

**IN THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA**

ADMINISTRATIVE ORDER S-2012-038

(Supersedes Administrative Orders S-2011-010, S-2011-029, and S-2011-060)

FORECLOSURE PROCEDURES

Based on some upcoming procedural changes regarding the processing of mortgage foreclosure cases in the General Civil Division, it is necessary to revise the mortgage foreclosure procedures. The Florida Legislature has authorized and designated funds for utilizing senior judges to assist with the backlog of residential mortgage foreclosure cases. The Hillsborough County Bar Foundation, in previously demonstrating its expertise managing the high volume of mediation of residential mortgage foreclosure cases in this circuit, is authorized to continue providing mediation services on a case-by-case basis. The Clerk of the Circuit Court (Clerk) is in the process of achieving the goal of conducting judicial sales of real property electronically.

By the power vested in the chief judge under article V, section 2(d) of the Florida Constitution; section 43.26, Florida Statutes; Florida Rule of Judicial Administration 2.215(b)(2); and Florida Supreme Court Administrative Order AOSC11-44 (*Managed Mediation Program for Residential Mortgage Foreclosure Cases*); it is therefore **ORDERED**:

1. Service

A. Constructive Service – Affidavit of Diligent Search and Inquiry

To obtain constructive service in a case, plaintiff's counsel must complete and file an affidavit of diligent search and inquiry as provided in Form 1.924, Florida Rules of Civil Procedure. A uniform Affidavit of Search and Inquiry may be accessed at <http://www.fljud13.org/Forms.aspx>.

B. Military Service – Memorandum for Certificate of Military Service

If plaintiff's counsel does not know whether a defendant is on active duty in a branch of the United States military service, plaintiff's counsel must complete and file a certificate of military service substantially similar to the memorandum for certificate of military service designated as Florida Family Law Rule of Procedure Form 12.912(a). A uniform Memorandum for Certificate of Military Service may be accessed at <http://www.fljud13.org/Forms.aspx>.

C. Default Judgment – Nonmilitary Affidavit

If plaintiff's counsel seeks a default judgment and the defendant has been properly served and has not responded to the mortgage foreclosure complaint, plaintiff's counsel must complete and file a nonmilitary affidavit substantially similar to the affidavit designated as Florida Family Law Rule of Procedure Form 12.912(b). A uniform Nonmilitary Affidavit may be accessed at <http://www.fljud13.org/Forms.aspx>.

2. Motions

A. Disposition of Non-Summary Judgment Motions

Unless the presiding judge directs otherwise, a copy of all non-summary judgment motions must be served on the presiding judge when the original motion is filed with the Clerk. The presiding judge may decide to rule on a non-summary judgment motion either with or

without a hearing. If a judge decides to rule on a non-summary judgment motion without a hearing, the judge will enter an order disposing of the motion within 30 days from the date of service of a copy of the motion on the presiding judge. Unless the presiding judge directs otherwise, a party may not set a non-summary judgment motion for hearing until at least 30 days have elapsed from the date of service of a copy of the motion on the presiding judge. The court may require a party filing a non-summary judgment motion to submit, along with the motion, an original and appropriate copies of a proposed order and addressed stamped envelopes to all parties.

B. Calendaring

Attorneys must schedule all summary judgment motion hearings and any non-summary judgment motions authorized to be set for hearing under section 3A of this administrative order through JAWS. A signed copy of any motion scheduled and the notice of hearing must be uploaded at the time the hearing is scheduled. The court may unilaterally cancel without notice any hearing set on the JAWS if the court has already entered an order on a non-summary judgment motion.

C. Summary Judgment Motions

i. Prerequisites to Scheduling Hearing

Prior to selecting a mortgage foreclosure summary judgment hearing date on the JAWS, attorneys of record for plaintiffs must file with the Clerk the motion for summary judgment and a uniform affidavit titled “Affidavit of Compliance with Foreclosure Procedures.” The uniform affidavit form may be found at <http://www.fljud13.org/Forms.aspx>. The affidavit swears or affirms that certain requisite actions have been completed and the dates on which they have occurred. Hearings scheduled on the JAWS prior to the filing of the summary judgment motion and the affidavit may be cancelled by the court without notice.

ii. Original Note or Lost Instrument Affidavit Required

Section four of the above-referenced Affidavit of Compliance with Foreclosure Procedures requires the attorney of record for the plaintiff to swear that the note and mortgage were filed with the Clerk on a specific date or that an affidavit of lost instrument was filed with the Clerk on a specific date. If an affidavit of lost instrument is filed with the Clerk, the affidavit must contain an agreement to indemnify the maker(s) or other adequate consideration. See section 673.3091(2), Florida Statutes (“The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected.”). If the note does not name the plaintiff as the payee, the plaintiff must submit evidence of: (1) the note bearing a special indorsement in favor of plaintiff; (2) the note bearing a blank indorsement; (3) the payee having assigned the note to the plaintiff; or (4) an affidavit of ownership to prove its status as a holder of the note.

iii. Notice of Hearing

Within 3 days of obtaining a summary judgment hearing date, attorneys of record for plaintiffs must serve a notice of hearing for the summary judgment hearing on defendant(s).

iv. Cancellations

Cancellations less than 20 days before the hearing date require a notice of cancellation with an explanation of the reason for cancellation.

3. Mediation

A. History

In December 2009, the Florida Supreme Court determined that mediation programs for homestead residential mortgage foreclosure actions should be mandatory throughout the state and directed the creation of a Residential Mortgage Foreclosure Mediation Program in each circuit.¹ Thereafter, the Hillsborough County Bar Foundation was selected as Program Manager for the Residential Mortgage Foreclosure Mediation Program (“RMFM Program”) in the Thirteenth Judicial Circuit. In December 2011, the Florida Supreme Court terminated the statewide managed mediation program effective December 19, 2011 but provided that cases already referred to and pending in a Residential Mortgage Foreclosure Mediation Program on or before December 19, 2011 will remain in the program through the completion of mediation.² Additionally, the Court authorized chief judges “to do everything necessary to promote the prompt and efficient administration of justice.”

Upon the termination of the statewide managed mediation program, the undersigned chief judge suspended the automatic referral of all newly filed mortgage foreclosure cases involving a homestead residence to the Residential Mortgage Foreclosure Mediation Program until further order of the Court.³ The suspension of automatic referrals was necessary in determining the appropriate measures to manage pending and new residential mortgage foreclosure cases, including referral of cases to mediation on a case-by-case basis in accordance with section 44.102, Florida Statutes, and Florida Rule of Civil Procedure 1.700(a).

B. Termination of RMFM Program

The Thirteenth Judicial Circuit RMFM Program, created under the statewide mandated managed mediation program, is terminated as of the effective date of this administrative order, except that cases filed on or before December 19, 2011, will remain in the RMFM Program through the completion of mediation, and such cases are subject to the provisions of Administrative Order S-2011-010 (*Residential Mortgage Foreclosure Case Management & Mandatory Mediation of Homestead Foreclosure Cases*).

C. Hillsborough County Bar Foundation Designated Mediation Provider

The Hillsborough County Bar Foundation is designated as the mediation provider for the Thirteenth Judicial Circuit to provide and manage the mediation of residential mortgage foreclosure cases on a case-by-case basis. Mediation services provided by the Hillsborough County Bar Foundation will include maintaining a web-enabled information platform, the coordination of the collection and exchange of financial documents, coordinating and scheduling the mediation conference, providing mediation facilities, assignment of a mediator and other related administrative tasks associated with the mediation conference.

D. Mediation Referral Procedures

The following procedures will be followed for the mediation of residential mortgage

¹ Supreme Court of Florida Administrative Order AOSC09-54, In Re: Final Report and Recommendation on Residential Mortgage Foreclosure Cases.

² Supreme Court of Florida Administrative Order AOSC11-44, In Re: Managed Mediation Program for Residential Mortgage Foreclosure Cases.

³ Thirteenth Judicial Circuit Administrative Order S-2011-060 (*Amendment to Administrative Order S-2011-010 Addressing Residential Mortgage Foreclosure Cases Management & Mandatory Mediation of Homestead Foreclosure Cases*).

foreclosure cases in the Thirteenth Judicial Circuit.

i. After service of the complaint, either party may request in writing to the presiding judge that such case be referred to mediation. Upon receipt of a request for mediation, the presiding judge will evaluate and determine, on a case by case basis, whether the case should be referred to mediation in accordance with section 44.102, Florida Statutes and Florida Rule of Civil Procedure 1.700(a).

ii. The presiding judge may *sua sponte* evaluate and determine, on a case-by-case basis, whether a case should be referred to mediation in accordance with section 44.102, Florida Statutes and Florida Rule of Civil Procedure 1.700(a).

iii. If the presiding judge determines that a case should be referred to mediation, the judge will enter a “Uniform Order of Referral to Foreclosure Mediation.” A copy of the Uniform Order of Referral to Foreclosure Mediation may be found on the Thirteenth Judicial Circuit’s webpage at www.fljud13.org/forms.aspx. Parties wishing to utilize mediation services other than those provided through the Hillsborough County Bar Foundation must follow the procedures set out in the Uniform Order of Referral to Foreclosure Mediation. Only Supreme Court certified circuit civil mediators who are specially trained in mortgage foreclosure cases may be designated to provide mediation services in the Thirteenth Judicial Circuit.

E. Statistical Information

On a quarterly basis, the Hillsborough County Bar Foundation will provide the Court Administrator with statistical information relating to cases referred to the Hillsborough County Bar Foundation for mediation. The statistical information will include:

- i. The number of cases referred to mediation;
- ii. The number of cases in which a mediation conference was held;
- iii. The number of cases in which a mediation agreement was reached;
- iv. The number of cases pending resolution;
- v. The number of cases returned to the court due to plaintiff non-participation;
- vi. The number of cases returned to the court due to defendant non-participation.
- vii. The number of cases in which the parties chose a mediator other than the Hillsborough County Bar Foundation;

viii. The number of cases pending resolution by the court after referral to mediation and the mediation report or the notice of non-participation has been filed; and

ix. The number of cases disposed by the court after referral to mediation and the mediation report or notice of non-participation has been filed.

This statistical information will be reported in a format approved by the Court Administrator.

4. Case Management – Senior Judges

A. Foreclosure Sections I and II - Cases Filed in and Prior to 2009

Foreclosure Sections I and II are created for the purpose of managing certain residential foreclosure cases. The administrative judge of the General Civil Division, in consultation with the chief judge, will manage the assignment of senior judges to these two sections. All cases that have been filed in or prior to 2009 will be set for hearing in the senior judge sections. Effective June 1, 2012, attorneys will be required to set hearings for these cases in the senior judge sections on the Judicial Automated Workflow System (JAWS). The JAWS may be accessed at the following link: <http://www.fljud13.org/JAWS.aspx>. Unrepresented parties may schedule hearings by telephoning the appropriate secretary or case manager in Section I at (813) 272-8572 or Section II at (813) 272-5121. All cases that have been filed in or prior to 2009 will be set by the court for a case management conference or trial during the next 12 months, unless the parties resolve the matter or set the matter for final resolution.

B. Regular Divisions - Cases Filed in 2010 and Later

All cases filed in 2010 or later will continue to be set on the dockets of the assigned regular divisions, although senior judges may be assigned to assist in conducting these cases. Attorneys should set hearings for cases filed in 2010 or later through the JAWS calendar listed for the assigned division. The court may also set these 2010 or later cases for case management conference or trial.

5. Telephonic Hearings

For any multi-party telephonic hearings, all parties must be conferenced into the call prior to the call being placed to the presiding judge's office. Presiding judges may require the parties to use COURT CALL (<http://www.courtcall.com/ccallp/info?c=CCGENERAL>) for telephonic appearances for motions for summary judgments and other motion hearings. COURT CALL is required for telephonic hearings in Foreclosure Sections I and II. Telephonic appearances are not permitted for foreclosure non-jury trials; attorneys and a client representative must be present at trial.

6. Foreclosure Judgment Packet

All foreclosure judgment packets must be received by the presiding judge's office at least five business days prior to all scheduled hearing dates for motions for summary judgment. The foreclosure judgment packet must include the following documents:

- Proposed Uniform Final Judgment of Foreclosure (sale date will be inserted by the court at the time of the hearing) with sufficient copies. The uniform

final judgment form must be used. The most current Uniform Final Judgment form may be accessed at <http://www.fljud13.org/Forms.aspx>;

- Certificate of Sale;
- Certificate of Disbursements;
- Certificate of Title; and
- Three copies of stamped addressed envelopes.

Proposed final judgments prepared by counsel must be delivered to the presiding judge, not to the clerk. If the clerk receives any proposed final judgment intended for signature by a judge, the clerk is not responsible for delivery of the proposed final judgment to the presiding judge. If the clerk receives a proposed final judgment intended for signature by a judge, the clerk may return the proposed judgment to the sender or destroy it without notice. See Administrative Order S-2012-031 (*Delivery of Proposed Orders*).

7. Notice of Sale and Proof of Publication

The plaintiff or the plaintiff's attorney is responsible for preparing, under section 45.031(2), Florida Statutes, and submitting the Notice of Sale to a legal publication. The original Notice of Sale and Proof of Publication must be filed with the Clerk at least 24 hours prior to the scheduled sale date.

8. Judicial Sales

A. Dates

Judicial sales will be held daily (excluding weekends and holidays), under sections 45.031(10) and 45.035(1) and (3), Florida Statutes.

i. Sale Date Prior to October 1, 2012 – Physical Presence Sale

All judgments or orders scheduling or rescheduling judicial sales with a sale date prior to October 1, 2012 will indicate that the sale will be conducted “in person” at 800 East Twiggs Street, Room 201/202, Tampa, Florida 33602. The “in person” sales will begin at 10:00 a.m. or 2:00 p.m. and continue until all scheduled sales have been completed.

ii. Sales Date On or After October 1, 2012 – Electronic Sale

All judgments or orders scheduling or rescheduling judicial sales with a sale date on or after October 1, 2012 will indicate that the sale will be conducted electronically online at <http://www.hillsborough.realforeclose.com>. All electronic sales will begin at 10:00 a.m. and continue until all scheduled sales have been completed. The direction under this subsection will supersede any contrary language contained in an individual judgment or order scheduling or rescheduling a judicial sale for a date on or after October 1, 2012.

B. Decorum

If the Clerk is ordered to perform a sale in person, the same decorum and behavior in courtrooms and chambers must be adhered to during judicial sales. Conduct that disrupts the deputy Clerk from conducting the judicial sale will not be tolerated. Cellular telephones and other electronic devices must be muted during the conduct of judicial sales. Any person who needs to communicate verbally by cellular telephone during the conduct of any judicial sale must exit the room, or, if the sales are not conducted in a room, from the immediate vicinity where the judicial sale is being conducted. The Clerk is empowered to establish any administrative rules to ensure judicial sales are conducted expeditiously and without disruption.

C. Bidding Increments

The deputy Clerk conducting the sale will require all tendered bids to be in increments of at least \$100.00. Any attempt to tender a bid to the deputy Clerk conducting the judicial sale that is less than the minimum \$100.00 will not be recognized by the deputy Clerk conducting the judicial sale. Minimum bidding increments for online sales will be \$100.00.

D. Waiver of Reading of Legal Descriptions

The plaintiff's representative has the right to request the deputy Clerk conducting the judicial sale to waive reading of the legal description of the property being sold. The deputy Clerk has the authority to honor this request and not read the legal description of the property being sold, unless it can be established that there is a defect in the legal description of such property.

E. Debarment for Failure to Pay Any Part of the Bid Price

Any successful bidder who cannot pay the required deposit at the time of the judicial sale or who fails to pay the balance of the bid or other required costs of the judicial sale within the time required by the Clerk shall be reported to the judge who ordered the judicial sale. The court may enter an order debaring that bidder from participating in future judicial sales conducted by the Clerk in Hillsborough County for a period of time, up to one month, or longer if such conduct is found to have been repetitive within the past 12 months. The deputy Clerk conducting the judicial sale will maintain all orders and enforce the orders by prohibiting debarred bidders from participating in the judicial sales during the term established in the respective order.

F. Authority to Stop the Judicial Sales to Enforce These Procedures

If the Clerk is ordered to perform a sale in person and the deputy Clerk conducting the judicial sale determines that one or more persons in the vicinity of the judicial sale is acting in a manner that disrupts the deputy Clerk from performing the activities of the judicial sale, the deputy Clerk must stop the judicial sale immediately and seek the cooperation of the person or persons to abide by the provisions of this administrative order. If the person or persons refuse(s) to cooperate with the deputy Clerk, the deputy Clerk must suspend the judicial sale and seek assistance from the court's bailiff or an administrative bailiff to maintain order, including removal of such person or persons. Any continuing disruptive conduct must be reported to the judge who ordered the judicial sale and the conduct may be considered as contempt of court. Once order has been restored, the deputy Clerk will proceed to conduct the remaining judicial sales.

G. Cancellation of Foreclosure Sale

i. Deadline

The deadline for cancellation of a judicial sale and for payment of the Clerk's sale fee is the day of the scheduled sale, no later than 9:30 a.m. for any 10:00 a.m. sale, and no later than 1:30 p.m. for any 2:00 p.m. sale for "in person" sales scheduled prior to October 1, 2012. Effective October 1, 2012, the deadline for cancellation of a judicial sale and for payment of the Clerk's sale fee is no later than 9:30 a.m. on the day of the scheduled sale.

ii. Upon Plaintiff's Notice of Cancellation

The Clerk will cancel any scheduled foreclosure sale upon receipt by the above-referenced deadline of a Notice of Cancellation of Foreclosure Sale submitted by plaintiff's counsel. The Clerk will accept a facsimile of the Notice of Cancellation of Foreclosure Sale at the number designated

on the Clerk's website at www.hillsClerk.com (Foreclosure Sales) and the Thirteenth Judicial Circuit website at www.fljud13.org (General Civil Division). The original Notice of Cancellation of Foreclosure Sale must be filed with the Clerk. The uniform Notice of Cancellation of Foreclosure Sale form may be accessed at <http://www.fljud13.org/Forms.aspx>. The Clerk will notify the online vendor of all cancellations of judicial sales.

iii. Upon Suggestion of Bankruptcy

Unless otherwise directed by the presiding judge or a United States Bankruptcy Judge, the Clerk will cancel any scheduled foreclosure sale if any deputy Clerk assigned to the foreclosure department of the General Civil Division receives, no later than the above-referenced deadline, a suggestion of bankruptcy on behalf of a named defendant in a pending foreclosure action.

iv. Upon Plaintiff's Failure to Pay Additional Filing Fee

If any difference between the estimated amount in controversy of the claim and the actual value of the claim causes there to be an additional filing fee owed by the plaintiff pursuant to section 28.241(1)(a), Florida Statutes (2010), the plaintiff must pay the additional fee prior to the judicial sale. If any additional filing fee owed is not paid prior to the judicial sale, the Clerk will cancel the judicial sale.

9. Verified Motion for Writ of Possession

The federal Protecting Tenants at Foreclosure Act of 2009 (Pub. L. No. 111-22, §§ 701 – 704 (2009)) (“Act”) provides that in the case of a foreclosure on any dwelling or residential real property, the party taking title to the property assumes the property subject to the rights of a bona fide tenant. Under the Act, any bona fide tenant occupying the property as of the date of a “notice of foreclosure” is protected by the Act’s provisions. The federal Protecting Tenants at Foreclosure Act Extension and Clarification (Pub. L. No. 111-203, § 1484 (2010)) clarifies that the date of the “notice of foreclosure” is “the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.” In Florida, complete title to a property is transferred to a successor entity when the certificate of title issues under section 45.031, Florida Statutes. In Florida, therefore, the Act protects any bona fide tenant who takes occupancy of the property before a certificate of title is issued to the successor in interest as a result of the foreclosure.

When a plaintiff seeks an order directing the Clerk to issue a writ of possession, a verified motion must be filed swearing or affirming that the residence sold at the judicial sale is either: (1) unoccupied; or (2) occupied by the debtor; or (3) occupied by a bona fide tenant (as defined in the Act) who has been given at least a 90-day notice to vacate AND the motion does not seek an order that violates any tenant’s or tenants’ right to continued occupancy under the Act. A uniform verified motion for writ of possession may be accessed at <http://www.fljud13.org/Forms.aspx>.

10. Additional Procedures

Individualized procedures for each judge’s mortgage foreclosure cases may be accessed on the respective judge’s web page located on the Thirteenth Judicial Circuit website at http://www.fljud13.org/JudicialDirectory.aspx#General_Civil.

11. Applicability

All sections of this administrative order apply to residential mortgage foreclosure cases. With the exception of sections 2 (Case Management – Senior Judges), 4 (Mediation), and 9

(Verified Motion for Writ of Possession), all other sections of this administrative order apply to non-residential mortgage foreclosure cases.

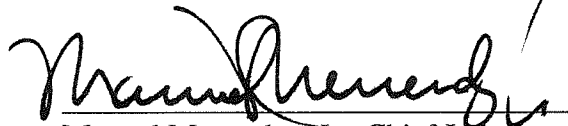
12. Previous Administrative Orders Superseded

This administrative order supersedes Administrative Orders S-2011-029 (*Foreclosure Procedures*) and S-2011-060 (*Amendment to Administrative Order S-2011-010 Addressing Residential Mortgage Foreclosure Cases Management & Mandatory Mediation of Homestead Foreclosure Cases*). This administrative order also supersedes Administrative Order S-2011-010 (*Residential Mortgage Foreclosure Case Management & Mandatory Mediation of Homestead Foreclosure Cases*) for all cases except for those filed on or before December 19, 2011, that remain in the RMFM Program through the completion of mediation.

13. Effective Date

Except as otherwise provided in this administrative order, the provisions of this order are effective July 1, 2012.

It is ORDERED in Tampa, Hillsborough County, Florida, on this 29th day of June, 2012.


Manuel Menendez, Jr., Chief Judge

Original to: Pat Frank, Clerk of the Court
Copy to: All General Civil Division Judges
Hillsborough County Bar Association
Hillsborough County Bar Foundation