

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 09-1
(Court Administration)**

**ADMINISTRATIVE ORDER
NO. 09-08**

**IN RE: ESTABLISHMENT OF 11TH
CIRCUIT HOMESTEAD ACCESS TO
MEDIATION PROGRAM (“CHAMP”)
FOR CASE MANAGEMENT OF
RESIDENTIAL FORECLOSURE
CASES IN THE ELEVENTH JUDICIAL
CIRCUIT OF FLORIDA**

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

WHEREAS, Rule 2.215(b)(3), Florida Rules of Judicial Administration mandates that the chief judge “develop an administrative plan for the efficient and proper administration of all courts within the circuit”; and

WHEREAS, Rule 2.545, Florida 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, if the judge determines the action to be of such nature that mediation could be of benefit to the litigants or the court; and

WHEREAS, given the large volume of mortgage foreclosure actions filed in this Circuit, it has been determined that mandatory mediation of mortgage foreclosure actions involving homestead properties, prior to the matter being set for final hearing, will facilitate better communication between the parties, resulting in more effective case management 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, with the resources and expertise in managing voluminous mediation matters; and

WHEREAS, in an effort to expedite the implementation of mandatory mediation of mortgage foreclosure actions involving homestead properties, the Circuit and the Collins Center collaborated to develop a pilot program to be known as the 11th Circuit Homestead Access To Mediation Program (“CHAMP”);

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida, under Rule 2.215 of the Florida Rules of Judicial Administration, it is hereby **ORDERED**:

1. **Establishment:** The 11th Circuit Homestead Access To Mediation Program (“CHAMP”) for case management of residential foreclosure cases involving homestead properties in the Eleventh Judicial Circuit of Florida, in collaboration with the Collins Center for Public Policy, Inc., is hereby established.
2. **Mediation Referral:** This Administrative Order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure. By this Administrative Order, unless a stipulation is specifically invoked by the parties in writing within five (5) days of service of the complaint on the main defendant, 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 participate in the CHAMP.
3. **Procedures and Requirements:** In all residential foreclosure actions involving homestead properties filed on or after May 1, 2009, to which this Administrative Order applies, if a notice for trial or motion for summary judgment is filed with the Clerk of the Courts, no action will be taken by the court to set a final hearing or enter a summary judgment until the following procedures are followed and requirements are met:
 - a. At the time a complaint for foreclosure on a homestead property is filed by a Plaintiff/Lender, counsel for the Plaintiff/Lender must also electronically transmit a notice form to the Collins Center advising of such filing, providing the names and contact information for the parties, and a certification that the Lender’s representative who will participate in the mediation has full authority to modify the terms of the note and mortgage and to settle the matter. (See Form A attached hereto)

- b. At the time of filing of the complaint and transmission of Form A, Plaintiff/Lender shall forward a check, made payable to the Collins Center, in the amount of Seven Hundred Fifty Dollars (\$750.00), to cover the administrative cost of the CHAMP (“Cost Check”). Should the Plaintiff/Lender fail to tender the Cost Check to the Collins Center within five (5) calendar days of the date of filing, the court will be so notified by the Collins Center, which may result in the court’s dismissal of the complaint without prejudice.
- c. Immediately upon receipt of the Cost Check, the Collins Center shall commence its efforts to contact the Defendant/Borrower to substantiate the foreclosure action and to advise of the availability of financial counseling and mediation. The Collins Center shall have thirty (30) days to make such contact. In the event the Collins Center is unable to contact the Defendant/Borrower within this prescribed timeframe, the Collins Center shall so advise the court and the Lender/Plaintiff, which may result in a final hearing being set or an entry of summary judgment by the court.
- d. Thereafter, with the agreement of the Defendant/Borrower, the Collins Center will refer the Defendant/Borrower to a 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 (“Counseling Agency”), to assist the Defendant/ Borrower on the telephone with the completion of financial documentation which shall immediately be made available electronically to the Lender for the purpose of renegotiating loan terms (“Financial Documentation”). The Counseling Agency shall have twenty-one (21) days from receiving a referral of a Defendant/Borrower from the Collins Center to contact the Defendant/Borrower, conduct the telephonic counseling session, complete the Financial Documentation, and make such Financial Documentation available electronically to the Plaintiff/Lender. The Counseling Agency shall use the Collins Center’s website, www.collinsmediation.org to download forms for the Financial Documentation and to complete and store the Financial Documentation. The Plaintiff/Lender shall use the Collins Center’s website, www.collinsmediation.org to retrieve the Financial Documentation if it wishes to review it prior to the mediation. The Counseling Agency and the Plaintiff/Lender and, if it so chooses, the Defendant/Borrower, shall register at the Collins Center’s website and receive access codes from the Collins Center for confidential use of the website for these purposes. In addition to making the Financial Documentation available electronically by

cooperating with the Counseling Agency, the Defendant/Borrower, as advised by the Counseling Agency, shall bring to the mediation such supporting documentation, to verify information on the Financial Documentation, as is specified on the Financial Documentation form.

- e. Upon notification from the Counseling Agency that its services have been rendered to the Defendant/Borrower and the Financial Documentation is complete and has been made available to the Plaintiff/Lender on the Collins Center website, the Collins Center will schedule and notice the mediation (“Mediation”)
- f. The Collins Center shall schedule such Mediations with those mediators who have been duly certified by the Florida Supreme Court as Circuit Civil Mediators and who have received additional training in foreclosure mediations provided by the Collins Center. All Mediators who meet the herein stated qualifications shall be eligible to provide mediation services for the CHAMP (“Foreclosure Mediators”).
- g. The Collins Center shall be responsible for paying the Foreclosure Mediators for their services, using Three Hundred and Fifty Dollars (\$350.00) of the Cost Check for that purpose (“Mediator’s Fee”). If the Mediation does not occur for one or more of the following reasons, the Collins Center shall refund the Mediator’s Fee to the Plaintiff/Lender:
 - (i) The Mediation is cancelled sooner than five (5) business days prior to the scheduled date.
 - (ii) The Collins Center is unable to contact the Defendant/Borrower within the thirty (30) days required by Paragraph 2c of this Order and the Mediation is never scheduled.
 - (iii) The Defendant/Borrower, after being contacted, refuses for any reason to participate in the mediation and the Mediation is never scheduled.
 - (iv) Pursuant to Rule 1.720(f), Fla. R. Civ. P., within five (5) days of service of the complaint, the parties have agreed upon a stipulation with the court designating a certified mediator.
- h. All parties named in the foreclosure action shall be noticed of the Mediation (“Mediation Notice”) by the Collins Center, using information provided on Form A by the Plaintiff/Lender. Upon

being noticed:

- (i) Plaintiff/Lender's counsel and the Defendant/Borrower **must** be physically present at the Mediation.
 - (ii) The Plaintiff/Lender's representative with full and complete authority to settle on behalf of the Lender is required to personally participate in the Mediation. Personal participation is deemed to be either physically present, present telephonically, or readily available by telephone.
 - (iii) Other interested parties who were noticed, may; but, are not required to personally participate in the Mediation.
- i. If either the Plaintiff/Lender or representative with full and complete settlement authority designated in Form A or amended Form A, or the Defendant/Borrower fails to appear at a properly noticed Mediation, the Collins Center will report the non-appearance to the court.
- j. Moreover, if the Plaintiff/Lender fails to timely tender the Cost Check as prescribed herein or if the Plaintiff/Lender or representative with full and complete settlement authority fails to appear, the Collins Center shall notify the court of such information and the court may dismiss the action without prejudice, order the Plaintiff/Lender 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 Defendant/Borrower is represented by an attorney.
- k. If the Defendant/Borrower fails to appear, or if the Mediation results in an impasse with all required parties present, the matter may proceed to a final hearing or summary judgment, in accordance with the rules of civil procedure without any further requirement to attend mediation.
- l. Pursuant to Rule 1.730, Rules of Civil Procedure, within ten (10) days after the completion of the Mediation, the Foreclosure Mediator shall file a report to the court of the result of the Mediation as follows:
- (i) If the parties do not reach an agreement as to any matter as a result of mediation, the Foreclosure Mediator shall report the lack of an agreement to the court without comment or recommendation.

- (ii) If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court and/or a stipulation of dismissal shall be filed.
 - m. All mediation communications occurring as a result of this Administrative Order shall be confidential and inadmissible in any subsequent legal proceeding pursuant to the Florida Mediation Confidentiality and Privilege Act, Section 44.401-406, 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. Accordingly, in conformance with Section 44.405(5), Florida Statutes, the Defendant/ Borrower's Financial Documentation **must** be provided to the Plaintiff's representative and any other party for whom Borrower gives authorization for disclosure in connection with the renegotiation of the loan documents under the CHAMP.
 - n. 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, Florida Rules of Civil Procedure.
 - o. Each CHAMP case, subject to the procedures and requirements as hereinabove set forth, shall commence and be completed within one hundred twenty (120) days.
4. **CHAMP Limitation:** Notwithstanding this Circuit's desire to reduce its number of mortgage foreclosure actions, the CHAMP shall only be available once per case for cases filed on or after May 1, 2009. However, mediation services will be available for mortgage foreclosure actions that predate May 1, 2009 that are still pending in the court, on a case by case basis, subject to the availability of Foreclosure Mediators, who will be selected from registry on a rotational basis, established in collaboration with the Collins Center, by the Eleventh Judicial Circuit.

This Administrative Order shall take effect on May 1, 2009 and will remain in full force and effect until further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this _____ day of April, 2009.

**JOSEPH P. FARINA, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**

****Please complete online at <http://www.CollinsMediation.org/FormA>, use the password: "mediation123" and file original with the Clerk of Court**

FOR CLERK'S USE:	Case No:	
	Mediator Fee Paid?	Yes No

IN THE 11TH CIRCUIT COURT IN AND FOR MIAMI DADE COUNTY, FLORIDA

Original Form A Amended Form A

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 11th Judicial Circuit Administrative Order _____ 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:	City:	
		State:	Zip:	
Additional Information:				

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:		