

Foreclosure Mediation Pilot Project Report for the Third Circuit  
December 1, 2010 through February 29, 2012

Electronically Filed  
Supreme Court  
SCMF-10-0000108  
27-MAR-2012  
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**BACKGROUND:**

The Supreme Court of the State of Hawai'i established a Foreclosure Mediation Pilot Project (FMPP) in the Third Circuit, effective November 1, 2009 through October 31, 2010. See Exhibit "A" Order filed in the Supreme Court of the State of Hawai'i on September 29, 2009. On October 28, 2010, another order extended the FMPP through January 30, 2011. On December 22, 2010, a memorandum submitted by the Committee on Initiatives to Enhance Civil Justice to Chief Justice Mark Recktenwald strongly advocated for the improvement and continuation of the FMPP.

On February 10, 2011, the Supreme Court of Hawai'i extended the FMPP until March 31, 2012. See Exhibit "B" Order filed in the Supreme Court of the State of Hawai'i. The process was modified and required that the Plaintiff file and serve upon the borrower along with the Complaint and Summons, a Foreclosure Mediation Notice and a Foreclosure Mediation Request. Further, whenever a Plaintiff's attorney files a request for Entry of Default, he/she needs to certify that the Foreclosure Mediation Notice and Foreclosure Mediation Request were served upon the borrower.

The eligible borrower can access the FMPP by completing the Foreclosure Mediation Request and file it in the appropriate district (Hilo or Kona). The borrower is then required to mail or hand-deliver the filed Foreclosure Mediation Request to either Judge Greg K. Nakamura in Hilo or Judge Ronald Ibarra in Kona and the plaintiff's attorney within 15 days of the filing date.

Upon the receipt of the Foreclosure Mediation Request, the attorney for the plaintiff shall schedule a pre-mediation conference with the appropriate Judge and shall provide notice of the conference to the defendant/borrower. At the status conference, the Judge will make a determination which may result in an order for Foreclosure Mediation. If so ordered, the Foreclosure Mediation Order shall be forwarded by the Court to the appropriate mediator. A second conference is to be set within 45 days.

In order to understand the following table of information, it is critical to

understand how the Judiciary codes a civil case as a foreclosure. Upon filing of a new case, Plaintiff's attorney submits a Civil Information Sheet, see Exhibit "C" attached. The court staff will denote the case a foreclosure if the "Foreclosure" box is checked off. Oftentimes, homeowner associations, condominium associations, private persons who are mortgagees under a purchase money mortgage, etc. will note that their case is a foreclosure. The focus and spirit of the FMPP is to address cases between a lender and a defendant-borrower. In other words, the primary focus is with Plaintiff-bank foreclosing on a defendant-borrower who lives on the property. This process, however, does not preclude any defendant in a foreclosure case who has received a Foreclosure Mediation Notice from filing a request for foreclosure mediation, although, our experience has shown that no one except the traditional bank vs. occupant-borrower has filed for mediation relief.

Finally, before examining the data, we note that the language in the February 10, 2011, Order, reads... "*that in each foreclosure action filed in the Circuit Court of the Third Circuit seeking foreclosure on borrow-occupied property(hereinafter "Residential Foreclosure Action"):*". It seems that plaintiffs take the liberty of interpreting that since the FMPP only applies to "*borrow-occupied property*", they need not file the Foreclosure Mediation Notice and the Request for Foreclosure Mediation in all foreclosure cases. We noticed as the year progressed, more and more attorneys did start to file the Foreclosure Mediation Notice and Request for Mediation as each Complaint was filed.

Total number of foreclosures filed in the Third Circuit in 2011                      789 cases\*

\*These are the total number of foreclosure cases and may include homeowner and condominium association suits on liens or suits for delinquent homeowner association dues or assessments, etc.

The total number of foreclosure cases which we have identified 409 cases\*  
 which are probably eligible for the FMPP (lender vs. defendant  
 which may be an owner occupying the property)

\*209 cases in Hilo and 200 cases in Kona

Of the 409 cases deemed eligible for FMPP:

	Mediation Requests Filed	Mediation Ordered	Mediation Denied	Mediation determined not necessary	Mediation conference to date
Hilo	102	13	1	1	31
Kona	103	24	2	2	34
<b>Total</b>	<b>205</b>	<b>37</b>	<b>3</b>	<b>3</b>	<b>65</b>

<b>Outcomes</b>		KONA	HILO	TOTAL
Mediation Ordered	Mediation Still in Process	13	8	21
Kona (24)	Agreement Reached, Dismissal pending	7*	4	11*
Hilo (13)	Rescinded	4	1	5
Mediation Denied	Unresolved	2	1	3
Kona (2)	Foreclosed	0	0	0
Hilo (1)				

\*West Hawaii mediation reported one more agreement reached, late last week, however, no documents have been filed in court as yet.

The data shows that 37 cases were ordered into mediation last year. 11 cases were settled and 21 are still active in the mediation process. Three cases were denied for mediations, one was denied because the mortgage was not on borrower-occupied residential property; one was denied because the defendant failed to appear at the pre- mediation conference; and one was denied because it wasn't a foreclosure action, but an action for ejectment following a non-judicial foreclosure. There were 5 cases which were ordered into mediation and subsequently the order was rescinded due to the fact that the court determined that 2 cases mediation were impractical; 2 cases where the mediation took place but the defendant refused to sign the agreement; and finally, one because the defendant's attorney didn't respond to the mediator's requests to set up the mediation.

#### STATISTICAL DATA AFTER FEBRUARY, 2011 MODIFICATIONS:

The Third Circuit Report submitted in January of 2011 revealed that approximately 17.7 % of the tracked cases in Hilo and 13.1% of the tracked cases in Kona showed filed Foreclosure Mediation Requests. Since February 2011, however, 48.8% of the tracked cases in Hilo and 51.5% of the tracked cases in Kona showed filed Foreclosure Mediation Requests. This is a significant increase. In January 2011, 10 cases were ordered into mediation and 1 case was mediated successfully. Since February 2011, 37 cases have been ordered into mediation with 21 that are still in the mediation process and 11 have reached settlement agreements. This not to say, however, that cases which were not ordered into mediation this process hasn't been helpful. Judge Nakamura indicated that one of his cases in which mediation was requested but not ordered, the parties actively engaged in dialogue and have negotiated a positive situation where a "short sale" may resolve their case. Similarly, Judge Ibarra had similar experiences that after the pre mediation conference and prior to ordering mediation, the parties had initiated talks and did in fact work out their own settlements. It seems that the court's involvement even at the inception is important and often results in positive results prior to ordering a case into mediation. We feel the data elicited shows a significant improvement over last year and as the process becomes more familiar to lenders and more defendants

get notice about the availability of the program to them, we can expect more and more conferences and settlements. If anything, the opportunity for dialogue can and will lead to settlements which can work.

#### MEDIATION SERVICES:

We note that although at the start of the FMPP back in 2009, mediators were trained in a one day crash course and available for mediation services at no expense to the parties, today all of the mediations are being done by the Kuikahi Mediation Center in Hilo and the West Hawaii Mediation Center in Kona. The judges give notice to the parties of choosing one of the pro bono mediators or choosing a Mediation Center and of all the mediations we tracked, all of the parties opted with using one of the Mediation Centers. Both Mediation Centers charge a total of \$400 per case, \$200 borne by the plaintiff and \$200 borne by the defendant-occupier.

Reaction from both the Kuikahi Mediation Center and West Hawaii Mediation Center has been very positive. They support the process, however, note that if the parties were prepared at the inception bringing in documentation of the promissory note, financial records and correspondence, documentation showing qualification for loan modification, W-2s, documentation of social security income, child support, etc., in other words, documentation similar to what ACT 48, of the 2011 Hawaii Legislature (HRS 667-80) requires for their non-judicial alternative dispute resolution process, this would greatly speed up the mediation process and hopefully be able to resolve matters in a more timely fashion.

#### RECOMMENDATIONS:

We are encouraged that more cases are coming to mediation under this process and people are finding that they don't have to lose their homes or if that isn't an option, that they have input in a dignified transition process. We would like to see, however, that in all cases where a plaintiff designates his/her case as a foreclosure on the Civil Information Sheet, that all plaintiffs be required to file along with the Complaint and Summons, the Foreclosure Mediation Notice and the Request for Foreclosure Mediation.

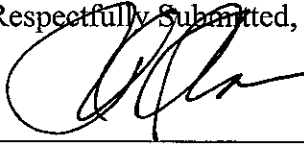
In this way, all potential cases involving a borrower-occupied defendant will receive notice of the Mediation option when they are served with the Complaint and Summons. Perhaps, plaintiffs are reading too much into the February 2012 Order and assuming the property is not occupied by the defendant or that the property is vacant land so filing and serving the mediation notice and request doesn't apply. It's much easier if plaintiffs just attach to the Complaint and Summons, the mediation notice and request. In cases where it doesn't apply, the Judge can take the appropriate action, more importantly, however, no defendant occupier would slip through the foreclosure process without getting notice of this program.

Having said that, the Court will normally be able to notify the defendant borrower-occupant when he/she either initiates a defense or at the time of filing of Entry of Default Judgment due to the Order's requirement of plaintiff certifying that notice and request for mediation was served upon the defendant. We hope, in time, the limited number of plaintiff's attorneys who initiate foreclosures would attach and file the notice and request to the initial Complaint and Summons for service and that would give all defendants the notice in any and all foreclosures.

Although it requires more work on the part of the Court and staff, we recommend the continuation of the FMPP and a modification of the process of requiring :

1. any plaintiff filing a new complaint in which they designate their cause of action as a Foreclosure on the Civil Information Sheet to attach the Notice of Foreclosure Mediation and Request for Mediation to their Complaint and Summons.
2. both plaintiff and defendant-borrower prepare and have available and send to the mediator as well as the adversarial party prior to the mediation conference information which would greatly assist the mediator, such as the requirements detailed in HRS 667-80. See attached Exhibit "D".
3. give the mediator the authority to be able to meet individually and independently without counsel, with each party.
4. additional staff be provided to the Court.

Respectfully Submitted,



Ronald Ibarra

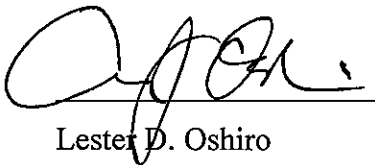
Chief Judge

Third Circuit Court

2/29/12

Date

Respectfully Submitted,



Lester D. Oshiro

Chief Court Administrator

Third Circuit Court

2-29-12

Date

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No. 33

IN THE SUPREME COURT OF THE STATE OF HAWAII

EM. RIMANDO  
CLERK, APPELLATE COURTS  
STATE OF HAWAII

2009 SEP 29 AM 9:43

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In the Matter of the  
FORECLOSURE MEDIATION PILOT PROJECT  
Circuit Court of the Third Circuit, State of Hawai'i

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ORDER ESTABLISHING FORECLOSURE MEDIATION PILOT PROJECT  
IN THE THIRD CIRCUIT COURT OF THE STATE OF HAWAII  
(By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

In consideration of the Foreclosure Mediation Protocol proposed by the Access to Justice Commission and having considered the Report of the Committee to Review the Foreclosure Mediation Protocol in accordance with the May 12, 2009 order establishing the Committee,

IT IS HEREBY ORDERED that a Foreclosure Mediation Pilot Project (hereinafter "FMPP") is established in the Third Circuit Court of the State of Hawai'i effective November 1, 2009, to October 31, 2010. The FMPP shall apply only to foreclosure actions filed in the Third Circuit Court seeking foreclosure of a mortgage on borrower-occupied residential property (hereinafter "Residential Foreclosure Action"). In accordance herewith, and notwithstanding any court rule to the contrary,

IT IS FURTHER ORDERED that in any Residential Foreclosure Action, a Foreclosure Mediation Notice that



substantially complies with Attachment A in form and content, shall be served along with the complaint and summons.

IT IS FURTHER ORDERED that a borrower is eligible to participate in the FMPP, provided the borrower occupies the subject property as the borrower's primary residence. An eligible borrower may request mediation by (1) completing the Foreclosure Mediation Request and (2) filing the Foreclosure Mediation Request as follows: (a) 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, filing must be at the Legal Documents Branch/Section of the Third Circuit Court, Hale Kaulike, 777 Kilauea Avenue, Hilo, Hawai'i 96720, or (b) 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, filing must be at the Legal Documents Branch of the Third Circuit Court, Kona Division, Keakealani Building, 79-1020 Haukapila Street, Kealakekua, Hawai'i 96750.

IT IS FURTHER ORDERED that the borrower shall (1) mail or deliver a file-stamped copy of the Foreclosure Mediation Request to the attorney for the plaintiff, and (2) mail or deliver a file-stamped copy to either

- (a) The Honorable Greg Nakamura, Third Circuit Court, Hale Kaulike, 777 Kilauea Avenue, Hilo, Hawai'i 96720, if the case is to be heard in Hilo, or to

(b) The Honorable Ronald Ibarra, Third Circuit Court, Kona Division, Keakealani Building, 79-1020 Haukapila Street, Kealahou, Hawai'i 96750, if the case is to be heard in Kona,

no later than fifteen (15) days after service of the Foreclosure Mediation Notice with the complaint and summons. Upon the filing of the Foreclosure Mediation Request, the deadline to file and serve an answer to the complaint and to seek relief by dispositive motion is suspended until further order of the court.

IT IS FURTHER ORDERED that within ten (10) days after the filing date of the Foreclosure Mediation Request, the plaintiff shall schedule a conference with Judge Nakamura or Judge Ibarra, as appropriate, that shall be attended by all parties. At the conclusion of the conference, Judge Nakamura or Judge Ibarra, as appropriate, may order the parties to participate in mediation. If mediation does not result in a settlement of the proceedings, Judge Nakamura or Judge Ibarra, as appropriate, shall set the time for defendant to file and serve an answer to the complaint and for filing of any dispositive motions.

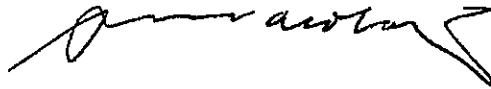
IT IS FURTHER ORDERED that this order shall not apply to cases ordered to mediation pursuant to Rule 12.2 of the Rules of the Circuit Courts of the State of Hawai'i. The FMPP shall terminate on October 31, 2010, unless extended by order of the Supreme Court of Hawai'i.

IT IS FURTHER ORDERED that, within 60 days after termination of this pilot project, a report about the pilot project shall be submitted for this court's consideration. The report shall include, but need not be limited to, the number of Foreclosure Mediation Requests filed, the number of cases in which mediation was ordered, and the disposition of each case ordered to mediation.

DATED: Honolulu, Hawai'i, September 29, 2009.



Puna C. Traxler



Man E. Redmond

Man E. Redmond

Circuit Court of the Third Circuit

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

Civil Number: \_\_\_\_\_

**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 this 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.gov/offices/hsg/sfh/hcc/hccprof14.cfm](http://www.gov/offices/hsg/sfh/hcc/hccprof14.cfm)). 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 below and file these two pages (original and 3 copies) at:

Legal Documents Branch/Section  
Circuit Court of the Third Circuit  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, Hawai'i 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  
Third Circuit Court  
Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealakekua, Hawai'i 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 pages to the Plaintiff's attorney, \_\_\_\_\_, whose address is \_\_\_\_\_  
\_\_\_\_\_ and to:

The Honorable Greg Nakamura  
Third Circuit Court  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, Hawai'i 96720,

if the case is to be heard in Hilo, or to:

The Honorable Ronald Ibarra  
Third Circuit Court  
Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealahou, Hawai'i 96750,

if the case is to be heard in Kona. A conference will be held with the Judge to consider the Mediation Request. You must attend the conference.

**FORECLOSURE MEDIATION REQUEST**

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

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

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

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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 AND EXTENDING THE FORECLOSURE MEDIATION PILOT  
PROJECT IN THE THIRD CIRCUIT COURT OF THE STATE OF HAWAII

(By: Recktenwald, C.J., for the court<sup>1</sup>)

We have considered (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 Order Extending the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i, (3) the Foreclosure Mediation Pilot Project Report for the period of November 1, 2009 through October 31, 2010 submitted by the Circuit Court of the Third Circuit, (4) the December 22, 2010 Memorandum from the Hawai'i Access to Justice Commission, and (5) our January 27, 2011 Order Extending the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i. We conclude that the Foreclosure Mediation Pilot Project

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<sup>1</sup>Considered by: Recktenwald, C.J., Nakayama, Acoba, and Duffy, JJ., and Intermediate Court of Appeals Chief Judge Nakamura, assigned by reason of vacancy.

in the Third Circuit should be extended for one year, but amendments should be made to the project to increase its effectiveness. At the end of the additional year, we will assess the results of the revised procedures. Therefore,

IT IS HEREBY ORDERED that the Foreclosure Mediation Pilot Project is extended to **March 31, 2012.**

IT IS FURTHER ORDERED, notwithstanding anything to the contrary in our September 29, 2009 Order Establishing the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i or any court rule, and unless otherwise ordered by the Third Circuit Court, that in each foreclosure action filed in the Circuit Court of the Third Circuit seeking foreclosure on borrow-occupied property (hereinafter "Residential Foreclosure Action"):

- (1) the Plaintiff shall file and serve upon the borrower(s) along with the complaint and summons,
  - (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's attorney shall file with any request for entry of default, in a form that substantially complies with Attachment C appended hereto, 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.

If the subject property is located in the Districts 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/Section of the Third Circuit Court  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, Hawai'i, 96720.

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

- (4) a defendant-borrower seeking mediation shall mail or deliver a file-stamped copy of the Foreclosure Mediation Request, no later than fifteen (15) days after service of the Foreclosure Mediation Notice, to:
  - (a) the attorney for the plaintiff, and
  - (b) the Honorable Ronald Ibarra, if the case is to be heard in Kona, or the Honorable Greg Nakamura, if the case is to be heard in Hilo.
- (5) 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.
- (6) the legal documents branch or section shall forward the filed Foreclosure



Mediation Request to the appropriate judge.

- (7) the plaintiff's attorney shall, within ten (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.
- (8) all parties shall attend the pre-mediation conference in person with the judge unless authorized to appear by telephone.
- (9) the judicial clerk shall monitor the process and inform the judge of non-compliance.
- (10) the judge shall order appropriate consequences for non-compliance.
- (11) 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 one (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.
- (12) 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.
- (13) if mediation is ordered, the judge shall schedule a status conference in forty-five (45) days to address the status of the mediation. The status conference may be held by telephone conference.
- (14) an Order Granting Mediation shall
- (a) identify the plaintiff bank's representative by position, and the bank's 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.
- (15) 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.
- (16) 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.
- (17) if the mediation is unsuccessful, the mediator shall send a report to the court.

- (18) 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 the Foreclosure Mediation Pilot Project report required by this court and the Third Circuit Court shall submit the report to this court no later than March 1, 2012.

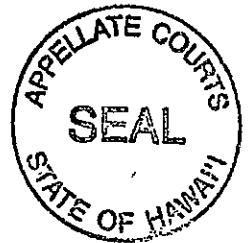
IT IS FINALLY ORDERED that this order shall not apply to cases ordered to mediation pursuant to Rule 12.2 of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, February 10, 2011.

FOR THE COURT:



MARK E. RECKTENWALD  
Chief Justice



IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT  
STATE OF HAWAII

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 this 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.gov/offices/hsg/sfh/hcc/hccprof14.fm](http://www.gov/offices/hsg/sfh/hcc/hccprof14.fm)). 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/Section  
Circuit Court of the Third Circuit  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, HI 96720

**Attachment A**  
**Foreclosure Mediation Notice**

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  
Third Circuit Court  
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 Honorable Greg Nakamura  
Third Circuit Court  
Hale Kaulike  
777 Kilauea Avenue  
Hilo, HI 96720

If the case is to be heard in Hilo;

or to:

The Honorable Ronald Ibarra  
Third Circuit Court  
Kona Division  
Keakealani Building  
79-1020 Haukapila Street  
Kealahou, HI 96750

If the case is to be heard in Kona.

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 JUDICIAL CIRCUIT  
STATE OF HAWAII

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

Attachment C

Certificate of Service of Foreclosure Mediation Notice and Request

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

CERTIFICATION 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 on the defendants.

Defendant: .

\_\_\_\_\_  
Plaintiff

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

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

## CIVIL INFORMATION SHEET

PLAINTIFF(S)	I. (a) PLAINTIFF ATTORNEY (NAME & NUMBER)		
	DEFENDANT ATTORNEY (IF KNOWN)		
DEFENDANT(S)	II. NATURE OF SUIT		
	<input type="checkbox"/> (101) Contract <input type="checkbox"/> (201) Motor Vehicle Tort <input type="checkbox"/> (301) Assault & Battery <input type="checkbox"/> (302) Construction Defects <input type="checkbox"/> (303) Medical Malpractice <input type="checkbox"/> (304) Legal Malpractice <input type="checkbox"/> (306) Product Liability <input type="checkbox"/> (399) Other Non-Vehicle Tort <input type="checkbox"/> (401) Condemnation <input type="checkbox"/> (501) Foreclosure <input type="checkbox"/> (511) Agreement of Sale Foreclosure <input type="checkbox"/> (503) Agency Appeal <input type="checkbox"/> (504) Declaratory Judgment <input type="checkbox"/> (599) Other Civil Action		
	III. ORIGIN		
	<input type="checkbox"/> A. Original Proceeding <input type="checkbox"/> B. Transfer from District Court <input type="checkbox"/> C. Transfer from another Circuit		
	IV. DEMAND \$ _____		
	V. JURY DEMAND  <input type="checkbox"/> YES <input type="checkbox"/> NO	VI. CLASS ACTION  <input type="checkbox"/> YES <input type="checkbox"/> NO	VII. REQUEST TO EXEMPT FROM ARBITRATION  <input type="checkbox"/> YES <input type="checkbox"/> NO
VIII. RELATED CASE(S) JUDGE _____  DOCKET _____			
RESERVED FOR COURT USE  CIV NO _____	IX. SIGNATURE OF ATTORNEY OF RECORD  _____		



In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office at PHONE NO. 961-7440, FAX 961-7416, or TTY 961-7525 at least ten (10) working days prior to your hearing or appointment date.



## **INSTRUCTIONS FOR ATTORNEYS COMPLETING THE CIVIL INFORMATION SHEET**

The civil information sheet and the information contained herein neither replaces nor supplements the filings, the service pleadings or other papers as required by law, except as provided by the rules of court. This form is required by the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil information sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a civil complaint is to complete the form as follows:

### **I. PLAINTIFFS-DEFENDANTS**

List names: last, first, middle initial.

If the plaintiff or defendant is a government agency, use only the full name.

If the plaintiff or defendant is an official within a government agency, first identify the agency and then the official's name and title.

If there are several plaintiffs-defendants, list them on an attachment noting in this section, "(see attachment)".

### **1(a). ATTORNEYS**

List the attorney's name and license number.

If there are several attorneys, list them on an attachment noting in this section, "(see attachment)".

### **II. NATURE OF SUIT**

Place an "X" in the appropriate box.

If the cause fits more than one nature of suit, select the most definitive.

### **III. ORIGIN**

A. Original Proceedings: cases originating in the circuit district.

B. Transfer from District Court: cases transferred from district court under Hawai'i Rev. Stat. §604-5, 633-31 (1985).

C. Transfer from another Circuit: cases transferred from another circuit under Hawai'i Rev. Stat §603-37-37.5 (1985).

### **IV. DEMAND**

Indicate the remedy being demanded such as a monetary sum or preliminary injunction.

### **V. JURY DEMAND**

Indicate whether or not a jury is being demanded.

### **VI. CLASS ACTION**

Indicate whether or not a class action is being filed.

### **VII. REQUEST TO EXEMPT FROM ARBITRATION**

Indicate whether or not the form, "Request to Exempt from Arbitration" is being filed.

### **VIII. RELATED CASES**

List the docket number(s) and the corresponding judge for related pending cases.

### **IX. DATE AND ATTORNEY SIGNATURE**

Date and sign the civil information sheet.

**[§667-80] Parties; requirements; process.** (a) The parties to a dispute resolution process conducted under this part shall consist of the owner-occupant or the owner-occupant's representative, and the mortgagee or the mortgagee's representative; provided that:

- (1) A representative of the mortgagee who participates in the dispute resolution shall be authorized to negotiate a loan modification on behalf of the mortgagee or shall have, at all stages of the dispute resolution process, direct access by telephone, videoconference, or other immediately available contemporaneous telecommunications medium to a person who is so authorized;
- (2) The mortgagee and owner-occupant may be represented by counsel; and
- (3) The owner-occupant may be assisted by an approved housing counselor or approved budget and credit counselor.

(b) No fewer than thirty days prior to the first day of a scheduled dispute resolution session pursuant to this part, the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor.

(c) The parties shall comply with all information requests from the department or neutral. No less than fifteen days prior to the first day of the scheduled dispute resolution session:

- (1) The mortgagee shall provide to the department and the mortgagor:
  - (A) A copy of the promissory note, signed by the mortgagor, 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 mortgagee'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.
- (2) The owner-occupant shall provide to the department and the mortgagee:
  - (A) Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant's financial ability to repay the mortgage;
  - (B) Any records or correspondence available which may dispute that the mortgage loan is in default;
  - (C) Any records or correspondence available evidencing a loan modification or amendment;
  - (D) Any records or correspondence available 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 owner-occupant 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.

(d) The dispute resolution session shall consist of at least one meeting lasting no more than three hours, which may be extended by the equivalent of one additional three-hour session on the same or a different day at the neutral's discretion.

The parties shall be present in person at the dispute resolution session;

provided that a party may submit a written request to the department at least fourteen days prior to the scheduled dispute resolution session to participate through telephone, videoconference, or other contemporaneous telecommunications medium. A request to participate through a telecommunications medium shall be granted only for good cause and upon agreement of the neutral and the other party to the dispute resolution. For purposes of this subsection, "good cause" means an event or circumstance outside of the requesting party's control that makes in-person participation impossible. The neutral shall have the discretion to postpone a dispute resolution session in order to allow the requesting party to participate in person; provided that postponement shall not delay the dispute resolution process beyond timelines established by this part.

(e) A dispute resolution process conducted pursuant to this part shall use the calculations, assumptions, and forms established by the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website or a different program or process if agreed to by both parties and the neutral.

(f) The dispute resolution process shall conclude within sixty days from the first scheduled meeting between the parties to the dispute resolution and the neutral; provided that the neutral shall have the authority to extend this period. Nothing in this part shall be construed to require the dispute resolution process to take the full sixty days allotted to reach a negotiated agreement. [L 2011, c 48, pt of §1]

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