

By Senator Joyner

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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.

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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 of 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.