Successful Foreclosure Mediation

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1. References

a. Rules for Certified and Court Appointed Mediators (Available via the Internet on the [Florida Supreme Court site at this Link](#))

b. Florida Supreme Court Task Force On Residential Mortgage Foreclosure Cases Report dated August 17, 2009 (Available via the Internet on the [Florida Supreme Court at this Link](#)).

c. Supreme Court of Florida Administrative Order AOSC 09-54 (Available via the Internet on the [Florida Supreme Court site at this Link](#))

d. Supreme Court of Florida Administrative Order AOSC 10-57 (Available via the Internet on the [Florida Supreme Court site at this Link](#)).

2. Introduction

a. Understanding Mediation

i. Rule 10.210 Mediation Defined

> Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

ii. Rule 10.230 Mediation Concepts

> Mediation is based on concepts of communication, negotiation, facilitation, and problem-solving that emphasize:
> (a) self determination;
> (b) the needs and interests of the parties;
(c) fairness;
(d) procedural flexibility;
(e) confidentiality; and
(f) full disclosure.
iii. Traditional Mediation Format

1. Mediator’s Introduction
2. Opening Statements
3. Joint caucus
4. Separate caucus
5. Settlement Agreement/Adjournment/Impasse

b. Mediation under the SC Model Order

i. Applicability of the Order

ii. Program Mediations

1. Role of Mediation Manager
2. Mandatory Disclosures (See AOSC)
   a. Plaintiffs Disclosure
      i. Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.
      ii. A history showing the application of all payments by the borrower during the life of the loan.
      iii. A statement of the plaintiff’s position on the present net present value of the mortgage loan.
      iv. The most current appraisal of the property available to the plaintiff.
b. Defendant’s Disclosures

   i. Dependent on desired outcome – Modification / Short Sale / Deed-in-Lieu of Foreclosure

   ii. Disclosures generally track with HAMP and lender guidelines – but not entirely!

   iii. Alternates to Program

      1. Pre-Foreclosure Mediation
      2. Non-program mediation

3. Observations from Mediations

   a. Program Mediations

      i. Generally more likely to produce a settlement

         1. Better disclosure of information
         2. Better prepared borrower
         3. Attorney participation a neutral

      ii. Statewide 34% result in a written agreement

   b. Non-Program Mediations

      i. Generally less likely to produce a settlement

         1. Borrowers are frequently unprepared
         2. Attorney participation increases success but no guarantor

      ii. Anecdotal results – 1 in 6 results in settlement. (Speedbump to MSJ)
4. How to be Successful
   a. Preparation is everything
   b. Know your loan
   c. Know your lender (and its requirements)
   d. Establish realistic goals for the homeowner
   e. Understand the limitations of the mediator’s role
   f. Transmit documents to lender and attorney at least 7 days before the mediation – follow up to confirm receipt by both – use signature mail.
   g. Coach client on outcomes – make them a negotiating partner.
   h. Understand the position of your defenses and what it gets you at mediation.

5. Questions / Comments / Discussion.