPROPRIATE ACTION AS PROVIDED IN RULE 1.200

THIS PRETRIAL CONFERENCE MAY BE CANCELLED ONLY BY THE COURT. Rescheduling should be sought through a Motion to Continue for Good Cause.

If any provision of this order conflicts with a provision of orders (including the court's policy for Summary Judgment) previously entered by this judge, the provision contained herein shall be the effective provision.

Certificate of Service Compliance

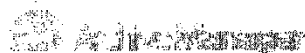
The enclosed Certificate of Service Compliance **must** be completed by the designated attorney and mailed to the Clerk of Court **within 14 days from the date of this order** with a courtesy copy provided to Amanda Bailey, Foreclosure Division Case Manager, 101 East James Lee Boulevard, Crestview, Florida 32536.

**DONE** and **ORDERED** in Okaloosa County, Florida, on this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Keith Brace  
Circuit Judge

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Shelia Sims, 190 Governmental Center, 5<sup>th</sup> Floor, Pensacola, FL 32502 (850) 595-4400 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.





*Judge  
Brace*

**From:** Amanda Bailey

**Sent:** Wed, 17 Nov 2010 12:59:00 GMT

**To:** [REDACTED]

**Subject:** FW: Mortgage Foreclosure Proceedings

[Memo to Chief Judges re Mortgage Foreclosure Proceedings.pdf \(936Kb\)](#) [Letter to Florida Press Assn et al.pdf \(169Kb\)](#)

Amanda Bailey  
Court Program Specialist II  
Foreclosure & Economic Recovery Program  
Okaloosa & Walton Counties  
101 E. James Lee Blvd.  
Crestview, FL 32536  
(850) 689-7329

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**From:** Judge Terrell  
**Sent:** Wednesday, November 17, 2010 11:26 AM  
**To:** Judge Allen; Judge Bell; Judge Bergosh; Judge Bilbrey; Judge Boles; Judge Brace; Judge Brown; Judge Dannheisser; Judge Geeker; Judge Green; Judge Grinsted; Judge Heflin; Judge Hilliard; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Kinsey; Judge Laporte; Judge Maney; Judge MGoodman; Judge Miller; Judge Nickinson; Judge Nobles; Judge Parnham; Judge Rasmussen; Judge Remington; Judge RGoodman; Judge Rimmer; Judge Santurri; Judge Shackelford; Judge Simon; Judge Stone; Judge Swanson; Judge Ward; Judge Wells  
**Cc:** ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's; Robin Wright; Keri Igney; Janet Gilbert  
**Subject:** FW: Mortgage Foreclosure Proceedings

As a follow-up to the letter sent out yesterday, please carefully read the attached letters from Chief Justice Canady. He reminds all of us of the presumption of open court proceedings in Florida. This includes hearings in chambers. Of course, if other accommodation can not be arranged in overcrowding instances, then the media as the surrogate for the public should be accommodated and consider rotating the public in and out of the available seats where possible.

By this e-mail, I request that all Administrative Judges share this information with their local court security. Furthermore, please request notification of any instance where any judge closes a hearing and pass that information along.

Keri, please forward this to all senior judges not otherwise included among the recipients of this e-mail.

**From:** Debbie Howells [mailto:howellsd@flcourts.org]  
**Sent:** Wednesday, November 17, 2010 7:03 AM  
**To:** Trial Court Chief Judges  
**Cc:** Trial Court Administrators; Lisa Goodner; Blan Teagle; Laura Rush; Kristine Slayden; Brenda Johnson; Judge John Laurent  
**Subject:** Mortgage Foreclosure Proceedings

Please see the attached memorandum from Chief Justice Canady regarding mortgage foreclosure proceedings.

Also attached is a copy of Chief Justice Canady's letter to The Florida Press Association.

Debbie Howells  
Office of the State Courts Administrator  
500 S. Duval Street  
Tallahassee, FL 32399-1900  
Phone 850-922-4370  
Fax 850-488-0156  
Email howellsd@flcourts.org

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