Advanced Foreclosure Mediation, Processes, and Ethics

presented by Rebecca Storrow  storrowr@adr.org

with guest mediator facilitators

Craig Steinberg, Esq. and Jodi Cason, Esq.

Mediator Training
September 20 & 21, 2010
12:00 to 1:00pm

"Happiness is not the absence of conflict, but the ability to cope with it" (unknown author)
Agenda

- Rebecca Storrow – Process and Technology
  E Center
  Process – Scheduling, Sign In Sheet
  Forms
    - Notice of Appointment
    - Mediation Agreement
    - Survey
    - Stats Report
    - Mediation Report

- Craig Steinberg – Strategy and Advanced Foreclosure Mediation
  Strategy
  Financial Roadblocks
  HAMP
  Settlement

- Jodi Cason – Ethics in Foreclosure Mediation
  Confidentiality
  Mediator Bias
  Power Balancing
Effective and efficient resolution of mortgage disputes.

Mortgage Foreclosure Mediation in Florida

Select Program...

As a result of the 2009 Florida Supreme Court Administrative Order, homeowners and lenders and mediators in the state of Florida may attempt mortgage foreclosure claims resolution through the AAA. Please select from the listed counties currently participating.

Non-Binding Resolution of Mortgage Claims through the American Arbitration Association

Overview of Non-Binding Services

The AAA offers mediation and non-binding arbitration, which are processes that help parties to settle their mortgage claims. Settlement can help to reduce the total cost of resolution and provides flexibility.
Want to become an AAA NEUTRAL?

The AAA’s National Roster of Arbitrators and Mediators consists of accomplished and respected experts from the legal and business communities. Learn more about qualifications and procedures for becoming an AAA neutral.

- Reality vs. Myth: The Truth About Management of the AAA Commercial Roster
- Qualification Criteria for Admittance to the AAA Panel of Arbitrators
- Qualification Criteria for Admittance to the AAA Panel of Mediators
- Qualification Criteria for Admittance to the AAA Labor Panel
- Qualification Criteria for Admittance to the ICDR International Roster of Neutrals

Are you currently AN AAA NEUTRAL?

As an AAA Neutral, you may access a variety of resources, manage your cases, communicate with clients and colleagues in a secure environment, and take training courses online.

If you are an AAA Neutral already, please log in below.

User ID

Password

Forgot your User ID? Click here for help.

Forgot your Password? Click here for help.

Neutral News

DISPUTE RESOLUTION TIMES

The Dispute Resolution Times is the AAA’s source for news and information from the ADR community. Who’s doing what and why? News as it happens.

more
Welcome to Your Neutrals eCenter.

Neutrals eCenter is a personalized online service provided to the AAA panel of neutrals.

ADMINISTRATION
The Administration module allows members to update their profile and resume, view past and present cases, access an online calendar, and track compensation and payments.

TRAINING
Access courses designed to strengthen knowledge and build skills. Courses are mandatory for commercial arbitrators.

RESOURCES
Printed resources pertinent to serving on the AAA’s National Roster are available here.

DISPUTE RESOLUTION SERVICES
Access information about AAA services, including Case Management and AAA Rules and Procedures.

Neutral News
SEE DISPUTE RESOLUTION TIMES FOR NEUTRALS

The Dispute Resolution Times is the AAA’s source for news and information from the ADR community. Who’s doing what and why? News as it happens.

more →
This calendar shows hearings (scheduled by AAA) for certain case loads. If you do not see your hearings listed here, select "Hearings and Awards Calendar" from the Calendar menu above instead. Contact your AAA case manager with any questions.

**WEDNESDAY AUGUST 25, 2010**

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*Please note that not all options are available for this case load. If you have any questions in this regard please contact your case manager or their.*
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SELECT EVENT TYPE

WOULD YOU LIKE TO SPECIFY:

- [ ] AVAILABILITY
- [ ] UNAVAILABILITY
- [ ] CANCEL
ADD UNAVAILABILITY

Start Date: 8/25/2010
Repeat Until Date: 8/26/2010
Start Time: 09 00 AM
End Time: 05 00 PM
Description: 

SAVE CANCEL
This calendar shows hearings (scheduled by AAA) for certain caseloads. If you do not see your hearings listed here, select "Hearings and Awards Calendar" from the Calendar menu above instead. Contact your AAA case manager with any questions.

Click on any time to add or delete Available Time or Personal Event.

**THURSDAY AUGUST 26, 2010**

- **08:00AM**
- **08:30AM**
- **09:00AM** Edit Mediation
- **09:30AM**
- **10:00AM**
- **10:30AM**
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- **07:00PM**

*Today is August 25, 2010*

- Available
- Unavailable
- AAA Hearings
- Partially Available
- Holiday

Need more help? Click here

Please note that not all options are available for this caseload. If you have any questions in this regard please contact your case manager or their...
This calendar shows hearings (scheduled by AAA) for certain caseloads. If you do not see your hearings listed here, select “Hearings and Awards Calendar” from the Calendar menu above instead. Contact your AAA case manager with any questions.

Today is August 25, 2010

Available
Unavailable

AAA Hearings
Partially Available
Holiday

Need more help? Click here

Please note that not all options are available for this caseload. If you have any questions in this regard please contact your case manager or their
MODIFY UNAVAILABILITY

Start Date: 08/26/2010
Start Time: 09 AM End Time: 05 PM
Description: Mediation

UPDATE DELETE CANCEL
The list of scheduled hearings won’t be ‘your’ cases only, but all cases scheduled on a day, by site. You have to refer to your notices from us about your scheduled days. This list is to show you the cases that will be going on the day you are mediating.
CASE NUMBER: 36-560-000045-10

Claimant: Bank of America  Filing Date: 06/23/2010
Respondent: Jim White  Case Manager: Case Manager Circuit 17

SUMMARY | CLAIMS | PARTIES | HEARINGS | DOCUMENTS

Statistical Worksheet
Compensation Deposits and Disbursements

Case Name: Bank of America AND Jim White AND Jim White
Status: Active
Number of Neutrals: 1

APPOINTED NEUTRAL(S)

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<th>Name</th>
<th>Type</th>
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<tr>
<td>Bruce E Chapin</td>
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<td>Bill C Hammer</td>
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TASKS

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Foreclosure Statistical Worksheet

Mediators: This is for statistical purposes only and should not contain any personal information of your parties such as the name of the borrower, lender, or case number. Please complete and return to the Office manager immediately upon conclusion of the mediation session.

IN ORDER FOR YOU TO RECEIVE PAYMENT, THIS FORM MUST BE SUBMITTED TO THE OFFICE MANAGER NO MORE THAN 5 DAYS AFTER YOUR MEDIATION SESSION. Thank you.

Mediator Name: Sheila S Cole  Court Case Number: CACE08037039
AAA Case Number: 36-300-000001-04

Section A.

Month (number) 09  Year 2010  County Broward  (Broward, Brevard, Alachua, Baker, Bradford, Gilchrist, Levy, Union)

Section B.

☐ Mediated Settlement Agreement
☐ Plan of Action
☐ Impasse
☐ Mediation was Terminated
☐ Adjournment
☐ Mediation could not proceed due to nonappearance
  □ Nonappearance on behalf of both parties
  □ Nonappearance by Plaintiff Representative
  □ Nonappearance by Plaintiff’s Attorney
  □ Nonappearance by Defendant
  □ Nonappearance by Defendant’s Attorney

Section C.

In the event a settlement was reached, please indicate the type of workout option by checking appropriate box(s):

1. ☐ Short Sale: Sale of the property to a third party in which the lender agrees to accept the proceeds of the sale as full satisfaction for the outstanding balance on the loan, even though the sale price is less than the loan balance.
2. ☐ Dued in Lieu of Foreclosure: The home owner voluntarily relinquishes the home to the lender after default to avoid foreclosure.
3. ☐ Mortgage Assumption: Another person transfers the loan into their name and is responsible for the mortgage payment.
4. ☐ Partial Claim: A Partial Claim involves HUD granting a junior mortgage loan to the Borrower in the amount of any arrears (not including late fees or foreclosure costs).
5. ☐ Repayment Agreement: An agreement to give the homeowner a fixed period of time to cure a default usually by paying the regular monthly payment plus an additional amount to cure the delinquency.
6. ☐ Temporary Rate Reduction.
7. ☐ Foreclosure Followed by Leaseback and Option to Purchase: Parties agree to go to foreclosure so that the lender takes title to the property back from Borrower and “Forecloses” all other interests, such as 2nd and 3rd mortgages.
8. ☐ Waiver of Late Fees
9. ☐ Blended Equity Mortgage: Lender takes part ownership (a percentage) in the property and reduces the mortgage by the same amount.
10. ☐ Forbearance: A type of repayment plan that permits a period of time for suspended or reduced monthly payments, or regular payments before requiring additional amounts to repay the mortgage.
11. ☐ Loan Modification: A loan modification tool that involves a permanent change in the terms of the loan that results in a lower loan payment that the Borrower is able to afford; it might be called an "in-house refinance" meaning that the consumer’s current lender provides a different (modified) loan.
12. ☐ Transition strategies: Technically not a workout that seeks to save the home, but a plan to ease the homeowner into a different, more affordable housing situation with the least amount of distress.
13. ☐ Options in the Context of Bankruptcy
14. ☐ Other

Other Reason Text
Download All

To download a zip file containing all documents associated with the current case, click on the Download All button.

Document types within source Document types

To view a list of documents for a document type, click on a Document Type link.

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Back to document list

To view a document, click on a link in the Description column.

To download one or more documents in a zip file, select the associated checkboxes and click the "Download Selected" button.

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Mediator Help Access

- Technology  RMFMOperations@adr.org
- Application Process foreclosuremediation@adr.org

Training
- Broward County Library offers an array of classes and programs at locations throughout the county.
  - [http://www.broward.org/Library/ClassesPrograms/Pages/ComputerBranches.aspx](http://www.broward.org/Library/ClassesPrograms/Pages/ComputerBranches.aspx)
  - [http://www.broward.org/Library/ClassesPrograms/Pages/ComputerInternet.aspx](http://www.broward.org/Library/ClassesPrograms/Pages/ComputerInternet.aspx)
- Introductory Courses at Broward Community College
  - [http://www.broward.edu/ied/ied/ce/ComputerCourses/page9775.html#office](http://www.broward.edu/ied/ied/ce/ComputerCourses/page9775.html#office)
  - [http://www.broward.edu/index.jsp](http://www.broward.edu/index.jsp)
**Process**
- Scheduling
- Circuits – 17th (4/day), 18th (2/day), 8th (local)
- Sign In Sheet

**Forms**
- Notice of Appointment – completed on site
- Mediation Agreement – completed on site
  - copies of signed agreement given to all parties;
  - original given to either party if they want to file with clerk
- Exit Survey – completed on site or online
- Foreclosure Statistical Worksheet – completed at site until online version on E-Center
- Mediation Report – completed on site
  - copies to all parties and original to site manager for filing with clerk;
  - Site manager can assist you to upload or fax to 877-395-1389
Florida Residential Mortgage Foreclosure Mediation Program

FORMS: Notice of Appointment

Florida

IN THE CIRCUIT COURT OF THE JUDICIAL CIRCUIT IN AND FOR COUNTY, FLORIDA
CASE NO.

PLAINTIFF

VS.

DEFENDANT

NOTICE OF APPOINTMENT

To:

You should have already completed the Mediation Panel Application Form inquiring about any previous employment by a mortgage lender and the RMF Appoinment Acknowledgement and Disclosure Form inquiring about current or prior, within the last five years, personal or professional relationships and contacts with mortgage lenders.

However, the Florida Rules of Certified & Court-Appointed Mediators state that if the burden of disclosure of any potential conflict of interest rests on the mediator, and requires that disclosure shall be made as soon as practicable after the mediator becomes aware of the interests or relationship giving rise to the potential conflict of interest. Therefore, based on the conflict of interest standards contained in the Florida Rules, and the ABA/ARBA Model Standards of Conduct for Mediators, please complete the following checklist of conflicts. Please note that an affirmative response to any of the following questions does not operate to automatically disqualify you from serving as a mediator in the above-captioned case. However, this completed Notice of Appointment will be shared with the parties who will be permitted to raise any additional questions or concerns they may have regarding your disclosures. You will not be able to begin the mediation session until a duly executed Notice of Appointment is completed, shared with the parties and returned to the Program Manager.

1. Have you had any personal or professional banking relationships with any of the companies involved in this mediation?
   Yes  No

2. Do you or your law firm presently represent any party that is involved in the mediation?
   Yes  No

3. Are you aware of any professional or social relationship you have had with counsel for any party in this proceeding, the firms for which they work, or any parties or witnesses identified to date in this proceeding or the entities for which they work?
   Yes  No

4. Have you ever served as a mediator or arbitrator in a proceeding in which any of the party representatives, law firms, or parties appeared before you or gave testimony?
   Yes  No

5. Have you or any member of your family, or any close social or business associate ever been involved in the last five years in a dispute involving the subject matter of this mediation?
   Yes  No

6. Have you ever been sued or been sued by either party or its representative?
   Yes  No

7. Do you or your spouse own a significant stock in any of the companies involved in this mediation that you are aware of?
   Yes  No

8. Are there any additional disclosures you would like to make that are not otherwise covered by the above questions?
   Yes  No

Should the answer to any question be “Yes,” or if you are aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create a potential conflict of interest, then describe the nature of the potential conflict(s) on an attached page.

MEDIATOR’S ACKNOWLEDGEMENT

I hereby affirm that the above information is true and accurate to the best of my knowledge, information and belief and further attest that I will faithfully and fairly serve as the mediator in this matter in accordance with the Florida Rules for Certified & Court-Appointed Mediators.

Dated:

Signed:

Printed Name:

6/27/2010

6/27/2010

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The AAA RMMP Program is dedicated to providing the highest quality of service. In order to
evaluate our effectiveness, we ask that you complete this anonymous questionnaire, fill it out, and return to the
front desk. For each statement please circle the answer that most closely fits your mediation experience.

1. The mediator provided a comfortable, quiet environment for the mediation.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
2. The mediator was effective in making me feel comfortable enough to openly discuss and express my issues and
   feelings.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
3. The mediator did not take sides.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
4. The mediation process and my rights and responsibilities were clearly explained.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
5. My issues were given a fair amount of time and attention during mediation.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
6. The mediator helped identify issues that were confusing.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
7. The mediator communicated with me in a respectful way.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
8. The mediator did not pressure me, allowing me to make my own decisions.
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
9. I am satisfied with the results of my mediation session(s).
   - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
10. I would recommend mediation to other people.
    - Strongly Agree  Agree  Neutral  Disagree  Strongly Disagree
11. What did we do well? What could we improve? Your comments and ideas are appreciated.

__________________________________________

AAA RMMP 2010
IN THE CIRCUIT COURT OF THE ______________ CIRCUIT
IN AND FOR ______________ COUNTY, FLORIDA

Plaintiff(s),

vs.

Defendant(s),

Case No(s): ______________

MEDIATION REPORT
(PFM Program)

Pursuant to the Court’s Order, a Mediation Conference was conducted by
_________________, Florida Supreme Court Certified Circuit Civil Mediator, on ____________

1. The following were present:
   a) Plaintiff's Representative ______________ and Plaintiff's attorney ______________
   b) Defendant(s) ______________ and his/her/their attorney(s) ______________.

2. The result of this Mediation Conference is as follows (check one below only):
   _____ A signed SETTLEMENT AGREEMENT was reached during this Conference.
   _____ The parties have reached a total IMPASSE.
   _____ The parties have agreed to ADJOURN the mediation to ____________.  Mediation has been TERMINATED.

   As required by Administrative Order ____, a copy of the most recently filed Form A is attached.

   Mediator:
   Certification # ______________

The original of the mediation report has been furnished to:

Chief of Court

Copies furnished to:
( ) Plaintiff
( ) Plaintiff's Attorney
( ) Defendant
( ) Defendant's Attorney
Strategies

- Create an environment on cooperation
- Do not lose the participants along the way
- Do some PR
- Realize that in the Blizzard of Foreclosures each Snow Flake (mediation) is different up close

HAMP

- The 31% Rule (realities and myths)
- NPV (fail or pass), (realities and myths)
- Documents (what is needed and what they look like)
- Waterfall (term extension, deferred accounts, etc.)
HAMP MODIFICATIONS 2009-2010
HAFA
- Life after HAMP
  - Short Sales
  - Deeds in Lieu
- Homeowner must considered within 30 days by Servicer
- Homeowner Must Apply for it within 14 days of being notified that they may qualify
- Requires lender to suspend all collection and legal proceedings while homeowner is being considered for HAFA
- Deficiency may be waived if permitted by law Homeowner must vacate within 30 days after Deed in lieu is signed

Incentives to the Parties
- Bank incentives – the banks get $1,000 servicing bonus
- Displaced Homeowners gets $1,500
- Lender pays all closing cost and admin costs

HAFA Youtube Video: http://www.youtube.com/watch?v=8TXx8rKy-Ow
Financial Roadblocks
- Homeowner does not disclose all income or financials
- Lack of proper Documents
- Not enough income
- Bank didn’t review the Documents before the Mediation
- Different perception of the income and expense presented

Settlement
- Creative (rent property, alternate payment options, etc.)
- Cooperative alternatives
- Financial Incentives
CONFIDENTIALITY (RULE 10.360) (FL. STAT. 44.405 EXCEPTIONS)

1. REPORTING REQUIREMENTS REQUIRED IN ADMINISTRATIVE ORDER. VARIES BY CIRCUIT.
   A. APPEARANCE OF PARTIES WITH AUTHORITY TO SETTLE
   B. APPEARANCE BY PARTY LISTED ON FORM A
   C. MANDATORY DISCLOSURES
   D. REQUIREMENTS FOR TELEPHONIC APPEARANCE AND REQUIREMENT TO STAY ON THE PHONE FOR COMPLETE MEDIATION
   E. APPEARANCE OF NON-PARTIES AT MEDIATION
   F. DISCLOSURE FOR PROFESSIONAL MISCONDUCT OR MALPRACTICE FL. STAT. 44.405(4) & (6)
POWER BALANCING V. OBLIGATION TO REMAIN NEUTRAL (RULE 10.410 BALANCED PROCESS)

1. UNREPRESENTED UNSOPHISTICATED DEFENDANTS V. REPRESENTED SOPHISTICATED PLAINTIFFS
2. KEEPING DEFENDANTS INFORMED (RULE 10.370-PROVIDING INFORMATION)
3. EXPLAINING DEFINITIONS AND PROCESSES
MEDIATOR BIAS (RULE 10.330-IMPARTIALITY)

1. PERSONAL FEELINGS FOR OR AGAINST A PARTY
2. BEING A PROACTIVE MEDIATOR
3. UNCONSCIONABLE/ILLEGAL/UNFAIR AGREEMENTS (RULE 10.370-ADVICE, OPINIONS, OR INFORMATION) VS. RULE 10.320 NON-PARTICIPATING PERSONS AND RULE 10.420(4)
CONFLICTS OF INTEREST

1. MEDIATOR/LAWYERS IN ACTIVE LITIGATION (RULE 10.340-PROHIBITS “UNDISCLOSED” CONFLICTS)
2. TWO HOUR TIME LIMIT
3. DRAFTING AGREEMENT