

Marion Superior Court Local Rule on Foreclosure Cases

Local Rule 49TR85 Rule 231

Effective March 2, 2009, the Circuit and Superior Courts of Marion County implemented a local rule requiring lenders and homeowners to attempt to resolve foreclosure cases by participating in a Mandatory Settlement Conference.

Local Rule 49TR85-231

Mandatory Settlement Conferences in Mortgage Foreclosure Cases

- **1. Mandatory Settlement Conferences**
- Pursuant to ADR Rule 1.1, in all owner-occupied residential mortgage foreclosure cases where service of process has been perfected, a settlement conference is mandatory. The settlement conference is to be completed within 90 days of the date service. An automatic stay of the proceedings, except for service of process, shall be in effect unless the settlement conference is vacated for good cause shown. Objections to the settlement conference shall be made in writing by any party within 15 days of the receipt of the notice scheduling the conference. Notice shall be provided by the Court on the approved form of Notice as said Notice appears in **Appendix A**. The Court shall also mail an approved form of financial declaration as said form appears in **Appendix B** and a Confirmation of Attendance Form as said forms appear in **Appendix C**.
- **a.** The homeowner or primary borrower must respond affirmatively on the provided Confirmation of Attendance form within 15 days. If no confirmation of attendance is received by the Court within the prescribed period, the conference shall be waived.
- **b.** The conference shall be conducted in the county courthouse or at such other location as the parties may agree and attended either in person or by telephone. The conference may be facilitated by a judicial officer, but the parties may proceed without a judicial presence. The Court shall provide adequate facilities for the parties to conduct such settlement conferences.
- **c.** The homeowner or primary borrower shall attend the conference in person or by telephone. The homeowner or primary borrower shall complete the financial declaration form and mail a copy to the Court and to the lender's attorney at least 7 days prior to the conference.
- **d.** Both the lender's attorney and a lender representative with ultimate settlement authority shall attend the conference in person or shall be available by telephone.
- **e.** The results of the settlement conference shall be reported to the Court, in writing, no later than 5 days after the completion of the conference. If no settlement conference takes place, the lender's attorney shall file a statement indicating why it was not held.
- **f.** Subordinate lien holders shall not be required to attend the settlement conference, but shall be notified of the outcome of the conference by the primary lender's attorney by regular mail within 5 days of the completion of the conference.
- **g.** If no conference is conducted prior to the end of the 90 day period, or if the homeowner or primary borrower fails to appear, or if the conference is otherwise waived, the stay will expire and the case shall proceed to disposition.
- **h.** Mortgage Foreclosure settlement negotiations conducted pursuant to this local rule are governed by **Ind. Evidence R. 408**.
- **i. This Rule will expire on December 31, 2012.**

Background

- The Rule is based on encouraging dispute resolution “with the view that the parties’ interests can be preserved in settings other than the traditional dispute resolution methods” (ADR Preamble)
- The Chief Justice has urged all civil trial court judges to become familiar with mortgage foreclosure procedures and to become creative in the Court’s response to the current foreclosure crisis in Indiana.

Background (Cont.)

- The effectiveness of such settlement conferences is potentially great in keeping families in their homes and in supporting the lender's interest in loss mitigation. Settlement rather than foreclosure is a win-win for both sides.
- There are a variety of loan modification options and other suitable outcomes available to the parties short of foreclosure.

Types of Cases Covered by the Rule

- The Chief Justice has also encouraged lawyers to become proficient in foreclosure defense and to offer their services to the public pro bono.
- The Rule refers to Mortgage Foreclosures only; the Rule does not apply to Land-Sales Contracts or Rent to Buy Agreements.
- The homeowner must actually occupy the property and use it as his/her primary residence.

What is a Settlement Conference?

- An informal discussion between the principal lender and the primary borrower to investigate whether a plan can be worked out to keep the homeowner in his/her residence.
- The lender and homeowner must enter into good faith negotiations, but they are not required to reach an agreement or to accept a settlement.
- The scope and nature of the plan is completely up to the lender and homeowner.

When & Where Will the Conference be Held?

- At least one conference must be held within ninety (90) days after the homeowner is served.
- The conference can be held in the courthouse or at any other place the parties choose.
- The lender and homeowner can also agree to confer by phone.
- The results of the conference must be reported to the Court within 5 days of completion.

What Must the Homeowner Do to Have a Settlement Conference?

1. The procedure is automatic. Once the Court has notice that Service of Process has been perfected, the Court will send the homeowner a Notice and Order for a Settlement Conference.
2. The Notice will set the date and time of the settlement conference.
3. The homeowner will also receive a Confirmation of Attendance form, which must be returned to the Court within fifteen (15) days stating whether they will or will not participate in the conference.

Is it Necessary to for the Homeowner to have a Lawyer at the Conference?

- No but counsel is recommended.
- The lender's attorney must be present and must have settlement authority. Such authority may be made available by phone.
- The homeowner may request the Judge or another judicial officer to sit in on the Conference.

What Information Must the Lender & Homeowner Provide Each Other?

- The homeowner must complete a Borrower Financial Form, which will be supplied by the Court.
 - The Homeowner must send a copy to the lender at least seven (7) days before the Conference.
- The lender is not required to provide any information in advance of the Conference.
 - The Court, might however, regard the denial of a reasonable request for information as not making a good faith effort.

What Happens to the Case During the Settlement Period?

- The case and proceedings (except for service of process) are stayed during the ninety day settlement period.
- When the stay expires, or is lifted, the parties may resume filing papers and all deadlines go back into effect.
- The stay is not intended to inhibit the foreclosure process, but rather is designed to give the parties an reasonable opportunity for workout.

May the Court Cancel a Conference or Lift the Stay Before the Ninety Days are Up?

- Yes and yes. The parties can agree to waive the settlement conference. The obligation to participate in a settlement conference remains, however, unless both agree to a waiver or the conference is cancelled due to failure to affirm attendance or for other good cause shown.

May the Court Cancel a Conference or Lift the Stay Before the Ninety Days are Up?

- Homeowner abandonment of the property or refusal to provide information needed for negotiations would be additional examples of reasons for the Court to lift the stay or cancel a conference.
- Marion County processed approximately 9,400 foreclosure cases in 2008. We expect, based on the experiences of other out-of-state projects that 20-30% of defendants will confirm attendance and participate.

Agencies Providing Legal Services to the Poor in Indianapolis

- Heartland Pro Bono Council
Attn: Laurie Boyd
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317.614.5304
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- Indianapolis Legal Aid Society
615 N. Alabama, Suite 122
Indianapolis, IN 46204
317.635.9538
www.indylas.org
- Indianapolis Legal Services
151 N. Delaware, Suite 1800
Indianapolis, IN 46204
317.631.9410
www.indianajustice.org
- Neighborhood Christian Legal Clinic
3333 N. Meridian St., Suite 201
Indianapolis, IN 46208
317.429.4131
www.nclegalclinic.org

Prepaid Legal Services for UAW Workers and Retirees

- UAW Legal Services
3750 N. Guion Road
Indianapolis, IN 46222
317.926.7036

How Can I Obtain More Information?

- ❖ Local Rule 231 and the forms mentioned above can be found at [www.in.gov/judiciary/marion.](http://www.in.gov/judiciary/marion)
- ❖ You can also contact the Court Administrator at 327.4747 or the Circuit Court at 327.4010.

Thank You!

Comments or Questions?

Cynthia J. Ayers, Judge Marion Superior Court *in collaboration with* Louis Rosenberg, Judge

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