

**COMMONWEALTH OF KENTUCKY**  
**48<sup>TH</sup> JUDICIAL CIRCUIT**  
**FRANKLIN COUNTY**  
**RULES OF COURT**

**RULE 1:     DEFINITIONS**

The following definitions apply for the purpose of these Rules:

- 1.01   Court: Division I or Division II of the Franklin Circuit Court, either individually or collectively; "Court" in these Rules does not include Division III (Family Court).
- 1.02   Clerk: the Franklin Circuit Court Clerk.
- 1.03   Judge: a judge from either Division I or Division II of the Franklin Circuit Court, unless otherwise indicated.
- 1.04   Party: either counsel or client, or both, unless otherwise indicated.

**RULE 2       ORGANIZATION OF THE FRANKLIN CIRCUIT COURT**

- 2.01   The Franklin Circuit Court is a court of continuous session and consists of three divisions. Divisions I and II hear criminal felony cases and civil actions satisfying the jurisdictional amount in controversy. In addition, Divisions I and II have appellate jurisdiction under KRS 138.140. Division III is the Family Court of Franklin County, and is governed by a separate set of rules.
- 2.02   The Master Commissioner shall be appointed in accordance with KRS 31A.010(1)(b) by a majority vote of judges of the Franklin Circuit Court (Divisions I, II and III). The Master Commissioner shall serve all three divisions of the Court for a term of four (4) years, or until a replacement is appointed in compliance KRS 31A.010(3).
- 2.03   The Court is a video court. All hearings where evidence is taken shall be recorded. If the party or parties so request, any other hearing may be taped. Copies of these tapes may be obtained from the Franklin Circuit Court Clerk upon payment of the required fee. Parties may use an additional court reporter at their own provision and expense.

**RULE 3       SESSIONS**

- 3.01   Civil Motion Hour for both Divisions I and II is held in the courtroom each Monday and Wednesday, beginning at 9:00 a.m.
- 3.02   Criminal Motion Hour is held in the courtroom beginning each Friday at 9:00 a.m. for Division I, and 10:30 a.m. for Division II.

3.03 The Court shall be closed on the following holidays, subject to the policies of the Kentucky Administrative Office of the Courts:

New Year's Day	Martin Luther King, Jr. Day
Spring Holiday	Memorial Day
Independence Day	Labor Day
Presidential Election Day	Veteran's Day
Thanksgiving Day	Christmas Day

**RULE 4      ASSIGNMENT OF CASES**

- 4.01 When either the filing of an original complaint commences a civil action or the Grand Jury returns an indictment in a criminal action, the case shall be assigned to a division of the Court. The Clerk will determine assignment by lot.
- 4.02 Upon assignment, the Clerk shall stamp or write the division number on the complaint, and shall indicate the proper division on all documents filed in that action. Thereafter, it is the responsibility of the parties to indicate the correct division on all subsequent pleadings tendered to the Court.
- 4.03 Each Judge of any of the three (3) divisions of the Franklin Circuit Court may hear questions or cases in any of the other divisions of the Franklin Circuit Court, when the Judge of the assigned division is ill, absent, disqualified or otherwise unavailable.
- 4.04 Upon motion of the Court or a party and if both Judges involved agree, an action may be transferred from one division of the Court to the other. Once transferred, the Clerk shall properly endorse the transfer.

**RULE 5      MOTIONS – GENERAL**

- 5.01 Parties shall file and serve all motions, along with an accompanying notice of any hearing, with the Clerk not less than five business days before the date of a hearing. Parties shall file any supporting memorandum at the time notice and motion is filed. The Court may grant leave to any party to file a memorandum after the date the motion is filed. Parties must file and serve any response to a motion or supporting memorandum no later than one business day before the scheduled hearing. Voluminous filings may be filed on electronic media such as CDs, CD-ROMs and thumb drives.
- 5.02 A supporting memorandum shall not exceed twenty pages in length (excluding exhibits and appendices) without leave of Court.

- 5.03 All motions that require a hearing shall be noticed for a specific hearing date.
- 5.04 All motions that involve real property shall be noticed for a specific hearing date.
- 5.05 If a party reasonably anticipates oral argument on a motion will last ten or more minutes in duration, the party may request a separate hearing outside of motion hour. No hearing shall be held until the parties have completed briefing.
- 5.06 Any hearing may be continued one time without order of the Court or agreement of the parties. The party seeking the continuance shall notify the Franklin Circuit Court Clerk and all parties to the action and shall file and serve a written re-notice of the hearing date and time. The matter may be continued to the same day and time the following week as the matter was first noticed, or such date and time as the parties may agree. After one continuance, a matter may be continued only by an order of the Court upon a showing of good cause. The continuance without order of the Court provided for by this rule shall not apply to hearings set by order of the Court or to motions pursuant to CR 65.
- 5.07 Matters involving appeals from administrative agencies or seeking review of the actions public agencies or officials shall be governed by Rule 17 of these rules. In other matters where the Court has appellate jurisdiction, once both the appeal and the answer to the appeal are filed, it is the responsibility of the parties to ensure proper motions for the briefing schedule are submitted to the Court, or to submit an Agreed Order setting forth the briefing schedule.

**RULE 6: MOTIONS – DISPOSITIVE**

- 6.01 This rule applies to any motion pursuant to CR 12, CR 56, or any other motion seeking judgment with respect to any claim presented in an action.
- 6.02 The movant shall file and serve a supporting memorandum, along with any supporting affidavits and other material not in the record, with the properly noticed motion. A party opposing the motion shall file and serve a responsive brief, along with any supporting affidavits and other material not in the record, within 21 days of service of the motion. The movant may file and serve a reply memorandum, along with any supporting affidavits and other material not in the record, within 14 days of service of the responsive memorandum and material, except that any reply must be served no less than five business days prior to the date of any hearing noticed on the motion.
- 6.03 A notice of hearing shall accompany any motion filed pursuant to this rule. A hearing on any motion filed pursuant to this rule may be noticed for any motion hour scheduled for five business days following the expiration of the briefing schedule provided for in Local Rule 6.02.
- 6.04 Any hearing may be continued one time without order of the Court or agreement of the parties. The party seeking the continuance shall notify the Franklin Circuit Court Clerk

and all parties to the action and shall file and serve a written re-notice of the hearing date and time. The matter may be continued to the same day and time the following week as the matter was first noticed, or such date and time as the parties may agree. After one continuance, a matter may be continued only by an order of the Court upon a showing of good cause. The continuance without order of the Court provided for by this rule shall not apply to hearings set by order of the Court or to motions pursuant to CR 65.

**RULE 7: ARRAIGNMENTS**

- 7.01 The Clerk shall assign an arraignment date when an indictment is returned by the Grand Jury.
- 7.02 The Court shall assign pretrial and trial dates after an arraignment. The Court shall include those dates in the arraignment order.

**RULE 8: PRETRIAL CONFERENCES AND SETTLEMENT CONFERENCES – CIVIL ACTIONS**

- 8.01 At least five (5) business days prior to any pretrial or settlement conference, each party shall file with the Clerk and serve on all other parties:
- (a) the facts and legal authority the party contends entitles it to the relief sought, or which constitutes a defense to each claim asserted against that party (in whole or in part);
  - (b) all items and amounts of both general and special damages claimed by that party, along with any supporting documentation, evidence, and calculations; and
  - (c) a description of the nature and extent of the injury claimed, along with supporting documentation, evidence, and calculations.
- 8.02 The Court has discretion to order settlement conferences in civil actions. All clients and principals shall attend. Where an insurer is defending, either a representative of the insurer or counsel with full settlement authority shall attend. Failure to attend may result in sanctions pursuant to 15.03(d) of these rules.

**RULE 9: JURY TERMS**

- 9.01 The Court shall convene a Petit Jury during the months of January, March, May, July, September, and November for a term of sixty (60) days. The Chief Circuit Judge may order these terms extended.
- 9.02 The Court shall convene a Grand Jury during the months of January, March, May, July, September, and November for a term of sixty (60) days.

**RULE 10: ENTRY OF ORDERS AND JUDGMENTS**

- 10.01 Counsel shall make the notation "Have Seen" on any judgment or order before the signature of the Court or entry, in all cases where the Court has directed counsel to tender an order.
- 10.02 Any party who tenders an order shall include a distribution list with the name, mailing address and e-mail address of each party who is to receive a copy of the order. The Clerk shall mail the judgment or order in an envelope bearing the clerk's return address.

**RULE 11: DEFAULT JUDGMENT ORDERS**

- 11.01 A party who tenders a default judgment order shall include a distribution list containing the names, mailing addresses and e-mail address of all parties to the action. The Clerk shall mail the default judgment order in an envelope bearing the clerk's return address. A party shall not include with a default judgment anything that either states or implies that the order is also a debt collection instrument.

**RULE 12: NOTICE OF SUBMISSION OF CASE FOR FINAL ADJUDICATION**

- 12.01 To submit a case for final adjudication the parties shall complete AOC Form 280. The appropriate copies of the completed AOC Form 280 shall be filed with the Clerk, mailed to the Administrative Office of the Courts, and served on the parties, AOC Form 280 is available in the Clerk's office and also electronically on the world wide web at [www.kycourts.net](http://www.kycourts.net). Upon receipt of the completed AOC Form 280, the Clerk shall deliver the record of the case to be submitted to the appropriate Judge. Upon submission for final adjudication, the Court has ninety (90) days from the date of filing of AOC Form 280 to adjudicate the case and enter its order or judgment.

**RULE 13: DISMISSAL FOR LACK OF PROSECUTION**

- 13.01 Pursuant to CR 41.02(1) and CR 77.02(2), and on motion of either party or on notice by the Court, the Court may dismiss a civil action for failure to prosecute when that action has remained on the civil docket for one year or more without any step being taken which would indicate an intent to prosecute that action.

**RULE 14: MONEY ORDERED PAID BY THE COURT**

- 14.01 The Clerk shall place into an interest bearing account any money ordered to be paid into Court. The Clerk shall distribute this money pursuant to an order by the Court.
- 14.02 NOW account is interest bearing but does not pay out interest. Escrow accounts pay interest and must have a court order for each account.

**RULE 15 MEDIATION**

- 15.01 Cases subject to mediation: Except for habeas corpus matters or cases involving election contests, administrative appeals, or appeals from the District Court, any Judge

may refer any civil case to mediation at either the completion of the pleadings or at any other time before trial. The Court will require mediation prior to conducting a bench or jury trial.

15.02 Referral to mediation:

- (a) The Judge may refer the case to mediation with or without the parties' consent. Either party may move the Court to refer the case to mediation. The Court shall refer mediation to either a Court-approved mediator or an appropriate mediation facility according to that facility's guidelines.
- (b) Any party may move to disqualify a mediator from a case for good cause. If the Court disqualifies a mediator from a case, the Court shall enter an order naming a qualified replacement. Nothing in this provision precludes mediators from either disqualifying themselves or refusing an assignment. The time for mediation is tolled during any period in which a motion to disqualify is pending.
- (c) Referral of a case to mediation is not a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

15.03 Mediation conferences:

- (a) Unless otherwise agreed, the parties shall schedule a mediation conference with the mediation facility or mediator within five business days from the entry of the Court's order to schedule a mediation conference. The parties shall hold the mediation conference within thirty days from the entry of the order or later if by agreement of both parties.
- (b) The parties shall attend the mediation conference once an order to mediate has been entered. Counsel for each party may attend. The mediator shall conduct the conference to consider:
  - (1) settlement of the case;
  - (2) simplification of the issues; and
  - (3) any other matters that either the mediator or the parties, or both, determine may aid the disposition of the case.
- (c) The mediator shall schedule sessions as necessary to complete the mediation process. Mediation shall continue until either:
  - (1) the parties have reached a settlement;
  - (2) the parties are unwilling to proceed further, or
  - (3) the mediator determines that further efforts are futile.

- (d) Appearance at mediation; sanctions:
- (1) Upon motion, the Court may impose sanctions against a party if that party fails to appear at a duly noticed mediation conference, unless the party shows good cause why they failed to appear. Possible sanctions include, but are not limited to, either an award of attorney's fees or other costs of mediation, or both.
  - (2) If a party to mediation is a public entity, that party has appeared if a representative with both full authority to negotiate on behalf of the entity and to recommend settlement to the decision-making body of the entity is physically present at the mediation conference.
  - (3) In all other cases, a party has appeared at the mediation conference if the party (or a representative with full authority to settle without further consultation, other than the party's counsel) and a representative of the insurance carrier for any insured party with full authority to settle without further consultation, other than the insurance carrier's counsel, is physically present at the mediation conference.
- (e) The mediator may request that the parties bring either documents or witnesses (including expert witnesses) or both to the mediation conference, but has no authority to order the parties to do so.

#### 15.04 Confidentiality:

- (a) Except as in 14.04(d) of these rules, all mediation documents and communications made during mediation conferences are both privileged and confidential. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.
- (b) No part of a mediation proceeding is considered public record.
- (c) No part of a mediation proceeding is subject to either the Kentucky Open Meetings Act or the Kentucky Open Records Act.
- (d) There is no privilege and no restriction on disclosure to the extent that:
  - (1) the parties consent in writing;
  - (2) the mediation communication or document gives the mediator either knowledge or reasonable cause to suspect that either a child or a spouse has been abused, or a child has been neglected; or
  - (3) the mediation communications were made in furtherance or the commission of a crime or fraud or as part of a plan to commit a crime or fraud.

- (f) Nothing in this rule permits an individual to obtain immunity from prosecution for criminal conduct.
- (g) Except as in 15.04(d) of these rules, a party has a privilege both to refuse to disclose and to prevent any other person from disclosing any communications or documents produced or generated during mediation proceedings between or among the parties to the case.
- (h) A mediator, mediation facility, or employees and agents of a mediator or mediation facility, in relation to parties or entities that engaged in mediation, have a privilege not to:
  - (1) testify as a witness either in discovery or at trial, in any administrative proceeding, or civil or criminal litigation; and
  - (2) produce any documents disclosed or generated during the mediation proceedings, or any documents used in the normal course of business by the mediator or mediation facility.
- (i) Any party in an administrative proceeding, or civil or criminal litigation, who tries to:
  - (1) subpoena as a witness; or
  - (2) compel the production of any documents fromany mediator, mediation facility, or any of their agents or employees, shall be liable for payment to those people for all reasonable costs and attorney's fees incurred in defending the particular action or quashing the particular motion.

#### 15.05 Reporting to the Court:

- (a) Either the mediator or mediation facility shall promptly notify the Court when they decline to accept a case for mediation.
- (b) Either the mediator or mediation facility may refer a case back to the Court for good cause shown at any time after the mediator or mediation facility accepts a case for mediation. Either the mediator or mediation facility shall make the referral in writing.
- (c) If a case is settled either prior to or during mediation, one of the parties shall prepare and submit to the Court an order stating a settlement has been reached. That party shall deliver a file-stamped copy of the order to the mediator. Any party who tenders an order shall include a distribution list with the name, address and e-mail address of each party who is to receive a copy of the order.



- (d) The parties shall submit a joint statement to the Court within ten (10) days of termination of mediation proceedings stating both the issues that have been resolved and the issues that remain for trial if:
  - (1) some, but not all, of the issues in the case are settled during mediation;
  - (2) agreements are reached to limit discovery; or
  - (3) agreements are reached on any other matter.
- (e) At the termination of mediation, either the mediator or mediation facility shall report to the Court that the mediation proceeding has ended. If the parties have not reached an agreement on any other matter in the mediation proceedings, the mediator shall report the lack of an agreement to the Court without comment or recommendation. If the parties consent, the mediator may identify any pending motions, outstanding legal issues, discovery process, or any other action by any party that would facilitate settlement if resolved or completed.

**RULE 16: ELECTRONIC FILING AND SERVICE**

16.01 Except as otherwise provided by these local rules, or by order of the Court, all filings in the Franklin Circuit Court may be made electronically by transmitting a .PDF copy of the document to be filed as an attachment to an e-mail to the following e-mail address: [efiling.franklincircuit@kycourts.net](mailto:efiling.franklincircuit@kycourts.net)

16.02 The following may not be electronically filed:

- (a) Any filing that must be accompanied by a payment, including, but not limited to, notices of appeal and complaints.
- (b) Filings, including exhibits and attachments, that total more than fifty pages in length. Filings may not be broken into parts to meet the fifty page limit.
- (c) Transmittals that exceed 15 MB in size.

16.03 Filings will be deemed filed upon receipt by the Franklin Circuit Court Clerk.

- (a) The Clerk will acknowledge receipt of a filing within one business day of receipt by a reply e-mail to all e-mail addresses listed in the “FROM” and “CC” fields of the e-mail transmitting the filing.
- (b) By reply e-mail to all e-mail addresses listed in the “FROM” and “CC” fields of the e-mail transmitting the filing, the Clerk also will return the first page of each filing stamped “FILED” or “RECEIVED,” as of the date the e-mail transmitting the document was received by the Clerk’s office.

16.04 Each electronic filing:

- (a) Shall be limited to a single pleading, motion, memorandum or other filing. Motions, supporting memoranda, any proposed order, exhibits, and supporting attachments shall be transmitted together, but may be attached as separate .PDF documents to the same e-mail.
- (b) Shall include the following information as part of the Subject field of the e-mail transmitting the filing:
  - (i) The case number.
  - (ii) A recognizable style of the case.
  - (iii) The title of main document being transmitted.
  - (iv) The name of the filing party or parties.
- (c) Shall include e-mail addresses for all parties or their counsel as part of the “CC” field of the e-mail.
- (d) All electronically formatted documents shall be formatted in accordance with the applicable Rules of Civil Procedure including CR 7.03, CR 10, CR 11 and these local rules.

16.05 Electronic filing is voluntary and is provided as a convenience to parties and their counsel by the Court and Clerk.

- (a) All filings, whether made electronically or otherwise, must include in the signature block the e-mail address of all counsel (or *pro se* parties) listed in the signature block of each filing.
- (b) The Court and Clerk may issue, file, and serve electronically notices, orders, judgments and other documents without regard to whether the parties employed electronic filing in the proceeding.
- (c) Parties and their counsel may employ electronic filing on a filing-by-filing basis, and may at any time physically file a document in the Clerk’s office.

16.06 Without regard to whether a document is electronically filed, the service required by CR 5.01 may be accomplished by e-mail transmission of the document in accordance with CR 5.02. Electronic service by e-mail shall be treated as service by mail in accordance with CR 6.05 for purposes of computing time.

16.07 Every pleading, motion or other paper filed electronically shall be signed as required with CR 11. An electronic signature meeting the requirements of CR 11, and which shall

constitute an original signature for purposes of CR 11, may take the form of either:

- (a) the PDF image of the signatory's written signature on the filing; or
- (b) a typed "electronic" signature in the form of /s/ [signatory's name]

**RULE 17: ADMINISTRATIVE APPEALS OR OTHER REVIEW OF THE ACTIONS OF PUBLIC AGENCIES AND OFFICIALS**

- 17.01 This rule applies to any appeal from, and any petition for review of, a decision of an administrative agency or official of the Commonwealth of Kentucky, as well as any proceeding in which the Court reviews the decision by another public body or official on other than a de novo basis. This rule shall not apply to any action seeking only relief in the nature of a writ of mandamus or prohibition.
- 17.02 Subject to any statutory or other requirements to the contrary, including any requirement that the record be designated, it shall be the obligation of the agency, official, or other public body whose decision or action is the subject of the proceeding in this Court to prepare the record of the proceedings to be reviewed. The record shall be filed with the Clerk within 30 days of the filing in this Court of the complaint, petition or other initiating document.
- 17.03 Simultaneously with the filing of the record with the Clerk, the agency, official or other public body shall serve on each party to the proceeding a notice of the filing of the record.
- 17.04 The appeal or review shall be decided upon the briefs of the parties filed in accordance with the following schedule:
- (a) Any party challenging the action of the agency, official, or other public body shall file within 35 days of the date of the notice of the filing of the record an Initial brief addressing the issues raised in the challenge to the action of the agency, official, or other public body.
  - (b) Any party wishing to file a response to an Initial Brief shall file a Response Brief within 35 days of the date the Initial Brief was due to be filed (70 days of the date of the notice of the filing of the record.)
  - (c) Any party filing an Initial Brief may file a Reply Brief within 14 days of the date the Response Brief was due to be filed (84 days of the date of the notice of the filing of the record.) Reply Briefs shall be limited to only those issues raised in the Response Briefs.)
  - (d) Upon the filing of the Reply Brief, or the expiration of the time for doing so if no Reply Brief is filed, the Parties shall submit an AOC Form 280.

**RULE 18: FORECLOSURE MEDIATION PROGRAM**

18.01 Definitions. As used in this Rule 18:

- (a) “Program” means the Franklin County Foreclosure Diversion Program.
- (b) “Mediator” means the person appointed as the Foreclosure Mediator for the Program.
- (c) “Qualifying Foreclosure” means an action seeking as a remedy foreclosure on owner-occupied residential property, or upon property that was owner-occupied following its purchase or construction by a Defendant.
- (d) “Court” means the Franklin Circuit Court.

18.02 Appointment of Mediator. A regularly-practicing member of The Bar of the Court shall be appointed by the Court Judges as the Mediator for the Program.

18.03 General Duties of Mediator. The Mediator shall conduct the Program and assist Plaintiffs and Defendants participating in the program. The Mediator shall conduct meetings between the parties, including mediation, and issue reports and recommendations to the Court.

18.04 Automatic Stay. All proceedings in a Qualifying Foreclosure action shall be stayed upon commencement of the action. No answer or motion shall be required of any defendant subject to the automatic stay until the stay is dissolved as to that defendant or the Court otherwise orders.

- (a) As to each Defendant the automatic stay shall terminate without further order of the Court upon the earlier of:
  - (1) That Defendant’s failure to contact the Mediator within 20 days of service of process upon that defendant and that Defendant’s failure to elect to participate in the Program;
  - (2) The filing and service by the Mediator of notice that after electing to participate in the Program that Defendant has not participated in the Program;
  - (3) The filing and service by the Mediator of notice that mediation of the claims against that Defendant has concluded.
- (b) The automatic stay may be terminated as to any Defendant by order of the Court upon motion by Plaintiff’s counsel to lift the stay.
- (c) Upon termination of the automatic stay as to any Defendant, that Defendant shall have 20 days to answer, move or take any other action required or permitted

under the Rules of Civil Procedure.

- (d) Notwithstanding the termination of the automatic stay under this Rule 18, any Judge of the Court may order any foreclosure case to mediation.

18.05 Plaintiff's Duties Upon Filing Of The Complaint. Upon commencement of a Qualifying Foreclosure Action the Plaintiff:

- (a) Shall file with the Clerk of the Court and cause to be served with each Qualifying Foreclosure Complaint a Notice conspicuously printed on colored

paper containing the following:

- (1) The Mediator's contact information. The contact information may be obtained by the Plaintiff from the Clerk of the Court.
  - (2) A statement that within 20 days of service of process each Defendant may contact the Mediator by telephone, e-mail or in-person to request a mandatory Status Conference.
  - (3) A statement that a Defendant's failure to contact the Mediator within 20 days of service of process will result in dissolution of the automatic stay as to that Defendant without further order of the Court.
- (b) Shall provide to the clerk and cause to be served with each Qualifying Foreclosure Complaint the following forms:
    - (1) A Request for Modification Affidavit (RMA) in the form illustrated at Appendix FM-1 to these rules;
    - (2) Dodd-Frank Certificate; and
    - (3) 4506T-EZ.
  - (c) Shall serve the Mediator with a copy of the Qualifying Foreclosure Complaint.

18.06 Information To Be Provided To Defendants. Upon contact by a Defendant the Mediator shall provide the Defendant with information regarding the Program, including fees, and determine whether the Defendant elects to participate in the Program.

18.07 Notice of Election. If a Defendant elects to participate in the Program the Mediator shall file a Notice of Election with the Court identifying the electing Defendant and provide copies of the Notice to the Plaintiff and all Defendants named in the Qualifying Foreclosure Complaint. Upon filing of a Notice of Election in a Qualifying Foreclosure Proceeding, all papers required to be served shall also be served on the Mediator until

further Order of the Court.

18.08 Status Conference. The Mediator shall schedule a Status Conference once the Defendants alleged in the Complaint to be liable to the Plaintiff on the debt giving rise to the foreclosure have contacted the Mediator, or the Mediator otherwise determines it is appropriate to proceed.

- (a) The Plaintiff and all Defendants electing to participate in the Program shall be required to appear at the Status Conference to explore alternatives to foreclosure.
- (b) The Status Conference shall be conducted by the Mediator no later than 70 days after the earlier of the date service of process on all Defendants is complete, or the date the Mediator determines it is otherwise appropriate to proceed. The Status Conference shall not be scheduled earlier than 10 days after the earlier of the date service of process on all Defendants is complete, or the date the Mediator otherwise determines it is appropriate to proceed.
- (c) At the Status Conference, the parties shall report to the Mediator the progress made in resolving Plaintiff's claims without foreclosure.
- (d) The attorney for any party represented by counsel must appear in person at any Status Conference. The plaintiff or its attorney shall have immediate access (either in-person or telephonically) to the Plaintiff or its agent with full authority to approve or deny an alternative to foreclosure, including a loan modification, deed-in-lieu of foreclosure, short sale, or a forbearance agreement.
- (e) At any Status Conference the Mediator may determine whether to order additional conferences or order other action by the parties.
- (f) At the conclusion of any status conference, the Mediator shall recommend whether to lift the existing stay of the foreclosure proceedings based on parties' good faith in attempting to settle the case without a foreclosure sale.

18.09 Hardship Packet. The Mediator may direct any Defendant allegedly indebted to the Plaintiff to submit a hardship packet to the Plaintiff for Plaintiff's review and action.

- a) The Hardship Packet must be delivered to the Plaintiff, or Plaintiff's counsel if represented, by a Defendant 30 days after the Mediator directs that Defendant to submit a Hardship Packet.
- (b) The Hardship Packet shall include the following:
  - (1) A Request for Modification Affidavit (RMA) in the form shown at Appendix FM-1 to these rules and documents supporting the Defendant or Defendants' reported income;

- (2) A 4506T-EZ form;
- (3) A Dodd-Frank Certificate.

18.10 Plaintiff's Obligations Upon Receipt of Hardship Packet. No later than 14 days after delivery by a Defendant of a Hardship Packet the Plaintiff shall acknowledge receipt of the Hardship Packet and serve on the submitting Defendant one of the following:

- (a) A loan modification or trial payment plan offer; or
- (b) A written notice describing the additional documents required by the Plaintiff to review of the loan for modification or other alternative to foreclosure; or
- (c) A written statement denying a loan modification and a detailed explanation of the reasons Defendant does not qualify for a loan modification.

18.11 Loan Modification Application. Within thirty (30) days after service by a Defendant of a completed loan modification application, the Plaintiff must serve one of the following on the submitting Defendant:

- (a) A written offer of trial or permanent loan modification; or
- (b) A written denial of the application that articulates the reasons for Plaintiff's refusal to modify the loan. The written denial must also explain why other alternatives to foreclosure, including a deed-in-lieu of foreclosure, a short sale, a repayment plan, or a forbearance agreement, are not appropriate.

18.12 Failure to Perform Mediation Agreement. A Plaintiff may request that the Mediator recommend to the Court that a stay be terminated as to any Defendant who fails to perform under any agreement reached through mediation. Upon such request, the Mediator may file a report with the Court recommending that the stay be lifted. The Plaintiff may move the Court to terminate a stay without regard to the Mediator's recommendation, or the necessity of seeking such a recommendation.

18.13 Mediator's Fee. The Mediator's fee of \$300.00 is payable at or before the Mandatory Status Conference.

- (a) One-half of the fee (\$150.00) shall be paid by the Plaintiff(s).
- (b) One half of the fee (\$150.00) shall be paid by those defendants who are alleged in the Complaint to be liable for the debt giving rise to the foreclosure proceeding.

- (c) No additional Mediator fees will be assessed absent good cause (e.g. failure of a party to appear at a status conference or to have the required authority.)
- (d) Plaintiff may not charge the Defendants or the Defendants' account the \$150.00 fee payable by the Plaintiff.
- (e) For good cause, the Court may adjust or reallocate the Mediator's \$300.00 fee based on the time and expense incurred in the mediation, the failure a party to participate in good faith, a Defendant's inability to pay the fee, or other equitable cause.

18.14 Modification or Waiver of Local Rule 18. This local rule governing the Program may be waived or modified in a pending action only by Order of the Court entered following hearing on a motion with notice to all parties and the Mediator. The Mediator may move to waive or modify the local rule governing the Program. Any party to the action or the Mediator may make a motion to modify or waive this local rule in that action.

18.15 Order of Sale. A motion for an Order of Sale must be accompanied by the moving party's certification that:

- (a) The moving party complied with the requirements of Local Rule 18; and
- (b) The Defendant(s) alleged in the Complaint to be liable for the debt giving rise to the foreclosure proceeding elected not to participate in the Program or the mediation was unsuccessful.

**RULE 19: MASTER COMMISSIONER SALES**

19.01. Master Commissioner Approval.

- (a) A copy of all Motions for Judgment and Order of Sale shall be served on the Master Commissioner not less than seven days prior to the motion hour at which the motion is to be heard. Tendered Orders must be in a format approved by the Master Commissioner and the Court. The Judgment and Order of Sale shall not include any requirement that the purchaser be responsible for any specific taxes, but should set out the "current" tax year (being the calendar year in which the Commissioner's sale is confirmed). The format for the Judgment and Order of Sale is provided in Appendix MC-1; however, the Master Commissioner may, if necessary from time to time, amend said sample Judgment and Order of Sale. The Master Commissioner will provide additional guidance for special situations.
- (b) The \$200 AOC fee and, if applicable, proof of compliance with the Franklin County Foreclosure Diversion Program must be submitted to the Court prior to entry of any Judgment and Order of Sale.
- (c) In the event any party has been constructively served, a bond pursuant to CR 4.11



must be obtained and filed before the Deed will be transmitted.

- (d) In addition to other requirements of these Rules, all judgments or orders directing the sale of property by the Master Commissioner, directing the disbursement of monies held by the Master Commissioner or directing the delivery of a deed must be submitted to the Master Commissioner for certification that it complies with these rules and may be rejected if found deficient or not in accordance with all applicable statutes and rules. No Order of Sale will be entered until reviewed and approved by the Master Commissioner. All judgments and orders subject to this provision shall have a signature block for the Master Commissioner to sign evidencing approval by the Master Commissioner.
- (e) Upon receipt of the entered Judgment and Order of Sale and Order Referring Case to Master Commissioner for Judicial Sale, the Master Commissioner will set a sale date. Said sale shall be set for the next sale date or generally within 4-6 weeks of entry of the Judgment. Appraisals are ordered when notice of the sale is given and should be posted on the website within 3-4 business days (<http://franklincomc.com> ).
- (f) In certain circumstances, the Master Commissioner may request a deposit for costs prior to scheduling a sale.

19.02. Time, Place and Terms of Sale.

- (a) The date and time of all sales shall be established by the Master Commissioner. Sales are held on the fourth Monday of each month at 11:30 a.m. unless noticed otherwise. Rescheduled sales shall be set within a reasonable time after receipt of the Court's order. Unless otherwise ordered and advertised, all sales shall be conducted in the conference room inside the front door of the Franklin County Judicial Center at 669 Chamberlin Avenue, Frankfort, Kentucky, upon the terms and conditions set out in the sample Judgment and Order of Sale attached as Appendix MC-1, and the Notice of Sale attached as Appendix MC-2, or as amended after approval of the Court.
- (b) The Master Commissioner may schedule multiple sales for the same date and time and conduct the individual sales sequentially. The Master Commissioner may announce the terms of the judicial sales once at the beginning of all sales to be held on that day.

19.03. Deposit - Resale if Not Made. Except where otherwise ordered by the Court, the cash deposit specified in the order or judgment of sale shall be made immediately in every case. If the deposit is not made immediately, the Master Commissioner shall reject the bid and resell the property forthwith. In making such resale, the Master Commissioner shall receive no bid from the rejected bidder. Deposits made to the Master Commissioner shall stop interest on the bid to the extent of any deposit as of the date of payment to the Master Commissioner.

- 19.04 Proceeds from Sale of Real Estate. The Master Commissioner shall collect the proceeds from sales and upon appropriate orders distribute same or a portion thereof to parties as approved by the Court. All remaining funds shall be held by the Master Commissioner pending appropriate orders of the Court.
- 19.05 Confirmation of Report of Sale. After making the sale the Master Commissioner shall report his actions to the Court with service on all parties not in default. Thereafter, the Master Commissioner will file the Motion to Confirm and attach draft copies of the Order Confirming Sale, Deed and Order of Distribution. Approximately two weeks after the filing and service of the Report of Sale and Motion to Confirm, if no objections have been filed thereto, the sale shall be confirmed. A copy of the Order Confirming Sale and Order of Distribution shall be served upon all parties not in default and upon the purchaser.
- 19.06 Fees of the Commissioner. The Master Commissioner shall be entitled to those fees set forth in Part IV of the Administrative Procedures of the Court of Justice.
- 19.07 Order of Distribution.
- (a) Orders requiring distribution of funds held by the Master Commissioner shall set forth all amounts collected, identify the proper recipient(s) and the specific amounts due each under the judgment or order. Within five days of receipt of the Master Commissioner's Report of Sale, the Plaintiff or other party entitled to proceeds from the sale, shall deliver to the Master Commissioner a final statement of all monies due the Plaintiff (or the party obtaining judgment) so that the Master Commissioner can complete the Order of Distribution.
  - (b) If disbursements are to be made to taxing authorities, the Master Commissioner will request payoffs from the taxing authorities and set out the amount(s) due in the Order of Distribution. Costs due in cases requiring payment to taxing authorities must be paid to the Master Commissioner at least seven days prior to the due date of said taxes as shown on the Order of Distribution, giving the Master Commissioner's office sufficient time to pay the bill(s) with the amount(s) listed in the order, which payments will be made by regular U.S. Mail. In the event a sale does not generate sufficient funds to pay all liens properly before the Court, the Master Commissioner shall prorate the amounts due to the appropriate parties and set out said proration on the Order of Distribution.
- 19.08 Appraiser's Fees.
- (a) In residential sales where an appraisal is required, the fee of each appraiser shall be \$125.00, unless otherwise ordered by the Court. Appraisal fees for residential sales when the Judgment amount is in excess of \$200,000.00, shall be \$200.00 unless otherwise ordered by the Court.

- (b) In the event a sale is canceled and rescheduled within four months of the original sale date, a new appraisal will not be required. However, a fee of \$50.00 shall be paid to one appraiser for the re-posting of the Notice of Commissioner's Sale pursuant to the Judgment. In the event a sale is canceled and not rescheduled within four months, an updated appraisal will be requested at an additional fee of \$75.00 to each appraiser (up to one year from the original appraisal).
- (c) Appraiser's fees for commercial, farm and other sales shall be set by the Court upon recommendation from the Master Commissioner.
- (d) Appraiser's fees shall be paid from the proceeds of sale.

#### 19.08 Cancellation of Sales.

- (a) The Master Commissioner, upon receipt of a written request from the Plaintiff received by the Master Commissioner's office no later than 10:00 am EST on the day of the sale by mail, fax or e-mail and written confirmation from the Master Commissioner, may postpone any Court ordered sale for good cause shown. In the event of postponement prior to sale, the Master Commissioner may immediately move the Court for payment of costs incurred prior to postponement in accordance with Part IV of the Administrative Procedures of the Court of Justice. In cancellations due to a bankruptcy filing, the sale may be canceled up to the time of the actual sale.
- (b) No sale will be rescheduled by the Master Commissioner without the Plaintiff making a motion to reschedule the sale, with proper notice of the date and time of the hearing on the motion to the Master Commissioner and parties.
- (c) The Master Commissioner will notify counsel for the Plaintiff (or the party obtaining Order of Sale) prior to advertising the sale that the Master Commissioner is ready to proceed with notice of the Master Commissioner's intent to proceed with the sale. If the judgment holder requesting the sale directs the Master Commissioner to proceed with the sale but subsequently cancels the sale prior to the actual sale date without good cause, the costs incurred in connection with the sale shall, upon order of the Court, be borne by said party and not charged back to the defendant or added to the judgment.

#### 19.09 Acceptance of Written Bids From Plaintiff.

- (a) The Master Commissioner, upon receipt of written notice by mail, fax or e-mail from the Plaintiff received no later than 4:00 pm EST on the last business day immediately preceding the sale date, will accept one written bid from the Plaintiff or party requesting the sale only. It is the responsibility of said party to confirm the Commissioner's receipt of said bid.
- (b) Unless confirmed by the Master Commissioner, said bid shall not be binding on

the Master Commissioner or the Court. Master Commissioner will not accept instructions or written bids directing that the sale be withdrawn or canceled in the event local counsel or a representative of the lender fails to appear at the sale.

- 19.10 Information Provided on Website. The Master Commissioner may maintain a website setting out the terms of sale and a list of all pending sales including the names of the parties, the property address and brief legal description, the date of the sale and the amount of the appraisal. However, this is for the convenience of the public, and the terms of the Orders of the Court and those announced by the Master Commissioner at the time of the sale shall control. The results of the sale may be posted to the website within 24 hours of the sale, or as soon thereafter as possible.

**RULE 20      EFFECTIVE DATE AND REPEAL OF PRIOR RULES**

- 20.01 These rules shall apply to all actions pending in this Court after the date of approval by the Chief Justice of the Supreme Court of the Commonwealth of Kentucky.

- 20.02 All previous Rules of this Court are repealed.

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Phillip J. Shepherd, Judge, Division I, Franklin  
Franklin Circuit Court

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Thomas D. Wingate, Division II,  
Franklin Circuit Court

**APPENDIX MC-1  
SAMPLE JUDGMENT AND ORDER OF SALE  
FOR MASTER COMMISSIONER'S SALES**

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION \_\_\_\_\_  
CIVIL ACTION NO. \_\_\_\_\_

\_\_\_\_\_

PLAINTIFF(S)

VS.

**JUDGMENT AND ORDER OF SALE**

\_\_\_\_\_

DEFENDANT(S)

**[LIST ALL PARTIES]**

\* \* \* \* \*

This matter came on to be heard on the Motion of the Plaintiff for a Judgment and Order of Sale against the Defendant(s), this Court having reviewed the pleadings and affidavits filed herein, it appearing to the Court that all necessary parties have been properly served according to the law and are properly before the Court, and, if applicable, have complied with the Franklin County Foreclosure Diversion Program, and the Court being otherwise sufficiently advised; IT IS ORDERED AND ADJUDGED that:

1. The allegations contained in the Complaint are true and that as of \_\_\_\_\_, there is due and owing to the Plaintiff, from the Defendant, \_\_\_\_\_, upon the promissory note as set forth in the Complaint the following sums:

for which total amount personal/in rem judgment is hereby rendered in favor of the Plaintiff and against the Defendant(s), \_\_\_\_\_, together with interest at the rate of \_\_\_\_\_ (\$\$/% per diem/per annum) from the above date until paid plus late charges, advances for taxes and insurance, and its costs herein expended, including a reasonable attorney fee and for any other fees expended for services performed in connection with the Defendant's default and for the purposes of protecting Plaintiff's interest in the property and its rights under the mortgage instrument.

2. To secure payment of its judgment set forth in Paragraph 1, the Court finds that said promissory note is secured by a certain mortgage of which the Plaintiff is the owner and holder, which mortgage constitutes a valid first mortgage upon the real estate owned by the Defendant, \_\_\_\_\_, which real estate is located at \_\_\_\_\_ [street address], Frankfort, Kentucky 40601, and is more particularly described in the attached **Exhibit A** [include legal description and COMPLETE source of title].

3. Plaintiff's lien(s) shall be enforced and to that end, the property described herein

shall be sold. The purchaser at the Commissioner's sale shall take said real estate free and clear of the claims of the parties to this action, but it shall be sold subject to:

- a. All state, county and city, if any, real estate taxes affecting said real estate for the **current tax year** and all subsequent tax years;
- b. Easements, restrictions and stipulations of record;
- c. Assessments for public improvements levied against the property;
- d. Any facts which an inspection and accurate survey of the property may disclose.
- e. Liens or claims of those not a party hereto and which are not properly before the Court.

4. The Court further finds that the real estate is indivisible and cannot be divided without materially impairing its value and the value of Plaintiff's lien thereon and shall be sold as a whole, subject to those items set out in Paragraph 2 (a), (b), (c), (d) and (e) above, but free and clear of all other liens and encumbrances of all parties properly before the Court, and all liens and/or interests arising by virtue of instruments which are recorded in the Franklin County Clerk's Office, or otherwise arise, after the recording of the Plaintiff's lis pendens notice, but the Plaintiff shall not be deemed to have warranted title to any purchaser. The purchaser shall be responsible for the real estate taxes either due and payable at the time of the confirmation of the sale or to be due in said tax year, but shall be not responsible for any delinquent real estate taxes.

5. In making the sale, the Master Commissioner of this Court shall follow the directions and the sale shall be made on the terms specified in the local rules of the Franklin Circuit Court.

6. The Master Commissioner shall have the real estate appraised under oath by two (2) disinterested, intelligent housekeepers of this county, and said appraisals shall be made in writing, signed by those individuals and reported to this Court pursuant to KRS 426.520.

7. The Master Commissioner of this Court shall sell at public sale the real estate described herein, in the conference room inside the front door of the Franklin County Judicial Center located at 669 Chamberlin Avenue in the City of Frankfort, Franklin County, Kentucky, after advertising the time, terms and place of sale by written notice posted, one on the public bulletin board outside the conference room inside the front door of the Franklin County Judicial Center, and two on or near the property for fifteen days next preceding the date of sale and advertising, also by publication in *The State Journal*, a newspaper of general circulation, once a week for three successive weeks. Said notice and publication shall set forth the description of the real estate and give the time, terms and place of sale. The sale shall be made to the highest and best bidder and the sale shall be for cash, or in the alternative, the Master Commissioner will take from the purchaser, ten percent of the purchase price in cash, due and payable at the time of sale, and the balance due and payable in thirty (30) days, with the purchaser to be required to

execute bond with surety thereon to be approved by the Master Commissioner to secure the unpaid portion of the purchase price. Said bond shall bear interest at the rate of 12% per annum from the day of the sale until paid in full and shall have the same force and effect as a Judgment and shall remain a prior and superior lien on the property until fully paid. In the event that the Plaintiff of secondary lien holder is the successful purchaser, it shall be entitled to a credit of its judgment against the purchase price and shall only be obligated to pay court costs, the fees and costs of the Master Commissioner and any real estate taxes payable pursuant to this Order.

It is further provided that if the property sold includes insurable improvements, the successful bidder at the sale shall, at bidder's own expense, carry fire and extended insurance coverage on said improvements from the date of sale until the purchase price is fully paid in the amount of the Court's appraised value of said improvements or the amount of the unpaid balance of the purchase price, whichever is less, at a minimum, with a loss payable clause to the Master Commissioner of the Franklin Circuit Court and the Plaintiff herein. Failure of the purchaser to obtain such insurance shall not affect the validity of the sale or the purchaser's liability thereunder, but shall entitle, but not require, any party adjudicated an interest in the real estate, after giving notice to the Master Commissioner, to effect said insurance and furnish evidence of the policy to the Master Commissioner. The premium on the insurance policy shall then be charged to the purchaser as a purchaser's cost.

The Master Commissioner shall serve written notice on the Attorney for the Plaintiff of the time and date of sale, not less than three (3) weeks prior to the date of the sale.

8. The Defendant(s), after the sale, or any person holding under them, are no longer entitled to possession of the property, and the Defendant(s) or any persons holding under them are ordered to vacate the premises upon confirmation of the sale.

9. The Master Commissioner, upon confirmation of the sale, shall pay from the proceeds of said sale, upon the claims herein found, the amounts thereof in the following order of priority as determined by the Court:

- A. To the costs of this action;
- B. **To the full satisfaction of any liens for delinquent ad valorem taxes assessed against the real estate;**
- C. To the full satisfaction of the judgment of Plaintiff granted herein in Paragraph 1; and
- D. The balance of the sale proceeds, if any, shall be held by the Master Commissioner until further Order of this Court.

10. This action is retained on the Court's docket for such further Orders and proceedings as may be necessary to effect said sale.

11. This is a final judgment and there is no just reason for delay. Pursuant to CR

77.04, the Circuit Clerk shall serve Notice of Entry hereof.

**Review and Approval of the Master Commissioner.** I, Charles E. Jones, Master Commissioner of the Franklin Circuit Court, have reviewed the foregoing and approve same for entry by the Court.

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Charles E. Jones  
Master Commissioner

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Judge, Franklin Circuit Court

Prepared by:

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Attorney for Plaintiff

DISTRIBUTION LIST:



**APPENDIX MC-2**

**SAMPLE NOTICE OF SALE**

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
CIVIL ACTION NO. \_\_\_\_\_  
DIVISION \_\_\_\_

\_\_\_\_\_

PLAINTIFF

vs.

**NOTICE OF COMMISSIONER'S SALE**

\_\_\_\_\_

DEFENDANTS

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By virtue of a Judgment and Order of Sale entered in the above-styled action on \_\_\_\_\_, I will sell the hereinafter described real estate at public auction from the conference room inside the front door of the Franklin County Judicial Center, 669 Chamberlain Avenue, Frankfort, Kentucky, on or about the hour of 11:30 am, on Monday, \_\_\_\_\_, to the highest and best bidder. The property to be sold is located at \_\_\_\_\_, Frankfort, Kentucky 40601, and is more particularly described as follows:

**LEGAL DESCRIPTION**

Being the same property conveyed to \_\_\_\_\_, from \_\_\_\_\_, by Deed dated \_\_\_\_\_, recorded \_\_\_\_\_, in Deed Book \_\_\_\_, Page \_\_\_\_, in the Office of the Franklin County Clerk.

Said sale is being made for the purpose of satisfying the lien of the Plaintiff in the amount of \$\_\_\_\_\_ plus interest from \_\_\_\_\_ at the rate of \_\_\_\_\_ per annum/diem, attorney fees and costs, and such other liens as may be shown to exist thereon, including any lien for delinquent ad valorem property taxes, provided, however, that the purchaser shall be required to assume and pay all ad valorem property taxes falling due during the current tax year and thereafter.

The purchaser shall be required to pay a cash deposit of ten percent (10%) of the purchase price at the time of public auction, except that said deposit shall be waived if the Plaintiff is the successful bidder at the sale, with the balance, *plus interest at the rate of twelve (12%) percent per annum from date of the public auction*, to be due in thirty (30) days. Purchaser will be required to execute a bond covering the balance of the purchase price with

surety thereon to be approved by the undersigned, said bond bearing interest at the rate of 12% from date of public auction until paid and having the same force and effect as a Judgment and to remain a prior and superior lien on said property until paid.

However, the purchaser shall have the privilege of paying all or any part of the purchase price in cash, or paying said bond before maturity, by paying the principal amount thereof, together with all interest accrued thereon to date of such payment.

Possession of the property shall pass to the purchaser upon delivery of deed. All bidders should be prepared to comply promptly with the foregoing terms.

The aforesaid property shall be sold free and clear of all liens and encumbrances except the following:

- a. All state, county and city, if any, real estate taxes affecting said real estate for the current tax year and all subsequent tax years;
- b. Easements, restrictions and stipulations of record;
- c. Assessments for public improvements levied against the property;
- d. Any facts which an inspection and accurate survey of the property may disclose.
- e. Liens or claims of those not a party hereto and which are not properly before the Court.

For further information, see the Final Judgment and Order of Sale and pleadings of record in the Office of the Circuit Court of Franklin County.

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CHARLES E. JONES  
MASTER COMMISSIONER  
FRANKLIN CIRCUIT COURT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Commissioner's Sale was served via first-class mail, postage prepaid, on this \_\_\_\_ day of \_\_\_\_\_, on:

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CHARLES E. JONES