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

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. (1) The intent of the Legislature is to
26 provide for a mortgage foreclosure diversion pilot program in
27 each judicial circuit if implemented by the chief judge of that
28 circuit. Such programs would be implemented in an effort to

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

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

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

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

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

56 2. A requirement that the mortgagee and the mortgagor or
57 their representatives attend.

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

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

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

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

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

78 (b) The following issues shall be addressed in the
79 conciliation conference:

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

82 2. Whether the defendant met with and cooperated with the
83 housing counseling agency as required.

84 3. Whether the housing counseling agency has prepared an
85 assessment or report providing an available loan work-out
86 arrangement for the defendant.

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

88 5. The defendant's employment status.

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

91 7. The necessity for and availability of assistance with
92 the preparation of loan work-out plans and required court
93 orders, as appropriate.

94 8. The necessity of a subsequent conference.

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

97 10. Any other relevant issue.

98 (c) At the conclusion of the conciliation conference, an
99 appropriate order may issue memorializing the results of the
100 conference.

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

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

109 Section 2. It is the intent of this act and the
110 Legislature to accord the utmost comity and respect to the
111 constitutional prerogatives of the judiciary of this state, and

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112 nothing in this act should be construed as an effort to impinge
113 upon those prerogatives. To that end, if the Florida Supreme
114 Court enters a final judgment concluding or declaring that any
115 provision of this act is deemed to improperly encroach upon the
116 authority of the Florida Supreme Court to determine the rules of
117 practice and procedure in the courts of this state, the
118 Legislature intends that such provision be construed as a
119 request for rule change pursuant to Section 2, Article V of the
120 State Constitution and not as a mandatory legislative directive.

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