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SCMF-10-0000108

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In the Matter of the  
FORECLOSURE MEDIATION PILOT PROJECT  
Circuit Court of the Third Circuit

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ORDER MODIFYING THE FORECLOSURE MEDIATION PILOT PROJECT  
IN THE THIRD CIRCUIT COURT OF THE STATE OF HAWAI'I  
(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

Upon consideration of: (1) our September 29, 2009 Order Establishing the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i; (2) our October 28, 2010, January 27, 2011, February 10, 2011, and March 27, 2012 Orders Modifying and Extending the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i; and (3) the Foreclosure Mediation Pilot Project Report for the Third Circuit for the period January 1, 2012 through December 31, 2012 and the Foreclosure Mediation Pilot Project Report for the Third Circuit for the period of January 1, 2013 through February 25, 2013, we conclude the Foreclosure Mediation Pilot Project should be

extended and four judges in the Circuit Court of the Third Circuit should be designated to preside over these cases.

Therefore;

IT IS HEREBY ORDERED that the Foreclosure Mediation Pilot Project is continued until further order of this court.

IT IS FURTHER ORDERED, notwithstanding any court rule to the contrary, that in each foreclosure action filed in the Circuit Court of the Third Circuit and without regard to whether the property is borrower occupied:

- (1) The plaintiff shall attach to the complaint and summons, and serve upon the borrower(s):
  - (a) a Foreclosure Mediation Notice that substantially conforms to the form set forth in Attachment A appended hereto, and
  - (b) a Foreclosure Mediation Request form that substantially conforms to the form set forth in Attachment B appended hereto.
- (2) The plaintiff shall file with any request for entry of default, in a form that substantially complies with Attachment C, a certification that the Foreclosure Mediation Notice and the Foreclosure Mediation Request were served upon the borrower.

- (3) An eligible defendant-borrower who desires mediation shall complete and file a Foreclosure Mediation Request in a form that substantially conforms to the form set forth in Attachment B appended hereto.
- (4) The plaintiff, no later than 15 days before the mediation conference, shall provide to the mediator the following information:
  - (a) a copy of the promissory note, signed by the defendant-borrower, including any endorsements, allonges, amendments, or riders to the note evidencing the mortgage debt,
  - (b) a copy of the mortgage document and any amendments, riders, or other documentation evidencing the plaintiff's right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee, and
  - (c) financial records and correspondence that confirm the mortgage loan is in default.
- (5) The defendant-borrower, no later than 15 days before the mediation conference, shall provide to the mediator the following information:

- (a) documentation showing income qualification for a loan modification, including copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or other income that the defendant-borrower deems relevant to the defendant-borrower's financial ability to repay the mortgage;
- (b) records or correspondence available that may dispute the mortgage loan is in default;
- (c) records or correspondence evidencing a loan modification or amendment;
- (d) records or correspondence that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
- (e) names and contact information for housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the defendant-borrower may have or is currently working with to address the delinquency; and

- (f) verification of counseling by an approved housing counselor or approved budget and credit counselor.
- (6) If the subject property is located in the district of Kau, Puna, North Hilo, South Hilo, or Hamakua, the Foreclosure Mediation Request shall be filed and the case heard in Hilo. The Foreclosure Mediation Request shall be filed at the:

Legal Documents Branch  
Circuit Court of the Third Circuit  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, Hawai'i, 96720

- (7) If the subject property is located in the Districts of North Kona, South Kona, North Kohala, or South Kohala, the case will be heard in Kona and the Foreclosure Mediation Request shall be filed at the:

Legal Documents Branch  
Circuit Court of the Third Circuit, Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealahou, Hawai'i, 96750

- (8) A defendant-borrower seeking mediation shall mail or deliver a file-stamped copy of the Foreclosure Mediation Request, no later than 15 days after service of the Foreclosure Mediation Notice, to:
- (a) the attorney for the plaintiff,

(b) if the case is to be heard in Hilo, Hawai'i

The Presiding Judge  
Circuit Court of the Third Circuit  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, Hawai'i 96720

(c) if the case is to be heard in Kona, Hawai'i

The Presiding Judge  
Circuit Court of the Third Circuit, Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealakekua, Hawai'i 96750

(9) Upon the filing of the Foreclosure Mediation Request, the deadlines to file and serve the answer to the complaint and to seek relief by dispositive motion are suspended, until further order of the circuit court.

(10) The legal documents branch or section shall forward the filed Foreclosure Mediation Request to the judge assigned to the particular case,

(a) if the case is in Hilo, to Judge Greg Nakamura or Judge Glenn Hara, as the case may be, or

(b) if the case is in Kona, to Judge Ronald Ibarra or Judge Elizabeth Strance, as the case may be.

(11) The plaintiff's attorney shall, within 10 days after the filing of the Foreclosure Mediation

Request, schedule a pre-mediation conference with the judge and shall provide notice of the conference to the defendant-borrower.

- (12) All parties shall attend the pre-mediation conference in person with the judge unless authorized to appear by telephone.
- (13) The judicial clerk shall monitor the process and inform the judge of non-compliance.
- (14) The judge shall order appropriate consequences for non-compliance.
- (15) At the pre-mediation conference the judge shall determine whether the case is appropriate for mediation, and should, among other factors,
  - (a) consider whether the primary borrower has resided in the residence for 1 year immediately prior to the foreclosure proceedings,
  - (b) consider the borrower's ability to pay in light of the borrower's current income and other sources of revenue, and
  - (c) ask the plaintiff if there are other reasons for not referring the case to mediation.
- (16) If mediation is denied, the judge's Order Denying Mediation shall

- (a) set the time for the defendant to file and serve an answer to the complaint and the time for filing any dispositive motions,
  - (b) include reasons for the denial, and
  - (c) be filed and a filed copy shall be forwarded to the Third Circuit Program Specialist.
- (17) If mediation is ordered, the judge shall schedule a status conference in 45 days to address the status of the mediation. The status conference may be held by telephone conference.
- (18) An Order Granting Mediation shall
  - (a) identify the plaintiff bank's representative by position and the bank representative, and the bank's attorney shall be present at the mediation with full authority to settle, provided the Third Circuit Court may allow a party's representative or attorney to appear by telephone or other electronic means,
  - (b) instruct the defendant-borrower to produce financial documents (similar to the documents required to obtain a loan) or other documents the mediator requests, and



- (c) be filed and a filed copy shall be forwarded to the Third Circuit Court Program Specialist.
- (19) If the case is to be mediated, the court shall appoint a mediator and forward copies of the complaint, summons, and Foreclosure Mediation Order to the mediator.
- (20) If the mediation is successful, the parties shall either
- (a) prepare and file a written settlement with the court, or
  - (b) schedule a hearing to place the settlement on the record.
- (21) If the mediation is unsuccessful, the mediator shall send a report to the court.
- (22) Upon completion of the mediation,
- (a) the judge's clerk shall submit a report of the result of the mediation to the Third Circuit Court Program Specialist, and
  - (b) the court shall issue an Order Discharging the Mediator and setting a time to answer the complaint.

IT IS FURTHER ORDERED that the Third Circuit Court Program Specialist shall write a Foreclosure Mediation Pilot Project Report and the Third Circuit Court shall submit the

report to this court no later than March 1, 2014 and each March 1 thereafter until the pilot project is concluded by order of this court.

IT IS FINALLY ORDERED that this order shall not apply to cases ordered to mediation pursuant to Rule 12.2 of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, June 20, 2013.

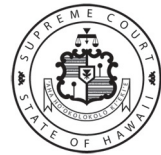
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard w. Pollack



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAI‘I

Case Name: \_\_\_\_\_

Civil No.: \_\_\_\_\_

**FORECLOSURE MEDIATION NOTICE**

**You have been served with a foreclosure complaint that could cause the loss of your home.**

The Court has a **Foreclosure Mediation Pilot Project** to assist parties to resolve foreclosure cases. You are eligible to participate in mediation under the Program if:

- (1) you are the borrower or co-borrower, and**
- (2) you occupy the property as your primary residence.**

Foreclosure mediation is a process in which a neutral mediator assists parties in trying to reach a voluntary agreement to avoid foreclosure. To help you prepare for mediation, you should consult with an attorney and with a HUD-certified counseling agency (which you can find by calling 1-888-995-4673 and/or going to [www.995hope.org](http://www.995hope.org) or [www.hud.gov/offices/hsg/sfh/hcc/](http://www.hud.gov/offices/hsg/sfh/hcc/)). You may also bring your attorney to the mediation.

To participate in the Foreclosure Mediation Pilot Project, no later than 15 days after you were served with this Notice, you must complete the Foreclosure Mediation Request attached and file these two documents (original and 3 copies) at:

Legal Documents Branch  
Circuit Court of the Third Circuit  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, HI 96720

if the property is located in the Districts of Kau, Puna, North Hilo, South Hilo, or Hamakua, and the case will be heard in Hilo;

or at:

Legal Documents Branch  
Circuit Court of the Third Circuit  
Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealahou, HI 96750

if the property is located in the Districts of North Kona, South Kona, North Kohala, or South Kohala, and the case will be heard in Kona.

You must immediately mail or deliver a file-stamped copy of these two documents to the Plaintiff's attorney, \_\_\_\_\_, whose address is \_\_\_\_\_ and to:

The Presiding Judge  
Circuit Court of the Third Circuit  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, HI 96720

if the case is to be heard in Hilo. If a Judge has not been assigned to this case, please call (808) 961-7400 with the Civil No. of your case.

or to:

The Presiding Judge  
Circuit Court of the Third Circuit  
Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealahou, HI 96750

if the case is to be heard in Kona. If a Judge has not been assigned to this case, please call (808) 322-8750 with the Civil No. of your case.

A conference will be held with the Judge to consider the Mediation Request. You must attend the conference.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAI‘I

**FORECLOSURE MEDIATION REQUEST**

Your Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Home Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

Work Phone \_\_\_\_\_ Email address \_\_\_\_\_

Mailing Address \_\_\_\_\_

I request foreclosure mediation in my case and certify that I am the borrower or co-borrower in this case and I occupy the property referenced in this case as my primary residence.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date Signed

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAI‘I

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the Foreclosure Mediation Notice and the Foreclosure Mediation Request were served along with the complaint and summons on the defendants.

Defendants:

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Attorney for the Plaintiff

Dated: \_\_\_\_\_