

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

ADMINISTRATIVE ORDER NO:
09-09-S AMENDED
SUPERSEDES 09-09-S

**IN RE: MEDIATION - MANDATORY MEDIATION CIRCUIT COURT SEMINOLE
 COUNTY OWNER-OCCUPIED RESIDENTIAL MORTGAGE FORECLOSURES**

WHEREAS: Residential mortgage foreclosure case filings have increased over 200% in Seminole County in the first half of 2008; and,

WHEREAS: Due to State and County budget cuts, the 18th Judicial Circuit has lost the services of the foreclosure case manager who was responsible for coordinating the scheduling of foreclosure case hearings in Seminole County; and,

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

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

WHEREAS: The Judges in the Seminole County Circuit Civil Divisions are routinely advised by owner-occupant litigants that it is difficult, if not outright impossible, to negotiate settlements due to the inability to communicate with appropriate representatives of the lender or the lender's attorneys after the complaint for foreclosure has been filed. In many of these cases, the first opportunity the owner/occupant litigants have to discuss the issues and attempt to resolve their differences is at a hearing on the lender's motion for summary judgment, or later at the foreclosure sale. By that time in most cases, all judicial labor has been expended and the costs and

attorney's fees have increased significantly. The failure of the parties to communicate in a timely fashion results in unnecessary waste of resources by the court, the court staff, and the clerk's office and could be obviated by pre-judgment mediation; and,

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

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

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

NOW, THEREFORE, IT IS ORDERED:

1. For all homeowner-occupied residential mortgage foreclosure actions filed in Seminole County, Florida, and in which responsive pleadings or other filings asserting viable defenses or seeking any form of affirmative relief are filed by a homeowner Defendant, this order shall constitute an order of referral to mediation. Counsel for plaintiff shall coordinate and schedule the case for mediation prior to the date the matter is set for final or summary judgment hearing. Counsel shall follow the procedure set out in Seminole County Local Rule of Civil Procedure 08-20-S-01 located on the 18th Judicial Circuit website (flcourts18.org). The plaintiff may schedule mediation with any Supreme Court Certified Civil Mediator or may schedule mediation through the Seminole County Court mediation department for discounted mediation services with a member of the courts' fixed-fee panel. The mediation department can be reached at 407-665-4244 to schedule a mediation hearing with a fixed-fee panel member.
2. The fee for mediations scheduled through the mediation department shall be \$250.00, paid in advance, for a 1½-hour session. All mediation fees shall be paid in advance by the plaintiff. If the matter does not resolve at mediation, the mediation fee may be taxed by the court as a cost of litigation in the final judgment of foreclosure.

3. The plaintiff shall make a reasonable effort to coordinate the mediation with all parties and shall give the defendant homeowner(s) and any un-defaulted inferior lien holders reasonable advance notice of the date, time, and place of the mediation. When plaintiff gives notice of the mediation, plaintiff shall also give written notice, using the form found in the local rules on the 18th Judicial Circuit website, identifying the lender's representative and attesting to the representative's authority to participate in mediation and settle on behalf of the lender. Mediation may only be waived on a verified motion filed by the plaintiff asserting that all defendants have been defaulted and no filing raising viable defenses or seeking affirmative relief has been made by a homeowner defendant. Plaintiff shall attach to its motion for waiver of mediation a copy of all documents filed by Defendant. Upon filing said motion, Counsel for the plaintiff shall also certify that there has been no communication with any of the defendant(s) or any representative for any of the defendant(s) and that the foreclosure is truly uncontested.
4. A copy of the mediation agenda found in the local forms set out on the 18th Judicial Circuit website shall be served upon the lender representative, the homeowner(s), and any un-defaulted inferior lien holders along with the notice of the mediation conference.
5. Nothing in this Order is intended to prevent the plaintiff from filing all pleadings necessary to proceed to final or summary judgment and scheduling a hearing on a motion for summary judgment, so long as the hearing is set to occur after the conclusion of the scheduled mediation session or mediation has been waived as permitted under paragraph 3 above.
6. A representative of plaintiff with full authority to settle must participate in the mediation. The representative may attend the mediation by telephone, provided notice of such attendance is included in the mediation notice and a toll-free number is provided by plaintiff's counsel. If the representative attends by telephone, his/her attendance must be continuous throughout the mediation session. Plaintiff's counsel, defendant(s), and defendant's counsel must appear at the mediation in person. Plaintiff's counsel must file with the court a certificate in the form set out in the local rules found on the 18th Judicial Circuit

website, identifying the lender's representative, describing that representative's position or relationship with the lender, and specifically certifying that the representative has full authority to resolve the foreclosure suit without the need to seek other authorization.

7. If defendant(s) fail to appear at a properly noticed mediation or if the matter impasses after mediation, the matter may be promptly noticed for final or summary judgment, provided all requirements of F.R.C.P. 1.510 have been met. If plaintiff fails to appear for mediation or no representative with full settlement authority appears, the action shall be dismissed without prejudice.
8. Lenders are encouraged to enter into pre-suit mediation to expedite the process and hopefully result in fewer foreclosures being filed.

DONE AND ORDERED this 30th day of September, 2009.

J. PRESTON SILVERNAIL
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CHIEF JUDGE

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