

By Senator Bennett

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1                   A bill to be entitled  
2           An act relating to mortgage foreclosure diversion  
3           pilot programs; providing legislative intent;  
4           authorizing each judicial circuit to establish a  
5           mortgage foreclosure diversion pilot program;  
6           providing for construction with other laws; providing  
7           for applicable rules of practice and procedure;  
8           requiring when such a mortgage foreclosure diversion  
9           pilot program exists, a conciliation conference must  
10          be held before an order of foreclosure may issue in a  
11          foreclosure proceeding concerning an owner-occupied  
12          residential property; prescribing a time period in  
13          which such a conference must be held; specifying items  
14          that may be included in the order for such a  
15          conference; providing for a person to preside over  
16          such a conference; specifying issues that must be  
17          addressed in such a conference; specifying  
18          consequences if a defendant fails to attend the  
19          mandatory conciliation conference; providing for  
20          termination of pilot programs and repeal of  
21          provisions; providing legislative intent concerning  
22          construction of provisions with regard to the  
23          constitutional prerogatives of the judiciary;  
24          providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

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28           Section 1. (1) The intent of the Legislature is to provide  
29 for a mortgage foreclosure diversion pilot program in each

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30 judicial circuit if implemented by the chief judge of that  
31 circuit. Such programs would be implemented in an effort to  
32 reduce foreclosures on owner-occupied residential properties by  
33 encouraging the restructuring of loans to allow borrowers to  
34 resume regular payments and thus to allow Floridians to remain  
35 in their homes, while protecting the interests of lenders. In  
36 addition, the Legislature recognizes that the foreclosure of  
37 large numbers of residential properties in an area has a  
38 negative effect on the value of all residential properties in  
39 that area, with negative consequences for property owners, local  
40 governments, and the state as a whole.

41 (2) Each judicial circuit may establish a mortgage  
42 foreclosure diversion pilot program as provided in this section.  
43 The provisions of this section shall prevail to the extent that  
44 they conflict with any other provisions of law. All proceedings  
45 provided for under this section shall be governed by the  
46 applicable rules of practice and procedure in the courts of this  
47 state.

48 (3) (a) In a judicial circuit in which a mortgage  
49 foreclosure diversion pilot program exists, after a complaint in  
50 a foreclosure proceeding has been filed concerning an owner-  
51 occupied residential property, a conciliation conference must be  
52 held before an order of foreclosure may issue. A case management  
53 order shall schedule such a conference to be held within 45 days  
54 after the filing of the complaint.

55 (b) A case management order for a conciliation conference  
56 shall include all necessary and appropriate terms and may  
57 include, but is not limited to, the following:

58 1. The time, date, and location of the conference.

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59       2. A requirement that the mortgagee and the mortgagor or  
60 their representatives attend.

61       3. A requirement that the defendant, immediately upon  
62 receipt of the case management order, contact a housing  
63 counseling agency approved by the United States Department of  
64 Housing and Urban Development serving the area in which the  
65 property is located.

66       4. A requirement that the defendant cooperate with the  
67 housing counseling agency, including providing it with requested  
68 financial and employment information and completing any loan  
69 resolution proposals and applications.

70       5. A requirement that the defendant exchange the  
71 information he or she provided in subparagraph 4. with the  
72 plaintiff or plaintiff's representative, as appropriate.

73       6. A provision allowing for the service of any motions  
74 necessary for entry of a default judgment, but delaying the  
75 entry of such a judgment until after the date of the  
76 conciliation conference.

77       (4) (a) As appropriate, the conciliation conference may be  
78 presided over by a judge of the court in which the foreclosure  
79 action has been filed, a case manager, or another person  
80 designated by the court.

81       (b) The following issues shall be addressed in the  
82 conciliation conference:

83       1. Whether the defendant is represented by counsel and, if  
84 not represented, whether volunteer counsel may be obtained.

85       2. Whether the defendant met with and cooperated with the  
86 housing counseling agency as required.

87       3. Whether the housing counseling agency has prepared an

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88 assessment or report providing an available loan work-out  
89 arrangement for the defendant.

90 4. The defendant's income and expense information.

91 5. The defendant's employment status.

92 6. The defendant's qualifications for any of the available  
93 loan work-out arrangements.

94 7. The necessity for and availability of assistance with  
95 the preparation of loan work-out plans and required court  
96 orders, as appropriate.

97 8. The necessity of a subsequent conference.

98 9. If there is no prospect of an amicable resolution,  
99 whether the case may proceed to foreclosure.

100 10. Any other relevant issue.

101 (c) At the conclusion of the conciliation conference, an  
102 appropriate order may issue memorializing the results of the  
103 conference.

104 (5) If the defendant fails to attend the mandatory  
105 conciliation conference, the requirement for a conference  
106 required by this section shall be deemed satisfied upon  
107 verification that the required notice was served and an order  
108 may be issued authorizing the plaintiff to proceed.

109 (6) All mortgage foreclosure diversion pilot programs shall  
110 terminate on December 31, 2010, and this section shall be  
111 repealed on that date.

112 Section 2. It is the intent of this act and the Legislature  
113 to accord the utmost comity and respect to the constitutional  
114 prerogatives of the judiciary of this state, and nothing in this  
115 act should be construed as an effort to impinge upon those  
116 prerogatives. To that end, if the Florida Supreme Court enters a

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117 final judgment concluding or declaring that any provision of  
118 this act is deemed to improperly encroach upon the authority of  
119 the Florida Supreme Court to determine the rules of practice and  
120 procedure in the courts of this state, the Legislature intends  
121 that such provision be construed as a request for rule change  
122 pursuant to Section 2, Article V of the State Constitution and  
123 not as a mandatory legislative directive.

124       Section 3. This act shall take effect upon becoming a law.