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Sixth Circuit's Plan Continues Managed Mediation for Residential Foreclosures

CLEARWATER – Revisions to a previously mandated mediation program are targeted more directly at property owners who are most likely to benefit, while making the procedures more user-friendly and effective. The goal is to continue to efficiently move foreclosure cases through the courts of the Sixth Judicial Circuit, which serves Pasco and Pinellas counties.

Under a new Administrative Order signed today by Chief Judge Thomas McGrady, Mediation Managers, Inc. (MMI), which contracts to provide mediation services for foreclosure cases, will no longer automatically offer mediation in every case. “A lot of resources were being used ineffectively while trying to serve borrowers who have already abandoned their homes or recognize that they will be unable to reach an agreed-on plan that would allow them to keep their homes,” Judge McGrady said.

Under the new plan, mediation will automatically be offered in all residential foreclosure case in which:

- Defendants have been personally served with notice of the foreclosure action;
- Notice of foreclosure was by publication, and the defendant responded within 120 days of service;

MMI will no longer make efforts to locate every borrower (only those who meet the criteria above), and mediation will now be available on foreclosure actions involving non-homestead residential property. The program that the Florida Supreme Court suspended last month required the initiation of mediation for all homestead cases and required MMI to attempt to locate all defendants before a case could move forward.

The suspended program also required lenders to pay an up-front fee of \$750 to MMI – a not-for-profit organization. Under the revised plan, MMI will receive no administrative fee, and its mediation fee is set at \$225 an hour with a two-hour minimum. The fee will continue to be paid by the lender, but will be listed as costs in all settlements or final judgments. If more than two hours are required, fees will be split between lender and borrower.

Chief Judge McGrady said that the new plan eliminates requirements that tried to include all homestead foreclosure cases. “As it has always been, mediation will continue to be a resource that is available to anyone who wants to utilize it to settle civil court cases, including foreclosures,” McGrady said. “But now, we will be proactive in trying to get parties to mediate only when there appears to be hope of a homeowner saving their property from foreclosure action that was initiated during a hard time that they are working themselves out of. We all have had setbacks, and mediation is a tool for overcoming those setbacks.”

In mediation, a neutral third party such as MMI assists both sides to reach a settlement agreement that quickly brings the case to a conclusion, avoiding longer and more costly litigation in court. Such agreements

could lead to modified payment plans, extended loan terms, sale of the property, returning the property without any further obligation on the loan, etc. “It (mediation) allows both sides to mutually resolve their issues,” McGrady said, “while avoiding the expense and uncertainty of further litigation.”

He pointed out that in most cases financial institutions really don’t want to take possession of more properties, while mediated agreements provide time for hard-working property owners to get back on their feet.

In mid-2010, Sixth Circuit judges were dealing with approximately 33,000 open foreclosure cases. Mediation and a senior judges program have helped reduce the number of pending actions to less than 29,000. Last year, almost 10,000 new cases – 6,293 in Pinellas and 3,690 in Pasco – were filed. Judge McGrady said that while the new mediation plan will not automatically apply to previously filed cases, it gives the courts another tool to efficiently deal with the situation.

MMI was founded in 2010 by three local attorney/mediators, J. Richard Rahter, Jon C. Kieffer, and Jack L. Townsend, Sr. Kieffer and Rahter – the principal attorneys of Kieffer & Rahter, P.A. in St. Petersburg since 1985 – have been Florida Supreme Court-certified mediators for 22 years. Townsend, the principal attorney of Jack L. Townsend, Sr., P.A. in Tampa, has been providing mediation and arbitration services in the Tampa Bay area since 1996.

Judge McGrady emphasized the revised program does not rule out mediation for cases involving properties that do not meet the eligibility criteria. “Mediation can still be requested by parties to proceedings for commercial properties, or for any other contested foreclosure,” he stated. Borrowers with cases currently pending before the Court may file a motion requesting participation in the Foreclosure Mediation Program.

The revised plan also places some new requirements – particularly in the exchange of information – on participants and attorneys for participants. The complete order and necessary forms can be accessed at

<http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2012/2012-002.htm>