

## Summary of Changes to Sixth Judicial Circuit Foreclosure Procedures as of January 20, 2012

### **ISSUES RELATING TO MANAGED MEDIATION:**

- All residential foreclosure cases, both homestead and non-homestead residential, will be referred to mediation when:
  - The defendant has been personally served or
  - The defendant was served by publication and has responded by filing anything with the Court within 120 days of service.
- The Plaintiff/Lender is still required to file a Form A, Plaintiff's Certificate. Form A has been modified. The new Form A should be used for cases filed after January 20, 2012, or for cases filed between December 20, 2011 and January 19, 2012 where no Form A was filed. If an old Form A was filed before January 20, 2012, it is not necessary to file a new Form A.
- The Plaintiff/Lender is still required to have Form A and Form B, Notice from the Court to Homeowner served with the summons and complaint. Form B has been modified. The new Form B should be used for cases filed after January 20, 2012, or for cases filed between December 20, 2011 and January 19, 2012 where no Form B was filed. It is not necessary to serve a new Form B for cases in the transition period.
- The fees for mediation are modified. No fee is required to be paid at the time of filing a Form A. Fees are to be paid once an Order of Referral is issued.
  - No administrative fee
  - Mediation fee is set at \$225 per hour with a 2 hour minimum
    - Paid by the lender
    - Taxable as costs
    - If more than 2 hours, fees will be split between the Lender and Borrower
- The requirement for financial counseling for the Borrower is eliminated.
- An exchange of information will be required before mediation will begin. The exchange of information will be supervised by the Foreclosure Program Manager.
  - It is important for the Plaintiff/Lender to identify the forms and information needed for a loan modification, deed in lieu of foreclosure, or short sale in Form A. If there are any changes, the forms and information should be identified in response to the Order of Referral to mediation. The Defendant/Borrower may also file a Defendant/Borrower's Request for Plaintiff/Lender's Disclosure for Mediation.
- Mediation Managers, Inc., will continue to be the Foreclosure Program Manager
  - Prepares the Order of Referral in each individual case
  - Oversees the exchange of information
  - Assigns the mediator

- Plaintiff/Lender will be authorized to appear by telephone in the standard Order of Referral. Amendments to Rule of Civil Procedure 1.720 require an authorized representative to appear in person unless otherwise authorized by the Court.
- Amendments to Rule of Civil Procedure 1.720 also require each party to identify the party representative 10 days prior to the mediation conference and confirm that the party representative has the required authority to settle.
- Items of Note for Plaintiff/Lenders
  - Clerk will not issue a summons until Form A is filed
  - The Court will issue an Order to Show Cause if the Plaintiff/Lender fails to follow the requirements in the Order of Referral to mediation and may impose sanctions.
  - The Plaintiff/Lender will be unable to schedule a summary judgment hearing if the case has been referred to mediation until the mediation process is concluded.
- Items of Note for Defendant/Borrowers
  - If the Defendant/Borrower does not timely provide the information identified by the Plaintiff/Lender as necessary to participate in mediation or does not appear at mediation and does not cooperate in timely rescheduling the mediation, Mediation Managers, Inc., will file a Notice of Non-participation and the case will proceed in accordance with the Rules of Civil Procedure.
- A motion for mediation may still be filed by a Plaintiff/Lender or Defendant/Borrower if an Order of Referral is not issued on the Court's own motion. The trial judge will determine whether to refer the case to the Foreclosure Program Manager or to Circuit Civil Mediation.
- Cases filed in the transition period (December 20, 2011 through January 19, 2012) will be referred to mediation in accordance with the new Administrative Order.

#### **ISSUES RELATING TO ALL FORECLOSURE CASES**

- Certificate of Compliance with Foreclosure Procedures.
  - The Certificate of Compliance is still needed in order to schedule a summary judgment hearing.
  - The Certificate form has been modified to reflect the requirement that payment records must be attached to the affidavit. Use Attachment G of the new administrative order
- Uniform Final Judgment.
  - The Uniform Final Judgment form has been modified. Use Attachment H of the new administrative order.