

RULE 1.491. GENERAL MAGISTRATES FOR RESIDENTIAL MORTGAGE FORECLOSURE MATTERS

(a) General Magistrates for Residential Mortgage Foreclosure.

The chief judge of each judicial circuit shall appoint such number of general magistrates to handle only residential mortgage foreclosures from among the members of the Bar in the circuit as are necessary to expeditiously preside over all actions and suits for the foreclosure of a mortgage on residential real property; and any other matter concerning the foreclosure of a mortgage on residential real property as allowed by the administrative order of the chief judge. Such general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office. General magistrates appointed to handle residential mortgage foreclosure matters only shall not be required to give bond or surety.

(b) Reference.

(1) Consent to a magistrate for residential mortgage foreclosure actions and suits may be express or may be implied in accordance with the requirements of this rule.

(A) A written objection to the referral to a magistrate handling residential mortgage foreclosures must be filed within 10 days of the service of the order of referral or within the time to respond to the initial pleading, whichever is later.

(B) If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing.

(C) Failure to file a written objection to a referral to the magistrate handling residential mortgage foreclosures within the applicable time period is deemed to be consent to the order of referral.

(2) The order of referral to a magistrate handling residential mortgage foreclosures shall be in substantial conformity with this rule and shall contain the following language in bold type:



A REFERRAL TO A MAGISTRATE FOR A RESIDENTIAL MORTGAGE FORECLOSURE MATTER REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE A MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER OR WITHIN THE TIME TO RESPOND TO THE INITIAL PLEADING, WHICHEVER IS LATER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE CONSENT TO THE REFERRAL. REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN THIS RULE. A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, MAY BE REQUIRED TO SUPPORT THE EXCEPTIONS.

When a reference is made to a magistrate, either party may set the action for hearing before the magistrate.

(c) General Powers and Duties. The provisions for the general powers and duties of a magistrate in rule 1.490(d) shall apply to proceedings under this rule.

(d) Notice of Hearings; Hearings. The provisions for notice of hearings and hearings in rules 1.490(f)–(g) shall apply to proceedings under this rule.

(e) Magistrate's Report. The provisions for the requirement of the magistrate's report in rule 1.490(h) shall apply to proceedings under this rule.

(f) Filing Report; Notice; Exceptions; Record. The provisions for filing the report, notice, exceptions to the report, and requirements for a record in rules 1.490(i)–(j) shall apply to proceedings under this rule.



Committee Notes

2014 Adoption. This rule is the result of an emergency petition by the Trial Court Budget Commission and is intended to alleviate the backlog of residential mortgage foreclosure cases that Florida courts are currently facing.

2015 Amendment. The changes are intended to adopt certain procedural changes made to rule 1.490 by *In re Amendments to Florida Rules of Civil Procedure*, 131 So. 3d 643 (Fla. 2013).

