

STATE OF ILLINOIS  
CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF WINNEBAGO  
COUNTY OF BOONE

LOCAL RULE 2.14

RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM

WHEREAS, the 17th Judicial Circuit Court, with the approval of the Illinois Supreme Court, has established by Circuit Court Rule a Residential Mortgage Foreclosure Mediation Program (hereinafter the "Foreclosure Mediation Program"); and

WHEREAS, said program shall commence on November 1, 2014;

NOW, THEREFORE, IT IS HEREBY ORDERED that the following Administrative Procedures are established on the effective date noted above:

A. Filing Fee/Complaint: In all Winnebago and Boone County cases where a complaint is to foreclose a residential real estate mortgage (as defined in 735 ILCS 5/15-1203, 15-1207, and 15-1219), the complaint shall clearly designate that the case is subject to mediation and the Circuit Clerk shall charge an additional filing fee to defray the cost of the Foreclosure Mediation Program. The fees collected shall be forwarded to the County Treasurer for the County in which the case is filed and maintained in a separate fund subject to disbursement on order of the Chief Judge of the Seventeenth Judicial Circuit. The additional fee for such case is set at \$65 per filing. The Chief Judge shall report quarterly to the Administrative Office of the Illinois Courts on the revenue and expenditures of the program in the manner directed by that office. It is contemplated that the program will be self-sufficient as a result of the filing fee and resources provided via Resolution Systems Institute for payment of mediators. The program will be re-assessed for financial viability after a period of one year, and/or if any of the resources provided by Resolution Systems Institute are diminished.

A complaint clearly designates that the case is subject to mediation if, below the title, the Plaintiff includes the following: "Subject to Mediation." In any complaint seeking foreclosure of property other than residential real estate as described above, the Plaintiff shall include the following on the complaint, below the title: "Not subject to Mediation."

B. Summons: In all residential real estate mortgage foreclosure cases (hereinafter "residential foreclosure cases"), Plaintiff's shall use a specific summons in substantially the form set forth as [Exhibit FM-1](#). Attorneys, the court, or the Intake Coordinator may generate forms for use in foreclosure mediation cases as long as they are substantially similar to the forms approved by the court.

Within seven calendar days of service of process on the homeowner defendant in a residential foreclosure case, the Plaintiff shall give notice of service to the Circuit Court via email to [Mediation17th@gmail.com](mailto:Mediation17th@gmail.com). If notice of service is not received by the Circuit Court via email

within 7 calendar days of actual service of process on the homeowner, the 21 calendar-day deadline (described in Section G) will not begin until the Circuit Court receives said notice.

C. Attachments: In residential foreclosure cases, Plaintiff shall also use a Notice of Mediation in substantially the form set forth as [Exhibit FM-2](#). The Notice of Mediation shall be attached to, and served with, the complaint served upon the homeowner/borrower (hereinafter referred to as the “Homeowner”). If the Court provides a bilingual version of this notice, that form must be used.

D. Counterclaims to Foreclose a Mortgage: Where the complaint to foreclose a mortgage takes the form of a Counterclaim (i.e. the original complaint is a mechanics lien), any counterclaims to foreclose a residential mortgage must pay the extra filing fee set forth above. Any party in a counterclaim seeking to foreclose a residential mortgage may request mediation by contacting court scheduling to schedule a mediation date. The party requesting and scheduling said date must provide notice of any scheduled date to all other parties to the action.

#### PRE-MEDIATION CONFERENCE

E. Intake Coordinator. The Intake Coordinator shall perform an initial assessment of eligibility and whether a Homeowner should submit their loss mitigation packet indicating the Homeowner is interested in retaining or relinquishing the home. If the Homeowner is eligible, the Intake Coordinator is to assist the Homeowner in submission of paperwork, etc., designed to make the mediation fruitful. If mediation is not a viable option, the Intake Coordinator may refer the Homeowner to other options.

The Intake Coordinator shall be appointed by the Chief Judge of the 17th Judicial Circuit. If the Intake Coordinator is a private individual or organization, any compensation it will earn for its services must be agreed to with the Chief Judge. The initial Intake Coordinator appointed to serve is HomeStart, a HUD Certified Housing Counselor.

The Intake Coordinator will inform Homeowner applicants, by notice on the intake webpage and/or in personal meetings with the Homeowner applicants, that it cannot provide legal services. The Intake Coordinator will inform Homeowner applicants that the counselor and/or the housing counseling agency will not provide them with legal services, and direct those desiring but unable to afford legal assistance to contact Prairie State Legal Services.

F. Program Administrator. The position of the Program Administrator is established to oversee the daily operations of the Program, and whether or not a direct employee of the Seventeenth Circuit, serves only with the approval of the Chief Judge and the Judges presiding over the foreclosure court call and acts as an agent of the court.

G. Submission of Application. Within 21 calendar days of being served by personal or abode service (or as described in Section B), or within 21 calendar days of an order referring the case to mediation as provided below, any Homeowner wishing to pursue mediation is to submit an application online. The application is to be completed as instructed in the Notice served with the Summons, or alternative arrangements are to be made with the Intake Coordinator as

instructed in the Notice. Where service upon a Homeowner is made by publication, the Notice in substantially the form set forth as [Exhibit FM-2](#) is to be mailed by the Plaintiff to the property address before the first date of publication. The time for the Homeowner to submit the application discussed above expires 28 calendar days after the first date of publication in a newspaper of general circulation.

Failure to submit an application in the time prescribed shall be treated as a decision by the Homeowner to “opt out” of the program. The submission of the Application by the Homeowner acts as an election to utilize the Foreclosure Mediation Program; in this circumstance, participation on the part of the Plaintiff is mandatory. The following relief may be sought from the Court, for good cause shown: (1) a Homeowner who fails to timely enter the program may file a motion with the Court seeking referral to mediation; (2) a Homeowner determined to be an unsuitable candidate for mediation may petition the Court for review of that decision, including situations in which the Homeowner’s circumstances have changed; and (3) any party may file a motion with the Court seeking to terminate mediation efforts, for good cause shown. Any party to a pending residential foreclosure case filed before or after the June 1, 2014, the original effective date of the program, may also ask the Court by motion to be entered into the mediation program, or the judge presiding over the case may refer the matter on the Court's own motion.

Upon receipt of the submission of the Application, the Intake Coordinator or Program Administrator shall issue a Notice, to be sent to the Circuit Clerk for filing in the case and to the Plaintiff’s attorney and the Homeowner, advising that the foreclosure mediation process has been implemented for that case. The Notice shall be in substantially the form set forth as [Exhibit FM-3](#). The Intake Coordinator shall direct Plaintiff’s counsel to provide the Homeowner with a loan modification packet or servicer/lender-generated relinquishment documents within 15 calendar days of the Notice of Entry.

The Homeowner must comply with deadlines established in the Application, or by the Intake Coordinator, for the submission of documents necessary to pursue mediation. The Intake Coordinator may extend any such deadlines for submission of documents by up to 7 days if the Homeowner is making a good-faith effort to comply.

H. Stay of Foreclosure Proceedings - Discovery. Upon issuance of the Notice described in the preceding paragraph, the Plaintiff is stayed from proceeding with the entry of judgment or confirmation of sale until the conclusion of the mediation process. A Homeowner is not required to have filed an answer or appearance in the foreclosure action in order to participate in the Foreclosure Mediation Program. The stay shall include a stay of discovery unless otherwise ordered by the Court. The stay terminates as described below.

I. Scheduling of Pre-Mediation Conference. Within 30 calendar days of receipt of the Homeowner’s Application, the Intake Coordinator shall conduct a pre-mediation conference with any Homeowner the Intake Coordinator determines may be eligible for mediation. The lender or its attorney may, within 10 calendar days of the Notice of Entry being filed, communicate directly to the Intake Coordinator any issues or concerns which the lender feels must be addressed in order to make mediation fruitful. Lenders and their counsel are encouraged to communicate directly with the Intake Coordinator via email. Should the lender or attorney object to mediation, the lender or its attorney shall send a formal letter to the Intake Coordinator and the

Homeowner describing their reasons for objecting. The Intake Coordinator shall proceed with the pre-mediation appointment, but attach any formal objection letter received to the Pre-Mediation Conference Report described in Section K.

J Pre-Mediation Conference. The purpose of the pre-mediation conference is to determine which cases are eligible for mediation. “Eligibility” means the reasonable prospect of the parties reaching agreement which permits the Homeowner to remain in the property or provides for a surrender option. Only the Homeowners and the Intake Coordinator need attend the Pre-Mediation Conference.

At the pre-mediation conference, if the Intake Coordinator determines that mediation will be beneficial, the Intake Coordinator, or its designee, shall schedule the mediation on a date that is sufficient to give the Homeowner an opportunity to complete the modification packet or relinquishment documents and the Plaintiff to have sufficient time to analyze the information submitted. If it is unclear how long this process will take, the Intake Coordinator may adjourn the pre-mediation conference to a future date for status, per Section O below. Cases are not to be continued generally for any reason. Plaintiff should confirm to the Intake Coordinator its receipt of any documents submitted to it, and it is Plaintiff’s responsibility to have reviewed any such submissions prior to any status conferences or mediation sessions. Plaintiff’s request for additional documents shall be made at least 10 business days prior to any mediation session.

K. Pre-Mediation Conference Report. At the conclusion of the pre-mediation conference, the Intake Coordinator, or its designee, shall complete a Pre-Mediation Conference Report in substantially the form set forth as [Exhibit FM-4](#).

If there are unresolved issues or concerns on the part of the Intake Coordinator or the Plaintiff, the Pre-Mediation Conference Report may request additional time, not to exceed 21 days, in which to resolve the issues or concerns.

If the Intake Coordinator believes the case is ready for mediation, then it shall issue a Pre-Mediation Conference Report as follows:

- (1) If the Plaintiff informs the Intake Coordinator that it does not agree that the case is ready or appropriate for mediation, the Intake Coordinator shall so indicate the Plaintiff’s objections and the Intake Coordinator’s response on the Pre-Mediation Conference Report (attaching a copy of the objections, as received from the lender or its attorney) and request guidance from the Court as to whether mediation should proceed; or
- (2) If the Plaintiff does not disagree with the Intake Coordinator’s assessment that the case is ready or appropriate for mediation, then the Intake Coordinator will schedule the case for a mediation date falling no more than 45 calendar days after the issuance of the Pre-Mediation Conference Report (absent court approval for a longer date).

The report shall be transmitted to the Circuit Clerk for filing in the Case being mediated, and a copy shall be provided to the Homeowner, the Plaintiff’s attorney, the Program Administrator, and the judge supervising mediation. If the Report indicates that Mediation is to be scheduled,

the stay on foreclosure proceedings continues. If the Report indicates that Mediation should not be scheduled, or if the Court decides that the case should not be mediated, then the stay is lifted and the Homeowner shall, within 21 calendar days thereafter, file an appearance and answer or responsive pleading with the Circuit Clerk if the Homeowner intends to contest the foreclosure.

## MEDIATION

L. Timing/Scheduling of Mediation: Mediation shall be scheduled in a timely fashion with a goal of being an expeditious and expense-saving alternative to traditional litigation for all parties. All parties shall use their best efforts to achieve a timely disposition and not delay the proceedings. The Plaintiff must submit a completed Plaintiff's Checklist in substantially the form set forth as Exhibit FM-5 to the Program Administrator within 10 business days of receiving a Pre-Mediation Report of an eligible case indicating the lender has rendered a decision or is ready to render a decision.

Unless additional documents are requested prior to the first mediation session, the servicer/lender shall have reviewed all documents submitted and made a decision regarding the case by the time of the first session (see Section P below). If a trial payment plan, permanent modification or agreement for relinquishment has been offered, Plaintiff's counsel shall provide a copy to the Program Administrator within 5 business days of said offer being made.

If for any reason either party cannot attend a mediation session or feels additional time is needed, the party requesting the continuance shall contact the Program Administrator to request a continuance at least 5 business days prior to the scheduled session unless it is an emergency situation.

M. Phone Usage: There will be a speakerphone and land line telephone service available for use by the mediator and the parties meeting with the mediator. Parties should be aware that the availability of other telephone land lines, as well as cellular telephone reception, is limited at the ADR Center. Consequently, any party wishing to open a second telephone communication with a party not present for the mediation must work within these limitations. In no case are photographs or recordings of the proceedings, parties or personnel attending allowed.

N. Other Lienholders – Right to Participate. Any other lienholders may attend any scheduled mediation. To the extent the mediator requests that another lienholder be invited to attend, Plaintiff's counsel shall provide such notice.

O. Status Conference: A status conference may be scheduled in the Program Administrator's discretion within 45 calendar days of the Pre-Mediation Report. The goals of the status conference are to determine whether a complete loss mitigation packet or servicer/lender-generated relinquishment document has been received, determine pay-off or reinstatement amounts, and determine whether the lender is ready to issue a decision on a Homeowner's submitted loss mitigation packet or servicer/lender-generated relinquishment document. Once Plaintiff indicates that it is ready to issue a decision, the Program Administrator will schedule a mediation session. Should the Homeowner receive the decision and decide to accept it without

further discussion, the Homeowner shall contact the Program Administrator to cancel any pending sessions.

The status conference may be facilitated by the Intake Coordinator, Program Administrator or a program-approved mediator. The Program Administrator, in his or her discretion, may permit the status conference to be conducted by phone.

P. Mediation – Good Faith -- Sanctions: Mediation will be conducted at the 17th Judicial Circuit ADR Center, 308 West State Street, Suite 25, Rockford, IL 61101. At the mediation, Plaintiff's counsel must appear in person. In addition, Plaintiff's representative with full authority to make decisions on the case must appear in person or by telephone. The representative may be an underwriter, loss mitigation person, or any other representative with full authority to enter into a loan modification agreement or to negotiate a disposition. All Homeowner-Defendant borrowers shall be present in person; the Homeowner's attorney, and other lienholders/titleholders, if any, are permitted to attend.

The mediator shall remind both the Homeowner and the Plaintiff of the need to complete matters in a timely fashion and to participate in the mediation process in good faith. All parties shall participate in good faith, which shall at a minimum mean timely appearance at status conferences and mediation sessions, and avoiding conduct which unnecessarily delays the process (for example, not providing the Intake Coordinator with a loan modification application packet or relinquishment documents within 15 calendar days once a Homeowner is deemed eligible for the program; failure to adhere to any agreements entered into; not providing or requesting documents within the time frames specified in these rules; or indicating a readiness for the case to be set with a mediator when it is not per the Plaintiff's Checklist). It is the Plaintiff's responsibility to have reviewed all submissions prior to any status conferences or mediation sessions.

Failure to abide by the mediation rules, or failure to participate in good faith in the mediation process, may result in sanctions to be imposed by the Circuit Court. For Lenders, sanctions may include, but are not limited to, dismissal of the action by the Court, with the Lender unable to recover its costs of re-filing in any subsequent foreclosure action. Upon written motion, additional sanctions for either party may include, but are not limited to, reasonable attorney's fees, fines, and lost wages attributable to the misconduct. Additionally, sanctions may include ordering the parties to return to mediation under conditions to be established by the judge presiding over the case, or in egregious cases dismissal, default on the merits, and/or monetary sanctions. The judge may place a party or lawyer/law firm in a probationary status, short of sanctions, to address recurrent problems.

Q. Mediation Report – Termination – Finalization of Agreement. At the conclusion of the mediation, the Mediator shall for each case complete a report in substantially the form set forth as [Exhibit FM-6](#). The report shall indicate one of the following regarding the result of the mediation:

1. The mediation resulted in a permanent or trial-period loan modification or other agreement between the parties, and the Plaintiff will either dismiss the case in due course or leave the

matter pending to allow for a trial modification period between the parties. If the agreement fails, the Plaintiff may file a motion seeking relief from the stay and the entry of judgment.

2. The mediation has not yet been successful, but the case should be put on hold to permit further interaction between the Plaintiff and the Homeowner, such as review of additional documents.
3. The mediation did not result in any agreement or trial agreement. If any party failed to participate in the mediation in good faith, the Mediator should so indicate.
4. If any party failed, at any time during the mediation program, to follow the guidelines set forth in Section P, the Mediator or Program Administrator should so indicate.

The Mediation Report is to be submitted to the Program Administrator, with a copy to each participant in attendance. The Program Administrator is to file the report with the Circuit Clerk for filing with the case being mediated, and copies mailed to any party not in attendance at the mediation.

In circumstance No. 1 or No. 2, above, the stay described in Paragraph G of this rule remains in effect. In the third circumstance, the stay terminates 21 calendar days after the issuance of the Mediation Report.

R. Communications to Remain Confidential. All communications during mediation sessions and statuses and all documents used by the Intake Coordinator, Program Administrator and the mediator, except for the Plaintiff's Checklist, any written agreement, or official reports to the court regarding the results of the mediation, pre-mediation conference, or any status conference are to be kept confidential and will be maintained in a separate place for the use of the Court. They are not official court case file records and are not discoverable. One of the program's goals is to encourage the parties to fully communicate by engaging in a confidential mediation process. However, where there is a contention that a party to mediation has failed to participate in good faith in mediation, or where there is an issue raised regarding non-compliance with these Rules, the Judge may permit inquiry as needed to explore that contention.

#### MEDIATORS

S. Appointment, Qualifications, and Compensation of Mediators. The Chief Judge shall maintain a list of certified mediators and shall, by General Order, issue a schedule for their compensation. For approval as a mediator, an individual must submit an application to the Chief Judge and satisfy the following requirements:

- (a) Be a retired judge; or
- (b) Be a member in good standing of the Illinois bar with at least five (5) years of litigation experience in foreclosures or at least ten (10) years of general real estate and/or litigation experience (or, if retired, may seek

approval from Chief Judge if these requirements were met as of the time of retirement); and

(c) Complete a 40 hour civil mediation course and a mortgage foreclosure mediation training program approved by the Chief Judge.

T. Conflicts. Mediators approved for the Foreclosure Mediation Program by the Chief Judge shall not participate in residential mortgage mediations in this program in any case in which he or she represents a party in the foreclosure litigation. Upon approval, each mediator shall sign a certification acknowledging this prohibition. Violation of this provision will result in the mediator's removal from the Foreclosure Mediation Program.

U. Review of Eligibility. The eligibility of each mediator to retain his or her status shall be periodically reviewed by the Chief Judge. The mediators shall comply with general standards established by the Chief Judge. Failure to adhere to these general standards may be grounds for revocation of mediator approval by the Chief Judge. The Chief Judge may contract with an outside mediation service to provide these services.

V. Contract for Mediation Services. The Chief Judge may enter into a contract with an entity to provide mediation services subject to all Court Rules and Procedures. It is contemplated that in its initial phase, the Foreclosure Mediation Program is conducted on a trial basis and that contracting with an outside entity for mediation services will result in services being provided without additional cost to the taxpayers or the expenditure of any public funds, with the exception of the filing fee authorized herein.

#### MISCELLANEOUS

W. Statistics. The Chief Judge shall maintain statistical data on the results of mediation, including the number of cases where the initial criteria were met and the number of cases where loans were modified or otherwise worked out between the parties and shall report the same to the Administrative Office of the Illinois Courts at such times and in such manner as required.

X. Immunity. The Intake Coordinator, Program Administrator, and any person approved to act as a mediator under these rules, while acting within the scope of his or her duties, shall have judicial immunity in the same manner and to the same extent as a judge in the State of Illinois as provided in Supreme Court Rule 99.

Y. Ineligible Cases. Foreclosures of non-residential or commercial property are not eligible for mediation. Cases involving residential real estate in which any or all defendant borrowers have a pending bankruptcy, and where the bankruptcy stay on foreclosure proceedings remains in effect, are not eligible for mediation.

Z. Training for Court Personnel. All mortgage foreclosure judges, key court personnel and volunteers designated by the Chief Judge shall complete training regarding mortgage foreclosure mediation as approved by the Chief Judge.



AA. Meaningful Language Access. Translation services shall be provided by the Intake Coordinator and the 17th Circuit ADR Center by either a competent translator or via “Language Line” services, as needed.

BB. Program Closure. The program will be closed annually from December 25<sup>th</sup> through January 1<sup>st</sup>, or if either date falls on a weekend, whichever dates the court is closed for these two holidays. All deadlines or other matters due within this timeframe are extended 7 calendar days from the due date.