

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER, MARTIN, OKEECHOBEE AND ST. LUCIE  
COUNTIES, STATE OF FLORIDA**

**ADMINISTRATIVE ORDER NUMBER 2009 -01**

**RE: ADMINISTRATIVE ORDER FOR CASE MANAGEMENT OF  
RESIDENTIAL FORECLOSURE CASES AND MANDATORY  
REFERRAL OF MORTGAGE FORECLOSURE CASES  
INVOLVING OWNER-OCCUPIED 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), 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 contested 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 Nineteenth Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the Nineteenth 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 Nineteenth Judicial Circuit; and

**Whereas**, high residential mortgage foreclosure rates place an increased strain on the citizens and families in the Nineteenth Judicial Circuit who have lost

jobs or who are otherwise suffering from the current downturn in the nation's economy. "A family who 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**, judges in the Nineteenth Judicial Circuit have 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 and clerk 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 Nineteenth Judicial Circuit.

# NOW, THEREFORE, IT IS ORDERED:

## Scope

1. Upon the effective date of this Administrative Order, all newly filed mortgage foreclosure actions in the Nineteenth 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 in this paragraph. All newly filed mortgage foreclosure actions involving an owner-occupied residence shall be referred for mediation in the program managed by the Collins Center.

An “owner-occupied residence” means a residential property owned by one of the defendant(s) (hereafter referred to as “owner defendant”) and occupied by one of the owner defendant(s) or an immediate family member of an owner defendant. An “immediate family member” means a spouse, child, parent, grandparent or sibling.

Compliance with this administrative order may also be required for residential mortgage foreclosure cases filed prior to the effective date of this order at the discretion of the presiding judge if there are sufficient resources provided by 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 a mortgage foreclosure of an owner-occupied residence. Unless a stipulation between the plaintiff and the owner defendant(s) is filed within 5 days of service of the complaint on the owner defendant(s), the parties 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.
3. The parties must comply with this administrative order and the mediation process must be completed before a default or summary final judgment is entered or a final hearing set in an action to foreclose a mortgage on an owner-occupied residence.

## Procedure

4. At the time a complaint for foreclosure on a residential property is filed, counsel for the plaintiff must also file a completed Form A (see attached) with the Clerk of Court. If the property is an owner-occupied residence, both certifications in Form A must be filled out completely. Within one business day after the complaint is filed with the Clerk of Court, counsel for plaintiff shall also electronically transmit a copy of Form A to the Collins Center. (The Collins Center website is <http://www.CollinsMediation.org>.) If the residential property is an owner-occupied residence as defined above, the plaintiff must also file with the complaint a copy of the promissory note and mortgage and any pooling or servicing agreements (PSA) with investors in the property that may affect the plaintiff's ability to settle and to resolve the foreclosure suit. In addition, a copy of the note, mortgage and PSA must 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 nonresponsive statements. If the property is an owner-occupied residence, plaintiff's counsel shall further certify the identity of the plaintiff or plaintiff's representative that has full and complete authority to settle and to resolve the foreclosure suit and that plaintiff's counsel has personally spoken to the representative and confirmed that the representative has full and complete settlement authority.

If the plaintiff certifies that the property is NOT an owner-occupied residence, after the defendant(s) have been lawfully served with a copy of the complaint and 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 the plaintiff certifies that the property is an owner-occupied residence, the Clerk shall electronically transmit Form A to the Collins Center no later than 10 days after the complaint is filed and the matter shall be processed for mediation in accordance with this Order. If there are any changes to the information provided initially in Form A, the plaintiff, if *pro se*, or counsel for the plaintiff, must file an amended Form A with the Clerk and transmit a

copy of the amended Form A to the Collins Center before commencement of the mediation.

If the plaintiff certifies that the property is an owner-occupied residence, the clerk shall attach to the summons for the defendant(s) information advising the defendant(s) of the existence of the mediation program.

At the time of filing a foreclosure action involving an owner-occupied residence, the plaintiff, in addition to paying the Clerk's filing fee, must pay to the Clerk the managed mediation fee as provided in paragraph 9 of this Order. The managed mediation fee and the filing fee for the foreclosure action **shall not** be combined in one check payable to the Clerk. The check for the mediation fee shall be payable to the Clerk of Court and not the Collins Center. The Clerk shall electronically transfer to the Collins Center the managed mediation fees due to the Collins Center, less the Clerk's portion of the fee, on a monthly basis, no later than the 20<sup>th</sup> day of each month. The Clerk's portion of the mediation fee for collecting and transmitting the mediation fee and for transmitting Form A to the Collins Center is \$10.00.

5. Within 10 days after the date the Clerk electronically transmits a copy of Form A to the Collins Center, the Collins Center shall schedule a mediation session. The mediation shall be conducted within a reasonable period of time thereafter with primary attention given to scheduling the mediation at a time and place convenient to the defendant(s) and 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 suitable location(s) within the circuit obtained by the Collins Center for mediation.
6. All parties named in the foreclosure action shall attend the scheduled mediation in person or by a representative with full and complete authority to settle on behalf of themselves or their principals.

Unless stipulated in writing and signed by the parties or changed by order of the presiding judge, a party is deemed to appear at a mediation proceeding if the following persons are physically present:

- (A) any individual party;
- (B) the party's counsel of record, if any;

- (C) a representative(s) of the plaintiff who has been certified as having full and complete authority to settle.

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

7. At the time the mediation is scheduled, the Collins Center shall send to the owner defendant(s) a list of US Department of Housing and Urban Development (HUD) and/or National Foreclosure Mitigation Counseling Program (NFMC) agencies experienced in mortgage delinquency and default resolution counseling, with contact information, that can assist the owner defendant(s) to prepare for the mediation session.

(A) The counseling agency the owner defendant(s) uses may request the owner defendant(s) to meet in person with a representative to assist in the preparation of the financial affidavit provided by the court or the Collins Center and to gather and prepare any other documents the Collins Center requests or deems necessary to advance the mediation process. The owner defendant(s) shall certify in the financial affidavit that the owner defendant(s) or an immediate family member of the owner defendant(s), including a spouse, child, parent, grandparent or sibling is residing at the property. In addition, a representative of the counseling service may accompany the owner defendant(s) to the mediation session to serve as a resource for the owner defendant(s) during the mediation process.

(B) The owner defendant(s), if not represented by an attorney, 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 owner defendant(s) applies to one of the 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 Collins Center. The appearance may be limited to representation only through to the conclusion of the mediation process.

8. If either the plaintiff, representative with full and complete settlement authority designated in Form A or amended Form A, or any of the owner

defendant(s) fails to appear at a properly noticed mediation, and the mediation results in an impasse, the report of the mediator shall notify the presiding judge of who appeared at mediation without making further comment as to the reasons for an impasse. If one of the owner defendant(s) fails to appear, or if the mediation results in an impasse with all required parties present, and if the owner defendant(s) have 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 the plaintiff or representative with full and complete settlement authority fails to appear, the court may dismiss the action without prejudice, order the plaintiff to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorneys fees and costs if the owner defendant is represented by an attorney.

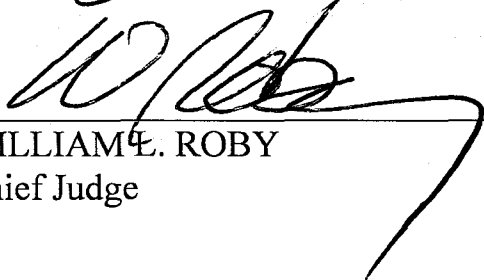
9. Pursuant to Rule 1.720(g), Fla. R. Civ. P., the reasonable fee for the managed mediation is \$750.00, which shall be paid by the plaintiff at the time the complaint is filed and is nonrefundable. The fee includes the mediator's fees and costs; a portion of the cost for the owner defendant(s) to attend a consumer credit counseling session with an approved consumer credit counseling agency representative, if they choose to do so; and, the cost to the Collins Center 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 and other related expenses incurred in managing the foreclosure mediation program. If the case is not resolved through the mediation process, the presiding judge may tax the mediation fee as a cost or apply it as a set off in the final judgment of foreclosure.

10. Pursuant to Rule 1.730, within 10 days after completion of the mediation, the mediator or the Collins Center on behalf of the mediator, shall file a report to the court of the result of the mediation. The court shall be advised whether the parties have reached a mediated settlement agreement or the mediation resulted in an impasse. 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 the plaintiff representative named in Form A appeared for mediation.

11. 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.
12. In all residential foreclosure actions to which this administrative order applies, if a notice for trial, motion for default final judgment or motion for summary judgment is filed with the Clerk, no action will be taken by the court to set a final hearing or enter a summary or default final judgment until the requirements of this administrative order have been met. The presiding judge may require that copies of the Form A (including any amendments) and the report of the mediator 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.
13. All mediation communications occurring as a result of this administrative 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 or by order of a court of competent jurisdiction.
14. 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 Nineteenth 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 cases being filed across the state and, in particular, in the Nineteenth Judicial Circuit.
15. 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 without further notice.

This Administrative Order shall be recorded by the Clerk of the Court in each county of the Nineteenth Judicial Circuit, and takes effect on March 13, 2009, and will remain in full force and effect unless and until otherwise ordered.

**DONE AND ORDERED** on February 20, 2009.

A handwritten signature in black ink, appearing to read 'W. Roby', is written over a horizontal line. The signature is stylized and cursive.

WILLIAM E. ROBY  
Chief Judge