

**2<sup>nd</sup> Amended Outagamie County Court Rule on Foreclosure Procedures**

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IT IS ORDERED that in all foreclosure actions filed in Outagamie County after the effective date of October 19, 2012, the plaintiff shall attach to the Summons and Complaint served on the defendant/homeowner the following forms:

1) Notice of Availability of Mediation; and 2) Application for Mediation.

Forms, which shall be printed on light green paper, can be downloaded from the Outagamie County website at <http://www.outagamie.org/ClerkofCourts>, or will be available at the Outagamie County Clerk of Courts Office

“Residential mortgage foreclosure actions” is defined as those foreclosure actions involving either first or second mortgages and involving one- to four-family residences, owner occupied, or tenant occupied, so long as the landlord owns no more than five one- to four-family rental properties.

While entry into the Foreclosure Mediation Program is voluntary for both parties, by consenting, the parties agree to abide by the process set forth in the Foreclosure Mediation Process Description below.

**Foreclosure Mediation Process Description**

**A. Goal.** The Outagamie County Foreclosure Mediation Program is patterned after the Wisconsin Foreclosure Mediation Network Model. The goal of the Program is to assist parties determine, within a reasonable period of time, whether foreclosure can be avoided by an alternate mutually agreeable arrangement, such as a loan modification or repayment plan, or to allow for a graceful exit from the property. The mediation program seeks to achieve this goal by structuring the collection and exchange of information to prepare the parties for their mediation session. The neutral and impartial mediator then guides and summarizes the communications so that parties gain a complete and clear understanding of any options that may exist, or the reasons retention options are not available.

**B. Eligibility.** The Program is available to parties to a first or second mortgage foreclosure action involving a one- to four-family residential property. The Homeowner need not reside in the property, but they may not own more than four other rental properties. This is consistent with the eligibility criteria for the U.S. Treasury’s Making Homes Affordable loan modification program. In addition, the action must be pending in Outagamie County. Vacation properties or “seasonal homes” are not eligible, nor are homes subject to a bankruptcy.

### **C. Request/Consent Process:**

**1. Mediation Request Form.** To initiate the mediation process, either party may make a request. The Homeowner's request must utilize the "Mediation Request Form." Within two business days of receiving the Request Form, the Program Administrator will refer a housing counseling agency to the Homeowner via mail or email. The Homeowner's second step is to contact a housing counselor to set up a meeting for the purpose of compiling a complete financial package. The housing counselor sends the package directly to the Program Administrator through the portal, once designated. The Homeowner's third step is to pay the application fee of \$150 by check, money order or credit/debit payment via telephone.

If the Homeowner does not complete all three steps within 60 days from receipt of the Mediation Request Form, in the absence of extenuating circumstances, the application will be deemed inactive.

**2. Lender's Consent.** After the Homeowner has completed all three application steps, the Program Administrator will notify Lender's counsel and request Lender's participation, seeking a response within 10 business days. Lender's non-refundable fee of \$150 is due at the time of consent. If no response is received within 30 days, the Program Administrator will notify the Court that Lender has not responded and will close the mediation.

### **D. Mediation Preparation/Document Exchange:**

**1. On-line Portal.** By consenting, Lender agrees to utilize an Administrator selected secure internet based portal to:

- a. Post the lender required loan modification application forms and requirements,
- b. Receive the Homeowner's loan modification package documents and
- c. Exchange messages about any outstanding documents or information.

**2. Initial Submission of Loan Modification Request Packet ("Financial Package").** Within 2 business days of lender's consent, the Program Administrator will send the Homeowner's financial package to the lender, either via the Portal or via lender's counsel.

**3. Notice of Deficient Package and (Lender's Confidential Loan Data Sheet).** Within 5 business days after receipt of Homeowner's initial submission of information, Lender shall:

- a. Notify the Program Administrator of any known deficiencies, including any missing information or documentation required for the loan modification application to be complete, and
- b. Send the completed Confidential Loan Data Sheet.

**4. Supplemental Submission.** Within 10 days from the date of the Lender's notification of deficiencies in the financial package, Homeowner shall submit supplemental information or documents. This deadline may be extended for compelling circumstances beyond the Homeowner's control.

**5. Notice of Commencement of Review Period.** When no outstanding Lender requests for information or documents remain, the Program Administrator will send a Notice to the Court advising that:

- a. The Homeowner has delivered to Lender, via Program Administrator, a completed application for a loan modification;
- b. Lender is reviewing the application for alternatives to foreclosure; and
- c. The next scheduled mediation activity.

## **F. Mediation Session**

**1. Assignment of Mediator.** At the time of the Initial Submission, the Program Administrator will assign a trained neutral and impartial mediator, who will utilize the facilitative style of mediation, refraining from directing or advising the parties, and will abide by the Uniform Model Standards of Mediator Conduct.

**2. Attendance by Parties with Authority.** By consenting, Lender agrees to designate a representative with knowledge of all of the Lender's loss mitigation programs either with full authority to make a determination on the Homeowner's request or access to persons having such authority. Such representative may appear via video or teleconference. All attorneys will appear in person or via videoconference (if such accommodations are available). Absent prior arrangements, all mortgagors and the mediator must be present at the mediation session. If subsequent mediation sessions are scheduled, all appearances may be via teleconference.

**3. Confidentiality and Privilege.** All communications made by the parties, attorneys and other participants at or in connection with the mediation shall be privileged and not reported, recorded or placed into evidence, or made known to the Court or construed for any purposes to be an admission. The Mediator will keep confidential all statements made during the mediation session, and will report to the Court only the results of the mediation or the procedural status of the mediation case.

**4. Scope of Subject Matter.** The mediation session may include negotiation of a modification of the Homeowner's loan, whether by new payment terms,

reduction or forgiveness in principal, interest, escrow shortage or advanced costs, surrender or sale of the mortgaged property or otherwise. Disputes of the amount due, application of payments, or other claims are within the scope of mediation only if both parties expressly make such election.

**5. Close of Mediation.** The Mediator shall cause the mediation process to conclude when:

- a. The Homeowner has withdrawn from the mediation process,
- b. The Lender has reached a determination about the Homeowner's eligibility for a loan modification and the Homeowner has been afforded an opportunity to discuss the determination during a mediation session, or
- c. The Homeowner has failed, after 10 business days, to supply information or documents identified as outstanding by the Lender and the Lender has requested that mediation be closed.

The Program Administrator shall send to the Court a Final Mediation Report no later than 10 days after the conclusion of the mediation.

Dated and approved this 19th day of October, 2012.

APPROVED BY THE CHIEF JUDGE ON  
10/19/12 – HON. DON ZUIDMULDER