

**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. 2nd 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 17th 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

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:	
		State:	
		City:	
		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:		