

**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISIONS I AND II
MISCELLANEOUS ORDER 2011-___**

**In re: FRANKLIN COUNTY FORECLOSURE DIVERSION PROGRAM,
(ORDER GOVERNING MEDIATION IN REAL ESTATE FORECLOSURE
CASES)**

ORDER

The mortgage foreclosure crisis and current economic downturn are resulting in a large increase in the number of foreclosure cases that have been and are likely to be filed in Franklin Circuit Court. This increase requires the expenditure of substantial court resources and has dire consequences for homeowners, neighborhoods, and lending institutions. Published reports from nationally respected industry analysts indicate that one in four Kentucky homeowners owes more than their house is worth and one in ten American homeowners are behind on their mortgage payments. Government programs have yet to effectively address this crisis or prevent the needless losses to all parties involved.

Kentucky Rules of Civil Procedure (CR 16) give the court the authority to implement case management programs or provisions that will assist the court and litigants in simplifying issues and “other matters as may aid the disposition of the action.” Franklin Court Local Rule 14.01 grants this Court broad authority to order mediation in any civil case.

Pursuant to the authority cited above, this court hereby creates the Franklin County Foreclosure Diversion Program. The program will provide early court intervention in foreclosure cases. The goal of the program is to help both banks and property owners communicate more effectively and efficiently with one another as they explore mutually beneficial resolutions to alleged defaults on notes secured by property in Franklin County.

Being sufficiently advised, ***IT IS THEREFORE ORDERED:***

1. Natalie Lile, a practicing member of the bar of the Franklin Circuit Court, with over a decade of experience representing lenders and property owners in real estate transactions, is hereby appointed as the Mediator for the Franklin County Foreclosure Diversion Program.
2. As Mediator, it shall be Ms. Lile's responsibility to help both Plaintiffs and Defendants participate in the program. She shall conduct meetings between the parties and issue reports and recommendations to the Court.
3. When a Complaint for foreclosure is filed and served in Franklin County, the Court shall automatically stay proceedings for a period of twenty (20) days after the service of process is complete, so that all named Defendants shall have adequate time to evaluate all options and to initiate participation in the Court's mediation program.
4. The Franklin Circuit Court Clerk shall attach a Notice to each foreclosure Complaint prior to the Complaint being served on the Defendant. This Notice shall inform the Defendants of the contact information for the Mediator, and all defendants shall be directed to contact the Mediator for an initial conference (either by telephone, email, or in person) within 20 days of service of process. Failure of any defendant to contact the Mediator within 20 days of service of process will result in dissolution of the automatic stay without further orders of the Court. Additionally, the Notice will include a Request for Modification Affidavit (RMA) and a 4506T-EZ form. These forms are often requested by foreclosing Plaintiffs and accordingly, those forms shall be provided to homeowners at the time of service to expedite mediation.

5. The Mediator, upon receiving contact from the defendants, shall set a mandatory Status Conference at which Plaintiff and Defendant will explore all feasible alternatives to foreclosure. The Mediator will have the discretion to schedule this Status Conference as soon as ten (10) days but not more than seventy (70) days from the date of the initial conference. For Defendants who contact the Mediator and agree to participate in the Foreclosure Diversion Program, the stay of the foreclosure proceedings will continue until the first Status Conference with the Plaintiff.
6. The Mediator may direct the Defendant to submit a hardship packet to the Plaintiff for Plaintiff's benefit and review. The Defendant will have thirty (30) days to complete a hardship packet and submit the hardship packet to Plaintiff's counsel. The hardship packet shall include three things:
 1. A Request for Modification Affidavit (RMA),
 2. A 4506T-EZ form, and
 3. Proof of Income and Bank Statements (if available);
7. Within ten (10) days of receipt of borrower's financial documents, the Plaintiff's servicer shall acknowledge the borrower's request by sending the borrower one of the following documents:
 - A loan modification or trial payment plan offer. If the loan modification is extended by a servicer participating in the Home Affordable Modification Program (HAMP) but is not a HAMP-compliant loan modification, the servicer must explain why the Defendant does not qualify for a HAMP modification;
 - A written notice describing the documents still needed by the Plaintiff to complete a review of the loan for modification or other alternative to foreclosure; or

- A letter denying the Defendant for a loan modification and a detailed explanation for why the property owner does not qualify for a Home Affordable Modification Program loan modification or an in-house loan modification.
8. Within thirty (30) days of the Plaintiff's receipt of a completed loan modification application from the Defendant, the servicer must send one of the following documents to the Defendant:
 - An offer of a trial or permanent loan modification; or
 - A denial notice that articulates the reasons why the servicer is not modifying the loan. This denial notice must also explain why other alternatives to foreclosure are not appropriate in this situation. These alternatives include a deed-in-lieu of foreclosure, a short sale, a repayment plan, and forbearance agreement.
 9. At the Status Conference, the parties shall report to the Mediator the progress the parties have made toward negotiating a mutually beneficial alternative to foreclosure. The Plaintiff's attorney must appear in person and have access (either in-person or telephonically) to an agent of the servicer with full authority to approve or deny an alternative to foreclosure, including a loan modification, deed-in-lieu of foreclosure, short sale, and/or a forbearance agreement. The Mediator shall determine at that time whether to order additional conferences or order other actions by the parties. For example, the Mediator may order the Defendant to appear at the next conference with updated pay stubs, bank statements, and/or other proof of income. Or, the Mediator may require the Plaintiff to produce documents such as an account history, the original note, or other documents establishing the Plaintiff's standing to foreclose. At the end of each conference, the Mediator shall recommend at that time whether to lift

the existing stay of the foreclosure proceedings based on the existence or non-existence of parties' good faith negotiations to settle the case without a foreclosure sale.

10. Both Plaintiff and Defendant will each pay a one-time \$125 fee to the Mediator at the time of the first status conference. If additional conferences are necessary, no additional Mediator fees will accrue. Plaintiff may not charge the \$125 fee to the Defendant's account. This Court finds that it is not reasonable for the Plaintiff to charge the Defendant for the opportunity to explore face-to-face alternatives to the expensive and risky process of foreclosing on a property. Furthermore, the Court notes that attorney's fees charged for attendance at status conferences must be reasonable before they are chargeable to the Defendants' account. Plaintiff's own delays in evaluating Defendants for alternatives to foreclosure, should that occur, may make charging additional fees to the Defendant's account unreasonable.
11. This Order shall remain in effect, and shall govern mediations in all cases involving real estate foreclosures (including both residential and commercial property), for a period of four years, until April 15, 2015, unless modified by further orders of the Franklin Circuit Court.
12. Any party seeking exemption or material alteration of the terms and conditions of this Order in any individual foreclosure case may do so by filing a motion, with notice to all parties, for hearing before the presiding judge of any case to which this Order applies.

So ordered this _____ day of March, 2011.

IT IS SO ORDERED.

FRANKLIN CIRCUIT COURT

BY:

**PHILLIP J. SHEPHERD, CHIEF JUDGE
DIVISION I**

**THOMAS D. WINGATE, JUDGE
DIVISION II**