



# Mediation Offices of G. Thomas Harper

4110 Southpoint Boulevard, Ste. 228  
Jacksonville, Florida 32216

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(904) 296-7000 Telephone  
(904) 296-7303 Facsimile  
[www.WorkplaceMediator.org](http://www.WorkplaceMediator.org)

## **To the Homeowner/Borrower from Mr. Harper:**

### **What to Expect at Mediation:**

The foreclosure suit against you is going to mediation. What does that mean? First, it's important for you to know what is not going to happen at mediation. Mediation is a voluntary process even though it is court ordered. By *voluntary*, this means that no one is going to make a decision for you or force you to accept a resolution.

Mediation is a process where a neutral person, called a mediator, acts to *encourage* and *facilitate* the resolution of a dispute between two parties. Mediation is an **informal, non-adversarial** process with the objective of helping the parties reach a *mutually acceptable* and *voluntary* resolution. **In mediation, decision making authority rests with the parties.**

I have been appointed by the Court to mediate, in part, because I am an experienced trial lawyer. I have been designated by the Florida Supreme Court as a Circuit Court Civil mediator. I have also attended hours of training both in residential foreclosure litigation and the mediation of residential foreclosure cases.

Before accepting this case as a mediator, I have determined that I have no "conflict" or interest in the parties or the outcome. I will be "neutral," with no "stake" in the case for either side. Mediators are trained in locating the issues that will be important when the case is brought before the Court. The role of the mediator includes assisting the parties and identifying the issues, fostering joint problem-solving and exploring resolution alternatives. The mediator's goal is to explore what the parties are seeking through the foreclosure to see if there is a resolution available that is satisfactory to both sides.

A mediator is decidedly not a judge. No one is going to rule on or decide on your case at mediation. The mediator **will not** tell you how he thinks a judge or jury will rule on your case! I will not predict what I think will happen when your case

goes to court. I will not give any legal advice. Further, I will not make any decision that will bind or affect your foreclosure case as it proceeds through the court system.

### **The Process:**

Every case is unique. However, I will usually begin a mediation with both parties in a joint meeting. I will explain the mediation process and what I anticipate happening during our conferences. Then I will turn to the lender/bank/loan servicer and give him or her, or their lawyer, a chance to tell about their case. After the lender is heard from, I will ask the homeowner/borrower to respond and tell their story. This begins a process of gathering information, clarifying interests and generating options. I will be attempting to anticipate each party's concerns and generate options that deal with those concerns.

One purpose of a joint meeting between the parties will be to give each side an opportunity to **hear** the arguments that will be made by the other side when the case goes to court. I may ask questions about your case and how certain facts and events will be portrayed before the court. These are questions that a judge or jury may think about as your case proceeds. These may be questions that you and your lawyer have already thought about. When you hear an outside "neutral" ask these questions, however, it may give you a different perspective in evaluating how a judge may analyze your situation.

### **Who Should Attend the Mediation?**

Mediation requires that each party have a representative who has authority to resolve the case. The Court has issued an Order that requires that both sides have a representative in attendance with *full authority* to resolve all of the claims in the case. That authority will be confirmed by the mediation Program Manager. If both husband and wife (or more than one person) are named on the note and mortgage, then both persons should attend the mediation.

### **How does the process work?**

After giving the parties the opportunity to hear the other side's story, I will normally place the parties in different rooms and will work back and forth between the parties. Part of the process will be for me to select and assess different options for the parties.

I will be listening, focusing and asking questions to try to determine what the parties really want. What are their concerns? I will be trying to come up with creative ideas that might meet the different interests of the parties. In addition, I will be looking for *objective criteria or standards* that can help both sides figure out what is a fair resolution of the matter.

One of the goals that you should set for the mediation is to **listen** to help you evaluate your chances of success. The analysis of your case, which is usually jointly reached by you and your lawyer, will play an important part in evaluating what you would like to see as a result.

The Court's Order requires that the mediation Program Manager receive a summary of payment and loan terms from the Lender/Bank, a statement of the Lender's position on the present net value of the loan and, the most current appraisal of the property. This information will be available to you and may help you decide the best course of action for you as a homeowner.

I am asking that you bring to the mediation recent paycheck stubs or business profit and loss statements establishing your income in the month prior to the mediation. This information, when documented, will help all parties evaluate the proper course of action. The lender may also use this information to determine whether you qualify for home loan modification programs. If you have been discussing with the lender a course of action, please bring with you any documents that the lender has requested, such as an updated hardship letter, IRS tax transcripts or copies of tax returns.

The Court has required that, before mediation, you must meet with a qualified financial counselor to review your financial situation. I hope that you will take the opportunity to do this in-person and not just submit the paperwork online. This process is designed to help you get a handle on your complete finances so you can best evaluate what you should do. You should prepare a list of your monthly expenses and all debts that you owe. Hopefully, you have already prepared a monthly budget. If not, you should prepare a monthly budget for your household listing your income from all sources and all expenses. Review this with the financial counselor.

On a personal note, I am a graduate of Dave Ramsey's *Financial Peace* course. ([www.DaveRamsey.com](http://www.DaveRamsey.com)) My wife and I have also taken the *Crown Financial* course. ([www.Crown.org](http://www.Crown.org)) *Moneyskill.org* is an online training program used to

teach personal finance to high school students. These programs are just to mention a few that are available--many local churches, community colleges and non-profit organizations offer training in money and budgeting. Although not required, I recommend that you look into taking a course to help you learn about personal finance and budgeting.

### **Do you have to worry about what you say during mediation?**

**All that occurs during the mediation process will be confidential.** Confidential means that what is said at mediation is not discussed with anyone who did not attend the mediation. Whatever happens or is said also may not be revealed in any subsequent legal proceedings. All parties agree not to institute any legal action based on the mediation or to testify or produce any records concerning what happened at mediation.

Parties will be required not to make any public statements concerning the mediation. All inquiries from the news media or other interested parties should be directed to me. If contacted, I will only acknowledge the existence of the mediation and report that the parties are attempting to negotiate an acceptable resolution to the dispute.

**The entire mediation process is confidential.** All offers, promises and statements, whether oral or written, made during the mediation, by the parties or their attorneys, will be confidential. Offers, promises and statements will not be disclosed to any outside persons and I will not disclose to the other side any statements or information that you ask me to keep confidential.

Unless the parties agree otherwise, I will only report to the court whether the case was settled, was adjourned with a Plan of Action to resolve the matter, was adjourned to be continued for further mediation, or was terminated because settlement was not possible and I have declared an impasse.

### **How long will mediation take?**

The Program Administrator has scheduled this mediation to last for 2-3 hours. However, you should plan and come prepared to devote the rest of the day to your mediation. If I believe that the parties are making progress, I may even take a break and begin another mediation, and then come back and continue working with

you. I have observed that foreclosure cases have emotions and, for this reason, the parties need time to express and digest their feelings.

During the process it may seem like I am spending an inordinate amount of time with the other side. Don't read anything into this or think that I am not giving your side of the case a fair hearing. Instead, I may just feel that more time is needed to work with the other side.

Remember, mediation is a voluntary process. There is no need for you to be stressed or concerned about mediation. No one at mediation is going to force you to accept a resolution.

### **Why Mediation is Important:**

Mediation is important because it is an opportunity for you to participate in how your case is decided! That's right. The great advantage that you will have at mediation is that the parties will decide how the case will be resolved.

If your case is not resolved prior to trial, our legal system provides that a judge and/or a jury will decide the case for you. You will not be involved as a decision-maker. Of course, you (or your attorney) will be able to argue and present facts, evidence and witnesses to the decision-makers. If they rule in your favor, that will be the result you want and you will be pleased. If, however, they don't see the case the way that you see it, they can rule differently--dividing the case, or even ruling against you. In mediation, however, you will participate and decide how the case is resolved. No one else will be making decisions for you.

If you have a first language other than English, please notify the mediation Program Administrator so arrangements can be made for an interpreter. If, for example, your wife is named in the foreclosure suit and she does not speak English as her first language, it will be important for an interpreter to be present so that she can meaningfully participate in the mediation.

This letter complies with Rule 10.420 of the Florida Rules for Certified and Court-Appointed Mediators. If you need any special accommodation or special foods while at mediation, please let me know. I do not want any distraction to lessen your focus during our sessions.

I am confident that a resolution of your case can be reached on terms that you can live with. I look forward to meeting and working with you.

G. Thomas Harper  
September, 2010