Rule 85 MANDATORY PEORIA COUNTY RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM

PURPOSE OF MEDIATION PROGRAM

The foreclosure mediation program is designed to reduce the burden of expenses sustained by lenders, borrowers and taxpayers as a result of residential mortgage foreclosures. It is also designed to aid the administration of justice by reducing the number of court cases. Further, the program is aimed at keeping families in homes, if possible, to prevent vacant and abandoned houses in Peoria County that negatively affect property values and de-stabilize neighborhoods.

ACTIONS ELIGIBLE FOR MEDIATION

The parties in all residential real estate foreclosures (as defined by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1203 and 15-1219) filed in Peoria County will be subject to mediation as set forth herein excepting where defendant borrower(s) have obtained relief in bankruptcy court.

QUALIFICATIONS, APPOINTMENT AND COMPENSATION OF MEDIATORS

- A. The chief circuit judge shall maintain a list of mediators who have sought appointment and been certified for approval by the court as residential mortgage foreclosure mediators. For approval, an individual must:
 - (i) Be a retired judge; or
 - (ii) 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 real estate and/or litigation experience;
 - (iii) Demonstrate completion of mediation training approved by the Minimum Continuing Legal Education Board of the Supreme Court of Illinois or such other program as approved by the chief circuit judge;
 - (iv) Submit a written application to the chief circuit judge.
- B. Mediators approved for the Mandatory Residential Mortgage Foreclosure Mediation Program by the chief circuit judge shall not participate in residential mortgage foreclosure proceedings in any capacity as plaintiff, defendant, or counsel for any party, or bidder at any Sheriff's sales. Each mediator shall sign a certification acknowledging this prohibition. Violation of this provision will result in the mediator's removal from the Mandatory Residential Mortgage Foreclosure Mediation Program.
- C. The eligibility of each mediator to retain his or her status shall be periodically reviewed by the chief circuit judge. The mediators shall comply with general standards established by the chief circuit judge. Failure to adhere to the general standards may be grounds for revocation of mediator approval. The chief circuit judge may contract with an outside mediation service to provide these services.
- D. The mediator shall be compensated at the rate of \$150.00 per case.

INITIAL PROCEDURE

A. Upon the filing of a complaint for mortgage foreclosure eligible for mandatory mediation, the circuit clerk shall set the case for a mandatory pre-mediation conference on a date at least forty-two (42) days but no later than sixty (60) days from the date of filing. The pre-mediation conference shall be attended by the defendant borrower(s) and the mediation coordinator.

FILING FEE/COMPLAINT: In all Peoria 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 whether 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 fees collected shall be forwarded to the Peoria County Treasurer and maintained in a separate fund subject to disbursement on order of the Chief Circuit Judge of the Tenth Judicial Circuit.

B. The first page of every foreclosure complaint shall clearly and conspicuously designate whether or not the case is eligible for foreclosure mediation by stating below the title that the case is: "Subject to mandatory mediation" or "Not subject to mandatory mediation". If the plaintiff fails to designate mediation eligibility, the circuit clerk shall collect the mediation filing fee.

SUMMONS: In all residential real estate mortgage foreclosure cases a plaintiff shall use a specific summons form attached hereto as Exhibit A. If an alias summons is necessary, the plaintiff shall select a new date for the pre-mediation 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 an alias summons.

COUNTERCLAIM: 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 \$25.00 filing fee. Any party in a counterclaim seeking to foreclose a residential mortgage must request mediation by contacting the circuit clerk's office 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.

NOTICE TO BORROWERS ACCESS TO HUD-CERTIFIED HOUSING COUNSELING SERVICES, ACCESS TO PRO BONO LEGAL SERVICES AND LANGUAGE ACCESS

- A. The circuit clerk shall provide a notice, to be included with the summons (or alias summons), notifying all of the defendants (borrowers) of the mandatory mediation program, which notice must be served upon each defendant borrower with the summons and evidenced on the proof of service.
- B. The notice shall include a provision that the case will be evaluated by a neutral mediation coordinator for possible loan modification or other loan workout. The notice shall further state that if such modification is not deemed feasible or the borrower does not desire to save the home from foreclosure, mediation may still be used to assist the parties with discussion of a consent foreclosure or deed-in-lieu of foreclosure in which the lender waives any deficiency against the borrowers.
- C. The notice shall: advise the defendant borrower to bring certain financial information (including the borrower's income and expenses) that will enable the mediation coordinator to determine if mediation is feasible; contain a list of housing counselors certified by Housing and Urban Development that may be available to assist borrowers in foreclosure; advise a defendant borrower of the Prairie State Legal Services Legal Help for Homeowners Project; and advise the defendant borrower that a language interpreters are available without cost upon contacting the mediation coordinator.
- D. The notice shall indicate that any financial information produced by the defendant shall be held in strict confidence by the mediation coordinator and mediator and shall not be disclosed to any other party without the defendant's consent.

PRE-MEDIATION CONFERENCE

- A. At or before the pre-mediation conference, each participating defendant shall complete a questionnaire to determine if the defendant meets the initial criteria of having greater monthly income than expenses in order to qualify for a loan workout or modification through mediation. If the information provided shows that the defendant does not meet the initial criteria or if the defendant indicates no desire to save the home from foreclosure, then the mediation coordinator may use the scheduled pre-mediation conference to determine whether the defendant can execute a deed conveying the property to the lender or consent to a judgment. In either case, the lender will waive any deficiency against the defendant. Alternatively, the mediation coordinator may assist the parties to determine whether they would agree that the property could be sold to a third party or short-sale that would result in the dismissal of the foreclosure action.
- B. If the mediation coordinator determines that borrower meets the initial criteria for a loan modification or workout or expresses a desire to surrender the property to the lender, the court, upon recommendation of the mediation coordinator, shall refer the case to mediation and direct plaintiff's counsel to provide the defendant(s) with a loan modification packet within fifteen (15) days. Upon referral to a mediator, he or she shall schedule the mediation on a date that is sufficient to give the defendant(s) an opportunity to complete the modification packet and the plaintiff to have sufficient time to analyze the packet.
- C. Representatives of the lender are <u>not</u> required to attend the pre-mediation conference.

DISCOVERY

Unless otherwise ordered by the court, discovery shall be stayed until after the conclusion of the mediation process.

CONDUCT OF MEDIATION CONFERENCES

A. At the mediation conference, plaintiff's counsel must appear in person or by telephone. In addition, plaintiff's representative 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 both the defendant(s) and the plaintiff of the need to complete matters in a timely fashion and to participate in the mediation process in good faith.

Any other lien holder(s) may attend any scheduled mediations. To the extent the mediator requests that another lien holder(s) be invited to attend, plaintiff's counsel shall provide such notice.

- B. 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. In the event a plaintiff places a file on "hold," it may ask the mediator to reset the mediation at a future date which may be greater than thirty (30) days; provided however, if all parties to the mediation are not in attendance, plaintiff's counsel shall provide prompt notice of such rescheduled date to all parties.
- C. 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.

ABSENCE OF PARTY AT CONFERENCES AND SANCTIONS

At the pre-mediation conference, all defendant borrowers who have been served must attend and provide the requested information. If a defendant borrower fails to appear or fails to provide the requested information, mediation may be terminated and the case may be sent back to court for regular foreclosure proceedings.

At the mediation conference, a defendant borrower must appear in person. Failure of the defendant borrower to appear or participate in good faith may result in termination of the mediation and referral of the case back to the court. At the mediation conference, the lender's representative with full settlement authority must appear either in person or by telephone and participate in good faith in the mediation process. Failure of the lender or its agent to attend or participate in good faith may result in sanctions by the court, including possible dismissal of the action, with the lender unable to recover its costs of re-filing in any subsequent foreclosure action.

TERMINATION AND REPORT OF MEDIATION CONFERENCE

Termination and reports of mediation conferences shall be filed by the mediation coordinator or mediator as the case may be in a timely fashion and indicating the outcome. Upon the conclusion of the pre-mediation conference and the mediation conference, the mediation coordinator and the mediator shall file a report with the court terminating mediation services and indicating the outcome. If an agreement is reached, it shall be reduced to writing and signed by the parties and their attorneys. At the request of the parties, the court may retain jurisdiction of the case to review any trial period which the parties may enter into prior to a loan modification becoming effective. If the lender notifies the court during the trial period that the defendant borrower has failed to successfully modify the loan or if no agreement was reached, the foreclosure action shall resume.

FINALIZATION OF AGREEMENT

The termination and report of a mediation conference where an agreement has been reached between the parties shall set forth the finalization timetable of the agreement reached and either schedule the case for a dismissal date or provide for a case management conference date certain.

REPORTING STATISTICAL DATA

The chief circuit judge shall maintain statistical data on the results of mediation, including the number of cases where the initial criteria was 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.

CONFIDENTIALITY

Unless otherwise authorized by court or the parties, all oral and written communications to the mediation coordinator or the mediator, other than written agreements between the parties and official reports submitted to the court regarding the results of the mediation or premediation, shall be exempt from discovery, shall be confidential, shall be maintained in a separate place for the court's use, and are inadmissible as evidence in the underlying cause of action.

IMMUNITY

The mediation coordinator 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.

SUSTAINABILITY PLAN INCLUDING LONG-TERM FUNDING

The chief circuit judge shall review the financial sustainability of this Mediation Plan on an annual basis. A current sustainability review of the Plan since its inception as a pilot program on June 1, 2011 indicates that the filing fees have sustained all of the expenses of the mediators and language interpreters. The review also indicates that the mediation coordinator and paralegal are sustained as employees of Peoria County.

TRAINING

Judges and key court personnel involved in mortgage foreclosure mediation shall keep themselves up-to-date on current and future laws, rules and procedures for residential foreclosure cases. Judges assigned to the foreclosure court shall attend continuing judicial education courses offered by the Administrative Office of Illinois Courts including during the ever-other-year EDCON Conference.

ATTACHMENTS

In residential foreclosure cases, in addition to the forms required by Illinois Supreme Court Rules, plaintiff shall use forms in substantial compliance with the following attachments: Summons (Exhibit A), Notice of Mandatory Mediation (Exhibit B), and Foreclosure Mediation Program Initial Questionnaire (Exhibit C.) Attorneys may generate forms for use in foreclosure mediation cases as long as they are substantially similar to the forms approved by the court. The circuit clerk may make the determination as to whether attorney-generated forms are substantially similar to the court-approved forms.

IT IS ORDERED on this 9th day of July 2013 by the judges of the 10th Judicial Court of Illinois that the foregoing Rule 85 of the Circuit Court of the 10th Judicial Circuit State of Illinois shall become effective immediately.

Michael E. Brandt, Chief Circuit Judge -Resident Peoria County

Kevin R. Galley, Circuit Judge -Resident Marshall County

Paul P. Gilfillan, Circuit Judge -Resident Tazewell County

Katherine S. Gorman, Circuit Judge -At-Large

Thomas A. Keith, Circuit Judge -Resident Stark County-By Appointment

Stephen A. Kouri, Circuit Judge -At-Large

Kevin W. Lyons, Circuit Judge -Resident Peoria County

Michael D. Risinger, Circuit Judge -At-Large

Scott A. Shore, Circuit Judge -Resident Putnam County

John P. Vespa, Circuit Judge -At-Large

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT PEORIA COUNTY, ILLINOIS

)		
Plaintiff,)		
VS.)) Cas	e No.	
• • • • • • • • • • • • • • • • • • • •)		
)		
Defendant(s).)		
(Res	SUMMONS sidential Foreclosure/N	(lediation)	
To each defendant: You are summoned and required to attached, or otherwise file your appearance, in summons, not counting the day of service. If judgment by default may be entered against you	n the office of the cle you fail to do so, and u for the relief asked in	rk of this court within and you do not participate the complaint.	30 days after service of this in the mediation process, a
YOU MAY BE ABLE TO SAV	E YOUR HOME. DO	NOT IGNORE THIS D	OCUMENT.
By order of the Chief Circuit Ju- , 20 at Peoria, Illinois. A mediation coordinator will mediation. For more information on the media of Mandatory Mediation.	2:00 p.m. at the Peoris	a County Courthouse, Roptions that you may ha	Room 201, 324 Main Street, ve and to pre-screen you for
The court provides interpreters for persons who (1) of have limited ability to read, speak, write or understated of hearing. The services of court foreign language is individual in need of the service. Contact (309) 677-	nd English (known as Li nterpreters and American	mited English Proficiency Sign Language interpreter	or LEP); or (3) are deaf or hard rs are provided at no cost to the
YOU MUST APPEAR FOR THE PRE-MEI	DIATION CONFEREI TERMINATE.	NCE OR YOUR RIGHT	TO MEDIATION WILL
To the officer:			
THIS IS AN ATTEMPT TO COLLECT A DE	BT AND ANY INFORM PURPOSE.	MATION OBTAINED WII	LL BE USED FOR THAT
This summons must be returned by the off and fees, if any, immediately after service. If servic This summons may not be served later than	e cannot be made, this su		
	WITNESS	, 20	
Attorney or Party if not represented by attorney Name ARDC #	·) —	e Circuit Court)	
Firm Name	-		
Address			

Phone #

Exhibit B NOTICE OF MANDATORY MEDIATION

IT MAY BE POSSIBLE TO SAVE YOUR HOME FREE FORECLOSURE MEDIATION IS AVAILABLE

You have been served with a foreclosure complaint that could cause you to lose your home. Peoria County Circuit Court has adopted a rule establishing a Mandatory Mediation Program to assist homeowners in foreclosure. This program is available to all homeowners whether or not they file an appearance in the foreclosure case and is *free of charge*.

WHAT DOES THIS MEAN?

Foreclosure mediation is a process where a neutral mediator communicates with borrowers and lenders to try to assist them to reach a voluntary and mutual agreement to resolve a loan delinquency. In the event your loan terms cannot be renegotiated, the mediator will also discuss your giving up the house in exchange for the lender releasing you from any further liability. All of your discussions with the mediator will be kept confidential.

WHERE DOES THE MEDIATION TAKE PLACE?

Foreclosure mediation will take place on the second floor of the Peoria County Courthouse located at 324 Main Street. In order to take advantage of this *free* mediation program you **must** appear for a pre-mediation conference on the date set forth in the Summons given to you. FAILURE TO APPEAR WILL RESULT IN THE TERMINATION OF THE MEDIATION PROCESS. YOUR CASE WILL BE SENT BACK TO THE COURT FOR A POSSIBLE JUDGMENT AGAINST YOU.

In order to assist the mediator in determining your ability to keep the home, you **must** bring the following documents to your pre-mediation meeting:

- Completed questionnaire (enclosed), most recent tax return, current bank statement and paycheck stub.
- All information submitted will be kept confidential. If you agree to release the information, it will be provided to a representative of your mortgage lender in order to try to reach an agreement between the parties.

YOU ARE ALSO ENCOURAGED TO SPEAK WITH A HOUSING COUNSELOR. For more information about housing counselors, go to www.hud.gov or call 1-800-569-4287. In Peoria, the HUD-certified housing counselors are:

METEC Novadebt Money Management International 2605 W. Krause 416 Main Street, Suite 800 418 Main Street, Suite 920

Peoria, IL 61605 Peoria, IL 61602 Peoria, IL 61602

www.metecl.org www.novadebt.org www.moneymanagement.org

cboswell@metec1.org education@novadebt.org counselinginfo@moneymanagement.org

(309) 676-3832 866-472-4557 866-232-9080

Prairie State Legal Services offers free legal representation to eligible borrowers through the Legal Help for Homeowners Project. Call 888-966-7757 for information or go to www.pslegal.org. Your housing counselor or attorney may attend the mediation with you.

CAUTION. While no court action will be taken against you while the mediation process is ongoing, there is no guarantee that an agreement can be reached between you and your lender. If you dispute your lender's claims, you should consult an attorney and fully participate in the foreclosure litigation.

For more information about the Peoria County Mandatory Foreclosure Mediation Program, please visit www.peoria.illinoislegalaid.org.

Exhibit C

Case Number:					
You have been named a party in a foreclosure case. This case may result in the loss of your home. Court-sponsored mediation may be available. Mediation is a free, confidential and voluntary process through which you and the lender that is seeking foreclosure of your home may discuss ways to resolve this case including reinstatement of the loan and re-negotiation of the loan terms. THIS IS NOT AN EVICTION.					
	Please complete this form and bring it with you to the pre-mediation conference. The date, time and location of that meeting is on the Summons you received with the foreclosure complaint.				
The information you provide will be used by mediation personnel to make an initial determination if the case is suitable for mediation. This information will <u>not</u> be shared with anyone unless you agree, and then only with a representative of your lender.					
Name:	·				
Currer	nt address:				
Teleph	none Number:				
1.	What is the total amount of your scheduled monthly payment to your lender? \$				
2.	Are your real estate taxes included in the monthly payment? \square Yes. \square No. Is your property insurance included in the monthly payment? \square Yes. \square No. If the taxes and insurance are <u>not</u> included in the payment, what is the amount of your annual real estate taxes? \square What is the amount of your property insurance? \square annually or \square monthly.				
3.	How many mortgage payments have you missed?				
4.	Please list your monthly expenses on page 3. Do <u>not</u> include monthly payments to your lender, real estate taxes or property insurance.				
5.	What is your net (take home) monthly income? \$ What is the source of your income? (Work, retirement, Social Security)				
6.	Do you have any money in savings? ☐ Yes ☐ No. If yes, how much?				
7.	Do you own any other real estate? ☐ Yes. ☐ No.				
8.	Do you currently live in the home that is the subject of the foreclosure case? \square Yes. \square No.				

9.	Check all circumstances that caused you to miss payments:					
	☐ Injury or illness ☐ Adjustable interest rate/balloon payment ☐ Loss of employment ☐ Expenses exceeded income ☐ Other:					
10.	If you selected injury or illness in #9, are you now well? ☐ Yes. ☐ No.					
11.	If you selected loss of employment in #9, have you found a new job? ☐ Yes. ☐ No.					
12.	Do you wish to keep the home that is the subject of this foreclosure case? ☐ Yes. ☐ No. If not, would you consider the following: ☐ Deeding the property to the lender ☐ Selling the property to a third party ☐ Consenting to the foreclosure					
13.	Have you ever filed bankruptcy? ☐ Yes. Case Number: ☐ No.					
14.	Is there any other information that you believe would be helpful in determining whether your case would be suitable for mediation?					
15.	I consent to release of information to my lender's representative. ☐ Yes. ☐ No.					
	(Signature) (Co-borrower signature)					

MONTHLY EXPENSES AFFIDAVIT ATTACHMENT TO INITIAL QUESTIONNAIRE PEORIA COUNTY RESIDENTIAL FORECLOSURE MEDIATION PROGRAM

<u>Nam</u>	<u>Age</u> <u>Rela</u>	<u>tionship</u>			
Mor	thly Housing Expenses				
A.	Home equity loan (not the mortgage in this suit)	\$			
л. В.	Condominium or HOA fees	\$ \$			
C.	Gas/Electric	\$ \$			
D.	Water	\$			
Б. Е.	Sewer	\$			
E. F.	Garbage collection	\$			
G.	Telephone (land line)	\$			
О. Н.	Cell phone	\$			
I.	Internet	\$			
J.	Cable/Satellite television	\$			
K.	Home repairs/maintenance	\$			
L.	Groceries	\$			
M.	Miscellaneous household	\$			
N.	Lawn care/snow removal	\$			
O.	Other	\$			
	TOTAL MONTHLY HOUSING EXPENSES	\$			
Mon	thly Medical Expenses (not paid by insurance)				
For :	you, spouse, child/children.				
A.	Doctors	\$			
В.	Dentist/Orthodontist	\$			
C.	Prescriptions/medications	\$			
D.	Other	\$			
	TOTAL MONTHLY MEDICAL EXPENSES	\$			
Mon	thly car expenses (Total number of cars:)				
A.	Total amount of car loan payments				
B.	Gasoline	\$			
C.	Maintenance and Repairs	\$			
D.	Insurance	\$			
	TOTAL MONTHLY CAR EXPENSES \$				

6.	Other monthly expenses					
	A.	Credit cards		\$		
	B.	Consumer loans		\$		
	C.	Student loans		\$		
	D.	Court-ordered child su	pport	\$		
	E.			\$		
	F.			\$		
	n 1-109	TOTAL OTHER MON undersigned, certify upper of the Code of Civil P	nder penalty of perj rocedure, that I have	ury as provided read the foregoin	g Monthly Expenses	
		at I know the contents the y knowledge, information		atements containe	ed therein are true to	
	Dated	this day of		, 20	<u>_</u> .	
		(Signature)				
	(printed name)					