

FORECLOSURE CLIENT CHECK LIST

- **Court Documents.** Copy of Docket, Complaint, any applicable motion that needs a response, and date homeowner was served the Complaint or when applicable motion was filed to calculate due date. This information can be found at the Montgomery County Common Pleas Court Website: www.clerk.co.montgomery.oh.us/pro/ While looking through the court filings, look to see if other foreclosures have been filed against the homeowner in the past on the same property. It is always interesting to see who the plaintiff is and what documentation is included with the Complaint and compare this with the current foreclosure action. If standing is an issue, you will want to bring to the court's attention the prior filings by other parties through the facts in the Answer. Also, res judicata precludes filing a foreclosure action,¹ if this last foreclosure filing is: the third filing; the loan has never been reinstated; homeowner has never paid another payment; and the prior two dismissals were voluntary dismissals under Rule 41(A)(1).

- **Documents.** Homeowner's documents involved in the purchase or refinance of the home. This can include multiple different types of documents, for example the homeowner may have been given preapproval letters for one type of loan and then was provided another. In general, the closing documents typically include: loan application; HUD-1 (shows breakdown of money paid, loan amount, and interest rate); Good Faith Estimates (estimate of how HUD-1 will look at closing); Truth in Lending Disclosure Documents (may only be with a refinance-provides breakdown of payments over the history of the loan, the Annual Percentage Rate, Finance Charges, which is the cost of the loan, Amount Financed, and Total amount of the payments over the life of the loan); and the Notice of Rights to Cancel (if a refinance). The terms of the Note and Mortgage rule when the debt can be accelerated and a foreclosure filed. Usually, the Note waives the right to Notice of default and opportunity to cure, but the Mortgage usually requires that notice of default and opportunity to cure be given before a foreclosure action can be filed—this is typically at paragraph 22. This is a condition precedent to filing the foreclosure. If it is not given, a foreclosure action cannot be filed. In general, the Note and Mortgage are separate contracts with separate remedies.² The Note allows for collection of the debt and is a legal action. The Mortgage is an interest in land is what allows for the equitable remedy of foreclosure. In looking to the terms of the Mortgage, you will also want to see if MERS is appointed nominee/mortgagee. Principle/agency law issues can be raised in regard to a Mortgage Assignment when MERS is acting as nominee. It can be argued that MERS did not receive instruction from the principle to assign the Mortgage.³ We sometimes raise in the Answer that appointing MERS as

¹ *U.S. Bank v. Gullotta*, 120 Ohio St. 3d 399 (Ohio 2008).

² *See: Fifth Third Bank v. Hopkins*, 177 Ohio App.3d 114 (9th Dist. 2008); also *See: Merit Brief of Amici Curia Advocates for Basic Legal Equality in U.S. v. Duvall*, 2011-Ohio-0218 (Ohio 2011) dismissed for mootness September, 2011(discussion of the difference between a Note and Mortgage with case law citations).

³ *See: Landmark National Bank v. Kesler*, 216 P.3d 158, 166 (Kan. 2009)(talks about MERS role as nominee and

nominee/mortgagee is an unconscionable adhesion term⁴, because the homeowner had no meaningful choice and it unreasonably favors the original lender. This term allows the original lender to no longer be responsible for keeping the chain of title clear and makes no one responsible for keeping the title clear, which also makes it against Public Policy⁵ as an unreasonable restraint on the title. Also, the mortgage typically provides for a right to reinstate the mortgage, even after foreclosure has been filed. We usually raise this in the context of the RSS funding (Ohio's Hardest Hit Fund program). The RSS funding provides funds to reinstate the mortgage. The argument is that the Plaintiff has a duty to negotiate the right to reinstate in good faith by allowing the RSS funding process to take place.

- **FHA/RHS/VA or what type of loan is this.** Is this a governmental backed loan? Each of these types of loans provide for condition precedents that must be complied with before a foreclosure action can be filed. Also, we raise as an affirmative defense that "Plaintiff's claims are barred by the National Housing Goals under 42 U.S.C. §1441. Government backed loan administrators must abide by the National Housing Goals of the "realization as soon as feasible the goal of a decent home and suitable living environment for every American family . . ." Additionally, if it is a Fannie Mae or Freddie Mac there may be certain options out there, such as a HARP refinance (client would have to be current on the mortgage payments, however). In addition, the guidelines may require that the Note be endorsed. If the loan is an FHA or VA, it is apparent on the note and mortgage. It will state it on top or in the corner. A Rural Housing loan may be harder to determine. Also, a downside of a government back loan, there will be no opportunity to offer a short payoff of the loan. It is against governmental policy.

- **Refinance or Purchase.** If refinance, check closing date to see if refinance occurred within three years. If within three years and after reviewing the closing documents the Homeowner did not receive the correct number of Notice of Rights to Cancel (each homeowner is required to receive two copies), then send Rescission letter to loan originator, servicer, current owner of loan, and if in foreclosure, the plaintiff's attorney invoking right to rescind. Note: there are other reasons that a Homeowner may have the right to rescind, but it requires a Truth in Lending (TILA), 15 U.S.C. §§1601-1666j and Homeownership and Equity Protection Act (HOEPA), 15 U.S.C. §1639 analysis, which is a specialized analysis. See: Attachment 1, an example of a Rescission Letter. If not within three years, but there would have been a right to rescind after a review of the closing documents, can raise a recoupment claim defensively in the Answer.

compares to principle/agency law).

⁴ *Wascovich v. Personacare of Ohio, Inc.*, 2010-Ohio-4563π25 (11th Dist.)(string citations omitted).

⁵ *Board of Education of the City School District of the City of Cincinnati v. Connors*, 2011-Ohio-1084,π6-7 (1st Dist.) (string citations omitted).

- **Qualified Written Request.** For servicing information or to alert a servicer about an error send servicer (at the designated QWR address; after January 10, 2014 required to provide address on mortgage statements/coupon book and website, if have a designated address for QWRs). Under the Real Estate Settlement Procedures Act (RESPA) 12 U.S.C. §§2601-2617, before January 10, 2014, the lender/servicer has 20 days to acknowledge receipt of the request (unless the action is taken within that time period) and 60 days after receipt to (1) make appropriate corrections in the account of the borrower; or (2) after conducting an investigation, provide borrower with a written explanation or clarification, including reasons why account is correct and name and telephone number of person who can assist borrower. After January 10, 2014, the QWR is split into two categories: Notice of Error (Federal Regulations §1024.35) and Request for Information (Federal Regulations §1024.36). Servicer has 5 business days to acknowledge request or notice of error and 30 business days to respond. Servicers can request a 15 day extension if notifies borrower of the extension and the reasons. Failure to comply provides individuals with actual damages as a result of the failure and any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance, in an amount not to exceed \$1000 (before January 10, 2014) not to exceed \$2000 after January 10, 2014. Reasonable attorney fees may be awarded as well. See: Attachment 2, an example of a QWR (used before January 10, 2014).

- **Homeowner Bankruptcy History, if any.** Filing bankruptcy may be an option for the homeowner and you will want to coordinate it with the foreclosure for the best outcome. We regularly refer clients to a bankruptcy attorney for homeowners to explore their options. Typically, bankruptcy attorneys provide a free initial consultation and in some instances, legal aid may assist the homeowner in bankruptcy.

- **Homeowner's Story.** Have homeowners tell the story of their closing and make note of anything unusual. Since, homeowners may have trouble remembering what exactly happened at closing, it is helpful to have the loan application and closing documents as ways to trigger memory. For example, the loan application may have the homeowner applying for fixed rate, but the actual loan is adjustable; ask what happened and what they knew about the final loan at the closing and when signing. You will also want to find out if the homeowner has sought help from the servicer and whether the servicer has been responsive. For example, is the servicer working with the homeowner to reinstate the loan or otherwise settle the default. There are defenses that can be raised if the servicer has been giving the homeowner a hard time such as: failure to mitigate damages; failure to act with equity, so not entitled to equitable remedy of foreclosure⁶; intentional infliction of emotional distress; breach of contract; promissory estoppel; equitable estoppel; contract breach for failure to negotiate in good faith right to reinstate; (Note that Ohio Supreme court recently found that servicers are not covered by the Consumer Sales Practices Act⁷).

⁶ See: *PHH Mortgage Corporation v. Barker*, 190 Ohio App.3d 71 (3rd Dist.)(homeowners made a good faith effort to reinstate loan, but Plaintiff obfuscated the situation making it impossible for the homeowners to reinstate. Court found that equitable principles made foreclosure an inappropriate remedy and it reinstated homeowner's mortgage).

⁷ See: Ohio Rev. Code § 1345, (Note: whether a Servicer is not covered by this act according to *Anderson v. Barclay's Capital Real Estate, Inc.*, 136 Ohio 31, 989 N.E.2d 997, 2013-ohio-1933.)

- **Fair Market Value of Home.** Research fair market value of home at time of refinance or purchase and current fair market value. Go to auditor's site for past and current tax assessed value. www.mcauditor.org Check listings in area to find out how much houses are being listed or recently sale prices. www.realtor.com; www.zillow.com; www.trulia.com Also, it is helpful to see the property by using Google Map to tour the street. www.googlemap.com We are not sure how old the pictures are from Google, so ask homeowner what the condition of the neighborhood is currently. For example ask the homeowner whether there boarded up houses or houses for sale in the area. Also, ask what homes are selling for in the homeowner's area.

- **HAMP (Home Affordable Modification Program).** Has the client applied for a modification through HAMP before the foreclosure was filed? If so, Supplemental Directive 10-01 provides a reminder that under HAMP, a case should not be referred to foreclosure while it is in the HAMP process. You will want to find out where the client is in this process. If filed foreclosure while still in process, a claim can be raised that the principles of equity do not allow the plaintiff to foreclose, because a TARP recipient has to follow HAMP directives. You can see if the plaintiff is a TARP recipient by going to <http://banktracker.investigativereportingworkshop.org> and search for TARP recipients. Also, if a foreclosure has been filed and then the client applies for HAMP, Supplemental Directive 09-01 provides that the foreclosure case should not proceed to foreclosure sale until the borrower has been evaluated for the program. In this situation, you may want to file a Stay of the foreclosure proceedings while the client is being evaluated for HAMP. Also, if the homeowner completed a trial payment plan for a HAMP homeowner has a right to be offered a permanent loan modification⁸.

- **Request Mediation.** In Montgomery County, Mediation might stop the pending foreclosure action and give the Homeowner the opportunity to negotiate with someone who has the ability to make a decision. (Note: over the years, mediation in Montgomery County has become very watered down and administratively blocked). Montgomery County has its own mediation request form online. But in general, when asking for mediation, in the mediation request/answer reference homeowner's attempts at trying to resolve the matter. You will need to find out from homeowner what steps she/he has taken to resolve the matter. For example, applied for loan modification, sent in money as part of temporary loan modification, but then was denied permanent loan modification for no reason. Also, can include information about how unconscionable the original terms are and should be modified or corrected. See, Attachments 3&4, Mediation Request Sample and Mediation Order Sample. In Mediation, can request some of the possible options: loan modification, short payoff (payoff loan for less than what is owed on the loan), deed in lieu with cash for keys (money in exchange for the house keys), no deficiency judgment⁹ (will not seek judgment for the loan amount less

⁸ *Corvello v. Wells Fargo Bank, N.A.*, Slip Op. No. 11-16234, 11-16242 (9th Cir. August 8, 2013) (Note on that September 23, 2013 the very strong language in favor of the homeowners by the concurrence was withdrawn for some reason).

⁹ If the loan is a refinance there may be tax consequences for waiver. But there are defenses to this, one of which is insolvency (more debts than assets). You should refer your client to a tax attorney for this issue. We suggest requesting waiver upfront, since if the bank writes off the loan down the road your client may be in a better position

than what it actually is worth), clear trade line (delete negative credit history in regard to the loan) or short sale (sell for less than what is owed on the loan) with cash for keys, no deficiency judgment, clear trade line. Can also ask for a forbearance (pay lower amount for a temporary period of time) or a partial claim (if it is an FHA loan), which is where the client receives a line of credit to cover arrearage or a moratorium (if it is a RHS loan). Also, can use Ohio's Hardest Hit Funds to settle the matter (if homeowner qualifies). Keep in mind that there may be other resolutions that have not been included in the above that would resolve the matter to your client's benefit.

Plaintiff as Trustee. If Plaintiff is a trustee, review Pooling and Servicing Agreement (PSA). Here is the link for finding pooling and servicing agreements: <http://www.sec.gov/edgar/searchedgar/companysearch.html>

Once at the site, type the trust name (like for example "Argent Securities" or "Series 2005-W5") and be sure that the circle "contains" is marked and not the "starts with." Once you find the trust, you then look in the documents labeled 8-K, sometimes there are several 8-K's you have to open to find the pooling and servicing agreement. The closing date will be in the definitions part of the trust, usually the very first section. The section relating to acquisition of mortgages will be 2.1 through 2.3.

In the PSA, look to what parties that Note and Mortgage were required to pass through in order to be acquired by the Trust. All these different transactions will be required to have receipts and warranties documenting the transfers. Also, the PSA will provide a closing date, which usually is the start-up date under the regulations that provide the tax benefit to the trust. This is referred to as a REMIC "real estate mortgage investment conduit." 26 U.S.C. §860D The REMIC regulations provide what loans can be acquired and the time frame by which the Trust needs to have acquired them. Look to the definitions in the PSA for the closing date and start up date, which usually are the same day. PSAs are written to comply with REMIC requirements, because then and only then do the Trusts receive the tax benefits. Look to 26 USC Section 860G for definitions such as "Qualified Mortgages" and "Qualified Replacement Mortgages" to understand when a loan would need to be acquired by the Trust in order to get the tax benefit. The point is to argue that the Plaintiff needs to provide evidence of when the loan was acquired. And, it would be unreasonable to believe that the Trust would risk its tax benefit status to acquire a loan that did not follow REMIC Regulations.

Note that the Third District recently discussed Trusts, Trustees and Pooling and Servicing Agreements in *Wells Fargo Bank, N.A. v. Freed*, 2012-Ohio-5941(3rd Dist.). The Court in *Freed* found that the Trustee Plaintiff's power to enforce the note derived from the terms of the Pooling and Servicing Agreement. *Id.* at ¶28-¶30. Also, it can be argued that Trustee has a duty under the law to comply with PSA under trust principles generally¹⁰.

then and may not have the insolvency defense available.

¹⁰ *Schafer v. RMS Realty*, 138 Ohio App.3rd 244 (2nd Dist. 2000)("A trustee is held to something stricter than the morals of the market place. Not honest alone but the punctilio of an honor the most sensitive, is then standard behavior."), quoting Judge Cadozo in *Labovitz v. Dolan* (1989), 189 Ill.App.3d 403, 545 N.E.2d 780.

- **Standing to File Foreclosure.** In order to file a foreclosure action, the Plaintiff must have standing (have an injury in fact) at the time the Complaint is filed.¹¹ The Ohio Supreme Court recently made clear in *Federal Home Loan Mortgage Corporation v. Schwartzwald*, 2012-Ohio-5017 that standing in a foreclosure action cannot be cured by later obtaining an interest in the note and mortgage. Standing must exist at the time of filing, otherwise the case must be dismissed without prejudice. (Note: Many Ohio appellate cases coming down interpreting the meaning of *Schwartzwald* standing. Research the cases in your district to know what is binding for your case.) In determining whether there is standing, ask the following questions: Did Plaintiff originate the loan? Is there a Note attached to the Complaint? Is the Note endorsed either to the Plaintiff or in blank?¹² Is there an Assignment of the Mortgage?¹³ Main questions for standing: Who is filing? What is used to support filing? How did Plaintiff obtain right to file? Also, will want to search Montgomery County Recorder's site to see what mortgages, releases, and assignments have been filed with the Montgomery County Recorder. www.mcrecorder.org (Note: you will have to set up a login name and password to see the documents that have been filed). Also, it is good to see if there are any past foreclosure actions to see who the Plaintiff was and what was included with the complaint.)

- **Liens on the Property.** Go to the Montgomery County Recorder's site for this information as well. Check to see if the Plaintiff's lien has not been released and what position is the lien. For example, is the Plaintiff the first lien holder? If only one spouse is on the Note, you will also want to see if both signed Mortgage. If other spouse did not sign Mortgage then there is not a lien on his/her interest. A spouse has the possibility of two types of interests—legal (if on deed) and dower right just by being married. If not on deed, a spouse can sign with the qualification “releasing dower right” and that puts a lien on his/her dower right. As for judgment liens, may want to consult a bankruptcy attorney about whether these liens can be released through filing bankruptcy.

- **Homeowner's Goal.** Find out homeowner's goal after discussing options and reality of the situation. In order to do so, good to know what homeowner's budget is and what credit looks like. **HomeOwnership Center of Greater Dayton** (937-853-1600) good for putting this together and an HOC can be utilized for finding out other possible outcomes: funding for short payoff (some lenders will accept around 10% of loan amount as payoff for loan) or to bring account current; filling out loan modification applications and deed in lieu requests; short sales; refinance options; and other loan possibilities, like lines of credit; and most importantly, will review eligibility for Hardest

¹¹ *Federal Home Loan Mortgage Corporation v. Schwartzwald*, 2012-Ohio-5017; Article I, §16.

¹² See: *HSBC Bank USA, N.A. v. Thompson*, 2010-Ohio-4158 (2nd Dist.) (No standing, since did not have a mortgage assignment and no Note endorsement); *H&S Financial, Inc. v. Davidson*, 2011-Ohio-4290 (2nd Dist.) (decided August 26, 2011) (caption statement regarding “successor in interest” is not evidence of standing); *Bank of Am., N.A. v. Miller*, 194 Ohio App.3d 307 (2nd Dist.) (copies of merger documents are not self-authenticating).

¹³ Statute of Frauds, Ohio Rev. Stat. § 1335.04 (1953), requires that to transfer an interest in land it must be in writing and signed by an authorized party. See: *Keybank Natl. Assn. v. Estate of Wright*, 2006-Ohio-4643π22;π24 (6th Dist.), citing, R.C. 1335.04, *Douglas v. Gatts*, 8 Ohio App.3d 186, 187 (1982), citing *Campbell v. Sidwell* 61 Ohio St. 179 (1899), *Webb's Admr. v. Roff*, 9 Ohio 430 (1859); and citing R.C. 5301.31.

Hit Funds and if qualify, will apply for funds.

- **Client Savings Account.** Have client set aside money in the amount of the mortgage payment or the amount they are attempting to reduce the mortgage payment into your IOLTA account. You can use this to show the court that the Homeowner is still paying the mortgage essentially. Many times the court gets clouded by the thought that homeowners are not paying their mortgages “victimizing” the poor, poor bank.
- **Main point is to know what client wants coupled with the reality of the situation. All the above information is a way to figure out these two components.**

QUALIFIED WRITTEN REQUEST

Date:

**To: Bank of America, N.A.
Qualified Written Requests
P.O. Box 942019
Simi Valley, CA 93094-2019**

**Permanent Parcel #: R72-10602-0075
Property Address: 500 Harriet Street, Dayton, Ohio 45417
Borrower: Jane Doe**

This letter is a Qualified Written Request as defined under the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(e).

NOTICE: You must acknowledge receipt of this qualified written request within 20 business days, pursuant to 12 U.S.C. Section 2605(e)(1)(A) and Reg. X Section 3500.21(e)(1). And most importantly, within 60 days from the receipt of this request, you must provide the requested information or an explanation of why the information requested is unavailable or cannot be obtained under 12 U.S. C. Section 2605(e)(2)(c), or to the extent applicable, provide a written explanation or clarification of the reasons for which you believe the borrower's account is correct as determined by you or make the appropriate corrections to borrower's account under 12 U.S.C. Section 2605(e)(2)(A)&(B). Failure to comply with this law will result in damages and costs available under 12 U.S.C. Section 2605(f). This includes actual damages and any additional damages that the court may allow, along with costs of the action together with any attorney fees incurred.

This Qualified Written Request is being made in regard to the above referenced property. Please, provide me the following information within 60 days of the receipt of this request:

1. Any and all loss mitigation options offered to me either orally or in writing from the origination of the loan to the present. Please, provide a description of what was offered, the date of when this was offered, and the outcome.
2. Any and all loss mitigation options in which you are currently reviewing my eligibility. Please, provide the date review began and description of loss mitigation option.
3. Any and all loss mitigation options in which it was determined that I do not qualify from the date of the loan origination to the present. Please, provide the date of denial, form denial was present to me, reason for the denial, and description of the loss mitigation option.
4. A complete and itemized statement of the interest rate percentage being charged to the principal balance of the loan from the date of the loan to the date of this letter.
5. Any and all Broker Price Opinion conducted on the property that is the subject of this request. Please, provide date BPO was conducted and estimated value of property.
6. A copy of the original note and mortgage documents.
7. A copy of all assignments of the mortgage.
8. A copy of all loan modifications.
9. A complete and itemized statement of the loan history from the date of the loan to the date of this letter including, but not limited to, all receipts by way of payment or otherwise and all charges to the loan in

whatever form. This history should include the date of each and every debit and credit to any account related to this loan, the nature and purpose of each such debit and credit, and the name and address of the payee of any type of disbursement related to this account.

10. A complete and itemized statement of all advances or charges against this loan for any purpose that are not reflected on the loan history transaction statement provided in answer to question #1.
11. A complete and itemized statement of the escrow account of the loan, if any, from the date of the loan to the date of this letter, including, but not limited to, any receipts or disbursements with respect to real estate property taxes, fire or hazard insurance, flood insurance, mortgage insurance, credit insurance, or any other insurance product.
12. A complete and itemized statement from the date of the loan to the date of this letter of any forced-placed insurance and expenses related thereto, related in any way to this loan.
13. A complete and itemized statement from the date of the loan to the date of this letter of any suspense account entries and/or any corporate advance entries related in any way to this loan.
14. A complete and itemized statement from the date of the loan to the date of this letter of any property inspection fees, property preservation fees, broker opinion fees, appraisal fees, bankruptcy monitoring fees, or other similar fees or expenses related in any way to this loan.
15. Please attach copies of all property inspection reports and appraisals.
16. A complete and itemized statement of any late charges to this loan from the date of this loan to the date of this letter.
17. The amount, if applicable, of any "satisfaction fees."
18. A complete and itemized statement from the date of the loan to the date of this letter of any fees incurred to modify, extend, or amend the loan or to defer any payment due under the terms of the loan.
19. The current amount needed to pay-off the loan in full.
20. A full and complete comprehensible definitional dictionary of all transaction codes and other similar terms used in the statements requested above.
21. A complete and itemized statement of any funds deposited in any suspension account(s) or corporate advance account(s), including, but not limited to, the balance in any such account or accounts and the nature, source and date of any and all funds deposited in such account or accounts.
22. The full name, address and phone number of the current holder of this debt including the name, address and phone number of any trustee or other fiduciary. This request is being made pursuant to Section 1641(f)(2) of the Truth In Lending Act, which requires the servicer to identify the holder of the debt.
23. The name, address and phone number of any master servicers, servicers, sub-servicers, contingency servicers, back-up servicers or special servicers for the underlying mortgage debt.
24. A complete and itemized statement from the date of this loan to the date of this letter of the amount, payment date, purpose and recipient of all foreclosure expenses, NSF check charges, legal fees, attorney fees, professional fees and other expenses and costs that have been charged against or assessed to this mortgage.
25. A complete and itemized statement of the amount, payment date, purpose and recipient of all fees for the preparation and filing of the original proof of claim, any amended proofs of claim, or any supplemental proofs of claim related to this mortgage.

Respectfully submitted,

Jane Doe

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY,
CIVIL DIVISION**

[NAME OF PLAINTIFF]

Plaintiff,

-v-

[CLIENT],

Defendant and

Third Party Plaintiff,

vs.

[LIST THIRD PARTY DEFENDANTS]

Third Party Defendants.

CASE NO.

JUDGE

MOTION TO REQUEST MEDIATION

Defendant [client], by and through his/her legal counsel, and respectfully requests that this Court order the above case into Mediation. In support, [client] states the following:

1. [CLIENT] solely owns the home and currently resides there [with his wife and twelve disabled children].
2. On February 5, 2008, the Supreme Court of Ohio Chief Justice issued a letter encouraging all Common Pleas Courts to consider mediation as an effective means of resolving foreclosure actions. (A copy of this letter is attached hereto).
3. [CLIENT'S CLAIMS THAT SHOW TERMS OF LOAN ARE UNCONSCIONABLE AND SHOULD BE MODIFIED]
4. [CLIENT'S ATTEMPTS AT RESOLVING MATTER]
5. [CLIENT] wishes to attempt to resolve this matter through mediation by negotiating a modification, an agreement for a short sale, or by agreeing to move and executing a deed in lieu, partial claim, forbearance, or any other reasonable method that would right the situation for each party involved and avoiding the time and expense of litigation.

WHEREFORE, [client] requests that this Court order the above case into Mediation.

Respectfully submitted,

[Attorney Name, Bar No.]
[Address]
[Telephone Number]
[Fax Number]
[email address]

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following via ordinary U.S. mail, postage pre-paid, this _____ day of _____, 2010:

[Attorney Name, Bar No.]

[List Name and Address of the parties involved that a copy of the motion is being sent]

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION**

[name of plaintiff],

Plaintiff,

vs

[client], et al._

Defendants.

CASE NO.

Judge:

ORDER GRANTING DEFENDANT'S
MOTION REQUESTING MEDIATION

Upon due consideration, the Defendant's request for mediation is granted and the above case is ordered into mediation.

SO ORDERED

JUDGE

Prepared by:

[defendant's attorney]

Copies to:

[plaintiff's attorney]