

CHIEF JUDGE'S LETTER TO ATTORNEYS SUMMARIZING NEW FORECLOSURE PROCEDURES AND ADMINISTRATIVE ORDERS

RE: Changes in Circuit Foreclosure Procedures Requiring Immediate Attention

Dear Sir or Madam:

Our records indicate that your firm is frequently engaged as counsel for the purpose of filing foreclosures in Sarasota, Manatee, and Desoto Counties. The workload for managing these cases has increased dramatically in the last year and no relief is in sight. The increase in foreclosure activity has occurred at the same time the judicial branch is experiencing drastic budget reductions. We are sure your practice has been similarly impacted both by the shrinking economy and the increase in foreclosure filings.

To respond to this increase, and to minimize the impact of these cases on the court system, we are required to reform the way foreclosure business is being conducted in our circuit.

I will be promulgating two new Administrative Orders which will directly affect your foreclosure operations. Their effective date is **December 1, 2008**. Your **immediate attention** to these orders will be necessary to avoid confusion and delay in the processing of future foreclosure litigation in the circuit. Compliance will require close adherence to the Administrative Orders and, because the new procedures are a radical departure from the status quo, we want to give you time to re-organize and adjust your office operations to the new requirements.

The pertinent Administrative Orders are posted on our website, www.jud12.flcourts.org and may be accessed and downloaded there. What follows are the highlights. However, it must be stressed that the two orders should be scrutinized as they are unlike any currently in force in other circuits. All forms referenced in the Administrative Orders are available on the circuit website.

Administrative Order Establishing Standard Procedures for Residential and Commercial Mortgage Foreclosure Actions; AO Number 2008-14.1

Section I: Applies to All Foreclosures Filed or Set for Summary or Final Hearing in the Circuit On or After 12/1/08

- Requires use of a new uniform foreclosure final judgment form;
- Requires use of the circuit's **Judicial Automated Calendaring System (JACS)** for the scheduling of hearings;
- Requires the filing of all documents supporting the motion for summary judgment contemporaneous with obtaining hearing time on JACS;
- Requires summary judgment pleadings and packets to be sent to the Clerks, not to judges;
- Requires as a prerequisite to setting a summary judgment hearing, that each summary judgment packet include the following new forms: *Mortgage Foreclosure Summary Judgment Checklist*; and, for cases filed after 12/1/08, *Attorney's Certificate of Compliance with Homestead Conciliation Program*;
- Establishes procedures for the cancellation of summary judgment hearings and foreclosure sales;
- Requires parties to appoint a **Circuit Foreclosure Liaison** to act as the court's point of contact in the event there is non-compliance with the Administrative Orders, or there is a need to communicate procedural changes or other matters of mutual interest relating to

foreclosure cases. This requirement applies to any party who has filed five or more foreclosures in the Twelfth Circuit in calendar years 2006, 2007, or 2008. The liaison's name and contact number is required to be provided to courtweb@jud12.flcourts.org on or before **January 1, 2009**.

Section II: Mandates E-Filing of Mortgage Foreclosures in Manatee & Sarasota Counties as to Cases Filed or Set for Summary or Final Hearing On or After 12/1/08

- Manatee and Sarasota Counties are part of a Supreme Court sanctioned project to establish procedures for the electronic filing of pleadings. Except for a limited number of original documents or exhibits, such as notes and mortgages, E-Filing eliminates the necessity of providing hardcopies of documents or pleadings to the Clerk or the judge. **The electronic version replaces them.** This should help reduce litigation expense and make processing of cases more manageable. To comply with E-Filing requirements, counsel should access the Clerks' websites for detailed instructions: www.sarasotaclerk.com/ or www.manateeclerk.com/;
- Establishes rules for providing original documents like promissory notes and mortgages to the Clerk, and sets the requirement for the furnishing of envelopes to the Clerk for mailing of conformed copies of foreclosure related documents;
- Provides procedures for submitting proposed or stipulated orders to the judge.

Administrative Order Establishing Circuit Wide Homestead Foreclosure Conciliation Program; AO Number 2008-15.1; Effective as to Cases Filed On or After 12/1/08

Effective 12/1/08, when a foreclosure case is filed, the Homestead Foreclosure Conciliation Program (HFCCP) requires lenders to communicate with homestead owners for the purpose of exploring options to litigation. The goal is to get lenders and owners to **talk** to each other. We believe both sides are missing opportunities to achieve a more favorable result due to a lack of communication. As the name indicates, the Program is for the benefit of persons owning homesteads. It is not for renters, investors, or second-home owners.

This is not mediation. Instead, the Program requires lenders' representatives to schedule and attend a telephone Conciliation Conference with those homestead owners willing to participate. Working in coordination with legal aid, local bar associations will provide *pro bono* attorneys to make limited appearance at the conferences on behalf of qualified homeowners. Attorneys retained by paying clients also may participate in the Conciliation project.

These are some highlights of the HFCCP Administrative Order:

- Parties filing foreclosure actions against homestead property are required to attach a ***Notice to Homeowners Facing Foreclosure*** to the complaint and summons. Responsibility for determining if the subject property is a homestead rests with the lender. When the homestead status is unknown or in doubt, the ***Notice to Homeowners Facing Foreclosure*** shall be attached to the summons and complaint. [Form available on circuit website - www.jud12.flcourts.org]
- The ***Notice to Homeowners Facing Foreclosure*** invites interested homeowners to contact legal aid to see if they qualify for *pro bono* representation. The ***Notice*** also suggests that owners contact plaintiffs' counsel to alert attorneys of their interest in the Program. However, primary responsibility for contacting the owner for the purpose of compliance with the Administrative Order rests with the plaintiff. Conciliation Conferences will be scheduled through legal aid entities for those homeowners they

accept as clients. Owners who do not qualify for legal aid assistance or wish to hire an attorney, but who want to participate in the Program are invited to schedule the Conference directly with lender's counsel;

- Lenders have up to **45 days** after service of process on the homeowner to schedule a Conciliation Conference, assuming the owner is communicative and willing; the parties have an additional **45 days** after the Conference for compliance with any consensus reached during the meeting; only one Conference is required, although the parties may consent to more;
- At the Conciliation Telephone Conference the lender shall arrange for the participation of knowledgeable persons, including attorneys, loss mitigation staff, and others who can confirm the amount and type of default, and who are authorized to make binding commitments regarding alternatives to litigation, including refinancing, partial forgiveness of debt, approving sales to third parties, clarifying the amount required to reinstate or discharge the loan, requesting deeds in lieu of foreclosure, implementing procedures for the protection of the premises, and establishing a mutually agreeable date for relinquishing possession;
- No summary judgment hearing shall be scheduled until the lender's attorney certifies the Conciliation Conference was completed, or at least attempted. An *Attorney's Certificate of Compliance* is required as a prerequisite to setting the summary judgment hearing. It advises the court that a Conciliation Conference was conducted or attempted, and the results, if any. [Form available on circuit website - www.jud12.flcourts.org]
- If the homeowner fails to respond to the *Notice to Homeowners Facing Foreclosure* that accompanies the complaint and summons, or if the Conciliation Conference is unproductive, the lender is free to file the *Attorney's Certificate of Compliance* and proceed in the normal course;
- Unless lender's counsel is otherwise notified, the *pro bono* attorneys attending the Conciliation Conference are making a **limited appearance** and are not representing clients for any other purpose;
- The program is not limited to clients represented by *pro bono* attorneys. Private attorneys retained by homeowners also are allowed to participate in the HFCP.

We ask you to pay particular attention to the transition rules. These are reproduced below:

The date JACS is **accessed** controls whether a case scheduled for summary judgment proceeds under the new circuit rules or the old rules:

A. If by November 30, 2008, a party has accessed JACS and reserved a summary judgment or final hearing for a date occurring on or after December 1, 2008, the case may continue under the prior procedure. For example, if on November 14, 2008, hearing time was obtained for December 14, 2008, the case may proceed under the old rules. Foreclosure packets may continue to be sent to the judges for those cases, and the older checklists and summary judgment procedures may be used. E-Filing may be used at any time at the option of the filing party.

B. For cases pending as of December 1, 2008, if JACS is accessed on or after December 1, 2008, and a summary judgment or final hearing date is obtained, the requirements of this Administrative Order, including E-Filing, use of the standard form Final Judgment, and the new Foreclosure Checklist, shall apply. For example, on a case filed before December 1,

2008, if on December 4, 2008, the attorney accesses JACS and secures a hearing time for January 15, 2009, the case proceeds under the new rules. [However, these cases are exempt from the Homestead Foreclosure Conciliation Program.]

This letter is being sent to those law firms known to us as being active in foreclosure practice. If you have colleagues or organizations that might benefit from knowing of these developments, please feel free to provide them with a copy.

We expect you may have questions regarding these changes. However, I am hopeful the Administrative Orders and the implementing forms we have published on our website will answer most of them. Please review these carefully before contacting us with your concerns. You may email my Judicial Assistant with your issues: jhouchell@jud12.flcourts.org. Questions concerning E-Filing procedures are best directed to the Clerks.

As noted above, the effective date of the Administrative Orders is **December 1, 2008**, as to cases filed or set for final or summary judgment hearing on or after that date.

In addition, you should be aware that Chips Shore, the Manatee Clerk, and Karen Rushing, the Sarasota Clerk, are close to finalizing the process that will permit internet sales of foreclosed properties, at which time traditional sales on the courthouse steps will cease. Please contact their offices to learn how this will be implemented.

We will use our best efforts to assist you with this transition. Thank you in advance for your understanding and patience as we make these innovations become a reality.

Sincerely,

Lee E. Haworth
Chief Judge

cc:

Chips Shore, Clerk of Courts, Manatee County
Karen Rushing, Clerk of Courts, Sarasota County
Mitzi McGavic, Clerk of Courts, Desoto County
Walt Smith, Trial Court Administrator

