

Waushara County Circuit Court Rules

(Sixth Judicial District)

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Small Claims Rules

I. These rules are made pursuant to Section 799.22(4) Wis. Stats.

II. Effective Date.

Effective March 1, 2014 and until further order of the Court, the following rules shall govern small claims proceedings in Waushara County, Wisconsin.

(a) Pleadings. All pleadings shall be in writing with complete itemizations, invoices/billings or creditor affidavits regarding the claim.

(1) If the defendant or the defendant's attorney appears in person on the return date, the court will permit an oral denial of the complaint. Such oral denial shall be followed by a written answer setting forth the basis for the denial within a time set by the court. Failure to timely submit a written answer may constitute a basis for the entry of default judgment. Default judgment may also be entered in the event the court determines that the answer filed by a defendant does not join issue with any material elements of the plaintiff's claim and the complaint adequately establishes the basis for the relief sought. No oral counterclaims, affirmative defenses or motions will be permitted. Answers by telephone will not be permitted. Answers by fax in accordance with the local Facsimile Transmission rule will be permitted.

(b) Service of Summons.

i. Non-eviction and Non-Contempt. Excepting eviction proceedings under Sec. 799.40 Wis. Stats., and contempt proceedings under Sec. 799.26 Wis. Stats., service of summons **may be made by mail** as provided within Sec. 799.12(2) and (3) Wis. Stats.

Any summons for actions served by mail shall contain notice to the defendant of the option to answer without appearance in court on the return date and the methods of answering permitted by this rule.

ii. Eviction. Service of summons in any action seeking eviction under Sec. 799.40 Wis. Stats., **shall be through certified mail**, return receipt requested, as authorized under Sec. 799.12(2) and (3) Wis. Stats. The plaintiff shall have paid the fee prescribed by Sec. 814.62(4) Wis. Stats., to the clerk of courts before the service by certified mail procedures will be undertaken.

The plaintiff in any eviction action may obtain personal or substituted service as provided in Section 801.11, Wis. Stats., rather than service through certified mail should the plaintiff prefer.

Any summons for actions served by certified mail must inform the parties or their attorney that they must appear in person on the return date and be prepared for trial at that time.

iii. Contempt. Service of summons in any action seeking contempt under Sec. 799.26 Wis. Stats., **shall be by personal or substitute service** as provided under Sec. 801.11 Wis. Stats.

Any summons for any contempt action must inform the parties or their attorney that they must appear in person on the return date and be prepared to proceed with trial at that time.

(c) Filing Required Before Service.

Service of a summons and complaint before filing and authentication thereof is not authorized.

(d) Personal Appearance.

Except for eviction actions or contempt proceedings, Plaintiff or plaintiff's attorney need not be present on the return date. Any defendant may answer without appearing on the return date by filing an answer in writing by mail or by delivery to the Clerk of Court. Such answer must be received and filed with the Clerk of Court no less than two (2) hours prior to the return date and time.

III. Contested cases will be set for pretrial conference and/or trial at the convenience of the court. The court may require pretrial statements, identification of witnesses, and submission of exhibits as may aid in the disposition of the matter.

IV. Default judgment will be granted if a defendant does not appear or file a written answer and the complaint contains adequate documentation for the relief sought. Otherwise, the default will be noted but judgment deferred until the factual basis for the judgment is supplied. Judgment on claims subject to the Wisconsin Consumer Act require complaints which comply with the requirements of 425.109(1)(d) and Household Finance v. Kohl, 179 Wis. 2nd 798 (Ct. App.1993). The complaint must set forth the figures for computing the amount owing.

V. Consolidated Creditor Actions – Specific Provisions.

Sec. 218.04(9j), Wis. Stats. allows a licensed collection agency to initiate one consolidated action against a single debtor on behalf of multiple creditors. Such actions must be brought under a single complaint that includes the name of the attorney who has either drafted the document or has supervised its preparation. The complaint must include a complete itemization, invoices or billings or creditor's affidavit in support of each creditor's claim. The collection agency will not be permitted to appear in court on behalf of any creditor and is not allowed to have its name included within any pleadings.

Judgments entered upon Consolidated Creditor Actions will be entered separately as to each creditor that the court determines is entitled to recovery and each creditor shall be responsible for payment of an individual docketing fee when making a request to docket the judgment. Pursuant to Paulson vs. Allstate Ins. Co., 2002 WI App. 168,256 Wis. 2nd 892, 649 N.W.2nd 645, each prevailing creditor will be entitled to recover statutory attorney fees. Costs may only be taxed once by the entire class of creditors and will be awarded to the creditor whose name first appears on the caption to the complaint. The collection agency or attorney representing the class of creditors will then be required to apportion costs between each creditor. THE COURT IS NOT RESPONSIBLE FOR

DETERMINING WHAT PORTIONS OF THE COSTS SHOULD BE AWARDED TO EACH CREDITOR.

VI. Copies of this Order shall be made available to litigants and their attorneys.

Dated and signed at Wautoma, Wisconsin, this 1st day of March, 2014.

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Facsimile Transmission of Documents to the Court

1. Effective November 1, 2005 and pursuant to Sec. 801.16(2)(a) Wis. Stats., the court establishes the following rules concerning the filing of documents and papers by facsimile:
 2. Facsimile documents transmitted directly to the court shall be accepted for filing only at 920-787-0481 and pursuant to the following provisions:
 1. The document, inclusive of cover letter, does not exceed twenty (20) pages in length.
 2. The transmission shall include a cover letter that clearly identifies the document(s) being filed and that reveals all parties and/or counsel are receiving the same communication.
 3. No filing fee is required.
 4. The circuit court must not incur any fee or charge for accepting or receiving the facsimile document.
 5. The regular business hours of the Waushara County Circuit Court are 8:00 a.m. to 4:30 p.m. Documents and papers will be considered filed on the date that they are received by facsimile at 920-787-0481, provided that the facsimile transmission is completed within these business hours. Facsimile transmissions completed after regular business hours shall be considered filed on the next business day.
 6. Facsimile papers are considered filed upon receipt by the clerk of the circuit court and are the official record of the court and may not be substituted or withdrawn. The party transmitting the papers or documents shall not send additional or "hard copies" of the facsimile transmission. Any duplicate papers subsequently received by the Clerk of Circuit Court, judge or court commissioner shall be disregarded and discarded by the Clerk of Circuit Court.
 7. Parties who have transmitted documents by facsimile to the court shall retain the "original" document used for the facsimile transmission within their own file.
 8. Any issue regarding the authenticity of the document submitted by facsimile shall place the burden of establishing authenticity upon the party who transmitted it.
3. The responsibility for timely and complete receipt of a document or paper submitted by facsimile shall rest with the party who submitted it. The circuit court, judge, commissioner, or clerk shall not be responsible for:
 1. Errors or failures in transmission that result in missing or illegible documents.

- 2.Periods when the circuit court facsimile machine is. not operational;
regardless of the reason.
4. The judge assigned to a specific matter may authorize the filing of documents in a manner that does not conform to these rules provided good cause is shown and there is compliance with Sec. 801.16 Wis. Stats. Facsimiles exceeding twenty (20) pages in length must include a representation from the submitting party that the judge or court commissioner has approved a facsimile that exceeds the limitations of these Waushara County Rules.
5. Documents that are received by plain-paper facsimile other than the through the facsimile machine at 920-787-0481 shall be accepted for filing only if the transmission complies with all elements of the Waushara County Rules or in the event that the filing includes a written representation that the procedure was approved by the judge or court commissioner.
6. Documents that are not to be filed but are used by the court for reference or other purposes may be transmitted by facsimile within the discretion of the judge, court commissioner or clerk.

Dated this 14th day of October, 2005.

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Civil Rule-Mortgage Foreclosure

That in all residential mortgage foreclosure actions, the plaintiff shall attach to the Summons and Complaint served on the defendant/homeowner the following forms printed on colored paper and can be downloaded from the Waushara County website http://www.co.waushara.wi.us/circuit_court.htm or will be available at the Waushara County clerk of courts Office:

- 1) Notice of Availability of Mediation
- 2) Mediation Request Form

“Residential mortgage foreclosure actions” is defined as those foreclosure actions involving either first or second mortgages and involving one-four family residences, owner occupied, or tenant occupied, so long as the landlord owns no more than five one-four family rental properties.

While entry into the Foreclosure Mediation Program is voluntary for both parties, by consenting, the parties agree to abide by the process set forth in the Foreclosure Mediation Process Description below.

Foreclosure Mediation Process Description

A. Goal. The Waushara County Foreclosure Mediation Program is patterned after the Wisconsin Foreclosure Mediation network Model. The goal of the Program is to assist parties to determine, within a reasonable period of time, whether foreclosure can be avoided by an alternate mutually agreeable arrangement, such as a loan modification or repayment plan, or to allow for a graceful exit from the property. The mediation program seeks to achieve this goal by structuring the collection and exchange of information to

prepare the parties for their mediation session. The neutral and impartial mediator then guides and summarizes the communications so that parties gain a complete and clear understanding of any options that may exist, or the reasons retention options are not available.

B. Eligibility. The Program is available to parties to a first or second mortgage foreclosure action involving a one-four family residential property. The homeowner need not reside in the property, but they may not own more than four other rental properties. This is consistent with the eligibility criteria for the U.S. Treasury's Making Homes Affordable loan modification program. In addition, the action must be pending in Waushara County. Vacation properties or "seasonal homes" are not eligible, nor are homes subject to a bankruptcy.

C. Request/Consent Process:

1. Mediation Request Form. To initiate the mediation process, either party may make a request. The homeowner's request must utilize the "Mediation Request Form." Within two business days of receiving the Request Form, the Program Administrator will refer a housing counseling agency to the homeowner via mail or email. The homeowner's second step is to contact a housing counselor to set up a meeting for the purpose of compiling a complete financial package. The housing counselor sends the package directly to the Program Administrator through the portal, once designated. The homeowner's third step is to pay the application fee of \$150 by check, money order or credit/debit payment via telephone.

If the homeowner does not complete all three steps within 60 days from receipt of the Mediation Request Form, in the absence of extenuating circumstances, the application will be deemed inactive.

2. Lender's Consent. After the homeowner has completed all three application steps, the Program Administrator will notify Lender's counsel and request Lender's participation, seeking a response within 10 business days. Lender's non-refundable fee of \$150 is due at the time of consent. If no response is received within 30 days, the Program Administrator will notify the Court that Lender has not responded and will close the mediation.

D. Mediation Preparation/Document Exchange:

1. Online Portal. By consenting, Lender agrees to utilize an Administrator selected secure internet based portal to:

- a. Post the lender required loan modification application forms and requirements,
- b. Receive the homeowner's loan modification package documents and
- c. Exchange message about any outstanding documents or information.

2. Initial Submission of Loan Modification Request Packet ("Financial Package"). Within 2 business days of lender's consent, the Program Administrator will send the homeowner's financial package to the lender, either via the Portal or via lender's counsel.

3. Notice of Deficient Package and (Lender's Confidential Loan Data Sheet).

Within 5 business days after the receipt of homeowner's initial submission of information, Lender shall:

- a. Notify the Program Administrator of any known deficiencies, including any missing information or documentation required for the loan modification application to be complete, and
- b. Send the completed Confidential Loan Data Sheet.

4. Supplemental Submission. Within 10 days from the date of the Lender's notification of deficiencies in the financial package, homeowner shall submit supplemental information or documents. This deadline may be extended for compelling circumstances beyond the homeowner's control.

5. Notice of Commencement of Review Period. When no outstanding Lender requests for information or documents remain, the Program Administrator will send a Notice to the Court advising that:

- a. The Homeowner has delivered to Lender, via Program Administrator, a completed application for a loan modification;
- b. Lender is reviewing the application for alternatives to foreclosure; and
- c. The next scheduled mediation activity.

F. Mediation Session

1. Assignment of Mediator. At the time of the Initial Submission, the Program Administrator will assign a trained neutral and impartial mediator, who will utilize the facilitative style of mediation, refraining from directing or advising the parties, and will abide by the Uniform Model Standards of Mediator Conduct.

2. Attendance by Parties with Authority. By consenting, Lender agrees to designate a representative with knowledge of all of the Lender's loss mitigation programs either with full authority to make a determination on the homeowner's request or access to persons having such authority. Such representative may appear via video or teleconference. All attorneys will appear in person or via videoconference (if such accommodations are available). Absent prior arrangements, all mortgagors and the mediator must be present at the mediation session. If subsequent mediation sessions are scheduled, all appearance may be via teleconference.

3. Confidentiality and Privilege. All communications made by the parties, attorneys and other participants at or in connection with the mediation shall be privileged and not reported, recorded or placed into evidence, or made known to the Court or construed for any purposes to be an admission. The Mediator will keep confidential all statements made during the mediation session, and will report to the Court only the results of the mediation or the procedural status of the mediation case.

4. Scope of Subject Matter. The mediation session may include negotiation of a modification of the homeowner's loan, whether by new payment terms, reduction or forgiveness in principal, interest, escrow shortage or advanced costs, surrender or scale of the mortgaged property or otherwise. Disputes of the amount due,

application of payments, or other claims are within the scope of mediation only if both parties expressly make such election.

5. Close to Mediation. The Mediator shall cause the mediation process to conclude when:

- a. The homeowner has withdrawn from the mediation process,
- b. The Lender has reached a determination about the Homeowner's eligibility for a loan modification and the Homeowner has been afforded an opportunity to discuss the determination during a mediation session, or
- c. The Homeowner has failed, after 10 business days, to supply information or documents identified as outstanding by the Lender and the Lender has requested that mediation be closed.

The Program Administrator shall send to the court a Final Mediation Report no later than 10 days after the conclusion of the mediation.

Dated this 28th day of November, 2012.