

**ADMINISTRATIVE ORDER NO. 2012 - 25**

**RESIDENTIAL MORTGAGE FORECLOSURE MANDATORY MEDIATION PROGRAM**

**(Amending Administrative Order No. 2012-03)**

WHEREAS, the Circuit Court with the approval of the Illinois Supreme Court has established by Circuit Court Rule a Residential Mortgage Foreclosure Mandatory Mediation Program; and,

WHEREAS, said program commenced on March 1, 2012;

NOW, THEREFORE, IT IS HEREBY ORDERED that the following Administrative procedures are established effective October 9, 2012:

1. **FILING FEE/COMPLAINT:** In all McLean County cases where a complaint is filed 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 \$25.00 filing fee to defray the cost of the Mandatory Residential Mortgage Foreclosure Mediation Program. The filing fee may be refunded by order of the Court pursuant to Section 8b of this Rule. The fees collected shall be forwarded to the McLean County Treasurer and maintained in a separate fund subject to disbursement on order of the Chief Judge of the Eleventh Judicial Circuit.
2. **SUMMONS:** In all Residential Mortgage Foreclosure cases, plaintiffs shall use a Summons Form specifically tailored for those cases and attached hereto and made a part hereof as Exhibit A. Attorneys may generate forms for use in foreclosure mediation cases as long as they are substantially similar to the forms approved by the court.
3. **ATTACHMENTS TO SUMMONS:** In all Residential Mortgage Foreclosure cases, Plaintiff shall attach to the Summons a Notice of Mandatory Mediation attached hereto and made a part hereof as Exhibit B and a Foreclosure Mediation Program Initial Questionnaire attached hereto and made a part hereof as Exhibit C. The parties may generate forms for use in foreclosure mediation cases as long as they are substantially similar to the forms approved by the court.
4. **SCHEDULING OF PRE-MEDIATION SCREENING CONFERENCE:** In all Residential Mortgage Foreclosure cases plaintiff shall select a date and time for the conference from a list of dates issued by the Circuit Court. The date shall be a least 42 days but no more than 60 days from the issuance of Summons. Said date shall be inserted in the Residential Mortgage Foreclosure Summons. If service is by publication, plaintiff shall pick a date from the Circuit Court list which is at least 42 days, but not more than 60 days from the date of first publication in a newspaper of general circulation in McLean County Illinois. When service is by publication plaintiff shall file a copy of the affidavit for Publication containing the date for the Pre-mediation Screening Conference with the Circuit Clerk so the Clerk can add the case to the Pre-mediation Screening calendar for the date selected.
5. **ALIAS SUMMONS:** If an alias summon becomes necessary, the plaintiff shall select a new date for the pre-mediation screening conference at least 42 days and not more than 60 days

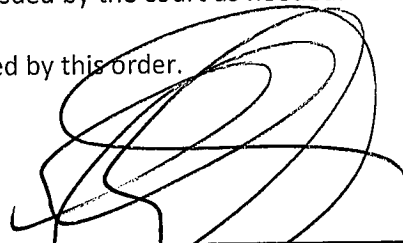
from the issuance of the alias summons. No court order will be required for the issuance of the Alias Summons.

6. 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 mortgage must pay the extra \$25 filing fee. 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.
7. SECOND LIENHOLDERS - RIGHT TO PARTICIPATE: Any 2<sup>nd</sup> lienholders may attend any scheduled mediations. To the extent the mediators request that a 2<sup>nd</sup> lienholder be invited to attend, the plaintiff's counsel shall provide such notice to any other lienholders.
8. STAY OF FORECLOSURE PROCEEDINGS:
  - a. No further action to pursue the foreclosure can occur during the mediation timeline (which begins on the date the summons is issued and ends on the date the mediator files a report). The defendant's obligation to answer the complaint and the court case are stayed for this period. No motions, except motions pertaining to mediation, can be filed during this time.
  - b. Motions which may be filed during the mediation process are those related to a stay or termination of foreclosure proceedings for the following reasons:
    - i. Active Duty Military Service (735 ILCS 5/15-1501.5)
    - ii. Other objections to jurisdiction over the person (725 ICLC 5/15-1505.6)
    - iii. Stay of proceedings by the US Bankruptcy Court under 11 U.S.C. § 362 (a)
    - iv. Foreclosure of non-residential or commercial property (not eligible for the program)
9. HOLD STATUS: In the event a plaintiff lender places a file on "hold", it may ask the mediator to reset the mediation to a future date which may be greater than 30 days, provided, however, if all parties to the mediation are not in attendance, the plaintiff's counsel shall provide prompt notice of such rescheduled date to all parties not in attendance.
10. PRE-MEDIATION CONFERENCE PROCEDURE: At the pre-mediation conference, defendants' cases will be assessed by pro bono counsel for the defendant and/or a HUD certified-counseling agency. If a loan modification is deemed feasible, defendants shall provide a completed modification packet and/or settlement offer to plaintiff's counsel. Plaintiff's counsel shall provide to defendant's counsel an itemized list of any missing information within 14 days of the packet being served. Once all information is received, Plaintiff's counsel shall file a Certificate of Readiness to Engage in Mediation and mediation will be scheduled within 45 days. In addition, Plaintiff's counsel shall provide Defendant's counsel

with a completed Plaintiff's questionnaire within 30 days of filing the Certificate. Representatives of the lender are not required to attend the pre-mediation conference.

11. MEDIATION: At the mediation, plaintiff's counsel must appear. 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 defendant borrowers shall be present in person, with their attorney and/or housing counselor. The mediator shall admonish all parties of the need to complete matters in a timely fashion and to participate in the mediation process in good faith. The Court may consider appropriate sanctions for any party not participating in good faith.
12. TIMING OF MEDIATION: Mediation shall be scheduled in a timely fashion with a goal not to extend the period of redemption under the Illinois Mortgage Foreclosure Act. All parties shall use their best efforts to achieve a timely disposition and not delay the proceedings.
13. PHONE USAGE: Since it is contemplated that plaintiff's counsel and lender's representatives will need to consult telephonically during the mediation process, plaintiff's counsel and lender shall be allowed to use phones and computers for the purpose of aiding the mediation process. In no case are photographs or recordings of the proceedings, parties or personnel attending allowed.
14. DOCUMENTS TO REMAIN CONFIDENTIAL: All documents used by the mediation coordinator and the mediator, except for official reports to the court regarding the results of the mediation or pre-mediation conference, are to be kept confidential and will be maintained in a separate place for the use of the judge. They are not official court records. One of the program's goals is to encourage the parties to fully communicate by engaging in confidential mediation process.
15. RULES: Attached as Exhibit D to this order are the Mandatory Residential Foreclosure Mediation Rules. The Mandatory Residential Foreclosure Mediation is a pilot program and further procedures, rules and guidelines may be issued by the court as needed.
16. Administrative Order 2012-03 is hereby superseded by this order.

DATED THIS 9<sup>th</sup> DAY OF OCTOBER, 2012.



---

ELIZABETH A. ROBB, CHIEF JUDGE  
ELEVENTH JUDICIAL CIRCUIT