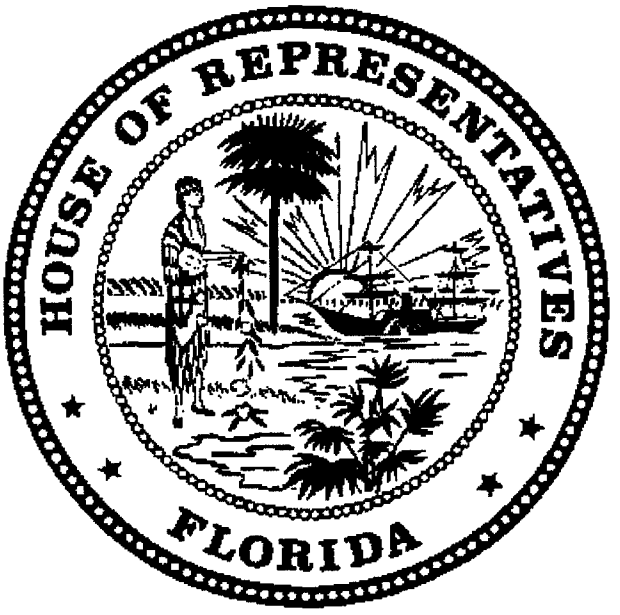

Civil Justice & Courts Policy Committee

Tuesday, February 2, 2010
8:00 AM - 9:45 AM
Reed Hall (102 HOB)

Meeting Packet

Larry Cretul
Speaker

Carl J. Domino
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Courts Policy Committee

Start Date and Time: Tuesday, February 02, 2010 08:00 am

End Date and Time: Tuesday, February 02, 2010 09:45 am

Location: Reed Hall (102 HOB)
Duration: 1.75 hrs

Consideration of the following bill(s):

HB 285 Parental Authority by Horner
HB 329 Condominium Foreclosures by Robaina
HB 561 Condominiums by Bogdanoff, Hudson

Discussion and review of Florida Supreme Court Administrative Order No. AOSC09-54 Re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases.

NOTICE FINALIZED on 01/26/2010 16:16 by Ingram.Michele

The Florida House of Representatives

Criminal & Civil Justice Policy Council

Civil Justice & Courts Policy Committee

Larry Cretul
Speaker

Carl J. Domino
Chair

February 2, 2010

AGENDA
8:00 AM – 9:45 AM
Reed Hall

I. Call Meeting to Order

II. Consideration of Bills

HB 285 Parental Authority by Horner

HB 329 Condominium Foreclosures by Robaina

HB 561 Condominiums by Bogdanoff and Hudson

III. Discussion of Florida Supreme Court Administrative Order No. AOSC09-54 - RE: Final Report and Recommendations on Residential Mortgage Foreclosure Cases

IV. Adjourn

417 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 410-4922 Fax: (850) 413-0420

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 285 Parental Authority
SPONSOR(S): Horner and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The United States Supreme Court and the Florida Supreme Court have both recognized that the right of parents to make decisions concerning care, custody and control of their children is a fundamental liberty interest protected by the constitution.

In Kirton v. Fields, decided December 11, 2008, the Florida Supreme Court held that "a parent does not have the authority to execute a pre-injury release [of liability] on behalf of a minor child when the release involves participation in a commercial activity." In Kirton, the Florida Supreme Court acknowledged that "[t]he absence of a statute governing parental pre-injury releases demonstrates that the Legislature has not precluded enforcement of such releases on behalf of a minor child." Nevertheless, the later Court declared ". . .we find that public policy concerns cannot allow parents to execute pre-injury releases on behalf of minor children."

HB 285 expressly authorizes natural guardians, on behalf of any of their minor children, to waive and release, in advance, any claim cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own behalf. The bill expressly precludes such waivers and releases from relieving a party for liability for any acts of sexual misconduct committed against the child.

The bill also amends s. 549.09, F.S., to make conforming changes to the current statute specifically addressing motorsport nonspectator liability releases. The bill provides that a release signed by a minor is valid if it is also signed by the minor's parent or guardian.

This bill appears to have a positive fiscal impact by avoiding an increase in the judicial workload and litigation costs that are a foreseeable result of continued application of the Kirton decision.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In Kirton v. Fields, decided December 11, 2008, the Florida Supreme Court held that "a parent does not have the authority to execute a pre-injury release on behalf of a minor child when the release involves participation in a commercial activity."[1] In its opinion the Court identified two compelling concerns regarding the enforceability of pre-injury liability releases: the right of parents in raising their children and the interest of the state in protecting children.[2]

The United States Supreme Court and the Florida Supreme Court have both recognized that the right of parents to make decisions concerning care, custody and control of their children is a fundamental liberty interest protected by the constitution. [3] It is "perhaps the oldest fundamental liberty interest recognized by [the United States Supreme Court]."[4] Under the federal constitution, the Fourteenth Amendment's Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interests, including parents' fundamental right to make decisions concerning the care, custody, and control of their children.[5] In fact, in Troxel v. Granville, a decision cited by the Florida Supreme Court in Kirton, the United States Supreme Court reiterated its recognition that there is a presumption that fit parents act in their children's best interests. [6] "Accordingly, so long as a parent adequately cares for his or her children (i.e. is fit), there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children."[7]

In Kirton, the Florida Supreme Court acknowledged that "[t]he absence of a statute governing parental pre-injury releases demonstrates that the Legislature has not precluded enforcement of such releases on behalf of a minor child."[8] Nevertheless, the later Court declared ". . .*we find* that public policy

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[1] Kirton v. Fields, 997 So.2d 349 (Fla. 2008) The Kirton decision was a 4 to 1 decision. Justices Quince, Anstead, Lewis and Pariente were in the majority. Justice Wells dissented. Justices Polston and Canady did not participate in the opinion.

[2] Id. at 352.

[3] See, Troxel v. Granville, 530 U.S. 57, 60 (2000); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Beagle v. Beagle, 678 So.2d 1271, 1275 (Fla. 1996).

[4] Troxel, supra at 65, citing Meyer v. Nebraska, 262 U.S. 390 (1923).

[5] Washington v. Glucksberg, 521 U.S. 702 (1997)

[6] Troxel, supra at 69. See also, Parham v. J.R., 442 U.S. 584, 602 (1979).

[7] Troxel, supra at 69 & 70. See also e.g., Reno v. Flores, 507 U.S. 292 (1993).

[8] Kirton, supra at 354.

concerns cannot allow parents to execute pre-injury releases on behalf of minor children." (emphasis added).[9]
The Court explained further:

> Although parents undoubtedly have a fundamental right to make decisions concerning the care, custody, upbringing, and control of their children, Troxel [v. Granville], 530 U.S. 57, 67 (2000), the question of whether a parent should be allowed to waive a minor child's future tort claims implicates wider *public policy* concerns. See Hojnowski [v. Vans Skate Park], 901 A.2d 381, 390. While a parent's decision to allow a minor child to participate in a particular activity is part of the parent's fundamental right to raise a child, this does not equate with a conclusion that a parent has a fundamental right to execute a pre-injury release of a tortfeasor on behalf of a minor child. *It cannot be presumed that a parent who has decided to voluntarily risk a minor child's physical wellbeing is acting in the child's best interest.* Furthermore, we find that there is injustice when a parent agrees to waive the tort claims of a minor child and deprive the child of the right to legal relief when the child is injured as a result of another party's negligence. When a parent executes such a release and a child is injured, the provider of the activity escapes liability while the parent is left to deal with the financial burden of an injured child. If the parent cannot afford to bear that burden, the parties who suffer are the child, other family members, and the people of the State who will be called on to bear that financial burden. Therefore, when a parent decides to execute a pre-injury release on behalf of a minor child, the parent is not protecting the welfare of the child, but is instead protecting the interests of the activity provider. Moreover, a "parent's decision in signing a pre-injury release impacts the minor's estate and the property rights personal to the minor." Fields, 961 So. 2d at 1129-30. *For this reason, the state must assert its role under parens patriae to protect the interests of the minor children.* (emphasis added).

In Troxel v. Granville, when the United States Supreme Court had before it a Washington state statute allowing any person to petition for forced visitation of a child at any time with the only requirement being that visitation serve the best interests of the child, they said of the statute:

> [The statute] contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests. [10]

The U. S. Supreme Court in Troxel, while refraining from invalidating the statute on its face, found the application of the statute against the parent's wishes in her case to be an unconstitutional violation of her due process right to make decisions concerning the care, custody and control of her daughters.[11] The effect of the Kirton decision is much broader in its application than the statute the U.S. Supreme Court had before it in Troxel. Under the Kirton decision, rather than having the validity of waivers evaluated on a case by case basis on their own facts and circumstances, the Florida Supreme Court preemptively invalidated all parental liability waivers for all commercial activities as a matter of statewide public policy.

While the decision in Kirton is limited to pre-injury releases for participation in commercial activities, its rationale may not be. The Court said in a footnote:

> We answer the certified question as to pre-injury releases in commercial activities because that is what this case involves. Our decision in this case should not be read as

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[9] Kirton, supra at 354.
[10] Troxel v. Granville, 530 U.S. 57 (2000).
[11] Troxel, supra at 76.

limiting our reasoning only to pre-injury releases involving commercial activity; however, any discussion on pre-injury releases in noncommercial activities would be dicta and it is for that reason we do not discuss the broader question posed by the Fifth District. [12]

Justice Wells in a dissenting opinion pointed out several issues concerning the effect of the Court's new public policy edict. Justice Wells stated in part:

> The importance of this issue cannot be overstated because it affects so many youth activities and involves so much monetary exposure. Bands, cheerleading squads, sports teams, church choirs, and other groups that often charge for their activities and performances will not know whether they are a commercial activity because of the fees and ticket sales. How can these groups carry on their activities that are so needed by youth if the groups face exposure to large damage claims either by paying defense costs or damages? Insuring against such claims is not a realistic answer for many activity providers because insurance costs deplete already very scarce resources. The majority's decision seems just as likely to force small-scale activity providers out of business as it is to encourage such providers to obtain insurance coverage.
>
> If pre-injury releases are to be banned or regulated, it should be done by the Legislature so that a statute can set universally applicable standards and definitions. When the Legislature acts, all are given advance notice before a minor's participation in an activity as to what is regulated and as to whether a pre-injury release is enforceable. In contrast, *the majority's present opinion will predictably create extensive and expensive litigation attempting to sort out the bounds of commercial activities on a case-by-case basis.*
>
> The majority opinion also does not explain the reason why after years of not finding pre-injury releases to be against public policy, it today finds a public policy reason to rule pre-injury releases unenforceable when the Legislature has not done so.[13] (emphasis added).

HB 285 amends s. 744.301, F.S. to expressly authorize natural guardians, on behalf of any of their minor children, to waive and release, in advance, any claim cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own behalf. The bill expressly precludes such waivers and releases from relieving a party for liability for any acts of sexual misconduct committed against the child.

The bill also amends s. 549.09, F.S., to make conforming changes to the current statute specifically addressing motorsport nonspectator liability releases. The bill provides that a release signed by a minor is valid if it is also signed by the minor's parent or guardian.

With respect to the extent to which an adult may waive liability on his or her own behalf, courts generally disfavor exculpatory clauses and strictly construe such clauses against the party claiming to be relieved of liability. [14] "Such clauses are enforceable only where and to the extent that the intention to be relieved was made clear and unequivocal in the contract, and the wording must be so clear and understandable that an ordinary and knowledgeable party will know what they are contracting away."[15]

With regard to simple negligence specifically, a waiver may release a party from liability for negligence, but to do so the waiver must be written in such a manner that it "clearly state[s] that it releases the party from liability for [its] own negligence."[16]

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[12] Kirton, supra at n2.

[13] Wells dissenting, Kirton, supra at 363.

[14] See, Murphy v. Young Men's Christian Association of Lake Wales, 974 So.2d 565, 567 (Fla. 2nd DCA, 2008) ; Theis v. J&J Racing Promotions, 571 So.2d 92, 94 (Fla. 2nd DCA, 1990); Southworth & McGil, P.A. v. S. Bell Tel. & Tel. Co., 580 So.2d 628, 634 (Fla. 1st DCA, 1991).

[15] Southworth, *supra* note 19 at 634.

[16] Goyings v. Jack & Ruth Eckerd Foundation, 403 So.2d 1144, 1146 (Fla. 2nd DCA, 1981).

Absent statutory language to the contrary expressing a different legislative policy with respect to child waivers, it is a foregone conclusion that child waivers will be subject to the same disfavor, the same scrutiny, and the same application to simple negligence that courts apply to adult waivers. They will not, however, be totally prohibited as required under the Florida Supreme Court decision in Kirton.

B. SECTION DIRECTORY:

Section1. Amends s. 549.09, F.S., relating to motorsport nonspectator releases.

Section 2. Amends s. 744.301, F.S., to authorize parents to waive liability on behalf of their children.

Section 3. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

This bill will have a positive fiscal impact if it operates to reduce or avoid litigation costs and court operating expenses associated with negligence claims brought on behalf of minors against commercial providers of activities for children due to the enforceability of parental pre-injury liability releases. Increases in litigation costs and the judiciary's workload are foreseeable without passage of HB 285 due to the continued application of the Kirton decision and any possible subsequent extension of Kirton to non-commercial activities as alluded to by the Court in footnote 2 of its decision. Liability insurance rates for commercial activity providers may also be adversely impacted by the statewide invalidation of all parental liability waivers resulting from the Kirton opinion.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

See discussion in Effect of Proposed Changes.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to parental authority; amending s. 549.09, F.S.; providing that a motorsport liability release signed by a minor is valid if the release is also signed by the minor's parent or guardian; amending s. 744.301, F.S.; authorizing natural guardians to waive and release, in advance, any claim or cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own behalf; providing that such waiver and release shall not relieve a party of liability for any acts of sexual misconduct committed against the minor child; providing an effective date.

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

Section 1. Paragraph (g) of subsection (1) and subsection (3) of section 549.09, Florida Statutes, are amended to read:

549.09 Motorsport nonspectator liability release.--

(1) As used in this section:

(g) "Nonspectators" means event participants who have signed a motorsport liability release, including a minor if the minor's parent or guardian has also signed the release.

(3)(a) A motorsport liability release may be signed by more than one person if ~~so long as~~ the release form appears on each page, or side of a page, which is signed. A motorsport liability release shall be printed in 8 point type or larger.

(b) A release signed by a minor is valid if the release is also signed by the minor's parent or guardian.

Section 2. Subsection (2) of section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.--

(2)(a) Natural guardians are authorized, on behalf of any of their minor children, to:

1.~~(a)~~ Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children;

2.~~(b)~~ Collect, receive, manage, and dispose of the proceeds of any such settlement;

3.~~(c)~~ Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

4.~~(d)~~ Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

5.~~(e)~~ Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or owner,

without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed $15,000.

(b) In addition to the authority granted in paragraph (a), natural guardians are authorized, on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own

behalf. No such waiver and release, however, shall relieve a released party of liability for any acts of sexual misconduct committed against the minor child.

Section 3. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Horner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (1) and subsection (3) of section 549.09, Florida Statutes, are amended to read:

549.09 Motorsport nonspectator liability release.—

(1) As used in this section:

(g) "Nonspectators" means event participants who have signed a motorsport liability release, including a minor if the minor's parent or guardian has also signed the release.

(3)(a) A motorsport liability release may be signed by more than one person if ~~so long as~~ the release form appears on each page, or side of a page, which is signed. A motorsport liability release shall be printed in 8 point type or larger.

(b) A release signed by a minor is valid if the release is also signed by the minor's parent or guardian.

Amendment No. 1

Section 2. Subsection (2) of section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.—

(2)(a) Natural guardians are authorized, on behalf of any of their minor children, to:

1.~~(a)~~ Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children;

2.~~(b)~~ Collect, receive, manage, and dispose of the proceeds of any such settlement;

3.~~(c)~~ Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

4.~~(d)~~ Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

5.~~(e)~~ Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or owner,without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed $15,000.

(b) In addition to the authority granted in paragraph (a), natural guardians are authorized, on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own behalf.

1. No waiver and release under this paragraph shall relieve a released party of liability for injuries sustained by a minor child for the released party's intentional misconduct, including any act of sexual misconduct committed against the minor child. As used in this paragraph "intentional misconduct" means that the released party had actual knowledge of the wrongfulness of the conduct and the high probability that injury to the minor child would result and, despite that knowledge, pursued a course of conduct resulting in injury.

2. No waiver and release under this paragraph shall relieve a released party of liability for injuries sustained by a minor child for the released party's gross negligence if such gross negligence is established by clear and convincing evidence. As used in this paragraph, "gross negligence" means conduct by act or omission so reckless or wanting in care that it constituted a conscious disregard or indifference to the life or safety of the minor child. In any civil action, no claim or cause of action under this subparagraph shall be permitted unless there is, along with the initial pleading, a reasonable showing by evidence in the record or proffered by the claimant that would provide a reasonable basis for stating a cause of action for gross negligence.

3. Liability that has been established for injuries sustained by a minor child under the circumstances described in subparagraphs 1. or 2. may not be imposed against an employer, principal, corporation, or other legal entity for the conduct of its employee or agent unless the claimant establishes, by clear and convincing evidence, that:

a. The employer, principal, corporation, or other legal entity actively and knowingly participated in the employee's or agent's conduct;

b. The officers or directors of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to the employee's or agent's conduct; or

c. The employer, principal, corporation, or other legal entity engaged in conduct that constituted intentional misconduct or gross negligence and contributed to the injuries suffered by the minor child.

Section 3. This act shall take effect July 1, 2010.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to parental authority; amending s. 549.09, F.S.; providing that a motorsport liability release signed by a minor is valid if the release is also signed by the minor's parent or guardian; amending s. 744.301, F.S.; authorizing natural guardians to waive and release, in advance, any claim or cause of action that would accrue to any of their minor children to the same extent that any adult may do so on his or her own behalf; providing that such waiver and release shall not relieve a party of liability for any acts of intentional misconduct committed against the minor child; providing that such waiver and

Amendment No. 1

release shall not relieve a party of liability for gross negligence against a minor child; specifying circumstances under which an employer, principal, corporation or other legal entity may be liable for injuries sustained by a minor child by conduct of an employee or agent; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Condominium Foreclosures
SPONSOR(S): Robaina
TIED BILLS: None **IDEN./SIM. BILLS:** None

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Many condominium associations are suffering financial problems because unit owners are defaulting in their obligations owed to the association. When those units are sold at foreclosure, current law limits the mortgage lender's liability for payment of those past due assessments. This bill amends landlord-tenant law and condominium law to increase the opportunities for associations to collect assessments by providing that:

- The association may demand that a tenant of a delinquent unit owner pay rent directly to the association to be credited to the tenant's account with the landlord if the unit is 30 days or more delinquent.
- The association may deny an owner or tenant occupancy of the unit and may deny use of common areas if the unit is 90 days or more delinquent. The denials do not apply to a bona fide tenant paying the association fees directly to the association.
- A mortgage lender must pay a portion of past due assessments on the filing of a foreclosure action, and is fully liable for past due assessments owed by the mortgaged unit.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have significant private sector fiscal impacts.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A condominium association is in effect a partnership between unit owners with a common interest in a condominium building or buildings. To operate, an association must collect regular assessments from the unit owners in order to pay for management, maintenance, insurance, and reserves for anticipated future major expenses. Section 718.116, F.S., provides for the assessment and collection of periodic and special assessments to fund the association. A unit owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for any assessment owed by such previous owners. Of course, in an ordinary voluntary sale the buyer insists that all assessments be brought current through the date of sale, and an owner's title insurance company (if purchased) insures the buyer should the closing agent not properly see to payment of assessments through closing.

Foreclosure, an involuntary sale, is different. A unit owner who stops paying the mortgage will likely also stop paying the regular assessments. Should the condominium unit be sold to a third party at foreclosure sale, that buyer assumes responsibility for all of the past due assessments. The usual buyer at a foreclosure sale, however, is the lending institution. Section 718.116(1)(b), F.S., limits the liability for past due assessments of a first mortgage holder who is the winning bidder at the foreclosure sale to only being responsible to the association for the lesser of 6 months regular assessments or 1% of the original mortgage loan. Uncollectible past due assessments that result from this limitation are passed on to all of the unit holders through increased regular assessments and may be passed on to the unit owners by special assessment.

In the past, foreclosures were infrequent and were generally resolved within 6 months, leaving condominium associations with small infrequent manageable foreclosure losses. Recent economic downturns have led to significant numbers of condominium units in foreclosure which, coupled with typical foreclosure delays now reaching approximately 18 months, have led to significant financial troubles in condominium associations statewide.[1] Of great frustration to associations is situations

[1] See, for instance: Iuspa-Abbott, *Condo Meltdown*, Daily Business Review, July 22, 2008; Bayles, *Help for Homeowners Associations*, HeraldTribune.com, October 6, 2008; Andron, *Condo Associations in Eye of Foreclosure Storm*, Miami Herald, April 21, 2008; 2008 *Florida Community Association Mortgage Foreclosure Survey*, April 16, 2008; Geffner, *Condo Foreclosures Hurt Others, Too*, MSNBC.com, August 29, 2008; Moody, *Banks Stick Unpaid Fees to Condos*, Florida Today, October 26, 2008; Owers, *Foreclosures Lead to Budget Problems for Associations*, South Florida Sun-Sentinel, February 24, 2009; *State of Distress: Florida Community Association Mortgage Foreclosures Spawn Crisis*

where the unit is rented and the unit owner in default keeps the rents while the association is required to allow the tenant to use the common areas.[2]

Effect of Bill

Tenant Pays on 30 Days Delinquent

This bill amends s. 83.46, F.S., a part of the Residential Landlord-Tenant Act, to provide that, if assessments due from a condominium unit are more than 30 days delinquent, the association may demand that the tenant pay the association the total due to the association, but no more than the rent due to the landlord. Monies paid to the association are credited against rent owed to the landlord. The debt owed to the association must be paid first and in full before the tenant pays rent to the landlord. A tenant may not claim to have pre-paid rent unless the prepayment is part of the lease and can show proof of payment. If the tenant fails to pay after demand, the association may deny the tenant access to common facilities and may evict the tenant.

Denial of Occupancy or Use on 90 Days Delinquent

Section 718.106, F.S., requires a condominium association to allow a unit owner, or a tenant of a rented unit, to use the common areas of the condominium association. This bill amends s. 718.106, F.S., to provide that, if a unit owner is over 90 days delinquent, the association may deny the unit owner, or the unit owner's tenant, the right to:

- Occupy the condominium unit
- Use the common areas
- Use recreational facilities
- Use parking or marina spaces
- Vote in any election.

This bill also amends s. 718.116(2), F.S., to provide that denial of occupancy or use is not grounds for a reduction in the regular assessments.

However, if a tenant is paying a fair market rental rate and is paying all of said rent to the association, the association must allow the tenant to remain in the unit, and may use common areas, parking, and recreational facilities. Rent paid directly to the association must be credited by the landlord to the tenant's account.

Increased Lender Liability for Past Due Assessments

This bill amends s. 718.116, F.S., to require a lender seeking to file a foreclosure action involving a condominium unit must first request an estoppel letter from the association, which letter sets forth the current monthly maintenance amount and the sum of 6 months assessments. The association may charge up to $50 for the letter, and must reply within 15 days. Within 30 days of the filing of the foreclosure action, the foreclosing lender must pay the association 6 months assessments, which sum is credited to the unit's account with the association.

If the foreclosure action is still pending on the one year anniversary of the filing of the action (defined as no certificate of title having been issued as of that anniversary), the foreclosing lender must pay to the association all outstanding monies owed by the unit and must pay future assessments as they come due.

Within State's Condo and HOA Population, February 24, 2008 (survey finding that nearly two-thirds of associations were impacted by foreclosure losses). All articles on file with committee staff.

[2] See s. 718.106(4), F.S.

If the foreclosing lender fails to make any payment owed to the association under these new requirements, the association may file for dismissal of the foreclosure action and may be awarded attorney's fees and costs for the motion.

Section 718.116, F.S., provides that a purchaser of a condominium unit is jointly and severally liable with the seller of the unit for all assessments due at the time of the sale or transfer. However, a first mortgagee, or the successor or assignee of the first mortgagee, who takes title pursuant to a foreclosure sale is only liable to the association for the lesser of the amount owed at the sale, 6 months assessments, or 1% of the original mortgage amount. This bill amends s. 718.116, F.S., to remove the limitations on the liability of a first mortgagee after foreclosure sale, making all purchasers of a condominium unit jointly and severally liable for all monies owed the association at the time of the sale or transfer.

B. SECTION DIRECTORY:

Section 1 amends s. 83.46, F.S., amending the Residential Landlord-Tenant Act to provide for payment of rent during foreclosure to a condominium association.

Section 2 amends s. 718.106, F.S., relating to use of common areas in condominium associations.

Section 3 amends s. 718.116, F.S., relating to assessments in a condominium association.

Section 4 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill substantially increases the liability of mortgage lenders for past due assessments related to condominium units, and correspondingly substantially increases the likely collection rates for condominium associations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It may be advisable to amend the prohibitions on retaliatory conduct by a landlord pursuant to the Residential Landlord-Tenant Act, at s. 83.64, F.S., to prohibit retaliatory conduct against a tenant that complies with a lawful demand by a condominium association for payment of rents.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to condominium foreclosures; amending s. 83.46, F.S.; requiring certain condominium unit tenants to pay moneys owed on behalf of the unit to the association; providing liability; providing a tenant's obligations to the association; amending s. 718.106, F.S.; providing condominium associations with certain powers relating to owners and tenants of a unit in foreclosure and more than 90 days delinquent; providing an exception for a tenant who pays the rent directly to the association; amending s. 718.116, F.S.; requiring a mortgagee to request an estoppel letter from an association prior to filing a foreclosure action; authorizing the association to charge a fee for the production of an estoppel letter; requiring the association to reply to the letter within a specified period of time; providing for dismissal of the action for failure to request the letter or make payments; requiring certain payments; deleting provisions limiting the liability of the mortgagee and successors acquiring the title by foreclosure or by deed in lieu of foreclosure for certain unpaid assessments; deleting an exemption from liability for certain unpaid assessments for certain persons acquiring the title to a condominium as a result of the foreclosure of the mortgage or by deed in lieu of the foreclosure of the mortgage; deleting the definition of the term "successor or assignee"; specifying additional circumstances for which liability for assessments may not be avoided; providing an effective date.

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

Section 1. Subsection (4) is added to section 83.46, Florida Statutes, to read:

83.46 Rent; duration of tenancies.--

(4)(a) If assessments upon a condominium unit subject to a rental agreement are delinquent for more than 30 days, the association may require the tenant to pay the association any moneys the unit owner landlord owes the association, not to exceed the amount of moneys the tenant owes the unit owner landlord during the pendency of the rental agreement. Any payment made by the tenant to the association shall be credited to the unit owner landlord's account with the condominium association.

(b) If a unit is subject to a rental agreement, and if a unit or the unit owner's monetary obligations to the association become delinquent, the unit's tenant is jointly and severally liable with the unit and unit owner for the unit and unit owner's monetary obligations to the association.

1. The tenant's monetary obligations to the association include, but are not limited to, all assessments and installments, late charges, collection costs, attorney's fees and court costs, and other monetary obligations from the unit owner to the association, and any interest thereon, that come due against the unit or the unit owner from the date of the association's notice to the tenant, and accruing to the date all the monetary obligations are paid in full, regardless of whether

the lease is terminated or otherwise concluded. In addition to all other remedies, the association may enforce the tenant's liability by evicting the tenant, either in the association's name or in the name of the unit owner, and by suspending the unit's right to utilize common elements other than those necessary for ingress and egress.

2. The liability of a tenant is limited to the amount of moneys due from the tenant to the unit owner. However, a tenant's prepayment of a lease obligation does not excuse the tenant for liability for the amount of the prepayment unless the prepayment is either expressly stated in the lease or is for an installment of monthly rent as expressly provided in the lease and paid within 5 days after the installment due date, and the tenant provides the association proof of payment in the form of a canceled check.

3. Upon the association's notice to the tenant, the tenant shall pay all moneys, whether as rent or otherwise, owed pursuant to the lease, directly to the association until payment of the monetary obligations due and accruing from the unit owner to the association are paid in full, for which the unit owner, contingent upon the unit owner's default, transfers, assigns, conveys, sets over, and delivers to the association all moneys, whether as rent or otherwise, owed under the lease with the right, but without the obligation, to collect all of such moneys that may come due under the lease.

Section 2. Subsection (6) is added to section 718.106, Florida Statutes, to read:

718.106 Condominium parcels; appurtenances; possession and enjoyment.--

(6) Notwithstanding the provisions of this section, if a condominium unit is in foreclosure and the unit has unpaid assessments of 90 days or more, the association may, but is not required to, take one or more of the following actions:

(a) Deny any owner or tenant the right to occupy the condominium unit.

(b) Deny any owner or tenant of the unit the use of the common areas. However, this paragraph shall not prevent any owner or tenant from using the common areas in order to leave the premises.

(c) Deny any owner or tenant of the unit use of recreational facilities.

(d) Deny any owner or tenant of the unit the use of a parking or marina space, which may be enforced by towing of the motor vehicle or vessel at the expense of the owner.

(e) Deny any owner of his or her voting rights.

Notwithstanding any provision of this subsection, if a tenant is paying a fair market rent and the tenant pays the entire rental amount due for a rental period to the association, the association may not deny the tenant under this subsection the right to occupy the unit, the use of common areas, the use of recreational facilities, or the use of parking areas during such rental period. Any rent paid by the tenant to the association shall be credited to the landlord's account with the condominium association for that unit pursuant to s. 83.46(4).

Section 3. Subsections (1) and (2) of section 718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection; rent during foreclosure.--

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

(b) Before a mortgagee of a loan secured by a lien on a condominium unit may file an action for foreclosure of the condominium unit, the mortgagee shall request an estoppel letter from the association for which the association may charge $50. Failure to make such a request for an estoppel letter shall be grounds for dismissal of the foreclosure action. The request shall be in writing and shall indicate the name of the borrower and the unit number. The association shall reply within 15 days with an estoppel letter stating the current monthly maintenance fee for the unit and the sum of 6 months' assessments. Within 30 days after the filing of the foreclosure action, the mortgagee shall pay to the association the sum of 6 months' assessments as indicated on the estoppel letter, which sum shall be credited to the unit's account. On the first anniversary of the filing of the foreclosure action, if the case is still pending without the

issuance of a certificate of title, regardless of cause, the mortgagee shall pay to the association all outstanding moneys owed by the unit as of that date and shall pay future assessments as they come due. Any payment to the association by the mortgagee shall be taxed as a cost in the foreclosure action, and the mortgagor shall be personally liable to the mortgagee for the value of the payment made to the association plus interest at the interest rate provided for in the promissory note for advances, all late charges, and attorney's fees. The court shall dismiss a foreclosure action when a plaintiff mortgagee has failed to make all monetary payments required by this subsection. Failure to make such payments shall result in the court awarding the association attorney's fees from the mortgagee. ~~The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:~~

~~1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or~~

~~2. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not~~

~~maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.~~

(c) The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the declaration or bylaws, except to the extent that the declaration or bylaws may provide to the contrary.

~~(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.~~

(e)~~(f)~~ The provisions of this subsection are intended to clarify existing law, and shall not be available in any case

where the unpaid assessments sought to be recovered by the association are secured by a lien recorded prior to the recording of the mortgage. Notwithstanding the provisions of chapter 48, the association shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.

~~(g) For purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.~~

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element, denial of the use or enjoyment of the unit, denial of the use or enjoyment of any common element, or ~~by~~ abandonment of the unit for which the assessments are made.

Section 4. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative Robaina offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (4) is added to section 83.46, Florida Statutes, to read:

83.46 Rent; duration of tenancies.—

(4)(a) If assessments upon a condominium unit subject to a rental agreement are delinquent for more than 30 days, the association may require the tenant to pay the association any moneys the unit owner landlord owes the association, not to exceed the amount of moneys the tenant owes the unit owner landlord during the pendency of the rental agreement. Any payment made by the tenant to the association shall be credited to the unit owner landlord's account with the condominium association.

Amendment No. 1

(b) If a unit is subject to a rental agreement, and if a unit or the unit owner's monetary obligations to the association become delinquent, the unit's tenant is jointly and severally liable with the unit and unit owner for the unit and unit owner's monetary obligations to the association.

1. The tenant's monetary obligations to the association include, but are not limited to, all assessments and installments, late charges, collection costs, attorney's fees and court costs, and other monetary obligations from the unit owner to the association, and any interest thereon, that come due against the unit or the unit owner from the date of the association's notice to the tenant, and accruing to the date all the monetary obligations are paid in full, regardless of whether the lease is terminated or otherwise concluded. In addition to all other remedies, the association may enforce the tenant's liability by evicting the tenant, either in the association's name or in the name of the unit owner, and by suspending the unit's right to utilize common elements other than those necessary for ingress and egress.

2. The liability of a tenant is limited to the amount of moneys due from the tenant to the unit owner. However, a tenant's prepayment of a lease obligation does not excuse the tenant for liability for the amount of the prepayment unless the prepayment is either expressly stated in the lease or is for an installment of monthly rent as expressly provided in the lease and paid within 5 days after the installment due date, and the tenant provides the association proof of payment in the form of a canceled check.

3. Upon the association's notice to the tenant, the tenant shall pay all moneys, whether as rent or otherwise, owed pursuant to the lease, directly to the association until payment of the monetary obligations due and accruing from the unit owner to the association are paid in full, for which the unit owner, contingent upon the unit owner's default, transfers, assigns, conveys, sets over, and delivers to the association all moneys, whether as rent or otherwise, owed under the lease with the right, but without the obligation, to collect all of such moneys that may come due under the lease.

Section 2. Section 627.714, Florida Statutes, is created to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required; excess coverage provision required.-For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy shall include property loss assessment coverage of at least $2,000 for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively when such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible shall apply of no more than $250 per direct property loss. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible shall apply to the loss assessment coverage. Every individual unit owner's residential property policy must contain a provision stating that the

coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

Section 3. Subsection (6) is added to section 718.106, Florida Statutes, to read:

718.106 Condominium parcels; appurtenances; possession and enjoyment.—

(6) Notwithstanding the provisions of this section, if a condominium unit is in foreclosure and the unit has unpaid assessments of 90 days or more, the association may, but is not required to, take one or more of the following actions:

(a) Deny any owner or tenant the right to occupy the condominium unit.

(b) Deny any owner or tenant of the unit the use of the common areas. However, this paragraph shall not prevent any owner or tenant from using the common areas in order to leave the premises.

(c) Deny any owner or tenant of the unit use of recreational facilities.

(d) Deny any owner or tenant of the unit the use of a marina space, which may be enforced by towing of the vessel at the expense of the owner.

(e) Deny any owner of his or her voting rights.

Notwithstanding any provision of this subsection, if a tenant is paying a fair market rent and the tenant pays the entire rental amount due for a rental period to the association, the association may not deny the tenant under this subsection the

right to occupy the unit, the use of common areas, the use of recreational facilities, or the use of parking areas during such rental period. Any rent paid by the tenant to the association shall be credited to the landlord's account with the condominium association for that unit pursuant to s. 83.46(4).

Section 4. Paragraphs (a), (b), (c), (d), (f), (g), (j), and (n) of subsection (11) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(a) Adequate property ~~hazard~~ insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost ~~full insurable value~~ shall be determined at least once every 36 months.

1. An association or group of associations may provide adequate property ~~hazard~~ insurance through a self-insurance fund that complies with the requirements of ss. 624.460-624.488.

2. The association may also provide adequate property ~~hazard~~ insurance coverage for a group of no fewer than three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721 by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. No policy or program providing such coverage shall be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval shall include approval of the policy and related forms pursuant to ss. 627.410 and 627.411, approval of the rates pursuant to s. 627.062, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners prior to execution of the agreement by a condominium association.

3. When determining the adequate amount of property ~~hazard~~ insurance coverage, the association may consider deductibles as determined by this subsection.

(b) If an association is a developer-controlled association, the association shall exercise its best efforts to obtain and maintain insurance as described in paragraph (a). Failure to obtain and maintain adequate property ~~hazard~~

insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the members can show that despite such failure, they have made their best efforts to maintain the required coverage.

(c) Policies may include deductibles as determined by the board.

1. The deductibles shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board~~. Such meeting shall be open to all unit owners~~ in the manner set forth in s. 718.112(2)(e). ~~The notice of such meeting must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. The meeting described in this paragraph may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.~~

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and

the condominium property that is required to be insured by the association pursuant to this subsection.

(f) Every property ~~hazard~~ insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium shall provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).

3. The coverage shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon shall be the responsibility of the unit owner.

(g) A condominium unit owner's policy shall conform to the requirements of s. 627.714. ~~Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special assessment coverage of no less than $2,000 per occurrence. An insurance policy issued to an individual unit owner providing such coverage does not~~

~~provide rights of subrogation against the condominium association operating the condominium in which such individual's unit is located.~~

~~1. All improvements or additions to the condominium property that benefit fewer than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.~~

~~2. The association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within 30 days after the date on which a written request is delivered, the association may purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in s. 718.116.~~

1.~~3.~~ All reconstruction work after a property ~~casualty~~ loss shall be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner shall obtain all

required governmental permits and approvals prior to commencing reconstruction.

2.~~4.~~ Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property ~~casualty~~ insurance, and any such reconstruction work undertaken by the association shall be chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116. ~~The association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.~~

3.~~5.~~ A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate such condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property ~~hazard~~ insurance required by this section and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages constitutes an amendment to the declaration of all condominiums operated by the association, and the costs of insurance shall be stated in the association budget. The amendments shall be recorded as required by s. 718.110.

(j) Any portion of the condominium property required to be insured by the association against property ~~casualty~~ loss pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. All property ~~hazard~~ insurance

deductibles, uninsured losses, and other damages in excess of property ~~hazard~~ insurance coverage under the property ~~hazard~~ insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of any insurer ~~as set forth in paragraph (g)~~.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure ~~under paragraph (g)~~.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and, to the extent the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property ~~casualty~~ losses as a

common expense if the property ~~casualty~~ losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property ~~casualty~~ was settled or resolved with finality, or denied on the basis that it was untimely filed.

(n) The association is not obligated to pay for any reconstruction or repair expenses due to property ~~casualty~~ loss to any improvements installed by a current or former owner of the unit or by the developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for any such improvements.

Section 5. Paragraph (h) is added to subsection (1) of section 718.116, Florida Statutes, and subsection (2) of that section is amended, to read:

718.116 Assessments; liability; lien and priority; interest; collection; rent during foreclosure.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any

right the owner may have to recover from the previous owner the amounts paid by the owner.

(b) The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

2. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

(h) Where it is anticipated that the assessments owed by a unit will in the near future be limited by paragraph (b), the board of administration may elect to negotiate with, and accept from, the first mortgagee or his or her successor or assignee a payment in full settlement of the future obligation that is less than the sum that will be due in the future as limited by paragraph (b). The settlement shall only limit the obligations owed by the unit should the mortgagee or his or her successor or assignee acquire title to the unit in the foreclosure case pending at the time of the settlement. A settlement or agreement

under this paragraph does not limit the amount due from a unit owner under paragraph (a).

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element, denial of the use or enjoyment of the unit, denial of the use or enjoyment of any common element, or ~~by~~ abandonment of the unit for which the assessments are made.

Section 6. This act shall take effect July 1, 2010.

T I T L E A M E N D M E N T

Remove the entire title and insert:

A bill to be entitled

An act relating to condominium associations; amending s. 83.46, F.S.; requiring certain condominium unit tenants to pay moneys owed on behalf of the unit to the association; providing liability; providing a tenant's obligations to the association; creating s. 627.714, F.S.; requiring that coverage under a unit owner's policy for certain assessments include at least a minimum amount of loss assessment coverage; requiring that every property insurance policy issued to an individual unit owner contain a specified provision; amending s. 718.106, F.S.; providing condominium associations with certain powers relating to owners and tenants of a unit in foreclosure and more than 90 days delinquent; providing an exception

for a tenant who pays the rent directly to the association; amending s. 718.111, F.S.; requiring that adequate property insurance be based upon the replacement cost of the property to be insured as determined by an independent appraisal or update of a prior appraisal; requiring that such replacement cost be determined at least once within a specified period; providing means by which an association may provide adequate property insurance; providing requirements for such coverage for a group of communities covering their probable maximum loss for a specified windstorm event; authorizing an association to consider deductibles when determining an adequate amount of property insurance; providing that failure to maintain adequate property insurance constitutes a breach of fiduciary duty by the members of the board of directors of an association; revising the procedures for the board to establish the amount of deductibles; requiring that an association controlled by unit owners operating as a residential condominium use its best efforts to obtain and maintain adequate property insurance to protect the association and certain property; requiring that every property insurance policy issued or renewed on or after a specified date provide certain coverage; excluding certain items from such requirement; providing that excluded items and any insurance thereupon are the responsibility of the unit owner; requiring that condominium unit owners' policies conform to certain provisions of state law; deleting provisions relating to

certain hazard and casualty insurance policies; conforming provisions to changes made by the act; amending s. 718.116, F.S.; authorizing the board of administration to settle the future obligation of a lender to pay prior assessments owed; specifying that such settlement does not limit the personal liability of the unit owner; specifying additional circumstances for which liability for assessments may not be avoided; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 561 Condominiums
SPONSOR(S): Bogdanoff; Hudson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1222

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill lowers the cost of owning a condominium by:

- Repealing the requirement to purchase individual unit owner coverage.
- Providing that certain condominium buildings need not install a fire alarm system.
- Extending the time for retrofitting of sprinklers.
- Providing for additional forms of bulk communications contracts.
- Repealing the requirement to provide alternative power supplies to elevators and alarms during emergencies.

This bill also amends condominium law to:

- Move new director certification from election qualifying to after the election.
- Provide a means by which a bulk buyer may purchase units owned by a financially troubled developer without having to assume all of the liabilities of such developer.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have significant fiscal impacts on the private sector.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Unit Owner Insurance

Prior to 2004, the statutes did not provide for a split of responsibility between the insurance coverage required of the condominium association and individual unit owner property insurance that a unit owner may purchase. Thus, agents and companies had difficulty in underwriting, and competing claims and competing denials of coverage led to litigation following storms and other damage events. In the 2004 legislative session, s. 718.111(11), F.S., was amended to include a provision splitting insurance responsibilities between associations and owners.

In the 2008 legislative session, the insurance provisions were substantially amended. Included in the 2008 changes is a requirement that a unit owner purchase hazard insurance, that the unit owner name the association as an additional insured, and that an association may purchase insurance on behalf of a unit owner who has not purchased the required insurance and may require the unit owner to reimburse the association for the cost of the insurance.

This bill amends the insurance provisions of the condominium law, s. 718.111, F.S., to:

- Repeal the requirement that a unit owner must obtain insurance coverage on the unit owner's unit.
- Repeal the requirement that the association be named as an additional insured on an individual unit owner's coverage.
- Replace the inaccurate term "hazard insurance" with the term "property insurance."
- Remove the requirement that the board of administration of the association give specific notice to all members of its intent to discuss property insurance deductibles.
- Specify that the association insurance policy does not cover personal property that is located within the boundaries of a unit and serves that unit only.
- Repeal the requirement that condominium associations request from unit owners evidence of a currently effective insurance policy.

This bill also amends the insurance code, creating s. 627.714, F.S., to create a requirement that condominium owners' insurance policies include a minimum special assessment coverage of $2,000, which special assessment coverage is for special assessments up to the association's deductible payable after an insured loss. The deductible may not exceed $250. A unit owner's policy is excess coverage over the amount recoverable under any other policy covering the same property. The date of loss to the association is the date of loss applicable to the $2,000 coverage, not the date of the special assessment.

Condominium Fire Alarm Systems

Section 633.0215(2), F.S., enacted in 1998, is a part of the insurance law. The act requires the State Fire Marshal to "adopt the National Fire Pamphlet 101, current editions, by reference." Pamphlet 101 is referred to as the Life Safety Code. Chapter 2000-141, L.O.F., amended the original effective date of the act from July 1, 1999 to July 1, 2001. Susbsequently, ch. 2001-186, L.O.F, amended the effective date of the act to January 1, 2002. The State Fire Marshall complied with the statute and adopted the Life Safety Code. Chapter 9.6 of the Life Safety Code requires installation of fire alarm systems in new and existing multi-family structures.

This bill adds subsection (1) to s. 633.0215, F.S., to provide that a condominium building of one or two stories in height and that is constructed with exterior corridors is exempt from the requirement to install a manual fire alarm system.

Condominium Association Directors

Current law provides that, if no person files to run for a particular seat against an incumbent director, that director is eligible for reappointment without an election. This bill amends s. 718.112(2)(d)1., F.S., to provide that if the total number of candidates for election to the board is equal to or is less than the number of vacancies, the incumbent candidates are reappointed without election.

Current law provides that co-owners of a condominium unit may not serve together on the association's board of administration. It is unclear under current law whether co-owners who own two or more units in an association are eligible to serve together on the board of administration. This bill amends s. 718.112(2)(d)1., F.S., to provide that co-owners who own more than one condominium unit in an association are eligible to serve together on the board of administration.

Current law provides that a person who is delinquent in payment of "any fee" is ineligible for election to the board of administration, and a current director who falls more than 90 days delinquent in any fee is removed by action of law from the board. This bill amends ss. 718.112(2)(d)1. and 718.112(2)(n), F.S., to provide that delinquency in payment of any "fee, fine, or special or regular assessment" disqualifies a person from running for the board, and any director or officer with a delinquency of any fee, fine, or special or regular assessment of 90 days or more is removed from the board.

Current law requires a person running for a seat on the board of administration must certify that he or she has read the condominium law and the association's governing documents upon qualifying to run for the office. A copy of the certification of each candidate must be distributed to unit owners with the notice of the election. This bill amends s. 718.112(2)(d)3., F.S., to remove the certification and distribution requirements.

The bill requires newly elected directors, within 90 days of being elected, to certify in writing that they have read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, or, in lieu thereof, submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies a director from serving on the board.

Condominium Fire Sprinker Retrofitting

Section 633.0215(2), F.S., enacted in the 1998 session, is a part of the insurance laws. This section requires the State Fire Marshal to "adopt the National Fire Protection Association's Standard 1, Fire Prevention Code . . . [and] the Life Safety Code, Pamphlet 101, current editions, by reference." The original effective date of the requirement to adopt was moved back by ch. 2000-141, L.O.F., and was moved back again by ch. 2001-186, L.O.F., to January 1, 2002. One of the many requirements of those fire prevention codes and standards is a requirement that certain existing multi-family structures be retrofitted with fire sprinkler systems within 12 years of enactment. Thus, one effect of s. 633.0215, F.S., as it currently is in law, is to require some older condominium buildings to complete installation of fire sprinkler systems (retrofit) by January 1, 2014, unless a change is made in the standards.

The state building code has required since 1994 that a multi-family structure three stories or taller must have installed sprinkler systems when first built. Prior to 1994, some local building codes required sprinklers upon initial construction of certain multi-family structures.

Section 718.112(2)(l), F.S., provides that, notwithstanding the provisions of ch. 633, F.S., or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a condominium association or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected condominium.

However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of the common areas in a high-rise building. A high-rise building is defined as a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest story that can be occupied. For purposes of this exception, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event may the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

There are special voting, reporting, notice and recording requirements related to votes on retrofitting, including a requirement that a prospective purchaser or lessee of a condominium unit must be notified that the association has voted to forego retrofitting. Of the 74 associations that have reported to the DBPR that they have conducted a vote to forego retrofitting with sprinklers, the vote to forego failed only once and the remaining 73 have voted to forego retrofitting.[1]

This bill repeals the exception relating to buildings in excess of 75 feet, thus providing that a condominium association of a building of any height may vote to forego retrofitting of the common areas. This bill also provides that any condominium association may vote to extend the deadline for retrofitting the common areas of a high-rise condominium building with fire sprinklers or an engineered lifesafety system from the end of 2014 to the end of 2019. A special meeting to call for a vote to forego retrofitting may be called by petition of at least 25 percent of the unit owners, which may be called no more than once every 3 years. This meeting may not be noticed electronically.

Bulk Communications Contracts

Section 718.115, F.S., provides for the splitting of costs and expenses to the unit owners of the association through assessments. Section 718.115(1)(d), F.S., authorizes an association to contract for and split the cost of a master antenna television system or a bulk cable television contract. Unlike ordinary assessments, the cost of which may vary between units, the cost of a bulk contract is split on a per-unit basis.

[1] Fire system retrofitting summary reports provided to staff by DBPR, on file with staff of the Civil Justice and Courts Policy Committee.

This bill expands the authority of a condominium association to enter into similar contracts by providing that a condominium association may enter into bulk contracts for communications services, information services, or internet services. This bill also provides that any bulk contract entered into by the developer may be cancelled within 120 days of turnover.

Current law provides that a unit owner who is blind, hearing-impaired, or receives certain government assistance for the poor may voluntarily discontinue receiving cable television service and thereby not have to pay for the service. The bill amends this provision so that that ability to discontinue a bulk service only applies to cable or video service. Therefore, such persons may be required to continue receiving, and paying for, other communication, information, and internet services contracted for by the association.

Turnover

The developer who creates a condominium also initially controls the condominium association. Turnover is the point at which control of the association must be transferred from the developer to the unit owners. Section 718.301(1), F.S., contains 7 different tests for turnover, which must occur upon the happening of the first of any of the 7. Paragraph (1)(f) requires turnover if the developer is placed into receivership and the developer has not had such receivership discharged within 30 days. This bill amends s. 718.301(1)(f), F.S., to provide that the receivership court may, within those 30 days, order that turnover not occur if the court finds that it is in the best interest of the association that the developer maintain control.

Condominium Bulk Buyers

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.[2]

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee.[3] The bill provides a statement of legislative intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

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[2] Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

[3] For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to condominium project, completed construction, and, while holding itself out as developer and owner of project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in entire condominium project, and for breach of any applicable warranties due to defects in portions of project completed by lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

Definitions

The bill amends the definition of "developer" s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define "bulk assignee" as a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines "bulk buyer" as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of DBPR over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

Assignment and Assumption of Developer Rights

Creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.
- Funding converter reserves for a unit not acquired by the bulk assignee.
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.
- Including in the cumulative audit required at turnover for an audit of income and expenses during the period prior to assignment.
- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board.
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.[4]

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer

[4] The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turnover items and documents that the bulk assignee actually has. A bulk assignee has the duty to attempt to obtain turnover materials from the original developer, and must list materials that the bulk assignee was unable to obtain.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer: Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

Condominium Association Emergency Power Supplies

Current law at s. 553.509(2), F.S. requires, as to any residential structure 75 feet in height or greater, that a condominium association provide a means to supply 5 days worth of electricity to the building fire

alarm systems and at least one elevator. Independent power can be either through an owned generator or through a contract to have a generator delivered during emergencies. The requirement applies to new construction and required retrofitting of existing structures. Current law also requires significant recurring costs, either for periodic maintenance and inspection of owned generators or for standby generator contracts. This bill amends s. 553.509(2), F.S., to repeal these requirements.

B. SECTION DIRECTORY:

Section 1 creates s. 627.714, F.S., regarding property insurance coverage for condominium units.

Section 2 amends s. 633.0215, F.S., regarding the Florida Fire Prevention Code.

Section 3 amends s. 718.103, F.S., regarding definitions applicable to the condominium law.

Section 4 amends s. 718.111, F.S., regarding condominium associations.

Section 5 amends s. 718.112, F.S., regarding the bylaws of a condominium.

Section 6 amends s. 718.115, F.S., regarding common expenses of a condominium association.

Section 7 amends s. 718.301. F.S., regarding transfer of control in a condominium association.

Section 8 creates Part VII of ch. 718, F.S., regarding distressed condominium relief.

Section 9 repeals a portion of s. 553.509, F.S., regarding elevators in condominium associations.

Section 10 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Business and Professional Regulation reports that this bill will have "[n]o significant impact. However, some costs may be associated with the development and maintenance of the education curriculum required in Section 5 of bill. These costs are unable to be determined at this time."[5]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill contains several provisions that would save condominium unit owners from expenses required under current law. This bill will have a negative fiscal impact on vendors who supply the materials and labor necessary to comply with current law. Specifically, the sections in this bill that have a direct economic impact on the private sector are:

[5] DBPR analysis dated January 11, 2010.

- Sections 1 and 4 modify insurance requirements and repeal the current requirement that every unit owner obtain insurance.

- Section 2 repeals a current requirement for alarm systems in certain 2-story condominium buildings.

- Section 9 of the bill repeals the requirement that a condominium association operating a high-rise building provide a power supply for at least 5 days operation of fire alarm systems and an elevator during an emergency situation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill does not require new rulemaking, but a small number of existing rules will require amendment to conform to the provisions changing the definition of "developer."[6]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill is similar to HB 419 filed in the 2009 legislative session. The companion bill, SB 714, passed both houses but was vetoed by the Governor.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

[6] DBPR analysis dated January 11, 2010.

A bill to be entitled

An act relating to condominiums; creating s. 627.714, F.S.; requiring that coverage under a unit owner's policy for certain assessments include at least a minimum amount of loss assessment coverage; requiring that every property insurance policy to an individual unit owner contain a specified provision; amending s. 633.0215, F.S.; providing an exemption for certain condominiums from installing a manual fire alarm system as required in the Life Safety Code if certain conditions are met; amending s. 718.103, F.S.; revising the definition of the term "developer" to exclude a bulk assignee or bulk buyer; amending s. 718.111, F.S.; requiring that adequate property insurance be based upon the replacement cost of the property to be insured as determined by an independent appraisal or update of a prior appraisal; requiring that such replacement cost be determined at least once within a specified period; providing means by which an association may provide adequate property insurance; prohibiting such coverage or program from existing beyond a specified date; authorizing an association to consider deductibles when determining an adequate amount of property insurance; providing that failure to maintain adequate property insurance constitutes a breach of fiduciary duty by the members of the board of directors of an association; revising the procedures for the board to establish the amount of deductibles; requiring that an association controlled by unit owners operating as a residential

condominium use its best efforts to obtain and maintain adequate property insurance to protect the association and certain property; requiring that every property insurance policy issued or renewed on or after a specified date provide certain coverage; excluding certain items from such requirement; providing that excluded items and any insurance thereupon are the responsibility of the unit owner; requiring that condominium unit owners' policies conform to certain provisions of state law; deleting provisions relating to certain hazard and casualty insurance policies; conforming provisions to changes made by the act; amending s. 718.112, F.S.; conforming cross-references; revising requirements for the reappointment of certain board members; revising board eligibility requirements; revising notice requirements for board candidates; establishing requirements for newly elected board members; deleting a provision prohibiting an association from foregoing the retrofitting with a fire sprinkler system of common areas in a high-rise building; prohibiting local authorities having jurisdiction from requiring retrofitting with a sprinkler system or other engineered lifesafety system before a specified date; providing requirements for a special meeting of unit owners that may be called every 3 years in order to vote to forgo retrofitting of the sprinkler system or other engineered lifesafety system; providing meeting notice requirements; providing that certain directors and officers delinquent in the payment of any fee, fine, or

regular or special assessments shall be deemed to have abandoned their office; amending s. 718.115, F.S.; requiring that certain services obtained pursuant to a bulk contract as provided in the declaration be deemed a common expense; amending s. 718.301, F.S.; revising conditions under which unit owners other than the developer may elect not less than a majority of the members of the board of administration of an association; creating part VII of ch. 718, F.S., relating to distressed condominium relief; providing a short title; providing legislative findings and intent; defining the terms "bulk assignee" and "bulk buyer"; providing for the assignment of developer rights to and the assumption of developer rights by a bulk assignee; specifying liabilities of bulk assignees and bulk buyers; providing exceptions; providing additional responsibilities of bulk assignees and bulk buyers; authorizing certain entities to assign developer rights to a bulk assignee; limiting the number of bulk assignees at any given time; providing for the transfer of control of a board of administration; providing effects of such transfer on parcels acquired by a bulk assignee; providing obligations of a bulk assignee upon the transfer of control of a board of administration; requiring that a bulk assignee certify certain information in writing; providing for the resolution of a conflict between specified provisions of state law; providing that the failure of a bulk assignee or bulk buyer to comply with specified provisions of state law results in the loss of

certain protections and exemptions; requiring that a bulk assignee or bulk buyer file certain information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation before offering any units for sale or lease in excess of a specified term; requiring that a copy of such information be provided to a prospective purchaser; requiring that certain contracts and disclosure statements contain specified statements; requiring that a bulk assignee or bulk buyer comply with certain disclosure requirements; prohibiting a bulk assignee from taking certain actions on behalf of an association while the bulk assignee is in control of the board of administration of the association and requiring that such bulk assignee comply with certain requirements; requiring that a bulk assignee or bulk buyer comply with certain requirements regarding certain contracts; providing unit owners with specified protections regarding certain contracts; requiring that a bulk buyer comply with certain requirements regarding the transfer of a unit; prohibiting a person from being classified as a bulk assignee or bulk buyer unless condominium parcels were acquired before a specified date; providing for the determination of the date of acquisition of a parcel; providing that the assignment of developer rights to a bulk assignee or bulk buyer does not release a developer from certain liabilities; preserving certain liabilities for certain parties; repealing s. 553.509(2), F.S., relating to the

requirement that certain residential family dwellings have at least one public elevator that is capable of operating on an alternate power source for emergency purposes; providing an effective date.

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

Section 1. Section 627.714, Florida Statutes, is created to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required; excess coverage provision required.—For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy shall include property loss assessment coverage of at least $2,000 for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively when such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible shall apply of no more than $250 per direct property loss. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible shall apply to the loss assessment coverage. Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.

Section 2. Subsection (13) is added to section 633.0215, Florida Statutes, to read:

633.0215 Florida Fire Prevention Code.—

(13) A condominium that is one or two stories in height and has an exterior means of egress corridor is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code.

Section 3. Subsection (16) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.—As used in this chapter, the term:

(16) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy; ~~, nor does it include~~

(b) A cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion; ~~,~~

(c) A bulk assignee or bulk buyer as defined in s. 718.703; or

(d) A state, county, or municipal entity ~~is not a developer for any purposes under this act when it is~~ acting as a

lessor and not otherwise named as a developer in the declaration of condominium ~~association~~.

Section 4. Paragraphs (a), (b), (c), (d), (f), (g), (j), and (n) of subsection (11) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(a) Adequate property ~~hazard~~ insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost ~~full insurable value~~ shall be determined at least once every 36 months.

1. An association or group of associations may provide adequate property ~~hazard~~ insurance through a self-insurance fund that complies with the requirements of ss. 624.460-624.488.

2. The association may also provide adequate property ~~hazard~~ insurance coverage for a group of no fewer than three communities created and operating under this chapter, chapter

719, chapter 720, or chapter 721 by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. No policy or program providing such coverage shall be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval shall include approval of the policy and related forms pursuant to ss. 627.410 and 627.411, approval of the rates pursuant to s. 627.062, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners prior to execution of the agreement by a condominium association.

3. When determining the adequate amount of property ~~hazard~~ insurance coverage, the association may consider deductibles as determined by this subsection.

(b) If an association is a developer-controlled association, the association shall exercise its best efforts to obtain and maintain insurance as described in paragraph (a). Failure to obtain and maintain adequate property ~~hazard~~ insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the

members can show that despite such failure, they have made their best efforts to maintain the required coverage.

(c) Policies may include deductibles as determined by the board.

1. The deductibles shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board~~. Such meeting shall be open to all unit owners~~ in the manner set forth in s. 718.112(2)(e). ~~The notice of such meeting must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. The meeting described in this paragraph may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.~~

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that is required to be insured by the association pursuant to this subsection.

(f) Every property ~~hazard~~ insurance policy issued or

renewed on or after January 1, 2009, for the purpose of protecting the condominium shall provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).

3. The coverage shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon shall be the responsibility of the unit owner.

(g) A condominium unit owner's policy shall conform to the requirements of s. 627.714. ~~Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special assessment coverage of no less than $2,000 per occurrence. An insurance policy issued to an individual unit owner providing such coverage does not provide rights of subrogation against the condominium association operating the condominium in which such individual's unit is located.~~

~~1. All improvements or additions to the condominium property that benefit fewer than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.~~

~~2. The association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within 30 days after the date on which a written request is delivered, the association may purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in s. 718.116.~~

1.~~3.~~ All reconstruction work after a property ~~casualty~~ loss shall be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

2.~~4.~~ Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for

which the unit owner is required to carry property ~~casualty~~ insurance, and any such reconstruction work undertaken by the association shall be chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116. ~~The association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.~~

3.~~5.~~ A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate such condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property ~~hazard~~ insurance required by this section and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages constitutes an amendment to the declaration of all condominiums operated by the association, and the costs of insurance shall be stated in the association budget. The amendments shall be recorded as required by s. 718.110.

(j) Any portion of the condominium property required to be insured by the association against property ~~casualty~~ loss pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. All property ~~hazard~~ insurance deductibles, uninsured losses, and other damages in excess of property ~~hazard~~ insurance coverage under the property ~~hazard~~ insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of any insurer ~~as set forth in paragraph (g)~~.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure ~~under paragraph (g)~~.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and, to the extent the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property ~~casualty~~ losses as a common expense if the property ~~casualty~~ losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property ~~casualty~~ was settled or resolved

with finality, or denied on the basis that it was untimely filed.

(n) The association is not obligated to pay for any reconstruction or repair expenses due to property ~~casualty~~ loss to any improvements installed by a current or former owner of the unit or by the developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for any such improvements.

Section 5. Paragraphs (b), (d), (l), and (n) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(b) Quorum; voting requirements; proxies.—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in sub-subparagraph ~~subparagraph~~ (d)3.a., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after

January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. No voting interest or consent right allocated to a unit owned by the association shall be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this subparagraph, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid

for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. When any of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(d) Unit owner meetings.—

1. There shall be an annual meeting of the unit owners held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by secret ballot; however, if the number of vacancies equals ~~or exceeds~~ the number of candidates, no

election is required. Except in a timeshare condominium, the terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise permitted by the bylaws. In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number ~~no person is interested in or demonstrates an intention to run for the position~~ of ~~a~~ board members ~~member~~ whose terms have ~~term has~~ expired according to the provisions of this subparagraph exceeds the number of eligible members showing interest in or demonstrating an intention to run for the vacant positions, each ~~such~~ board member whose term has expired shall become eligible for reappointment ~~be automatically reappointed~~ to the board of administration and need not stand for reelection. In a condominium association of more than 10 units or in a condominium association that does not include timeshare units, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit and are not co-occupants of a unit. Any unit owner desiring to be a candidate for board membership must ~~shall~~ comply with sub-subparagraph ~~subparagraph~~ 3.a. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (n), is not eligible for board membership. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in

another jurisdiction that would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for a period of no less than 5 years as of the date on which such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a member of the board is ineligible for board membership due to having been convicted of a felony.

2. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice, which notice must include an agenda, shall be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the condominium property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the condominium property or association property upon which all notices of unit owner meetings shall be posted; however, if there is no condominium property or association property upon which notices can be posted, this requirement does not apply. In lieu of or in addition to the physical posting of notice of any meeting of the unit owners on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda

must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice shall be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes shall be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association shall provide notice, for meetings and all other purposes, to that one address which the developer initially identifies for that purpose and thereafter as one or more of the owners of the unit shall so advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered, in accordance with this provision.

3.a. The members of the board shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board, either in general elections or elections to

fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. Not less than 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, whether by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election ~~along with a certification form provided by the division attesting that he or she has read and understands, to the best of his or her ability, the governing documents of the association and the provisions of this chapter and any applicable rules~~. Any unit owner or other eligible person desiring to be a candidate for the board must give written notice of intent to be a candidate to the association not less than 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 2., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, ~~the association shall include~~ an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, shall ~~along with the signed certification form provided for in this subparagraph, to~~ be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of

the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election of members of the board. No unit owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid, provided any unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. The regular election shall occur on the date of the annual meeting. The provisions of this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare condominium associations. Notwithstanding the provisions of this sub-subparagraph ~~subparagraph~~, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected to the board, each newly elected director shall certify in writing to the secretary of the association that he or she has read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies; that he or

she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, the newly elected director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies the director from service on the board. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any appropriate action.

4. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any statute that provides for such action.

5. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any statute.

If authorized by the bylaws, notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission.

6. Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

7. Any unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

8. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of sub-subparagraph ~~subparagraph~~ 3.a. unless the association governs 10 units or fewer ~~less~~ and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and

rules adopted by the division.

Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-subparagraph (d)3.a., an association of 10 or fewer units may, by the affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(l) Certificate of compliance.—There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. ~~However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection,~~

~~the term "high rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway.~~ In no event shall the local authority having jurisdiction require completion of retrofitting ~~of common areas~~ with a sprinkler system or other engineered lifesafety system before the end of 2019 ~~2014~~.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail, hand deliver, or electronically transmit to each unit owner written notice at least 14 days prior to such membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote shall be mailed, hand delivered, or electronically transmitted to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

2. A vote to forego retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 25 percent of the voting interests, once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

3.~~2.~~ As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

(n) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any fee, fine, or regular or special assessments shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 6. Paragraph (d) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(d) If the association is authorized pursuant to ~~so provided in~~ the declaration to enter into a bulk contract for communications services as defined in chapter 202, information

services, or Internet services, the costs charged for such services~~, the cost of a master antenna television system or duly franchised cable television service obtained pursuant to a bulk contract~~ shall be deemed a common expense. If the declaration does not authorize the association to enter into a bulk contract for ~~provide for~~ the cost of communications services as defined in chapter 202, information services, or Internet services ~~a master antenna television system or duly franchised cable television service obtained under a bulk contract as a common expense~~, the board may enter into such a contract for such services.~~, and~~ The cost of the services under a bulk contract ~~service~~ will be a common expense but allocated on a per-unit basis rather than a percentage basis if the declaration provides for other than an equal sharing of common expenses, and any contract entered into before July 1, 1998, in which the cost of the service is not equally divided among all unit owners, may be changed by vote of a majority of the voting interests present at a regular or special meeting of the association, to allocate the cost equally among all units. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after the effective date hereof for communications services as defined in chapter 202, information services, or Internet services ~~a community antenna system or duly franchised cable television service~~ may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the ~~said~~ contract, but if no motion is made or if such motion fails to obtain the required majority

at the next regular or special meeting, whichever occurs ~~is~~ sooner, following the making of the contract, ~~then~~ such contract shall be deemed ratified for the term therein expressed. Any contract made by the association prior to assumption of control of the association by unit owners other than the developer may be canceled within 120 days after unit owners other than the developer elect a majority of the board of directors consistent with the provisions of s. 718.302(1).

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing-impaired or legally blind unit owner who does not occupy the unit with a non-hearing-impaired or sighted person, or any unit owner receiving supplemental security income under Title XVI of the Social Security Act or food stamps as administered by the Department of Children and Family Services pursuant to s. 414.31, may discontinue the cable or video service without incurring disconnect fees, penalties, or subsequent service charges, and, as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association share the expenses of cable or video service ~~television~~, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners receiving cable or video service ~~television~~.

Section 7. Subsection (1) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect

by association.—

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;

(e) When the developer files a petition seeking protection in bankruptcy;

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after

appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after recordation of the declaration of condominium; or, in the case of an association which may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

Section 8. Part VII of chapter 718, Florida Statutes, consisting of sections 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, is created to read:

PART VII

DISTRESSED CONDOMINIUM RELIEF

718.701 Short title.—This part may be cited as the

"Distressed Condominium Relief Act."

718.702 Legislative intent.—

(1) The Legislature acknowledges the massive downturn in the condominium market which has transpired throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have either failed or are in the process of failing, whereby the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to be paid for their investments.

(2) The Legislature recognizes that all of the factors listed in this section lead to condominiums becoming distressed, resulting in detriment to the unit owners and the condominium association on account of the resulting shortage of assessment moneys available to support the financial requirements for proper maintenance of the condominium. Such shortage and the resulting lack of proper maintenance further erode property values. The Legislature finds that individuals and entities within Florida and in other states have expressed interest in purchasing unsold inventory in one or more condominium projects, but are reticent to do so because of accompanying liabilities inherited from the original developer, which are by definition

imputed to the successor purchaser, including a foreclosing mortgagee. This results in the potential purchaser having unknown and unquantifiable risks, and potential successor purchasers are unwilling to accept such risks. The result is that condominium projects stagnate, leaving all parties involved at an impasse without the ability to find a solution.

(3) The Legislature finds and declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities within these condominiums for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part shall be used by purchasers of condominium inventory for a specific and defined period.

718.703 Definitions.—As used in this part, the term:

(1) "Bulk assignee" means a person who:

(a) Acquires more than seven condominium parcels as set forth in s. 718.707; and

(b) Receives an assignment of some or all of the rights of the developer as are set forth in the declaration of condominium or in this chapter by a written instrument recorded as an exhibit to the deed or as a separate instrument in the public

records of the county in which the condominium is located.

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels as set forth in s. 718.707 but who does not receive an assignment of any developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

718.704 Assignment of developer rights to and assumption of developer rights by bulk assignee; bulk buyer.—

(1) A bulk assignee shall be deemed to have assumed and is liable for all duties and responsibilities of the developer under the declaration and this chapter, except:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except for design, construction, development, or repair work performed by or on behalf of such bulk assignee.

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit which was not acquired by the bulk assignee; or

2. Provide converter warranties on any portion of the condominium property except as may be expressly provided by the bulk assignee in the contract for purchase and sale executed with a purchaser and pertaining to any design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association as required by s. 718.301. However, the bulk assignee shall provide an audit for the period for which the bulk assignee elects a majority of the

members of the board of administration.

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects a majority of the members of the board of administration.

(e) Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments, except as otherwise provided in subsection (2).

Further, the bulk assignee is responsible for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the obligations of the developer described in paragraphs (a)-(e).

(2) A bulk assignee receiving the assignment of the rights of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 shall be deemed to have assumed and is liable for all obligations of the developer with respect to such guarantee, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving an assignment of the right of the developer to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 or a bulk buyer is not deemed to have assumed and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments in the same manner as all other owners of condominium parcels.

(3) A bulk buyer is liable for the duties and

responsibilities of the developer under the declaration and this chapter only to the extent provided in this part, together with any other duties or responsibilities of the developer expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer to such acquirer was made with the intent to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquirer is a person who would constitute an insider under s. 726.102(7).

(5) An assignment of developer rights to a bulk assignee may be made by the developer, a previous bulk assignee, or a court of competent jurisdiction acting on behalf of the developer or the previous bulk assignee. At any particular time, there may be no more than one bulk assignee within a condominium, but there may be more than one bulk buyer. If more than one acquirer of condominium parcels receives an assignment of developer rights from the same person, the bulk assignee is the acquirer whose instrument of assignment is recorded first in applicable public records.

718.705 Board of administration; transfer of control.—

(1) For purposes of determining the timing for transfer of control of the board of administration of the association to unit owners other than the developer under s. 718.301(1)(a) or (b), if a bulk assignee is entitled to elect a majority of the members of the board, a condominium parcel acquired by the bulk assignee shall not be deemed to be conveyed to a purchaser, or to be owned by an owner other than the developer, until such condominium parcel is conveyed to an owner who is not a bulk

assignee.

(2) Unless control of the board of administration of the association has already been relinquished pursuant to s. 718.301(1), the bulk assignee is obligated to relinquish control of the association in accordance with s. 718.301 and this part.

(3) When a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee shall deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee during the period during which the bulk assignee was the owner of condominium parcels. In conjunction with the acquisition of condominium parcels, a bulk assignee shall undertake a good faith effort to obtain the documents and materials required to be provided to the association pursuant to s. 718.301(4). To the extent the bulk assignee is not able to obtain all of such documents and materials, the bulk assignee shall certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for the delivery of the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) shall commence as of the date on which the bulk assignee elected a majority of the members of the board of administration.

(4) If a conflict arises between the provisions or application of this section and s. 718.301, this section shall

prevail.

(5) Failure of a bulk assignee or bulk buyer to comply with all the requirements contained in this part shall result in the loss of any and all protections or exemptions provided under this part.

718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.—

(1) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee or bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the creating developer prepared in accordance with s. 718.504, which shall include the form of contract for purchase and sale in compliance with s. 718.503(2).

(b) An updated Frequently Asked Questions and Answers sheet.

(c) The executed escrow agreement if required under s. 718.202.

(d) The financial information required by s. 718.111(13). However, if a financial information report does not exist for the fiscal year before acquisition of title by the bulk assignee or bulk buyer, or accounting records cannot be obtained in good faith by the bulk assignee or bulk buyer which would permit preparation of the required financial information report, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must

include in the purchase contract the following statement in conspicuous type:

THE FINANCIAL INFORMATION REPORT REQUIRED UNDER SECTION 718.111(13), FLORIDA STATUTES, FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.

(2) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee must file with the division and provide to a prospective purchaser a disclosure statement that must include, but is not limited to:

(a) A description to the purchaser of any rights of the developer which have been assigned to the bulk assignee.

(b) The following statement in conspicuous type:

SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF SELLER.

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

SELLER HAS NO OBLIGATION TO FUND CONVERTER

RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) In addition to the requirements set forth in subsection (1), a bulk assignee or bulk buyer must comply with the nondeveloper disclosure requirements set forth in s. 718.503(2) before offering any units for sale or for lease for a term exceeding 5 years.

(4) A bulk assignee, while in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves in accordance with s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, or bulk buyer; or

(b) The use of reserve expenditures for other purposes in accordance with s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, or bulk buyer.

(5) A bulk assignee, while in control of the board of administration of the association, must comply with the requirements imposed upon developers to transfer control of the

association to the unit owners in accordance with s. 718.301.

(6) A bulk assignee or bulk buyer must comply with all the requirements of s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be afforded all the protections contained in s. 718.302 regarding agreements entered into by the association before unit owners other than the developer, bulk assignee, or bulk buyer elected a majority of the board of administration.

(7) A bulk buyer must comply with the requirements contained in the declaration regarding any transfer of a unit, including sales, leases, and subleases. A bulk buyer is not entitled to any exemptions afforded a developer or successor developer under this chapter regarding any transfer of a unit, including sales, leases, or subleases.

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired before July 1, 2011. The date of such acquisition shall be determined by the date of recording of a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located or by the date of issuance of a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

718.708 Liability of developers and others.—An assignment of developer rights to a bulk assignee or bulk buyer does not release the developer from any liabilities under the declaration

or this chapter. This part does not limit the liability of the developer for claims brought by unit owners, bulk assignees, or bulk buyers for violations of this chapter by the developer, unless specifically excluded in this part. Nothing contained within this part waives, releases, compromises, or limits the liability of contractors, subcontractors, materialmen, manufacturers, architects, engineers, or any participant in the design or construction of a condominium for any claim brought by an association, unit owners, bulk assignees, or bulk buyers arising from the design of the condominium, construction defects, misrepresentations associated with condominium property, or violations of this chapter, unless specifically excluded in this part.

Section 9. Subsection (2) of section 553.509, Florida Statutes, is repealed.

Section 10. This act shall take effect upon becoming a law.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Bogdanoff offered the following:

Amendment

Remove lines 144-148 and insert:

(13) A condominium that is less than three stories in height and has an exterior means of egress corridor is exempt from installing a manual fire alarm system as required in s. 9.6 of the most recent edition of the Life Safety Code adopted in the Florida Fire Prevention Code, or as same may be amended or renumbered.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 561 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Bogdanoff offered the following:

Amendment

Remove line 452 and insert:

otherwise permitted by the bylaws. In the event that the ~~bylaws~~ governing documents

Amendment No. 3

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Bogdanoff offered the following:

Amendment

Remove line 598 and insert:

from service on the board. Notwithstanding the foregoing, a director shall not be automatically removed from the board if the director's failure to provide the completed education certificate results from a failure of the education provider to timely provide it. The secretary shall cause the

Amendment No. 4

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Bogdanoff offered the following:

Amendment

Remove lines 680-703 and insert:

~~of common areas~~ with a sprinkler system or any other form of engineered lifesafety system before the end of 2019 ~~2014~~.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail~~,~~ or hand deliver~~, or electronically transmit~~ to each unit owner written notice at least 14 days prior to such membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or any other form of engineered lifesafety system is to take place. Within 30 days after the association's

Amendment No. 4

opt-out vote, notice of the results of the opt-out vote shall be mailed~~,~~ or hand delivered~~, or electronically transmitted~~ to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

2. If there has been a previous vote approving the association to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such a vote may only be called for once every 3 years. Notice

Amendment No. 5

COUNCIL/COMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Bogdanoff offered the following:

Amendment (with title amendment)

Between lines 119-120, insert:

Section 1. Subsection (5) of section 719.1055, Florida Statutes, is amended to read:

719.1055 Amendment of cooperative documents; alteration and acquisition of property.--

(5) There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the cooperative units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a cooperative or unit owner is not obligated to retrofit the common elements, common areas, association-owned property, or

units of a residential cooperative with a fire sprinkler system or any other form of engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected cooperative. ~~However, a cooperative may not forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway.~~ In no event shall the local authority having jurisdiction require completion of retrofitting ~~of common areas~~ with a sprinkler system or other form of engineered lifesafety system before the end of 2019 ~~2014~~.

(a) A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the cooperative is located. The association shall mail~~,~~ or hand deliver~~, or electronically transmit~~ to each unit owner written notice at least 14 days prior to such membership meeting in which the vote to forego retrofitting of the required fire sprinkler system or any other form of engineered lifesafety

system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote shall be mailed~~,~~ or hand delivered~~, or electronically transmitted~~ to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

(b) If there has been a previous vote approving the association to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such a vote may only be called for once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

(c)~~(b)~~ As part of the information collected annually from cooperatives, the division shall require associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting.

Amendment No. 5

T I T L E A M E N D M E N T

Remove line 2 and insert:

An act relating to community associations; amending s. 719.1055, F.S.; deleting a provision prohibiting an association from foregoing the retrofitting with a fire sprinkler system of common areas in a high-rise building; prohibiting local authorities having jurisdiction from requiring retrofitting with a sprinkler system or other engineered lifesafety system before a specified date; providing requirements for a special meeting of unit owners that may be called every 3 years in order to vote to require retrofitting of the sprinkler system or other engineered lifesafety system; providing meeting notice requirements; creating s. 627.714,

Amendment No. 6

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Civil Justice & Courts Policy Committee

Representative(s) Bogdanoff offered the following:

Amendment

Remove lines 663-665 and insert:

unit owner is not obligated to retrofit the common elements, common areas, association-owned property, or units of a residential condominium with a fire sprinkler system or any other form of engineered lifesafety system in a building that has

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

SUMMARY ANALYSIS

Supreme Court Administrative Order AOSC09-54 requires the chief judges of the 20 circuits to enter local administrative orders that will require private mediation of mortgage foreclosure cases. Highlights of the order are:

- All mortgage foreclosure actions involving homestead residential property are referred to mediation, which must be completed prior to final court action. The program is optional to borrowers, mandatory for lenders.

- A lender must pay an initial fee of up to $400 to a private provider. That fee covers case management services and financial counseling to be provided to the borrower. If the case goes to mediation, the lender must pay an additional mediation fee of up to $350. Borrowers are not required to advance any fees to participate.

- The lender and borrower must exchange information prior to the mediation.

- The lender may have a representative appear at the mediation by phone, but the lender's counsel must appear in person at any mediation. A mediator program manager (an employee of the private firm other than the assigned mediator) must start the mediation by determining whether the lender representative has full authority to settle. If this person (not a judicial officer) determines that the lender representative does not have full authority, the mediation is cancelled and the matter referred to the trial court. The court may impose sanctions, including dismissal of the case, for failure to appear.

- Mediators must have special training in foreclosure mediation.

- Numerous forms are created.

This administrative order does not appear to have a fiscal impact on state or local governments. This administrative order may have a substantial negative fiscal impact on mortgage lenders and servicers.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 2009, there were 2,824,674 U.S. properties in some stage of foreclosure. 2.21 percent of all U.S. housing units (one in 45) received at least one foreclosure filing during the year, up from 1.84 percent in 2008, 1.03 percent in 2007 and 0.58 percent in 2006. "As bad as the 2009 numbers are, they probably would have been worse if not for legislative and industry-related delays in processing delinquent loans," said James J. Saccacio, chief executive officer of RealtyTrac, a leader in foreclosure information. "After peaking in July with over 361,000 homes receiving a foreclosure notice, we saw four straight monthly decreases driven primarily by short-term factors: trial loan modifications, state legislation extending the foreclosure process and an overwhelming volume of inventory clogging the foreclosure pipeline.[1]

For 2009, more than 10 percent of Nevada housing units received at least one foreclosure filing in 2009, giving it the nation's highest state foreclosure rate for the third consecutive year. Arizona registered the nation's second highest state foreclosure rate in 2009, with more than 6 percent of its housing units receiving at least one foreclosure filing during the year, and Florida registered the nation's third highest foreclosure rate, with 5.93 percent of its housing units receiving at least one foreclosure filing during the year. Other states with 2009 foreclosure rates ranking among the nation's 10 highest were California (4.75 percent), Utah (2.93 percent), Idaho (2.72 percent), Georgia (2.68 percent), Michigan (2.61 percent), Illinois (2.50 percent), and Colorado (2.37 percent).[2]

Four states accounted for more than 50 percent of the nation's 2009 total foreclosure filings, with more than 1.4 million properties receiving a foreclosure filing in California, Florida, Arizona and Illinois combined. A total of 632,573 California properties received a foreclosure filing in 2009, the nation's largest state foreclosure activity total and an increase of nearly 21 percent from 2008. Florida posted the nation's second largest total, with 516,711 properties receiving a foreclosure filing in 2009 — a 34 percent increase from 2008. The state's fourth quarter foreclosure activity was down nearly 9 percent from the previous quarter despite a 4 percent monthly increase in foreclosure activity in December.[3]

Florida judicial circuits have tried various approaches to manage the large number of cases. In the 12th Circuit, lenders are required to meet with homestead owners to see if the problems can be resolved. The 16th Circuit has volunteer mediators working at a reduced rate, while the 18th Circuit is looking at in-house mediation. The 11th Circuit is working on a comprehensive system, getting input

[1] http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&accnt=0&itemid=8333
[2] Id.
[3] Id.

from lenders, mediators, and attorneys, and the 19th Circuit is looking at setting up a mediation program.[4]

In October 2008, there were more than 335,000 civil cases pending in Florida's courts. Of this total, about 286,000 were real property/mortgage foreclosure cases. It is estimated that, at the current case disposition rates, it will take almost 18 months for the foreclosure cases currently in the courts to be disposed of. A conservative estimate of the direct economic impacts of civil case delays are $10.1 billion per year, when you add up $1.2 billion in additional legal and other case-related expenses; $4.6 billion in lost/foregone mortgage interest on foreclosed properties; and $4.3 billion in declines in property values due to case delays.[5]

A trial court may, under current law, refer any case, including a foreclosure case, to mediation[6]. In mediation of a foreclosure case, the lender would be required to meet with the borrower to discuss whether a settlement or mortgage workout could be negotiated. A trial court may, under current court rules, set a case management conference at which the judge may, among other things, "pursue the possibilities of settlement" and "determine other matter that may aid in the disposition of the action."[7]

Effect of Administrative Order

This administrative order requires the chief judges of the 20 judicial circuits to each enter a local administrative order regarding foreclosure cases. A model administrative order is attached to the order. The model order sets forth the terms of the program.

Applicability

The program applies to any foreclosure of a mortgage encumbering homesteaded residential property where the mortgage was subject to federal truth in lending regulations. The federal truth in lending regulations apply to any person that offers or extends credit when four conditions are met: (i) The credit is offered or extended to consumers; (ii) the offering or extension of credit is done regularly; (iii) the credit is subject to a finance charge or is payable by a written agreement in more than 4 installments; and (iv) the credit is primarily for personal, family, or household purposes.[8]

Lenders are required to pay for the program and must comply with program requirements as a condition of the foreclosure. The program is optional to borrowers.

A lender is not required to comply with the program if the lender and borrower previously participated in a similar program.

Program Providers

The administrative order requires each circuit to select a program provider that is qualified to receive referrals to mediation, contact borrowers, provide financial counseling, assign mediators, facilitate the exchange of documents between the parties, schedule mediation conferences within designated time frames, and develop procedures for verifying compliance with the managed mediation administrative order.

Mediators

Mediators are selected by the program provider. To qualify for appointment, a mediator must first be certified as a circuit civil mediator, and must complete a special course on mortgage mediation.

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[4] Blankenship, *Florida should consider mediation in foreclosures*, Florida Bar News, February 1, 2009.
[5] Pudlow, *Business leaders feel the sting of court cuts*, Florida Bar News, February 1, 2009. The estimates were developed by Coral Gables economist Tony Villamil.
[6] Section 44.102(2)(b), F.S.; F.R.C.P. 1.700-1.730.
[7] F.R.C.P. 1.200(a).
[8] Section 226.1(c) of Regulation Z.

Process

A lender must contact the program manager upon filing of a foreclosure case and must pay a fee to be set locally of up to $400. The program manager will then contact the borrower to determine if he or she is willing to participate in the program. If so, a mediation date is set between 60 and 120 days from the date that the foreclosure case was filed. The borrower is referred by the program manager to a HUD-certified foreclosure counselor. The cost for the foreclosure counselor is paid from the initial fee paid by the lender.

The counselor assists the borrower in collecting financial information necessary to the mediation. The borrower is required to provide the lender with:

- A detailed financial worksheet (not under oath)[9]
- Fannie Mae Hardship Form 1021 (under oath)[10]
- If the borrower intends on asking for a short sale[11]: a signed purchase contract for the homestead residence, the listing agreement, a preliminary HUD-1, and written permission from the borrower authorizing the plaintiff or any agent of the plaintiff to speak with the real estate agent about the borrower's loan.
- If the borrower intends on offering a deed in lieu of foreclosure: a current title search.

The lender is required to provide the borrower with:

- Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.
- A history showing the application of all payments by the borrower during the life of the loan.
- A statement of the plaintiff's position on the present net value of the mortgage loan.
- The most current appraisal of the property available to the plaintiff.

At the mediation meeting, the borrower and an attorney for the lender are required to appear in person. The lender must also have a representative attend the mediation, although that representative may appear by phone. Before the mediation starts, the mediation manager questions the lender representative to determine if the lender representative has full authority to settle. The mediation manager must approve the lender representative before the mediation may go forward.[12] If the parties do not settle, the lender representative appearing by phone must file an affidavit certifying that he or she stayed on the phone during the entire mediation.[13]

Funding

The lender pays a $400 fee upon the filing of a case. If the case goes to mediation, the lender pays an additional $350 mediation fee. Borrowers are not required to advance any funds. These fees may be assessed as costs in the action.

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[9] Pages A-30 to A-32

[10] Pages A-33 to A-37

[11] A short sale is a negotiated sale to a third party where the lender agrees to accept less than a full payoff in exchange for a satisfaction or release of the mortgage lien.

[12] At page A-9, the model local administrative order reads: "If the Program Manager determines that the plaintiff's representative present does not have full authority to settle, the Program Manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by this Administrative Order."

[13] Page A-9, and Exhibit 8.

Sanctions
If plaintiff's counsel or the plaintiff's representative fails to appear at a mediation, the court may dismiss the action without prejudice, order plaintiff's counsel or the plaintiff's representative's to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorney's fees and costs if the borrower is represented by an attorney. If the borrower or borrower's counsel of record fails to appear, the court may impose such other sanctions as the court deems appropriate, including, but not limited to, attorney's fees and costs.

The court may not enter a final judgment of foreclosure until all of the requirements of the program are met. The failure of a party to fully comply with the provisions of this Administrative Order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.[14]

Other Administrative Duties
Any lender who has filed 5 or more foreclosures in a circuit must appoint two liaisons, one of whom must be a lawyer and the other a representative of the entity servicing the plaintiff's mortgages. The name, phone number (including extension), email, and mailing address of both liaisons must be provided to the chief judge and the Program Manager, and must be periodically updated. The liaisons shall be informed of the requirements of this Administrative Order and shall be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff's cases through the RMFM Program. The liaisons shall act as the court's point of contact in the event the plaintiff fails to comply with this Administrative Order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.[15]

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown, see Fiscal Comments.

2. Expenditures:

   Unknown, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This administrative order requires every lender foreclosing a residential property to initially pay a fee of up to $400. Should the property go to mediation, the lender will pay an additional fee of up to $350.

[14] Page A-12
[15] Pages A-14 to A-15

Where a mediation is conducted, this administrative order further requires that an attorney representing the lender appear in person. The cost to lenders of this requirement is unknown and variable, but is likely significant. The major law firms performing foreclosure work are concentrated in the South Florida and Tampa Bay urban areas. The cost to such firms to send attorneys to the rural counties may be substantial. In current practice, foreclosure law firms charge a flat fee per foreclosure case. Current flat fee arrangements do not contemplate personal appearance at a mediation session. This administrative order will have a negative fiscal impact on law firms forced to absorb the cost of sending an attorney, or on lenders who will pay higher fees that cover a personal appearance at a mediation.

After a foreclosure sale, the additional costs and fees initially paid by lenders can be added to the deficiency judgment entered against the borrowers. In practice, it is highly unlikely that such costs will be recovered by the lender as deficiency judgments are rarely paid in full.

D. FISCAL COMMENTS:

Last year, the cost to file a foreclosure action was increased from $295 to:

- $395 if the balance owed is less than $50,000;
- $900 if the balance owed is between $50,000 and $250,000; or
- $1900 if the balance owed is in excess of $250,000.

It is unknown how this administrative order would affect state government revenues and expenditures. It may serve to defer or deter the filing of some foreclosure cases, which would lower filing fee revenue. However, when the foreclosure filing fee was substantially increased last year (see above), there was no drop in the rate of foreclosure cases filed. If that trend were to continue, there would be no decrease in revenues resulting from this increase in fees.

This administrative order may increase the duties of the clerks and court administrative staff related to ensuring compliance with the requirements for mediation and with hearings on compliance. On the other hand, if successful this administrative order may resolve cases prior to hearing, which would lower expenditures. If successful, this administrative order may lower fee revenue to clerks related to the fee required for conducting the sale (no impact in counties utilizing an outside provider to conduct on-line sales).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The constitutional mandates provision does not apply to court rules or administrative orders enacted by the judiciary. If it did, this administrative order does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article V, s. 2 of the state constitution provides for adoption of "rules for the practice and procedure in all courts." This administrative order is not designated by title as a rule of court, but it could be argued, under the maxim that "form follows function," that this administrative order is in the form of, and is, in effect, a rule of court subject to review and possible repeal by the legislature. A court rule may be repealed by general law enacted by a two-thirds vote of the membership of each house.

The courts have often set aside laws passed by the legislature on the ground that such laws were procedural in nature, and thus violated the court's exclusive rule making authority. Correspondingly, it could be argued that this administrative order is substantive in nature and thus in the exclusive

domain of the legislature. Substantive provisions of this order include the setting of fees and the creation of requirements for foreclosure of a mortgage.

B. RULE-MAKING AUTHORITY:

See discussion below.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This administrative order requires a lender to pay an initial fee of $400. Part of that fee is to cover the cost of financial counseling provided to the borrower/defendant. If the borrower does not elect to attend the counseling, the provider is supposed to refund the value of the counseling to the lender.[16] The value of this counseling is not set forth in the administrative order, but was estimated at $125 at the court's oral argument. The administrative order does not ensure that providers will follow through on the duty to refund and does indicate the value of the counseling or a means to determine the value of the counseling. This ambiguity may lead to litigation.

The legislature has authorized the courts to require parties to attend, and pay for, mediation services. Section 44.102, F.S, provides, in part (emphasis added):

> 44.102 Court-ordered mediation.--
>
> (1) Court-ordered mediation shall be conducted **according to rules of practice and procedure** adopted by the Supreme Court.
>
> (2) A court, **under rules adopted by the Supreme Court**:
>
> (a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless: [exceptions not applicable, and are deleted for clarity]
>
> . . .
>
> (b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.
>
> . . .
>
> (4)
> (b) Nonvolunteer mediators shall be compensated **according to rules** adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county or by the parties.

It is clear that the authority to set a fee for mediation is created by statute and requires the enactment of a rule of procedure. It is unclear whether there is authority to impose a mediation fee by administrative order. It is also unclear what constitutional authority the court has to impose the initial fee or court cost of up to $400, whether by rule or by administrative order, in that the fee covers case administration and counseling services provided to a party.

Section 44.108, F.S., provides that the clerk of court collects mediation fees for mediation programs, and, after retaining a small service charge, pays the mediation fee to a mediator or mediation program. It is unclear what authority, if any, the court has to create a program bypassing the clerk and requiring direct payment to a private vendor.

[16] Page A-13

The administrative order does not indicate how the chief judge of the circuit is to select the program manager, whether by non-public solicitation by the chief judge, rotation among qualified firms, invitation to negotiate, or competitive bidding.

If the borrower intends to offer a deed in lieu of foreclosure, the program requires the borrower to provide a current title search. It is unclear why this would be a requirement. The foreclosing attorney has already performed a title search prior to filing of the action in order to determine the appropriate defendants (an update would be necessary prior to delivery of the deed, but that is a simple matter for the attorney who has already performed the base search). It is unlikely that an unrepresented borrower would know what a title search is or how to order one. A full title search paid for by the borrower appears to be an unnecessary expense.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a

Supreme Court of Florida

No. AOSC09-54

IN RE: FINAL REPORT AND RECOMMENDATIONS ON RESIDENTIAL MORTGAGE FORECLOSURE CASES

ADMINISTRATIVE ORDER

Foreclosure case filings in Florida trial courts stood at nearly 369,000 in December 2008. At the beginning of the last quarter of 2009, foreclosure filings statewide totaled in excess of 296,000. Florida has the third highest mortgage delinquency rate, the worst foreclosure inventory, and the most foreclosure starts in the nation. At the close of 2009, it is estimated there will be an inventory of approximately 456,000 pending foreclosure cases statewide. The crisis continues unabated.

The Task Force on Residential Mortgage Foreclosure Cases was established to respond on an emergency basis to the residential mortgage foreclosure crisis in Florida.[1] In Re: Task Force on Residential Mortgage Foreclosure Cases, AOSC09-8 (March 27, 2009). The 15-member Task Force issued a Final Report and

1. The Task Force was asked to recommend "policies, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties" through "mediation and other alternative dispute resolution strategies, case management techniques, and approaches to providing *pro bono* or low-cost legal assistance to homeowners."

Recommendations on August 15, 2009.[2] The Final Report and Recommendations was published for comment, and oral argument was held on November 4, 2009. In its report, the Task Force identified lack of communication between plaintiffs and borrowers as the most significant issue impeding early resolution of foreclosure cases, and concluded that effective case management and mediation techniques are the best methods the courts can employ to ensure that such communications occur early enough in the case to avoid wasted time and resources for the courts and the parties.

Recognizing that section 44.108, Florida Statutes, and statewide trial court budget policy considerations do not allow trial courts to collect fees for the provision of circuit civil mediation services, the Task Force concluded that outside entities would be needed to manage mediations on the scale required to address the state's foreclosure crisis.

Statewide Managed Mediation Program

The Task Force recommended adoption of a uniform, statewide managed mediation program to be implemented through a model administrative order to be issued by each circuit chief judge. Under this program, all foreclosure cases in the

2. The Task Force met over a period of approximately 20 weeks. During that time period, it conducted in-depth surveys and engaged in other outreach efforts to determine the impact of the foreclosure crisis on lenders and servicers, borrowers, attorneys and judges. The Task Force's Final Report and Recommendations is available at http://www.floridasupremecourt.org/pub_info/documents.shtml#foreclosure.

state courts that involve residential homestead property will be referred to mediation, unless the plaintiff and borrower agree otherwise or unless effective pre-suit mediation that substantially complies with the managed mediation program requirements has been conducted. Referral of the borrower to foreclosure counseling prior to mediation, early electronic exchange of borrower and lender information prior to mediation, and the ability of a plaintiff's representative to appear at mediation by telephone are features of the model administrative order.

The Court approves this recommendation as the best method to open communication and facilitate problem-solving between the parties to foreclosure cases while conserving limited judicial resources. The Court therefore adopts, with minor changes, the Task Force's proposed model administrative order. The model administrative order is incorporated into and appended to this Administrative Order.

As part of the managed mediation program, the Task Force recommended specific written parameters for qualifying providers of managed mediation services, as appended to the model administrative order as Exhibit 13. The Court adopts these standards for providers. It is crucial that these non-profit organizations be independent of the judicial branch, capable of sustained operation without fiscal impact to the courts, politically and professionally neutral, and have a demonstrated ability to efficiently manage the extremely high volume of

foreclosure actions in the circuit or circuits in which services are to be provided. All providers will be responsible for receiving referrals to mediation, reaching out to borrowers, assigning mediators, facilitating the exchange of documents between the parties, scheduling mediation conferences within designated time frames, and developing procedures for verifying compliance with the managed mediation administrative order issued by the circuit chief judge.

The model administrative order applies to all residential mortgage foreclosure actions filed against homestead property involving loans that originated under federal truth in lending regulations. The administrative order issued by the chief judge will constitute a formal referral to mediation. A borrower may opt out of the process by declining to participate upon being contacted by the mediation manager, or by not completing the pre-mediation requirements of foreclosure counseling and submission of financial documentation to the mediation manager. The parties may also opt out of post-filing managed mediation if they participated in pre-suit mediation either directly through the managed mediation program or through a Supreme Court-certified circuit civil mediator specially trained to mediate residential mortgage foreclosure actions, providing the borrower has participated in foreclosure counseling, there has been a supervised exchange of plaintiff and borrower disclosures, and mediation resulted in either settlement or impasse. In order to qualify as an opt-out from the managed mediation program,

pre-suit mediation must share characteristics of the managed mediation program; that is, it must be independent, genuine, fair and impartial.

Only Florida Supreme Court-certified circuit civil mediators specially trained in residential mortgage foreclosure matters may be assigned to mediate cases referred to a managed mediation program. The Task Force developed training standards and objectives for training mediators in foreclosure matters, and the Court adopts these standards, as appended to the model administrative order as Exhibit 12.

Under the model administrative order, the mediation manager must schedule mediation no earlier than 60 days and no later than 120 days after suit is filed. The mediation manager is responsible for contacting borrowers to explain the program and to refer the borrower to one of several HUD-certified foreclosure counselors who are available to the program on a rotating basis. The mediation manager must also accept and deliver party disclosures through electronic means. While the Task Force recommended the creation of a web-enabled information platform or other secure information system in which to maintain plaintiff and borrower disclosures, the Court recognizes that establishment of such a platform may require time and resources that are not presently available in the midst of the current foreclosure crisis. The Court therefore supports and encourages, as an interim solution, the use of a secure dedicated e-mail address by managed mediation providers for the

purpose of accepting and exchanging plaintiff and borrower disclosures prior to scheduled mediations. The provider of managed mediation services must be responsible for protecting the confidentiality of borrower financial information in accordance with Florida law. The advantage of this solution is that it can be implemented immediately at little or no cost.

The Court recognizes, however, that a secure, encrypted, web-based shared electronic platform is the optimal solution, and urges managed mediation providers to research the availability and feasibility of implementing this method for maintaining and exchanging plaintiff and borrower information. The Court directs the Florida Courts Technology Commission to monitor the methods of electronic information exchange implemented by managed mediation providers in order to evaluate the effectiveness of these methods, and to report the Commission's findings to the Court one year from the date of this Administrative Order.

The Task Force majority recommended that costs of the managed mediation program be paid by the plaintiff, and the Court agrees with this recommendation as the most effective approach to getting plaintiffs and borrowers quickly into mediation for early resolution of their cases. Requiring borrowers to pay a portion of mediation up front would operate as a barrier to this Court's goal of efficiently managing these cases to avoid waste of judicial and party resources. The model administrative order provides for staged payments: part paid at the time the

complaint is filed and the balance paid after mediation is scheduled. These costs will be recoverable in the final judgment of foreclosure. Plaintiffs will be entitled to a refund of fees attributable to foreclosure counseling if the borrower did not participate. Plaintiffs also will be entitled to a refund of fees if cases settle prior to mediation or if borrowers decline to participate in the program before mediating the case. While the model administrative order proposed by the Task Force did not identify a specific fee amount to be paid by plaintiffs, the Court has determined that the total fee for managed mediation may not in any instance exceed $750.

The Task Force concluded that plaintiffs must have present at the mediation conference a representative who has full authority to settle and who can bind the plaintiff to any mediated settlement agreement. Because of the high volume of foreclosure cases and the fact that many of the leading foreclosure filers are not Florida institutions, the Task Force concluded that the plaintiff's representative may appear at mediation by telephone or another electronic method. Electronic appearance is in compliance with existing mediation rules, including rule 1.720(b), Florida Rules of Civil Procedure, which permits a change in the appearance requirement by order of the court. Plaintiff's counsel, however, as well as the borrower and borrower's counsel, if any, must attend mediation in person.

In order for the managed mediation program to effectively facilitate early resolution of cases, the courts must know whether program requirements are being

met by the parties. The Task Force therefore recommended that the mediation manager, prior to commencement of the mediation conference, determine whether plaintiff's representative is present and whether the representative has full authority to settle the case. If the representative does not have full authority to settle, the mediation manager will report to the court that the plaintiff did not appear with full authority to settle, in violation of the model administrative order requirements. The Committee on Alternative Dispute Resolution Rules and Policy is examining the appearance issue in relation to all mediations as a potential change to Rule 1.720, Florida Rules of Civil Procedure. The Court approves this provision of the model administrative order as an interim measure in lieu of an immediate rule change.

Reporting and Data Collection

The Court cannot anticipate how effective the statewide managed mediation program will be in easing the backlog of pending residential foreclosure cases in Florida. The Court therefore directs the Committee on Alternative Dispute Resolution Rules and Policy to implement a reporting system to collect data on the number of cases statewide that are referred to managed mediation programs; whether the cases were settled, adjourned, or ended in impasse; and other relevant information. Key determinants in evaluating the success of the program will be: (1) the percentage of cases referred to the program that result in the program

manager successfully contacting borrowers; (2) the percentage of scheduled mediations failing to go forward because plaintiff's representative did not appear; (3) the percentage of scheduled mediations failing to go forward because the borrower did not appear; and (4) the percentage of mediations resulting in partial or complete agreements compared to those resulting in impasse. The Committee shall report these statistics to the court one year from the date of this Administrative Order.

Case Management Strategies

In addition to approving the model administrative order and the forms attached to the model order, the Court also approves the "best practices" case management forms submitted as appendices to the Task Force's Final Report and Recommendations. The forms are incorporated into and appended to this Administrative Order. These forms may be adopted and modified by the courts for use in managing foreclosure cases that are not referred to managed mediation programs. The Court also approves the Task Force recommendation for use of sections 702.065 and 702.10, Florida Statutes, to expedite cases involving vacant properties. The Court further approves the Task Force recommendation that cases involving properties that are occupied by individuals other than the borrower may opt into the managed mediation program, at equal cost to the parties, and that

structural improvements, such as open calendars, be employed by courts to allow cases to move as quickly and smoothly as possible.

The Court commends the Task Force for the important work it has performed in addressing the residential mortgage foreclosure crisis in Florida in a brief time frame under significant budgetary constraints.

DONE AND ORDERED at Tallahassee, Florida, on December 28, 2009.

Chief Justice Peggy A. Quince

ATTEST:

Thomas D. Hall
Clerk, Supreme Court

APPENDIX

A. Model Administrative Order

B. Best Practices Case Management Forms

APPENDIX A

MODEL ADMINISTRATIVE ORDER

IN THE [number] JUDICIAL CIRCUIT OF FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER NUMBER 2009 –*[#]*

ADMINISTRATIVE ORDER FOR CASE MANAGEMENT OF RESIDENTIAL FORECLOSURE CASES AND MANDATORY REFERRAL OF MORTGAGE FORECLOSURE CASES INVOLVING HOMESTEAD RESIDENCES TO MEDIATION

Whereas, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3)**,** Florida Rules of Judicial Administration, mandates the chief judge to "develop an administrative plan for the efficient and proper administration of all courts within the circuit;" and

Whereas, rule 2.545 of the Rules of Judicial Administration requires that the trial courts "…take charge of all cases at an early stage in the litigation and…control the progress of the case thereafter until the case is determined…", which includes "…identifying cases subject to alternative dispute resolution processes;" and

Whereas, Chapter 44, Florida Statutes, and rules 1.700-1.750, Florida Rules of Civil Procedure, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

Whereas, residential mortgage foreclosure case filings have increased substantially in the *[number]* Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the *[number]* Judicial Circuit to manage these cases in a timely manner; and

Whereas, high residential mortgage foreclosure rates are damaging the economies of the count*[y][ies]* in the *[number]* Judicial Circuit; and

Whereas, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter

being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

Whereas, the *[name of Program Manager]* is an independent, nonpartisan, nonprofit organization that has demonstrable ability to assist the courts with managing the large number of residential mortgage foreclosure actions that recently have been filed in the *[number]* Judicial Circuit.

NOW, THEREFORE, IT IS ORDERED:

Definitions

As used in this Administrative Order, the following terms mean:

"RMFM Program" (Residential Mortgage Foreclosure Mediation Program) means the mediation program managed by *[name of Program Manager]* to implement and carry out the intent of this Administrative Order.

"The Program Manager" means *[name of Program Manager]*, qualified in accordance with parameters attached as Exhibit 13. Also referred to as the "Mediation Manager."

"Plaintiff" means the individual or entity filing to obtain a mortgage foreclosure on residential property.

"Plaintiff's representative" means the person who will appear at mediation who has full authority to settle without further consultation and resolve the foreclosure suit.

"Borrower" means an individual named as a party in the foreclosure action who is a primary obligor on the promissory note which is secured by the mortgage being foreclosed.

"Homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last

assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

"Form A" means the certifications required herein in the format of Exhibit 1 attached.

"Plaintiff's Disclosure for Mediation" means those documents requested by the borrower pursuant to paragraph 7 below.

"Borrower's Financial Disclosure for Mediation" means those documents described in Exhibit 5 attached.

"Foreclosure counselor" means a counselor trained in advising persons of options available when facing a mortgage foreclosure, who has no criminal history of committing a felony or a crime of dishonesty, and who is certified by the United States Department of Housing and Urban Development (HUD) or National Foreclosure Mitigation Counseling Program (NFMC) as an agency experienced in mortgage delinquency and default resolution counseling.

"Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of the participants is audible to all persons present.

Scope

1. ***Residential Mortgage Foreclosures (Origination Subject to TILA).*** This Administrative Order shall apply to all residential mortgage foreclosure actions filed in the *[number]* Judicial Circuit in which the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. However, compliance with this Administrative Order varies depending on whether the property secured by the mortgage is a homestead residence.

   Upon the effective date of this Administrative Order, all newly filed mortgage foreclosure actions filed against a homestead residence shall be referred to the RMFM Program unless the plaintiff and borrower agree in writing otherwise or unless pre-suit mediation was conducted in accordance to paragraph 23. The parties to the foreclosure action shall comply with the conditions and requirements imposed by this Administrative Order. In

actions to foreclose a mortgage on a homestead residence, the plaintiff and borrower shall attend at least one mediation session, unless the plaintiff and borrower agree in writing not to participate in the RMFM Program or the Program Manager files a notice of borrower nonparticipation.

Upon the effective date of this Administrative Order, all newly filed residential mortgage foreclosure actions involving property that is not a homestead residence shall comply with the requirements of filing a Form A as required by paragraph 5 below and the requirements of paragraph 18 below (plaintiff's certification as to settlement authority).

At the discretion of the presiding judge, compliance with this Administrative Order may also be required for homestead residential mortgage foreclosure actions filed prior to the effective date of this Administrative Order, to residences which are not homestead residences, and any other residential foreclosure action the presiding judge deems appropriate. A party requesting that the case be sent to mediation with the RMFM Program at the discretion of the presiding judge shall make the request in format of Exhibit 3 attached.

2. ***Referral to Mediation.*** This Administrative Order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure in actions involving a mortgage foreclosure of a homestead residence. The plaintiff and borrower are deemed to have stipulated to mediation by a mediator assigned by the Program Manager unless pursuant to rule 1.720(f), Florida Rules of Civil Procedure., the plaintiff and borrower file a written stipulation choosing not to participate in the RMFM Program. Referral to the RMFM Program is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the panel of available certified circuit civil mediators. Mediators used in the RMFM Program shall be trained in accordance with the standards stated in Exhibit 12 attached. Mediation through the RMFM Program shall be conducted in accordance with Florida Rules of Civil Procedure and Florida Rules for Certified and Court-Appointed Mediators.

3. ***Compliance Prior to Judgment.*** The parties must comply with this Administrative Order and the mediation process must be completed before the plaintiff applies for default judgment, a summary judgment hearing, or a

final hearing in an action to foreclose a mortgage on a homestead residence unless a notice of nonparticipation is filed by the Program Manager.

4. ***Delivery of Notice of RMFM Program with Summons.*** After the effective date of this Administrative Order, in all actions to foreclose a mortgage on residential property the clerk of court shall attach to the summons to be served on each defendant a notice regarding managed mediation for homestead residences in the format of Exhibit 2 attached.

Procedure

5. ***Responsibilities of Plaintiff's Counsel; Form A.*** When suit is filed, counsel for the plaintiff must file a completed Form A with the clerk of court. If the property is a homestead residence, all certifications in Form A must be filled out completely. Within one business day after Form A is filed with the clerk of court, counsel for plaintiff shall also electronically transmit a copy of Form A to the Program Manager along with the case number of the action and contact information for all of the parties. The contact information must include at a minimum the last known mailing address and phone number for each party.

   In Form A, plaintiff's counsel must affirmatively certify whether the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. In Form A, plaintiff's counsel must also affirmatively certify whether the property is a homestead residence. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar nonresponsive statements.

   If the property is a homestead residence and if the case is not exempted from participation in the RMFM Program because of pre-suit mediation conducted in accordance with paragraph 23 below, plaintiff's counsel shall further certify in Form A the identity of the plaintiff's representative who will appear at mediation. Plaintiff's counsel may designate more than one plaintiff's representative. At least one of the plaintiff's representatives designated in Form A must attend any mediation session scheduled pursuant to this Administrative Order. Form A may be amended to change the designated plaintiff's representative, and the amended Form A must be filed with the court no later than five days prior to the mediation session. All amended Forms A must be electronically transmitted to the Program Manager via a secure dedicated e-mail address or on the web-enabled

information platform described in paragraph 8 no later than one business day after being filed with the clerk of court.

6. ***Responsibilities of Borrower.*** Upon the Program Manager receiving a copy of Form A, the Program Manager shall begin efforts to contact the borrower to explain the RMFM Program to the borrower and the requirements that the borrower must comply with to obtain a mediation. The Program Manager shall also ascertain whether the borrower wants to participate in the RMFM Program.

   The borrower must do the following prior to mediation being scheduled: meet with an approved mortgage foreclosure counselor, and provide to the Program Manager the information required by the Borrower's Financial Disclosure for Mediation. The Borrower's Financial Disclosure for Mediation will depend on what option the borrower wants to pursue in trying to settle the action.

   It shall be the responsibility of the Program Manager to transmit the Borrower's Financial Disclosure for Mediation via a secure dedicated e-mail address or to upload same to the web-enabled information platform described in paragraph 8; however, the Program Manager is not responsible or liable for the accuracy of the borrower's financial information.

7. ***Plaintiff's Disclosure for Mediation.*** Within the time limit stated below, prior to attending mediation the borrower may request any of the following information and documents from the plaintiff:

   Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.

   A history showing the application of all payments by the borrower during the life of the loan.

   A statement of the plaintiff's position on the present net value of the mortgage loan.

   The most current appraisal of the property available to the plaintiff.

   The borrower must deliver a written request for such information to the Program Manager in the format of Exhibit 6 attached no later than 25 days

prior to the mediation session. The Program Manager shall promptly electronically transmit the request for information to plaintiff's counsel.

Plaintiff's counsel is responsible for ensuring that the Plaintiff's Disclosure for Mediation is electronically transmitted via a secure dedicated e-mail address or to the web-enabled information platform described in paragraph 8 below no later than five (5) business days before the mediation session. The Program Manager shall immediately deliver a copy of Plaintiff's Disclosure for Mediation to the borrower.

8. ***Information to Be Provided on Web-Enabled Information Platform.*** All information to be provided to the Program Manager to advance the mediation process, such as Form A, Borrower's Financial Disclosure for Mediation, Plaintiff's Disclosure for Mediation, as well as the case number of the action and contact information for the parties, shall be submitted via a secure dedicated e-mail address or in a web-enabled information platform with XML data elements.

9. ***Nonparticipation by Borrower.*** If the borrower does not want participate in the RMFM Program, or if the borrower fails or refuses to cooperate with the Program Manager, or if the Program Manager is unable to contact the borrower, the Program Manager shall file a notice of nonparticipation in the format of Exhibit 4 attached. The notice of nonparticipation shall be filed no later than 120 days after the initial copy of Form A is filed with the court. A copy of the notice of nonparticipation shall be served on the parties by the Program Manager.

10. ***Referral to Foreclosure Counseling.*** The Program Manager shall be responsible for referring the borrower to a foreclosure counselor prior to scheduling mediation. Selection from a list of foreclosure counselors certified by the United States Department of Housing and Urban Development shall be by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending. The borrower's failure to participate in foreclosure counseling shall be cause for terminating the case from the RMFM Program.

11. ***Referrals for Legal Representation.*** In actions referred to the RMFM Program, the Program Manager shall advise any borrower who is not represented by an attorney that the borrower has a right to consult with an attorney at any time during the mediation process and the right to bring an

attorney to the mediation session. The Program Manager shall also advise the borrower that the borrower may apply for a volunteer *pro bono* attorney in programs run by lawyer referral, legal services, and legal aid programs as may exist within the circuit. If the borrower applies to one of those agencies and is coupled with a legal services attorney or a volunteer *pro bono* attorney, the attorney shall file a notice of appearance with the clerk of the court and provide a copy to the attorney for the plaintiff and the Program Manager. The appearance may be limited to representation only to assist the borrower with mediation but, if a borrower secures the services of an attorney, counsel of record must attend the mediation.

12. ***Scheduling Mediation.*** The plaintiff's representative, plaintiff's counsel, and the borrower are all required to comply with the time limitations imposed by this Administrative Order and attend a mediation session as scheduled by the Program Manager. No earlier than 60 days and no later than 120 days after suit is filed, the Program Manager shall schedule a mediation session. The mediation session shall be scheduled for a date and time convenient to the plaintiff's representative, the borrower, and counsel for the plaintiff and the borrower, using a mediator from the panel of Florida Supreme Court certified circuit civil mediators who have been specially trained to mediate residential mortgage foreclosure disputes. Mediation sessions will be held at a suitable location(s) within the circuit obtained by the Program Manager for mediation. Mediation shall be completed within the time requirements established by rule 1.710(a), Florida Rules of Civil Procedure.

    Mediation shall not be scheduled until the borrower has had an opportunity to meet with an approved foreclosure counselor. Mediation shall not be scheduled earlier than 30 days after the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff via a secure dedicated e-mail address or uploaded to the web-enabled information platform described in paragraph 8.

    Once the date, time, and place of the mediation session have been scheduled by the Program Manager, the Program Manager shall promptly file with the clerk of court and serve on all parties a notice of the mediation session.

13. ***Attendance at Mediation.*** The following persons are required to be physically present at the mediation session: a plaintiff's representative designated in the most recently filed Form A; plaintiff's counsel; the

borrower; and the borrower's counsel of record, if any. However, the plaintiff's representative may appear at mediation through the use of communication equipment, if plaintiff files and serves at least five (5) days prior to the mediation a notice in the format of Exhibit 7 attached advising that the plaintiff's representative will be attending through the use of communication equipment and designating the person who has full authority to sign any settlement agreement reached. Plaintiff's counsel may be designated as the person with full authority to sign the settlement agreement.

At the time that the mediation is scheduled to physically commence, the Program Manager shall enter the mediation room prior to the commencement of the mediation conference and, prior to any discussion of the case in the presence of the mediator, take a written roll. That written roll will consist of a determination of the presence of the borrower; the borrower's counsel of record, if any; the plaintiff's lawyer; and the plaintiff's representative with full authority to settle. If the Program Manager determines that anyone is not present, that party shall be reported by the Program Manager as a non-appearance by that party on the written roll. If the Program Manager determines that the plaintiff's representative present does not have full authority to settle, the Program Manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by this Administrative Order. The written roll and communication of authority to the Program Manager is not a mediation communication.

The authorization by this Administrative Order for the plaintiff's representative to appear through the use of communication equipment is pursuant to rule 1.720(b), Florida Rules of Civil Procedure (court order may alter physical appearance requirement), and in recognition of the emergency situation created by the massive number of residential foreclosure cases being filed in this circuit and the impracticality of requiring physical attendance of a plaintiff's representative at every mediation. Additional reasons for authorizing appearance through the use of communication equipment for mortgage foreclosure mediation include a number of protective factors that do not exist in other civil cases, namely the administration of the program by a program manager, pre-mediation counseling for the borrower, and required disclosure of information prior to mediation. The implementation of this Administrative Order shall not create any expectation that appearance through the use of communication equipment will be authorized in other civil cases.

If the plaintiff's representative attends mediation through the use of communication equipment, the person authorized by the plaintiff to sign a settlement agreement must be physically present at mediation. If the plaintiff's representative attends mediation through the use of communication equipment, the plaintiff's representative must remain on the communication equipment at all times during the entire mediation session. If the plaintiff's representative attends through the use of communication equipment, and if the mediation results in an impasse, within five (5) days after the mediation session, the plaintiff's representative shall file in the court file a certification in the format of Exhibit 8 attached as to whether the plaintiff's representative attended mediation. If the mediation results in an impasse after the appearance of the plaintiff's representative through the use of communication equipment, the failure to timely file the certification regarding attendance through the use of communication equipment shall be grounds to impose sanctions against the plaintiff, including requiring the physical appearance of the plaintiff's representative at a second mediation, taxation of the costs of a second mediation to the plaintiff, or dismissal of the action.

Junior lienholders may appear at mediation by a representative with full settlement authority. If a junior lienholder is a governmental entity comprised of an elected body, such junior lienholder may appear at mediation by a representative who has authority to recommend settlement to the governing body. Counsel for any junior lienholder may also attend the mediation.

The participants physically attending mediation may consult on the telephone during the mediation with other persons as long as such consultation does not violate the provisions of sections 44.401-406, Florida Statutes.

14. ***Failure to Appear at Mediation.*** If either the plaintiff's representative designated in the most recently filed Form A or the borrower fails to appear at a properly noticed mediation and the mediation does not occur, or when a mediation results in an impasse, the report of the mediator shall notify the presiding judge regarding who appeared at mediation without making further comment as to the reasons for an impasse. If the borrower fails to appear, or if the mediation results in an impasse with all required parties present, and if the borrower has been lawfully served with a copy of the complaint, and if

the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation. If plaintiff's counsel or the plaintiff's representative fails to appear, the court may dismiss the action without prejudice, order plaintiff's counsel or the plaintiff's representative's to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorney's fees and costs if the borrower is represented by an attorney. If the borrower or borrower's counsel of record fails to appear, the court may impose such other sanctions as the court deems appropriate, including, but not limited to, attorney's fees and costs.

15. ***Written Settlement Agreement; Mediation Report.*** If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Pursuant to rule 1.730(b), Florida Rules of Civil Procedure, if a partial or full settlement agreement is reached, the mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days after completion of the mediation. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. In the case of an impasse, the report shall advise the court who attended the mediation, and a copy of Form A or any amended Form A shall be attached to the report for the court to determine if at least one of the plaintiff's representative named in Form A appeared for mediation. The mediator's report to the court shall be in the format of Exhibit 9 attached.

16. ***Mediation Communications.*** All mediation communications occurring as a result of this Administrative Order, including information provided to the Program Manager that is not filed with the court, shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law.

17. ***Failure to Comply with Administrative Order.*** In all residential foreclosure actions, if a notice for trial, motion for default final judgment, or motion for summary judgment is filed with the clerk of court, no action will be taken by the court to set a final hearing or enter a summary or default final judgment until the requirements of this Administrative Order have been met. In cases

involving a homestead residence, the presiding judge shall require that copies of either 1) the most recently filed Form A and the report of the mediator, or 2) the most recently filed Form A and the notice of borrower's nonparticipation be sent to the presiding judge by the plaintiff or plaintiff's counsel prior to setting a final hearing or delivered with the packet requesting a summary or default final judgment.

The failure of a party to fully comply with the provisions of this Administrative Order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.

18. ***Mediation Not Required If Residence Is Not Homestead.*** If the plaintiff certifies in Form A that the property is NOT a homestead residence when suit is filed, plaintiff's counsel must file and serve with the complaint a certification identifying the agent of plaintiff who has full authority to settle the case without further consultation. The certification shall be in the form of Exhibit 10 attached.

    If the plaintiff certifies in Form A that the property is NOT a homestead residence, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation, unless otherwise ordered by the presiding judge.

RMFM Program Fees

19. ***RMFM Program Fees.*** The fee structure for the RMFM Program is based on the assumption that a successful mediation can be accomplished with one mediation session. Accordingly, pursuant to rule 1.720(g), Florida Rules of Civil Procedure, the reasonable program fees for the managed mediation, including foreclosure counseling, the mediator's fee, and administration of the managed mediation program, is a total of no more than $750.00 payable as follows:

    1) not more than $400.00 paid by plaintiff at the time suit is filed for administrative fees of the RMFM Program, including outreach to the borrower and foreclosure counseling fees; and

2) not more than $350.00 paid by plaintiff within 10 days after notice of the mediation conference is filed for the mediation fee component of the RMFM Program fees

If more than one mediation session is needed, the total program fee stated above will also cover a second mediation session. However, if an additional mediation session is needed after the second session, the plaintiff shall be responsible for the payment of the program fees for such additional mediation sessions, unless the parties agree otherwise. The program fees for the third and each subsequent mediation session shall be no more than $350.00 per session.

All program fees shall be paid directly to the Program Manager. If the case is not resolved through the mediation process, the presiding judge may tax the program fees as a cost or apply it as a set off in the final judgment of foreclosure.

If the borrower cannot be located, chooses not to participate in the RMFM Program, or if the borrower does not make any contact with the foreclosure counselor, the plaintiff shall be entitled to a refund of the portion of the Program fees attributable to foreclosure counseling. If mediation is scheduled and the borrower announces an intention not to participate further in the RMFM Program prior to the mediation session, or if the case settles and the Program Manager has notice of the settlement at least five (5) days prior to the mediation session, the plaintiff shall be entitled to a refund of the Program fees allocated for the mediation session. If notice of settlement is not received by the Program Manager at least five (5) days prior to the scheduled mediation session, the plaintiff shall not be entitled to any refund of mediation fees.

The total fees include the mediator's fees and costs; the cost for the borrower to attend a foreclosure counseling session with an approved mortgage foreclosure counselor; and the cost to the Program Manager for administration of the managed mediation program which includes but is not limited to providing neutral meeting and caucus space, scheduling, telephone lines and instruments, infrastructure to support a web-enabled information platform, a secure dedicated email address or other secure system for information transmittal, and other related expenses incurred in managing the foreclosure mediation program.

Program Manager to Monitor Compliance and Satisfaction

20. ***Monitoring Compliance Concerning Certain Provisions of This Administrative Order, Satisfaction with RMFM Program, and Program Operation.*** The Program Manager shall be responsible for monitoring whether Form A has been filed in all residential foreclosure actions that commence after the effective date of this Administrative Order and whether the RMFM Program fees have been paid if the residence is a homestead residence. The Program Manager shall send compliance reports to the chief judge or the chief judge's designee in the format and with the frequency required by the chief judge.

    The Program Manager may assist with enforcing compliance with this Administrative Order upon filing a written motion pursuant to rule 1.100(b), Florida Rules of Civil Procedure, stating with particularity the grounds therefor and the relief or order sought. Example orders are attached as Exhibit 11.

    The Program Manager shall also provide the chief judge with periodic reports as to whether plaintiffs and borrowers are satisfied with the RMFM Program.

    The Program Manager shall also provide the chief judge with reports with statistical information about the status of cases in the RMFM Program and RMFM Program finances in the format and with the frequency required by the chief judge.

21. ***Designation of Plaintiff Liaisons with RMFM Program.*** Any plaintiff who has filed five (5) or more foreclosure actions in the *[number]* Judicial Circuit while this Administrative Order is in effect shall appoint two RMFM Program liaisons, one of whom shall be a lawyer and the other a representative of the entity servicing the plaintiff's mortgages, if any, and, if none, a representative of the plaintiff. Plaintiff's counsel shall provide written notice of the name, phone number (including extension), email, and mailing address of both liaisons to the chief judge and the Program Manager within 30 days after the effective date of this Administrative Order, and on the first Monday of each February thereafter while this Administrative Order is in effect.

The liaisons shall be informed of the requirements of this Administrative Order and shall be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff's cases through the RMFM Program. Plaintiff's counsel shall promptly inform the chief judge and Program Manager of any changes in designation of the liaisons and the contact information of the liaisons. The liaisons shall act as the court's point of contact in the event the plaintiff fails to comply with this Administrative Order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.

List of Participating Mediators and Rotation of Mediators

22. ***List of Participating Mediators and Rotation of Mediators.*** The Program Manager shall post on its website the list of Florida Supreme Court certified mediators it will use to implement the RMFM Program and will state in writing the criteria, subject to approval by the chief judge, the program will use in selecting mediators. The Program Manager shall also state in writing the procedure, subject to the approval by the chief judge, the program will use to rotate the appointment of mediators. The RMFM Program shall encourage the use of mediators who have been trained to mediate mortgage foreclosure cases, reflecting the diversity of the community in which it operates. Assignment of mediators shall be on a rotation basis that fairly spreads work throughout the pool of mediators working in the RMFM Program, unless the parties mutually agree on a specific mediator or the case requires a particular skill on the part of the mediator.

Pre-Suit Mediation Encouraged

22. ***Pre-Suit Mediation.*** Mortgage lenders, whether private individuals, commercial institutions, or mortgage servicing companies, are encouraged to use any form of alternative dispute resolution, including mediation, ***before*** filing a mortgage foreclosure lawsuit with the clerk of the court. Lenders are encouraged to enter into the mediation process with their borrowers ***prior*** to filing foreclosure actions in the *[number]* Judicial Circuit to reduce the costs to the parties for maintaining the litigation and to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the

large numbers of such actions being filed across the state and, in particular, in the *[number]* Judicial Circuit.

If the parties participated in pre-suit mediation using the RMFM Program or participated in any other pre-suit mediation program having procedures substantially complying with the requirements of this Administrative Order, including provisions authorizing the exchange of information, foreclosure counseling, and requiring use of Florida Supreme Court certified circuit civil mediators specially trained to mediate residential mortgage foreclosure actions, the plaintiff shall so certify in Form A, in which case the plaintiff and borrower shall not be required to participate in mediation again unless ordered to do so by the presiding judge. A borrower may file a motion contesting whether pre-suit mediation occurred in substantial compliance with the RMFM Program.

Nothing in this paragraph precludes the presiding judge from sending the case to mediation after suit is filed, even if pre-suit mediation resulted in an impasse or there was a breach of the pre-suit mediation agreement.

This Administrative Order shall be recorded by the clerk of the court in each county of the *[number]* Judicial Circuit, takes effect on *[effective date]*, and will remain in full force and effect unless and until otherwise ordered.

ORDERED on _____, 20[___].

_____

[NAME OF CHIEF JUDGE], Chief Judge
[number] Judicial Circuit, State of Florida

RMFM PROGRAM TIMELINES

TIMELINE FROM DATE SUIT FILED:

Suit is filed

Form A filed with Complaint
RMFM Program fees paid by Plaintiff
Notice of RMFM Program attached to Summons

1 business day after suit is filed

Form A electronically transmitted to Program Manager by Plaintiff's counsel

60-120 days after suit is filed

Borrower meets with foreclosure counselor
Borrower's Financial Disclosure for Mediation is transmitted to IT platform
Mediation session is scheduled
Borrower requests Plaintiff's Disclosure for Mediation, if desired

120 days after suit is filed

Notice of Nonparticipation filed by Program Manager, if applicable

TIMELINE WITH MEDIATION SESSION AS POINT OF REFERENCE

Prior to mediation being scheduled

RMFM Program fees paid by Plaintiff
Borrower must contact Program Manager
Borrower must meet with foreclosure counselor
Borrower must complete and submit Borrower's Financial Disclosure for Mediation packet to Program Manager

30 days prior to mediation session

Program Manager electronically transmits Borrower's Financial Disclosure for Mediation to the IT platform

25 days prior to mediation session

Borrower makes written request for Plaintiff's Disclosure for Mediation if desired

5 days prior to mediation session

Any amended Form A designation of the plaintiff's representative must be filed with the Clerk

3 business days prior to mediation session

Plaintiff's counsel transmits Plaintiff's Financial Disclosure for Mediation to the IT platform

1 day prior to mediation session

Any amended Form A designation of the plaintiff's representative must be uploaded to the IT platform

10 days after mediation session

Program Manager/Mediator files mediator's report with the clerk of court and serves copies on the parties

INDEX OF EXHIBITS

EXHIBIT 1

FORM A

Please complete online at http://www. and file original with the Clerk of Court***

IN THE CIRCUIT COURT IN AND FOR _____ COUNTY, FLORIDA

[Name of Plaintiff]
Plaintiff,
vs.

Case No.:

[Names of Defendant(s)]
Defendant(s)

Form "A"

(Certifications Pursuant to *[number]* Judicial Circuit Administrative Order 200*[__]*)

Certificate of Plaintiff's Counsel Regarding Origination of Note and Mortgage

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the origination of the note and mortgage sued upon in this action ____WAS or _____WAS NOT subject to the provisions of the federal Truth in Lending Act, Regulation Z.

Certificate of Plaintiff's Counsel Regarding Status of Residential Property

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the property that is the subject matter of this lawsuit ____IS or _____IS NOT a homestead residence. A "homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

If the residential property is a homestead residence, complete both of the following:

Certificate of Plaintiff's Counsel Regarding Pre-Suit Mediation

The following certification ____ DOES or ____DOES NOT apply to this case:

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies that prior to filing suit a plaintiff's representative with full settlement authority attended and participated in mediation with the borrower, conducted by *[Name of Program Manager]*, and the mediation resulted in an impasse or a pre-suit settlement agreement was reached but the settlement agreement has been breached. The undersigned further certifies that prior to mediation the borrower received services from a HUD or NFMC approved foreclosure counselor, Borrower's Financial Disclosure for Mediation was provided, and Plaintiff's Disclosure for Mediation was provided.

Certificate of Plaintiff's Counsel Regarding Plaintiff's Representative at Mediation

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the following is a list of the persons, one of whom will represent the plaintiff in mediation with full authority to modify the existing loan and mortgage and to settle the foreclosure case, and with authority to sign a settlement agreement on behalf of the plaintiff *(list name, address, phone number, facsimile number, and email address)*:

Plaintiff's counsel understands the mediator or the RMFM Program Manager may report to the court who appears at mediation and, if at least one of plaintiff's representatives named above does not appear at mediation, sanctions may be imposed by the court for failure to appear.

As required by the Administrative Order, plaintiff's counsel will transmit electronically to the RMFM Program Manager the case number of this action, the contact information regarding the parties, and a copy of this Form A, using the approved web-enable information platform.

Date:

_____

(Signature of Plaintiff's Counsel)
[Printed name, address, phone number and Fla. Bar No.]

EXHIBIT 2

NOTICE OF RMFM PROGRAM
TO BE SERVED WITH SUMMONS

IN THE CIRCUIT COURT FOR THE *[NUMBER]* JUDICIAL CIRCUIT
IN AND FOR *[COUNTY]*, FLORIDA

A NOTICE FROM THE COURT REGARDING LAWSUITS TO FORECLOSE MORTGAGES ON HOMES

If you are being sued to foreclose the mortgage on your primary home and your home has a homestead exemption and if you are the person who borrowed the money for the mortgage, you have a right to go to "mediation." At "mediation," you will meet with a Florida Supreme Court certified mediator appointed by the court and also a representative of the company asking to foreclosure your mortgage to see if you and the company suing you can work out an agreement to stop the foreclosure. **The mediator will not be allowed to give you legal advice or to give you an opinion about the lawsuit.** The mediator's job is to remain neutral and not take sides, but to give both sides a chance to talk to each other to see if an agreement can be reached to stop the foreclosure. If you and the company suing you come to an agreement, a settlement agreement will be written up and signed by you and the company suing you. With some limited exceptions, what each side says at the mediation is confidential and the judge will not know what was said at mediation.

You will not have to pay anything to participate in this mediation program. To participate in mediation, **as soon as practical**, you must contact *[name of the Program Manager]* by calling *[phone number]* between 9:00 a.m. and 5:00 p.m., Monday through Friday.

To participate in mediation, you must also provide financial information to the mediator and meet with an approved foreclosure counselor prior to mediation. You will not be charged any additional amount for meeting with a foreclosure counselor. You may also request certain information from the company suing you before going to mediation.

[Name of the Program Manager] will explain more about the mediation program to you when you call.

If you have attended mediation arranged by *[name of the Program Manager]* prior to being served with this lawsuit, and if mediation did not result in a settlement, you may file a motion asking the court to send the case to mediation again if your financial circumstances have changed since the first mediation.

AS STATED IN THE SUMMONS SERVED ON YOU, YOU OR YOUR LAWYER MUST FILE WITH THE COURT A WRITTEN RESPONSE TO THE COMPLAINT TO FORECLOSE THE MORTGAGE WITHIN 20 DAYS AFTER YOU WERE SERVED. YOU OR YOUR LAWYER MUST ALSO SEND A COPY OF YOUR WRITTEN RESPONSE TO THE PLAINTIFF'S ATTORNEY. <u>YOU MUST TIMELY FILE A WRITTEN RESPONSE TO THE COMPLAINT EVEN IF YOU DECIDE TO PARTICIPATE IN MEDIATION</u>.

[Signature of Chief Judge]
CHIEF JUDGE, *[number]* Judicial Circuit

EXHIBIT 3

BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

Plaintiff(s), .

vs.

Defendant(s).
_____

BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM

_____, *(printed name)*, as the borrower on the mortgage sued upon in this case, hereby requests that this case be referred by the court to mediation using the RMFM Program. The undersigned states, under penalty of perjury, that he or she is currently living on the property as a primary residence and the property has a homestead tax exemption.

Signed on _____, 20___.

_____
(Signature)

_____
(Printed Name)

[Certificate of Service on the parties]

EXHIBIT 4

NOTICE OF BORROWER'S NONPARTICIPATION

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

Plaintiff(s), .

vs.

Defendant(s).
_____

NOTICE OF BORROWER NONPARTICIPATION

WITH RMFM PROGRAM

[Name of Program Manager] hereby gives notice to the court that _____, (Borrower) will not be participating in the RMFM Program because:

- ☐ Borrower has advised that [he/she] does not wish to participate in mediation for this case;
- ☐ Borrower has failed or refuses to meet with a foreclosure counselor;
- ☐ Borrower has failed or refuses to comply with the Borrower's Financial Disclosure for Mediation;
- ☐ The RMFM Program has been unable to contact Borrower.

Signed on _____, 20___.

[Name of Program Manager]

BY: _____
(Signature)

_____
(Printed Name)

[Certificate of Service on the parties]

EXHIBIT 5

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION

EXHIBIT 5A: LOAN MODIFICATION
EXHIBIT 5B: SHORT SALE
EXHIBIT 5C: DEED IN LIEU OF FORECLOSURE

EXHIBIT 5A

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (LOAN MODIFICATION)

FORECLOSURE MEDIATION FINANCIAL WORKSHEET

Case No.:

v.

Plaintiff's Name	First Defendant's Name

SECTION 1: PERSONAL INFORMATION

Borrower's Name		Co-Borrower's Name	
Social Security Number	Date of Birth (mm/dd/yyyy)	Social Security Number	Date of Birth (mm/dd/yyyy)
☐ Married	☐ Civil Union/ Domestic Partner	☐ Married	☐ Civil Union/ Domestic Partner
☐ Separated	☐ Unmarried (single, divorced, widowed)	☐ Separated	☐ Unmarried (single, divorced, widowed)
Dependents (Not listed by Co-Borrower)		Dependents (Not listed by Borrower)	
Present Address (Street, City, State, Zip)		Present Address (Street, City, State, Zip)	

SECTION 2: EMPLOYMENT INFORMATION

Employer	☐ Self Employed	Employer	☐ Self Employed
Position/Title	Date of Employment	Position/Title	Date of Employment
Second Employer		Second Employer	
Position/Title	Date of Employment	Position/Title	Date of Employment

	Borrower	**Co-Borrower**	**Total**
Gross Salary/Wages			
Net Salary/Wages			
Unemployment Income			
Child Support/Alimony			
Disability Income			
Rental Income			
Other Income			
Total (do not include Gross income)			

SECTION 3: EXPENSE AND LIABILITIES

	Monthly Payments	Balance Due
First Mortgage		
Second Mortgage		
Other Liens/Rents		
Homeowners' Association Dues		
Hazard Insurance		
Real Estate Taxes		
Child Care		
Health Insurance		
Medical Charges		
Credit Card/Installment Loan		
Credit Card/Installment Loan		
Credit Card/Installment Loan		
Automobile Loan 1		
Automobile Loan 2		
Auto/Gasoline/Insurance		
Food/Spending Money		
Water/Sewer/Utilities		
Phone/Cell Phone		
Other		
Total		

SECTION 4: ASSETS

	Estimated Value
Personal Residence	
Real Property	
Personal Property	
Automobile 1	
Automobile 2	
Checking Accounts	
Saving Accounts	
IRA/401K/Keogh Accounts	
Stock/Bonds/CDs	
Cash Value of Life Insurance	
Other	
Total	

Reason for Delinquency/Inability to Satisfy Mortgage Obligation:

☐ Reduction in income	☐ Medical issues	☐ Death of family member
☐ Poor budget management skills	☐ Increase in expenses	☐ Business venture failed
☐ Loss of Income	☐ Divorce/separation	☐ Increase in loan payment

☐ Other: _____

SECTION 4: ASSETS CON'T

Further Explanation:

I / We obtained a mortgage loan(s) secured by the above-described property.

I / We have described my/our present financial condition and reason for default and have attached required documentation.

I / We consent to the release of this financial worksheet and attachments to the mediator and the plaintiff or plaintiff's servicing company by way of the plaintiff's attorney.

By signing below, I / we certify the information provided is true and correct to the best of my / our knowledge.

Signature of Borrower	SSN	Date
Signature of Co-Borrower	SSN	Date

Please attach the following:

- ✓ Last federal tax return filed
- ✓ Proof of income (e.g. one or two current pay stubs)
- ✓ Past two (2) bank statements
- ✓ If self-employed, attach a copy of the past six month's profit and loss statement

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Fannie Mae Hardship Form 1021

Home Affordable Modification Program Hardship Affidavit

Borrower Name (first, middle, last):_____
Date of Birth:_____
Co-Borrower Name (first, middle, last):_____
Date of Birth:_____
Property Street Address:_____
Property City, State, Zip:_____
Servicer:_____
Loan Number:_____

In order to qualify for _____'s ("Servicer") offer to enter into an agreement to modify my loan, I/we am/are submitting this form to the Servicer and indicating by my/our checkmarks the one or more events that contribute to my/our difficulty making payments on my/our mortgage loan:

My income has been reduced or lost. For example: unemployment, underemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. I have provided details below under " Explanation."

Borrower: Yes ____ No ____ Co-Borrower: Yes ____ No ____

My household financial circumstances have changed. For example: death in family, serious or chronic illness, permanent or short-term disability, increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members). I have provided details below under "Explanation."

Borrower: Yes ____ No ____ Co-Borrower: Yes ____ No ____

My expenses have increased. For example: monthly mortgage payment has increased or will increase, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, increased real property taxes. I have provided details below under "Explanation."

Borrower: Yes ____ No ____ Co-Borrower: Yes ____ No ____

My cash reserves are insufficient to maintain the payment on my mortgage load and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts). Cash

reserves do not include assets that serve as an emergency fund (generally equal to three times my monthly debt payments). I have provided details below under "Explanation."

Borrower: Yes ____ No ____ Co-Borrower: Yes ____ No ____

My monthly debt payments are excessive, and I am overextended with my creditors. I may have used credit cards, home equity loans or other credit to make my monthly mortgage payments. I have provided details below under "Explanation."

Borrower: Yes ____ No ____ Co-Borrower: Yes ____ No ____

There are other reasons I/we cannot make our mortgage payments. I have provided details below under "Explanation."

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

BORROWER:
Ethnicity:
____ Hispanic/Latino
____ Not Hispanic/Latino

Race:
____ American Indian/Alaska Native
____ Asian
____ Black/African American
____ Native Hawaiian/Other Pacific Islander
____ White

____ I do not wish to furnish this information

CO-BORROWER:
Ethnicity:
____ Hispanic/Latino
____ Not Hispanic/Latino

Race:
____ American Indian/Alaska Native
____ Asian
____ Black/African American
____ Native Hawaiian/Other Pacific Islander
____ White

____ I do not wish to furnish this information

TO BE COMPLETED BY INTERVIEWER

Interviewer's Name (print or type): _____
Name/Address of Interviewer's Employer: _____
_____

Face-to-face interview
Interviewer's Signature/Date _____/_____
Address _____
Telephone (include area code) _____
Internet address _____

BORROWER/CO-BORROWER ACKNOWLEDGEMENT

1. Under penalty of perjury, I/we certify that all of the information in this affidavit is truthful and the event(s) identified above has/have contributed to my/our need to modify the terms of my/our mortgage loan.
2. I/we understand and acknowledge the Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate Federal law.
3. I/we understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this Hardship Affidavit, or if I/we do not provide all of the required documentation, the Servicer may cancel the Agreement and may pursue foreclosure on my/our home.
5. I/we certify that my/our property is owner-occupied and I/we have not received a condemnation notice.
6. I/we certify that I/we am/are willing to commit to credit counseling if it is determined that my/our financial hardship is related to excessive debt.
7. I/we certify that I/we am/are willing to provide all requested documents and respond to all Servicer communication in a timely manner. I/we understand that time is of the essence.
8. I/we understand that the Servicer will use this information to evaluate my/our eligibility for a loan modification or other workout, but the Servicer is not obligated to offer me/us assistance based solely on the representations in this affidavit.
9. I/we authorize and consent to Servicer disclosing to the U.S. Department of Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided by me/us or retained by Servicer in connection with the Home Affordable Modification Program.

_____ _____	_____ _____
Borrower Signature Date	Co-Borrower Signature Date
E-mail Address:_____	E-mail Address:_____
Cell phone #_____	Cell phone #_____
Home Phone #_____	Home Phone #_____
Work Phone #_____	Work Phone #_____
Social Security #_____-___-_____	Social Security #_____-___-_____

EXPLANATION:
(Provide any further explanation of the hardship making it difficult for you to pay on your mortgage.)

EXHIBIT 5B

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (SHORT SALE)

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Signed purchase contract for the homestead residence
Listing agreement for sale of the homestead residence
Preliminary HUD-1
Written permission from the borrower authorizing the plaintiff or any agent of the plaintiff to speak with the real estate agent about the borrower's loan

Borrowers should be reminded that the sale MUST be an arm's length transaction, and the property cannot be sold to anyone with close personal or business ties to the borrower.

EXHIBIT 5C

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (DEED IN LIEU OF FORECLOSURE)

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Current title search for the homestead residence

EXHIBIT 6

BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

Plaintiff(s), .

vs.

Defendant(s).
_____

NOTICE OF BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION

_____, *(printed name)*, as the borrower on the mortgage sued upon in this case, hereby requests the following information and disclosure from the plaintiff pursuant to Administrative Order *[number]* entered in the *[number]* Judicial Circuit *(mark the information and documents requested)*:

___ Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.

___ A history showing the application of all payments by the borrower during the life of the loan.

___ A statement of the plaintiff's position on the present net present value of the mortgage loan.

___ The most current appraisal of the property available to the plaintiff.

Signed on _____, 20___.

_____
(Signature)

[Certificate of Service on the parties]

EXHIBIT 7

PLAINTIFF'S NOTICE OF ATTENDING MEDIATION THROUGH THE USE OF COMMUNICATION EQUIPMENT

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

.

Plaintiff(s),

vs.

Defendant(s).
_____

NOTICE THAT PLAINTIFF'S REPRESENTATIVE WILL APPEAR THROUGH THE USE OF COMMUNICATION EQUIPMENT AND DESIGNATION OF AUTHORITY TO SIGN SETTLEMENT AGREEMENT

Plaintiff gives notice of exercising the option to allow plaintiff's representative designated in Form A filed in this case to attend mediation through the use of communication equipment, and designates *[name of person]* as the person who will be physically present at mediation with full authority on behalf of plaintiff to sign any settlement agreement reached at mediation.

On the date of the mediation, plaintiff's representative can be reached by calling the following telephone number: [*telephone number, including area code and extension*].

Signed on _____, 20___.

[Name of Plaintiff]

_____
(Signature)

_____
(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

EXHIBIT 8

PLAINTIFF'S CERTIFICATION REGARDING ATTENDANCE AT MEDIATION THROUGH THE USE OF COMMUNICATION EQUIPMENT

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

.

Plaintiff(s),

vs.

Defendant(s).
_____

CERTIFICATION REGARDING ATTENDANCE AT MEDIATION THROUGH THE USE OF COMMUNICATION EQUIPMENT

[Name], who was designated as Plaintiff's Representative in Form A filed herein, under penalty of perjury, states to the court that [he][she] *(mark as appropriate)*

□ Attended mediation through the use of communication equipment, and was on the communication equipment at all times during the entire mediation.

□ Attended mediation, through the use of communication equipment but was not on the communication equipment at all times during the mediation.

Signed on _____, 20___.

_____
(Signature)

_____
(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

EXHIBIT 9

MEDIATION REPORT

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

Plaintiff(s), .

vs.

Defendant(s).
_____

MEDIATION REPORT
(RMFM Program)

Pursuant to the Court's Order, a Mediation Conference was conducted by *[name of mediator]*, Certified Circuit Civil Mediator, on *[date]*.

1. The following were present:

   a) The Plaintiff's Representative, *[name]*, and Plaintiff's attorney, *[name]*.

   b) The Defendant[s], *[name(s)]*, and his/her/their attorney[s], *[name(s)]*.

2. The result of the Mediation Conference is as follows *(Mediator selects only one)*:

   _____A signed **SETTLEMENT AGREEMENT** was reached during this Conference.

   _____The parties have reached a total **IMPASSE**.

   _____The parties have agreed to **ADJOURN** the mediation to *[date]*.

   _____Mediation has been **TERMINATED**.

As required by Administrative Order *[number]* a copy of the most recently filed Form A is attached.

[Certificate of Service]

EXHIBIT 10

CERTIFICATION REGARDING SETTLEMENT AUTHORITY (RESIDENCE NOT HOMESTEAD)

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

.

Plaintiff(s),

vs.

Defendant(s).
_____

PLAINTIFF'S CERTIFICATION SETTLEMENT AUTHORITY
(Residence Is Not Homestead)

In compliance with Administrative Order *[number]*, the undersigned attorney certifies that following person or entity has full authority to negotiate a settlement of this case with the borrower without further consultation:

(All of the following information must be provided)
Name:
Mailing Address:
Telephone Number (including area code and extension):
Fax Number:
Email Address:
Loan/File Number:

Notice to Defendants: Because of privacy laws and rules, the plaintiff will only be able to negotiate a modification of the loan with the named borrower on the underlying debt.

I certify a copy of this certification was served on defendants with the summons.

Date:
[Signature, Address, Phone Number of Plaintiff's Counsel]

EXHIBIT 11

ORDERS FOR REFERRALS, COMPLIANCE, AND ENFORCEMENT

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

.

Plaintiff(s),

vs.

Defendant(s).
_____

ORDER TO SHOW CAUSE
(Plaintiff's Failure to Comply with Administrative Order *[number]*)

It appearing to the court that Plaintiff has failed to comply with the requirements of Administrative Order *[number]* in regards to the following *(as marked)*:

Form A

___ Plaintiff failed to file Form A.

___ Plaintiff failed to electronically submit Form A to the Program Manager using the approved web-based information platform.

Payment of RMFM Program Fees

___ Plaintiff failed to pay the portion of the RMFM Program fees payable at the time suit is filed.

___ Plaintiff failed to pay the portion of the RMFM Program fees payable within 10 days after the notice conference is filed.

Electronic Transmittal of Case Number and Borrower Contact Information

___ Plaintiff failed to electronically submit the case number and contact

information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

___ Plaintiff failed to file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order).

Attendance at Mediation

___ Plaintiff's counsel failed to attend mediation.

___ Plaintiff's representative designated in the most recent Form A filed in the court file failed to attend mediation.

___ Plaintiff's agent with full authority to sign a settlement agreement failed to attend mediation.

___ Plaintiff's representative failed to attend by telephone at all times during the mediation session.

___ After the mediation resulted in an impasse, plaintiff's representative failed to file the certification regarding attendance at mediation by telephone at all times (Form Exhibit 7 attached to the Administrative Order).

IT IS ORDERED that Plaintiff shall appear before the court at the *[designation of courthouse/courtroom]* on *[date]* at *[time]* to show cause why sanctions for noncompliance the Administrative Order *[number]* should not be imposed. Plaintiff is cautioned that failure to appear at the show cause hearing may result in the case being dismissed and the imposition of other appropriate sanctions.

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

.

Plaintiff(s),

vs.

Defendant(s).
_____

ORDER AFTER SHOW CAUSE HEARING
(Plaintiff's Failure to Comply with Administrative Order *[number]*)

The court having determined that Plaintiff has failed to comply with the requirements of Administrative Order *[number]*, it is ORDERED and ADJUDGED *(as marked)*:

Form A

___ Within 10 days from the date of this order, Plaintiff shall file and electronically submit Form A to the Program Manager using the approved web-based information platform.

Payment of RMFM Program Fees

___ Within 10 days from the date of this order, Plaintiff shall pay $_____ of the RMFM Program fees to the Program Manager.

Electronic Transmittal of Case Number and Borrower Contact Information

___ Within 10 days from the date of this order, Plaintiff shall electronically submit the case number and contact information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

___ Within 10 days after the date of this order, Plaintiff shall file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order).

Attendance at Mediation

___ Plaintiff's counsel shall attend the next scheduled mediation in this case.

___ _____ *(Name)*, as plaintiff's representative designated in the most recent Form A filed in the court file, shall physically attend the next scheduled mediation in this case.

___ _____ *(Name)*, as plaintiff's agent with full authority to sign a settlement agreement shall attend the next scheduled mediation in this case.

Dismissal

___ This case is dismissed without prejudice.

Additional Sanctions

___ The court determines _____ is entitled to an award of attorney's fees and cost, the amount of which shall be determined at a subsequent hearing.

_____

_____

_____

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Case No(s).:

.

Plaintiff(s),

vs.

Defendant(s).
_____

ORDER REFERRING CASE TO RMFM PROGRAM
(Case Filed Prior to *[effective date of Administrative Order]*)

It appearing to the court that the residence which is the subject of this action to foreclose a mortgage is a "homestead residence" to which Administrative Order *[number]* applies and that Defendant _____ (Borrower) has requested that the case be referred to mediation, it is ORDERED:

The case is referred to the RMFM Program for mediation, and the plaintiff and borrower shall comply with Administrative Order *[number]*. Within 10 days from the date of this order, the plaintiff shall pay that portion of the RMFM Program fees payable at the time suit is filed, file a properly filled out Form A in the manner required by the administrative order, and electronically transmit Form A to the Program Manager using the approved web-based information platform.

The plaintiff and borrower are to cooperate with the Program Manager and must attend any mediation scheduled by the Program Manager.

The plaintiff is advised and cautioned that failure to comply in a timely manner with the requirements of this order will result in dismissal of the cause of action without further order of the court.

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

EXHIBIT 12

MEDIATION TRAINING STANDARDS

Residential Mortgage Foreclosure Training Standards

Introduction

Achieving an informed and committed workforce of Residential Mortgage Foreclosure Mediators requires not only a grasp of the obvious mediation skills, but an extension of those skills into practical and substantive knowledge areas including, but not limited to, mortgage loan products, securities, loan servicers, court processes, and resolution options. A training model which includes both a preliminary online modular dissemination of information followed by live classroom training will provide this knowledge. Participants' completion of online training modules prior to a one-day live class will facilitate better discussion and greater comprehension. Post training access to online practice resources can improve, develop statewide practice and provide real time content updates.

Development of this training model is not only feasible, but also can be developed in a timely way. We recommend that each training provider maintain a needs-based approach to training, reflect on and respond to the participants' needs, and clearly state a training rationale that will serve as a methodological and ethical touchstone. It is our hope that this outline for Residential Mortgage Foreclosure Mediation Training Objectives and Standards will lead to quality mortgage foreclosure mediation training and practice throughout the State of Florida.

1. Mortgage Foreclosure Mediation Training Goals

At the conclusion of the training, the participants shall be able to:

- Recognize Basic Legal Concepts in Mortgage Foreclosure Mediation
- Identify Negotiation Dynamics in Mortgage Foreclosure Mediation
- Identify Mediation Process and Techniques in Mortgage Foreclosure Mediation
- Recognize Financial Issues in Mortgage Foreclosure Mediation
- Identify Communication Skills in Mortgage Foreclosure Mediation
- Recognize Ethical Issues in Mortgage Foreclosure Mediation

2. Learning Objectives

a. Basic Legal Concepts in Mortgage Foreclosure Mediation

1) Recognize basic legal concepts in mortgage foreclosures.

2) Explain the process of, and timelines in, mortgage foreclosure and in the mortgage foreclosure mediation process.

3) Identify the state rules, state and federal statutes, servicing guidelines, and local procedures and forms governing mortgage foreclosure mediation.

4) Identify the protections, constraints, and exceptions of the Florida Confidentiality and Privilege Act in the context of Mortgage Foreclosure Mediation.

b. Negotiation Dynamics in Mortgage Foreclosure Mediation

1) Recognize the issues of settlement authority as they relate to the stakeholders in Mortgage Foreclosure Mediation.

2) Recognize the impact of physical, telephonic, videoconference, on line or other electronic means of appearance at the mediation conference on the negotiation.

3) Recognize the role(s) of the following in the Mortgage Foreclosure Mediation process:

i. lender
ii. loan servicer
iii. investor
iv. mortgage broker
v. mortgage pool
vi. second mortgagee
vii. condominium association
viii. homeowners' association
ix. lien holders (i.e., municipal, mechanics lien)
x. MERS

xi. appraiser

4) Recognize techniques for assessing risks and incentives in a mortgage foreclosure case.

5) Recognize concept of "good faith" and distinguish it from state court appearance requirements.

6) Recognize basic mortgage nomenclature and sources, types and structure of mortgages.

7) Identify options for resolution such as:

i. modification of mortgage terms
ii. partial loan forgiveness
iii. placement of delinquent payments at the end of the loan term
iv. short sale
v. deed in lieu of foreclosure
vi. waiver of deficiency judgment
vii. stipulation to modify (i.e., if mortgagor makes X number of payments, then the loan will be modified)
viii. principal set aside
ix. repayment plan
x. loan reinstatement
xi. "right to rent" (i.e., the bank owns the property and rents it to the former borrower at the market rental rate)

c. Mediation Process and Techniques in Mortgage Foreclosure Mediation

1) Identify procedural elements which should be addressed prior to the parties' entry into the mediation room including telephonic and other electronic equipment.

2) Identify information which needs to be exchanged prior to mediation (i.e., Pooling and Servicing Agreement; life of loan history; mortgagee current financial disclosure; different loss mitigation, loan modification and other resolution options).

3) Identify issues which are appropriate for mortgage foreclosure mediation and those that are not appropriate.

4) Identify individuals who are essential participants in mortgage foreclosure mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.

5) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are presented by counsel.

6) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.

7) Discuss the dynamics of mediating when one or more parties, participants, or representatives frequently participate in mediation.

8) Discuss how emotions affect mortgage foreclosure issues and a party's ability to effectively mediate.

9) Identify the role and procedures of the Program Manager

d. Financial Issues in Mortgage Foreclosure Mediation

1) Understand the Net Present Value Model of the Making Home Affordable Program.

2) Understand debt-to-income ratios and guidelines and potentials for re-defaults.

3) Identify Fannie Mae, Freddie Mac, FHA, VA, and other loan servicer and investor issues and options.

e. Communication Skills in Mortgage Foreclosure Mediation

1) Identify appropriate questions to assist the parties see their own and the other party's issues.

2) Identify resources for foreign language interpreters and when and how to use them.

f. Ethical Issues in Mortgage Foreclosure Mediation

1) Recognize power imbalances and when a mediator shall advise the parties of the right to seek independent legal counsel.

2) Understand that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.

3) Memorializing the parties' agreement.

3. **Training Parameters**

a. Training Provider

1) Training may be provided by the Program Manager(s) OR by independent training providers.

b. Funding

1) Fees would be paid by mediators to training provider(s) and may include entire training process.

c. Structure

1) A series of self – study web based modules corresponding to the six categories of learning objectives outlined in these recommendations – each followed by an online quiz; completed at participant's own pace.

2) Final online test for pass code entry to live class.

3) Live classroom training

i. Length of Training. An instructional hour is defined as 50 minutes.
ii. Span of Training. Live mortgage foreclosure mediation training shall be presented over a period of one (1) day.

4) Certificate of Completion of Advanced Course on Florida Residential Mortgage Foreclosure Mediation given to participant. Access to web-based modules terminates.

5) Optional Online Learning Forum - for continued learning provided by Program Manager(s) OR by independent training providers – additional monthly fee for access

4. **Recommended Course Content Requirements**

Required Training Materials. At a minimum, training providers shall provide each of their attendees with a training manual that includes:

a. An agenda annotated with the learning objectives to be covered in each section and the intended method of instruction;

b. Sample mortgage foreclosure mediated settlement agreements;

c. Sample federal government forms, i.e. HAMP Program Hardship Affidavit, HAMP Trial Period Plan, HAMP FAQs, IRS Form 4506-T, Foreclosure Mediation Financial Worksheet;

d. Suggested readings including:

i. Chapter 44, Florida Statutes – Mediation Alternatives to Judicial Action
ii. Florida Rules for Certified and Court-Appointed Mediators
iii. Rules 1.510 and 1.700 - 1.750, Florida Rules of Civil Procedure
iv. Chapter 697, Florida Statutes – Instruments Deemed Mortgages and the Nature of a Mortgage
v. Chapter 701, Florida Statutes – Assignment and Cancellation of Mortgages
vi. Chapter 702, Florida Statutes – Foreclosure of

Mortgages, Agreements for Deeds, and Statutory Liens

vii. Chapter and/or sections pertaining to Condominiums and Homeowner Associations

viii. Section 55.10(1), Florida Statutes (2004) pertaining to judgment liens

ix. Federal statutes (i.e. Bankruptcy; Truth in Lending Act, Hope for Homeowners Act of 2008, Fair Debt Collection Practices Act, Service Members Civil Relief Act of 2003, and others to be identified and defined more specifically)

x. Homeowner Affordability and Stability Plan, Home Affordable Modification Program (HAMP), and guidelines for servicers

xi. Glossary of Terms

xii. List of local, state and federal resources for borrowers

xiii. Internet Links to useful on line resources

xiv. Current Supreme Court of Florida Administrative Order, In Re Task Force on Residential Mortgage Foreclosure Cases

xv. Local Judicial Circuit Administrative Order on Residential Mortgage Foreclosure Cases

xvi. Additional reading resources provided by the Mediation Manager

5. **Training Methodology**

a. Pedagogy. Residential mortgage foreclosure mediation training programs shall include, but are not limited to, the following: lecture, group discussion, and a mortgage foreclosure mediation demonstration.

1) Use of subject matter specialists, i.e. lender, borrower, loan servicer, investor, plaintiff and defense counsel, mortgage foreclosure counselor, community resources.

2) A subject matter specialist shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the residential mortgage foreclosure mediation process.

b. Residential Mortgage Foreclosure Mediation Demonstration. All mortgage foreclosure mediation training programs shall present a residential mortgage foreclosure role play mediation demonstration either live (including video conferencing) or by video/DVD presentation.

c. Web-Based Methodologies. Web-based technologies may be used as an optional delivery method or as a post-training forum for continued learning and discussion for mediators. An online version of the training may provide a repository for the rapidly changing residential mortgage foreclosure training information.

d. Assessment. Post-training assessment by participants, using post-training surveys combining a Likert scale with narrative response components, should inform content development and methodologies and provide quality assurance for training providers. The post-training survey would give the participants the opportunity to evaluate the effectiveness of the trainer(s), the substantive content of the program, and the practical value of the training, and to offer additional suggestions or comments.

EXHIBIT 13

PARAMETERS FOR MANAGED MEDIATION

PARAMETERS FOR PROVIDERS OF MANAGED MEDIATION SERVICES

Purpose: To define the parameters of managers directing mediation services for parties involved in residential mortgage foreclosure litigation.

A. Characteristics of Program Manager

1. Compliant with ADR principles as promulgated by the supreme court, and ADR statutes and rules;
2. Non-profit entity or associated with a reputable organization of proven competence, autonomous and independent of the judicial branch;
3. Capable of efficient administration of large case loads;
4. Sensitive to cultural, diversity, and Americans with Disabilities Act issues;
5. Politically and professionally neutral;
6. Knowledgeable of court procedures, current trends, laws, rules, and regulations affecting residential foreclosures;
7. Fiscally transparent and accountable;
8. Quickly adaptable to a dynamic and rapidly evolving legal environment;
9. Financially stable;
10. Capable of sustained operation without fiscal impact on the courts;
11. Capable of effectively implementing information technology systems and web-based programs;
12. Alert to ethical and confidentiality issues; and
13. Agreeable to acting as manager for voluntary pre-suit mediation.

B. Services to be Provided by Program Manager

1. Receive mediation referrals and, within designated time limits, schedule and coordinate mediation conferences: date, place and time; reserve and provide venues for mediation and caucus; manage continuances and re-scheduling;

2. Maintain financial books and records to insure transparency and accuracy of receipts and expenditures;

3. Prepare financial statements, financial and performance reports (for example, attendance and failure to attend mediation reports);

4. Establish and maintain performance standards for staff and mediators, including maintaining a roster of mediators comprised of persons who are properly trained in accordance with the standards attached, and who are otherwise qualified, and effective in foreclosure mediation;

5. Assist in specialized training of mediators for workout options and resources;

6. Arrange and pay for interpreters;

7. Bill, collect, deposit, and disburse mediation fees and refunds; pay for necessary services and costs incidental to mediation managing as required to implement mediation administrative order;

8. Establish procedures for managing and communicating with *pro se* litigants and attorneys. This includes implementing a process for prompt outreach to borrower-owners immediately after suit has been filed; the goal of the outreach is to inform mortgagors about the mediation program, invite their participation, and to start the process of referral to mortgage foreclosure counseling and the collection of required financial information;

9. Establish procedures for complying with confidentiality rules;

10. Establish a system for managing mediators that:

    a. Provides for the impartial assignment of mediators, for example, by the use of a rotating list,

    b. Is open to qualified supreme court certified mediators who are capable of providing effective services in the residential foreclosure setting, and

    c. Allows for more than one Mediation Managing entity in the circuit if approved by the chief judge.

11. Monitor or supervise the preparation of mediation settlement agreements;

12. In accordance with the Administrative Order establish the schedule for division of fees between mediators, managers and others;

13. Prepare operational reports as required by the chief judge, regarding the number of cases mediated, impasse or successful mediations, etc.;

14. Solicit qualified mediators and maintain current list of mediators available for residential foreclosure cases;

15. Establish procedures for disqualifying and replacing mediators with ethical or other conflicts;

16. Coordinate the referral of mortgagors to certified foreclosure counselors pre-mediation;

17. Refer unrepresented parties to legal aid, or panels of pro bono or reduced fee attorneys;

18. Facilitate the exchange of documents between the parties, pre- and post-mediation, including the establishment and maintenance of a secure web-based communication system between the Program Manager and all parties to mediation using a platform capable of transmitting financial data, email, mediation forms and attachments, and able to track participant payments and refunds;

19. Maintain for dissemination to owner-borrowers a list of approved foreclosure counselors willing to perform services at the rates established by the court;

20. Answer inquiries from mediators and parties re the mediation process and forms;

21. Establish a system for resolving complaints against mediators and other persons involved in the Managed Mediation Program;

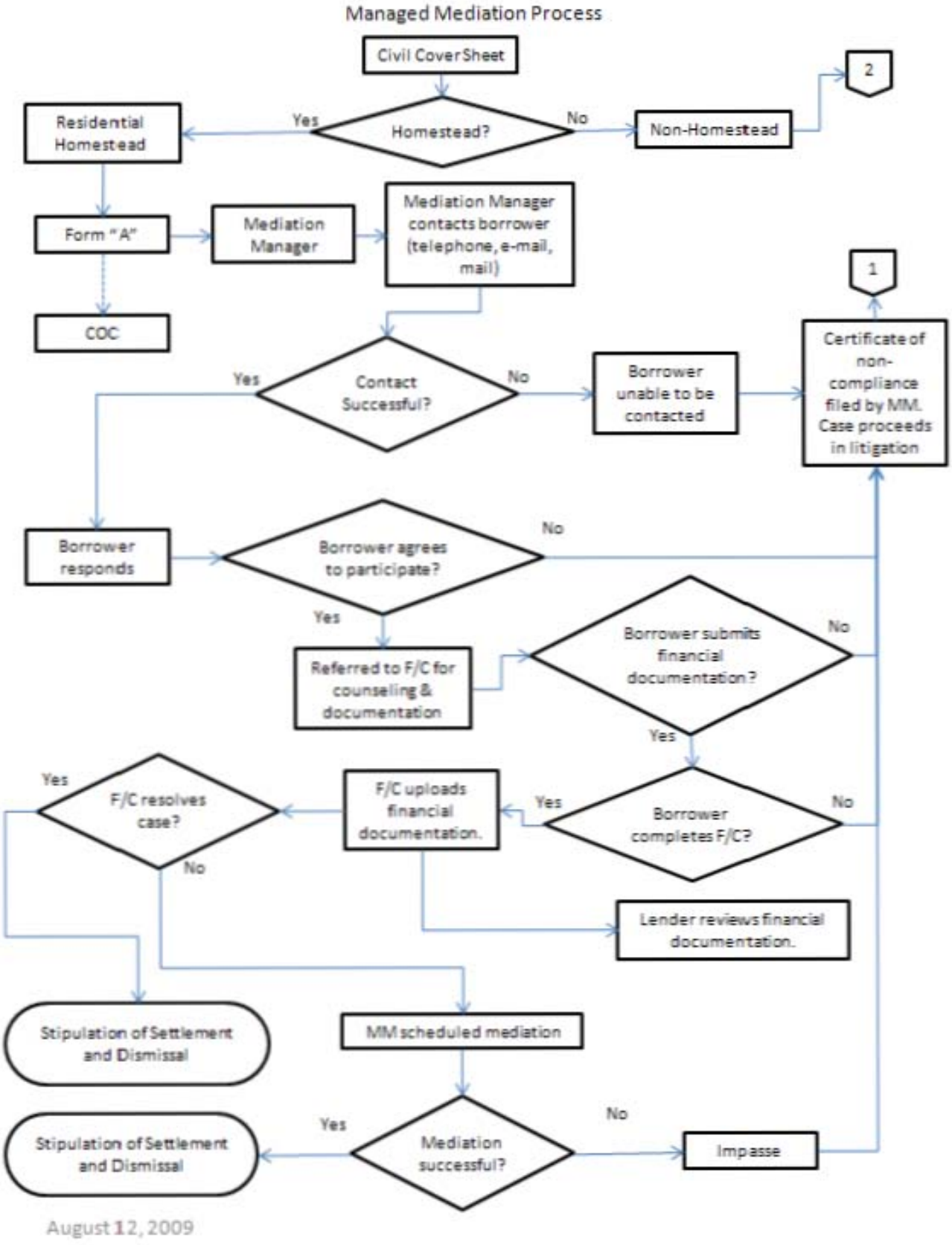
22. Establish procedures for participant evaluation of mediation program services, including satisfaction surveys;

23. Develop the forms and procedures necessary to verify compliance with the residential foreclosure mediation program by lender/servicer representatives, their attorneys, and borrowers; and

24. Using judicial disqualification criteria as a model, disclose to the chief judge any direct or indirect financial ties to lenders/servicers (including any immediate family members), whether present or within the past three (3) years, with a continuing obligation to disclose.

EXHIBIT 14

RMFM PROGRAM FLOWCHART


Managed Mediation Process
Civil Cover Sheet
Homestead?
Yes
No
Residential Homestead
Non-Homestead
2
Form "A"
Mediation Manager
Mediation Manager contacts borrower (telephone, e-mail, mail)
COC
1
Contact Successful?
Yes
No
Borrower unable to be contacted
Certificate of non-compliance filed by MM. Case proceeds in litigation
Borrower responds
Borrower agrees to participate?
No
Yes
Referred to F/C for counseling & documentation
Borrower submits financial documentation?
No
Yes
F/C resolves case?
Yes
F/C uploads financial documentation.
Yes
Borrower completes F/C?
No
No
Lender reviews financial documentation.
Stipulation of Settlement and Dismissal
MM scheduled mediation
Stipulation of Settlement and Dismissal
Yes
Mediation successful?
No
Impasse
August 12, 2009

APPENDIX B

BEST PRACTICES CASE MANAGEMENT FORMS

IN THE CIRCUIT COURT OF THE

_____JUDICIAL CIRCUIT

Plaintiff

IN AND FOR _____,
FLORIDA

vs.

GENERAL JURISDICTION
CASE NO.:

Defendant

_____/

Notice of Hearing Form – Residential Foreclosure

El tribunal no proveé intérpretes judiciales para los casos de reposesión hipotecaria (foreclosure). Si usted no habla inglés, por favor traiga su propio intérprete calificado para traducirle a usted en esta audiencia. Alguien que tenga más de 18 años.

Tribunal la pa bay entèprèt nan ka lè yo menase pou sezi kay ou. Tanpri, vini ak you moun ki gen plis ke 18 an pou tradui pou ou nan odyans sa a, si ou pa pale Angle.

TO: (name of party being noticed, should include service list)
You are notified that the undersigned lawyer will bring the following Motion:

---

before the Honorable _____
For hearing: _____

Address: _____
Date: _____
Time: _____

This hearing may be confirmed the business day before by calling _____.
Movant's failure to contact opposing side to confirm/cancel hearings may result in sanctions.

By:_____
(attorney)
Bar No._____
Address: _____
Telephone No.: _____
Fax No: _____
Email address: _____

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMIDATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADA COORDINATOR NO LATER THAN 7 DAYS PRIOR TO THE PROCEDDING AT (XXX) XXX-XXXX (VOICE) OR (XXX) XXX-XXXX (TDD) AND (XXX) XXX-XXXX FOR FAX, WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-955-8771, FOR THE FLORIDA RELAY SERVICE.

IN THE CIRCUIT COURT OF THE
_____ JUDICIAL CIRCUIT
IN AND FOR _____,
FLORIDA

GENERAL JURISDICTION
CASE NO.:

Plaintiff

vs.

Defendant.
_____/

Notice of Hearing on Motion to Dismiss and Order of Dismissal

Fla. R. Civ. P. 1.070(j)

YOU ARE HEAREBY NOTIFIED that upon the Court's motion the above styled cause has been set for hearing in that is does not affirmatively appear that a summons has (have) been served on the defendant(s) within 120 days pursuant to Fla. R. Civ. P. 1.070(j).

Therefore, it is ADJUDGED as follows:

1. Plaintiff shall show good cause why service has not been perfected within 120 days of the date of the filing of the complaint. Said showing shall be in writing and filed with the Clerk of Court at least (5) days before the hearing date referenced in paragraph 2. A courtesy copy also must be delivered to: Service Calendar, _____ at least (5) days before the hearing date referenced in paragraph 2.

2. If a showing of good cause is timely filed, you must appear at the hearing which shall be held on the _____ day of _____, _____ at _____ a.m. The hearing shall take place at _____, _____ in Room No. _____ before the Honorable _____

3. Failure to timely file a showing of good cause will result in this action being dismissed without further Order on the date specified in paragraph 2. Said dismissal shall be without prejudice.

4. The Clerk of Court will record this Order of Dismissal after the hearing date in paragraph 2.

DONE AND ORDERED in chamber at _____ County, Florida this ____ day of April, 2008.

_____
CIRCUIT COURT JUDGE

cc:

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMIDATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COURT ADA COORDINATOR NO LATER THAN 7 DAYS PRIOR TO THE PROCEDDING AT (_____ (VOICE) OR _____(TDD) AND (_____FOR FAX, WITHIN TWO (2) WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-955-8771, FOR THE FLORIDA RELAY SERVICE.

Copies mailed and certified to:

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
STATE OF FLORIDA, IN AND FOR _____ COUNTY
CIRCUIT CIVIL DIVISION _____
DISMISSAL DOCKET & CASE MANAGEMENT SCHEDULING ORDER

STYLE	CASE NUMBER	ATTORNEY/PRO SE PARTY

ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED FOR FAILURE TO SERVE WITHIN 120 DAYS AND SCHEDULING CASE MANAGEMENT CONFERENCE

NOTE: HEARING MAY BE CANCELLED IFCOURT RECEIVES COPY OF VOLUNTARY DISMISSAL, SUGGESTION OF BANKRUPTCY OR RETURN OF SERVICE PRIOR TO ABOVE DATE

PLEASE BE ADVISED that, pursuant to Florida Rules of Civil Procedure Rule 1.070 and Rule 1.200(a), the cases above listed will be called up for Case Management Conference at _____ _____ , Florida, before the Honorable _____. Rule 1.070 provides when service of the initial process and initial pleading is not made upon a defendant with 120 days after the filing of the initial pleading directed to that defendant, the court shall direct that service be effected within a specified time or shall dismiss the action without prejudice or drop that defendant as a party. The court may extend the time for service for an appropriate period if the plaintiff shows good cause or excusable neglect for the failure. Wherefore, Plaintiff, individually or through counsel if represented is hereby ordered to appear and show cause on the date listed below as to why the case, as listed above, should not be dismissed.

HEARING DATE:

Attorneys must be present in person before the Court at this hearing. Incarcerated parties without legal counsel may contact the court at _____ no later than 48 hours prior to the hearing to arrange a telephonic appearance. Inmates will not be transported.

ON FAILURE OF THE PARTIES OR COUNSEL TO ATTEND THE CONFERENCE, THE COURT MAY DISMISS THE ACTION WITHOUT PREJUDICE AS PROVIDED IN RULE 1.070 (j).

THIS CASE MANAGEMENT CONFERENCE MAY ONLY BE CANCELLED

WITH THE COURT'S PRIOR WRITTEN PERMISSION.

DONE AND ORDERED in _____, _____ County, Florida this day of , 20_____.

_____
CIRCUIT JUDGE

Copies Provided to Counsel

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, _____, FL _____, phone number _____ within 2 working days of your receipt of this Order Scheduling Case Management conference; if you are hearing impaired, call_____; if you are voice impaired, call _____.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
STATE OF FLORIDA, IN AND FOR _____ COUNTY
CIRCUIT CIVIL DIVISION _____

NOTICE OF LACK OF PROSECUTION AND

CASE MANAGEMENT SCHEDULING ORDER

STYLE	CASE NUMBER	DATE AND TIME

NOTICE OF LACK OF PROSECUTION

PLEASE TAKE NOTICE that it appears on the face of the record that no activity by filing of pleadings, order of court, or otherwise has occurred for a period of 10 months immediately preceding service of this notice, and no stay has been issued or approved by the court. Pursuant to rule 1.420(e), if no such record activity occurs within 60 days following the service of this notice, and if no stay is issued or approved during such 60 day period, this action may be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing scheduled below on the motion why the action should remain pending.

ORDER SCHEDULING CASE MANAGEMENT CONFERENCE

NOTE: HEARING MAY BE CANCELLED IFCOURT RECEIVES COPY OF VOLUNTARY DISMISSAL, SUGGESTION OF BANKRUPTCY OR UNIFORM ORDER SCHEDULING TRIAL PRIOR TO ABOVE DATE

PLEASE BE ADVISED that, pursuant to Rule 1.200(a), Fla. R. Civ. Proc., the cases above listed will be called up for Case Management Conference at the _____, Florida, before the Honorable _____. Rule 2.250 of the Florida Rules of Judicial Administration prove time standards which are presumptively reasonable for the completion of cases. In civil cases, jury cases are to be disposed within 18 months of filing and non-jury cases are to be disposed within 12 months of filing. The Court records reveal either that the above-styled cause has exceeded these standards or there are other compelling reasons for case management.

HEARING DATE:

Matters to be considered at the Case Management Conference include matters that may aid in the disposition of the action including, but not limited to:

1. Schedule or reschedule trial or additional case management conference;
2. Schedule or reschedule the service of motions, pleadings and other papers;
3. Coordinate the progress of the action if complex litigation factors are present;
4. Limit, schedule, order or expedite discovery;
5. Schedule disclosure of expert witnesses are discovery of facts known and opinions held by such experts;
6. Schedule time to hear motions in limine;
7. Require filing of preliminary stipulations if issues can be narrowed;
8. Possibilities of settlement;
9. Dismissal without prejudice.

Attorneys must be present in person before the Court at this hearing. Incarcerated parties without legal counsel may contact the court at _____ no later than 48 hours prior to the hearing to arrange a telephonic appearance. Inmates will not be transported.

ON FAILURE OF THE PARTIES OR COUNSEL TO ATTEND THE CONFERENCE, THE COURT MAY DISMISS THE ACTION, STRIKE PLEADINGS, LIMIT PROOF OR WITNESSES OR TAKE ANY OTHER APPROPRIATE ACTION AS PROVIDED IN RULE 1.200 (c).

THIS CASE MANAGEMENT CONFERENCE MAY BE CANCELLED

WITH THE COURT'S WRITTEN PERMISSION.

STIPULATIONS TO CONTINUE WILL BE GRANTED ONLY UPON A SHOWING OF GOOD CAUSE

DONE AND ORDERED in _____, _____ County, Florida this day of , 20_____.

_____
CIRCUIT JUDGE

Copies Provided to Counsel and Pro Se Parties

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, _____, FL_____, phone number _____ within 2 working days of your receipt of this Order Scheduling Case Management conference; if you are hearing impaired, call_____

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
STATE OF FLORIDA, IN AND FOR _____ COUNTY
CIRCUIT CIVIL DIVISION _____

ORDER FOLLOWING COURT SCHEDULED CASE MANAGEMENT

STYLE	CASE NUMBER	ATTORNEY/PRO SE PARTY

ORDER OF DISMISSAL WITHOUT PREJUDICE

THIS CAUSE came before the court for purpose of Case Management, pursuant to the Florida Rules of Civil Procedure as provided in Rule 1.200 either due to failure to serve on a timely basis as provided by Rule 1.070 or lack of prosecution as provided by Rule 1.420 (e). Reasonable notice and opportunity to be heard was provided to plaintiff and all served parties at the address(es) listed on pleadings. The order scheduling case management provided notice that when a party or its counsel fails to attend a court scheduled case management conference, the court may dismiss the action without prejudice. The Court finds that:

_____ 1 (a) **FAILURE TO SERVE**: No response was filed to demonstrate good cause or excusable neglect for the failure to serve on a timely basis and a return of service has not been filed. Cf. Fla.R.Civ.P. 1.070. **OR**

_____ 1. (b) **LACK OF PROSECUTION**: No written response was filed to demonstrate good cause why the action should remain pending. Cf. Fla.R.Civ.P. 1.420 (e).

_____ 2. **FAILURE TO APPEAR:** No one appeared at the hearing. Cf. Fla.R.Civ.P. 1.200 (c).

It is therefore, **ORDERED AND ADJUDGED** this matter is dismissed without prejudice.

DONE AND ORDERED in _____, _____ County, Florida this _____ day of _____, 20_____.

_____
CIRCUIT JUDGE

Copies Provided:

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
STATE OF FLORIDA, IN AND FOR _____ COUNTY
CIRCUIT CIVIL DIVISION _____

STYLE	CASE NUMBER	ATTORNEY/PRO SE PARTY

CASE MANAGEMENT CONFERENCE ORDER

THIS CAUSE came before the court for a case management, pursuant to the Florida Rules of Civil Procedure as provided in Rule 1.200. The order scheduling case management provided notice that when a party or its counsel fails to attend a court scheduled case management conference, the court may dismiss the action without prejudice. It is therefore, **ORDERED AND ADJUDGED**:

_____ 1 (a) **FAILURE TO SERVE**: This case is dismissed without prejudice. No response was filed to demonstrate good cause or excusable neglect for the failure to serve on a timely basis and a return of service has not been filed. Cf. Fla.R.Civ.P. 1.070. **OR**

_____ 1. (b) **LACK OF PROSECUTION**: This case is dismissed without prejudice. No written response was filed to demonstrate good cause why the action should remain pending. Cf. Fla.R.Civ.P. 1.420 (e).

_____ 2. **FAILURE TO APPEAR:** This case is dismissed without prejudice. No one appeared at the hearing. Cf. Fla.R.Civ.P. 1.200 (c).

_____ 3. **RESCHEDULED:** The case management conference is continued and reset for _____, 20 ___, at _____ A.M./P.M. All provisions in the order scheduling case management conference remain in force and effect.

_____ 4. **PENDING MOTIONS SCHEDULED FOR HEARING:** (All pending) (The following motions: _____
_____)
are scheduled for hearing on _____, 20 ___, at _____ A.M./P.M.

_____ 5. **MEDIATION:** The parties shall schedule mediation and complete on or before _____ _____, 20 ___.

_____ 6. **TRIAL**: Counsel for _____ (select party) shall submit a uniform order scheduling trial and pretrial conference within _____ days.

_____ 7. **OTHER:** _____
_____
_____
_____

It is therefore, **ORDERED AND ADJUDGED** this matter is (dismissed without prejudice) (continued as provided above).

DONE AND ORDERED in _____, _____ County, Florida this _____ day of _____, 20_____.

_____
CIRCUIT JUDGE

Copies Provided:

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
CIVIL DIVISION

Plaintiff(s) CASE NO.:

VS.

DIVISION:

Defendant(s)

----------/

ORDER REMOVING CASE FROM PENDING STATUS

This cause came before the court ex parte as part of the Court's ongoing responsibilities concerning case management and, based on a review of the pleadings, it appears to the Court that this case is not currently "pending." It is therefore,

ORDERED and ADJUDGED

_____ A dismissal has been filed and this case is concluded.

_____ The Defendant has filed **BANKRUPTCY**. Therefore the Clerk of the Circuit shall **REMOVE THIS CAUSE FROM ACTIVE PENDING.**

_____ The Parties have agreed to a **SETTLEMENT**. Therefore the Clerk of the Circuit Court shall **REMOVE THIS CAUSE FROM ACTIVE PENDING.** If this cause goes into Default, the Plaintiff may reinstate the matter and move forward with their case.

_____ Other.

DONE and ORDERED in Chambers, _____, _____ County, Florida this _____ day of _____, 20_____.

_____
CIRCUIT JUDGE

Copies Furnished To:

IN THE CIRCUIT COURT
STATE OF FLORIDA
COURT OF GENERAL CIVIL JURISDICTION

_____,

Plaintiff, **CASE NO.:**

vs.

DIVISION

_____,

Defendant.
_____/

CASE MANAGEMENT ADMINISTRATIVE ORDER

RESIDENTIAL MORTGAGE FORECLOSURE

THIS CAUSE came before the Court on the Court's own motion for purpose of entry of a case management order to govern the conduct of this case. Compliance with the provisions of this order is mandatory unless waived in writing by the court after a hearing with notice to all parties of an appropriate motion.

TIME STANDARDS

Counsel for the plaintiff will be responsible for compliance with the time standards set forth below. A failure to comply with any portion of this order which is found attributable to deliberate delay on the part of any party will be grounds for dismissal or other sanctions as deemed appropriate by the court.

IF UNOPPOSED and after compliance with the Administrative Order No. _____ (which provides for case management of residential foreclosure cases and mandatory referral of mortgage foreclosure cases involving borrower-occupied residence to mediation),the presumptive date to complete this cause is no later than _____ days from the date that all defendants have been served as required by law and the case is at issue.

IF OPPOSED and any defendant files a good faith intent (defined herein) to participate in voluntary dispute resolution/mediation, then the presumptive date for completion of voluntary dispute resolution/mediation is _____ days from the date of the filing of the good faith compliance with an additional _____ days to complete a contested proceeding following mediation if the case is not settled.

PROCEDURE

1. **HOME OCCUPIED BY BORROWER:** the case shall proceed as provided in Administrative Order _____.

2. **HOME VACANT OR OCCUPIED BY TENANTS:** Upon a return of service indicating that the home is vacant or is being occupied by tenants, the Plaintiff shall set the cause for a motion for final summary judgment within _____ days of the cause being at issue.

RESPONSIVE PLEADINGS:

1. **MOTION TO DISMISS:** A motion to dismiss must be set for hearing within _____ days of filing. If a defendant fails to set the cause for hearing, then the Plaintiff must do so. The hearing may not be continued or cancelled without prior consent of the Court.
2. **ANSWER:** Upon the filing of an answer, the Plaintiff shall immediately submit an order referring the parties to mediation within _____ days.

MOTIONS TO WITHDRAW: Special appearances by defense counsel are not permitted. No motion to withdraw will be granted, absent good cause shown and a hearing held on said motion, when there is a motion filed by such attorney pending in the cause.

MOTIONS TO AMEND PLEADINGS/VOLUNTARY DISMISSAL: When Plaintiff has filed a count to reestablish a lost note and thereafter discovers that the note is in its possession, counsel for the plaintiff must immediately notify in writing all parties who have filed responsive pleadings of the discovery of the original note and file a copy of such correspondence with the court.

VOLUNTARY DISPUTE RESOLUTION: Plaintiff will engage in voluntary dispute resolution as provided in Administrative Order _____. In all other cases, parties must attend mediation prior to non-jury trial unless otherwise ordered by the court.

HEARINGS:

1. **SCHEDULING:** Counsel for plaintiff may not schedule a hearing on a motion for summary judgment unless the motion with the supporting affidavits has been filed.
2. **CERTIFICATE OF COMPLIANCE WITH FORECLOSURE PROCEDURES:** (form available on circuit website) must be filed contemporaneously with the notice of hearing.
3. **CONTINUANCES:** Motions for continuance must be filed in writing supported by good cause. If parties jointly stipulate to a continuance, a copy of the joint stipulation accompanied by an order must be submitted to the court _____ days prior to the scheduled hearing.

FINAL JUDGMENTS: The Final Judgment or Final Summary Judgment of Foreclosure shall be in the model form provided and shall not include any costs not actually incurred and must be supported by sworn testimony or affidavit (if summary judgment).

SALES: The Clerk's sale shall be conducted as provided by law and may include such other method of sale employing electronic media as determined by the Clerk of Court and permitted by law.

DONE AND ORDERED this _____ day of _____, 200____, in

_____, _____ County, Florida.

_____
Chief Judge

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 3.306-5/09

IN RE: CASE MANAGEMENT STATUS CONFERENCES
IN HOMESTEAD FORECLOSURE ACTIONS
BY INSTITUTIONAL LENDERS
_____:

During the summer of 2009, the Fifteenth Judicial Circuit will have staff attorneys and law school and college interns that can assist the court with the increasing foreclosure actions.

As set forth in Administrative Order 3.305, Notices of Compliance may be filed up to 14 days after the filing of a response by a defendant/homeowner.

NOW, THEREFORE, pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215, it is **ORDERED** as follows:

1. All new foreclosure actions filed between May 20, 2009 and June 30, 2009 to which the Plaintiff has attached exhibits in accordance with Administrative Order 3.305, will have attached to the summons a Notice of Case Management Conference which Notice will be provided to the Clerk and Comptroller by Court Administration.

2. The Notice of Case Management Status Conference will be on a color of paper other than white or blue (yellow, goldenrod, pink, etc.). A copy of the Notice of Case Management Conference is attached hereto as Exhibit "A". The Clerk and Comptroller will note the case number on the Case Management Conference Form.

3. The Notice of Case Management Conference will notice the parties to appear at a case management conference no later than 34 days after the date of the issuance of the summons ("34th Day"). A listing of filing dates and the corresponding Case Management Conference Dates is attached hereto as Exhibit "B".

4. Case Management conferences will occur on Tuesdays and Thursdays from 3:00-5:00 in the north end of the cafeteria at the Main Judicial Center. Additional days and/or times may set by order of the Chief Judge or a circuit judge assigned to foreclosure.

5. The case management status conferences are scheduled as follows:
   a. Up to 300 cases are to be noticed for each case management conference.
   b. The first 75 cases (cases 1-75) will be set at 3:00.
   c. The second group of 75 cases (cases 76-150) will be set at 3:30.

d. The third set of 75 cases (cases 151-225) will be set at 4:00 and the last set of 75 (cases 226-300) will be set at 4:30.

6. The case management conference is a request for appearance by the parties and no penalty will be imposed upon a party should the party fail to appear.

7. If a defendant/homeowner appears at the case management status conference, a trial court law clerk employed by the Fifteenth Judicial Circuit ("judicial law clerk"), or an individual interning with the Fifteenth Judicial Circuit ("judicial intern") under the supervision of the General Counsel, or other individuals employed or interning with the Fifteenth Judicial Circuit, will meet with the defendant/homeowner and explain Administrative Order 3.305 including its purpose, the forms, and the time limitations set forth therein. No legal advice will be given.

8. Should a defendant/homeowner attend the Case Management Status Conference and wish to avail him/herself of the procedures set forth in Administrative Order 3.305, then the defendant/homeowner shall complete a revised Financial Statement (Exhibit "D" to Administrative Order 3.305) which shall not include any information about the Defendant/Borrower's assets. A copy of the revised Financial Statement is attached as Exhibit "C".

9. The judicial law clerks and judicial interns can inform the defendant/homeowner that the Florida Bar, the Palm Beach County Bar, Legal Aid, or Florida Rural Legal Services may be able to provide further assistance. The defendant/homeowner may also be directed to the Clerk and Comptroller's self help center to obtain forms or set an appointment with an attorney.

10. The judicial law clerk or judicial intern will complete a Case Management Status Conference Report indicating whether the defendant/homeowner appeared. The Case Management Status Conference Report shall be placed in the court file.

DONE AND SIGNED in Chambers at West Palm Beach, Palm Beach County, Florida this 11 day of May, 2009.

Kathleen J. Kroll, Chief Judge

IN THE CIRCUIT COURT OF THE _____JUDICIAL CIRCUIT IN AND FOR _____, FLORIDA

Plaintiff,

vs.

GENERAL JURISDICTION DIVISION

Defendant(s).

CASE NO.

_____/

Plaintiff's Certification of Residential Mortgage Foreclosure Case Status

The undersigned attorney hereby certifies that the information provided herein is true and correct:

DEFENDANTS	SERVED	DROPPED	ANSWER	NON-MILITARY AFFIDAVIT	DEFAULT

This property is _____Homestead _____not subject to Homestead
If Homestead, _____ this property completed the (Managed Mediation) program, compliance attached

Foreclosure package, Confirm copies were mailed to defendants and indicate dates:

_____ Motion for Summary Judgment
_____Original Note, mortgage,
_____Assignments and/or allonge
_____Lost Note Affidavit
_____ Notice of Hearing on Summary Judgment for this hearing date
_____ Affidavit of Indebtedness
_____ Affidavit of Costs
_____ Affidavit of Attorney Fees
_____ Affidavit as to Reasonableness of Attorney Fees
_____(Managed Mediation) Compliance attached

Confirm compliance and indicate dates:

_____Lost Note count pled or withdrawn
_____ All Motions to Dismiss resolved
_____No discovery outstanding
_____No suggestion of bankruptcy
_____ Affirmative defenses filed, attached
_____

a. The Summary Final Judgment of Foreclosure submitted is the court-approved form, without any alterations or additions; and

b. That the amounts in the final judgment are accurate and correspond with the affidavits filed herein.

Undersigned counsel further certifies, under penalty of perjury, that in accordance with Administrative Order # , all of the above is true and correct.

Date

Signature of Attorney

Print Attorney's Name & Florida Bar Number

FLORIDA SUPREME COURT
TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES

FINAL REPORT AND RECOMMENDATIONS ON RESIDENTIAL MORTGAGE FORECLOSURE CASES

AUGUST 17, 2009

FLORIDA SUPREME COURT
TASK FORCE ON RESIDENTIAL MORTGAGE FORECLOSURE CASES

FINAL REPORT AND RECOMMENDATIONS
AUGUST 17, 2009

CONTENTS

I. Case Flow Charts
J. Alternative Dispute Resolution Proposals
    1. Model Administrative Order with Forms
    2. Minority Model Administrative Order with Forms
    1. Case Management Proposals
    2. Rule and Form Proposals
    3. Comments of the Rules of Civil Procedure Committee
    3. Best Practices Forms
K. Minority Report (Haworth)
L. Minority Report (Storrow)

Respectfully submitted:

Jennifer D. Bailey
Chair
Circuit Judge, Eleventh Judicial Circuit

Rosezetta Bobo, Consultant/Mediator
Alan Bookman, Past President, The Florida Bar
Arnell Bryant-Willis, E.W. Bryant Associates
J. Thomas Cardwell, Esquire, Akerman Senterfitt
April Charney, Esquire, Jacksonville Area Legal Aid
Burton Conner, Circuit Judge, Nineteenth Judicial Circuit,
Supreme Court Committee on Alternative Dispute Resolution Rules and Policy
Sandra Fascell Diamond, Esquire, Real Property, Probate and Trust Law Section of The Florida Bar
Michael M. Fields, Florida Bankers Association
Gregory Firestone, Ph.D., Supreme Court Committee on Alternative Dispute Resolution Rules and Policy
University of South Florida Conflict Resolution Collaborative
Lee A. Haworth, Circuit Judge, Twelfth Judicial Circuit
Claudia Isom, Circuit Judge, Thirteenth Judicial Circuit,
Rules of Civil Procedure Committee of The Florida Bar
Perry S. Itkin, Mediator, Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, Dispute Resolution, Inc.
Tammy Teston, Deputy Chief Financial Officer, State of Florida
Rebecca Storrow, Alternative Dispute Resolution Director, Fifteenth Judicial Circuit

Staff Support provided by:
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1900

INTRODUCTION

Picture this: the biggest road out of town. Now imagine it is rush hour. In a thunderstorm. Add that it is also a hurricane evacuation. A lane is closed due to construction delayed by budget impacts. Imagine the traffic jam.

The clearest description of the impact of the foreclosure crisis and the following recession on Florida's courts can be summarized by that picture. Imagine every car is a case. The General Jurisdiction Courts of our state have a certain amount of judicial infrastructure, just like there is a certain amount of room on the road. There is a certain capacity of judges, of court staff, of clerks, of filing space, of hearing time, of courtrooms, even of hours in the day. Year in, year out, that capacity flexes with the caseload traffic to afford reasonable, prompt, efficient and fair justice.

The enormous increase in foreclosure filings has overwhelmed those resources in many circuits and represents a caseload traffic jam that the infrastructure cannot meet in a timely and efficient manner without support and traffic management. The Task Force has looked for ways to create off-ramps to get traffic off the road, in the form of managed mediation to resolve cases at the beginning instead of at the end; and in the use of expedited proceedings in cases involving vacant or abandoned property. The traffic left on the road must be coordinated to keep it moving safely and as swiftly as possible through the use of the limited case management resources available to a judicial system where every spare staff slot has already been cut. Without case managers to assist in keeping this traffic moving, the best options are standardization of procedures and form orders.

The recommendations of this Task Force are real world recommendations. Without budgetary limitations and with infinite resources, we could have designed a case management system guaranteed to resolve all these issues. However, we live in a state in a budget crisis. Given Florida's financial situation, it would be a foolish exercise to address needs for foreclosure case managers, additional judges and support staff, special magistrates, and court-funded mediation in the absence of any realistic expectation that such recommendations could be funded. We have made recommendations, in some instances choosing the least of evils that can work on an emergency basis to immediately begin to meet the challenge of these cases. We believe it is imperative that the Florida Supreme Court address the explosion of mortgage foreclosure filings as soon as possible for the welfare of our courts, our communities, our businesses, and our state.

EXECUTIVE SUMMARY

Task Force

By Administrative Order dated March 27, 2009, Chief Justice Peggy A. Quince established a 15-member Task Force on Residential Mortgage Foreclosure Cases to recommend "policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties." AOSC09-8, In Re: Task Force on Residential Mortgage Foreclosure Cases. The Chief Justice directed the Task Force to address these matters on a statewide basis and to include in its recommendations, as may be appropriate, "mediation and other alternative dispute resolution strategies, case management techniques, and approaches to providing *pro bono* or low-cost legal assistance to homeowners." Id. The Chief Justice further directed the Task Force to "examine existing court rules and propose new rules or rule changes that will facilitate early, equitable resolution of residential mortgage foreclosure cases."

Meetings and Organizational Structure

The Task Force dedicated a huge amount of personal and professional effort to this work during the approximately 20 weeks it has been in existence. The Task Force met 18 times as a committee of the whole. The Task Force was constrained by budget limitations that allowed very limited travel, and hence met live only twice for full day meetings after it requested and was granted approval for these meetings from the Chief Justice, once on April 27 and again June 29. Those meetings lasted approximately 16 hours and included working lunches in both sessions.

The majority of the Task Force's work was conducted in conference call as a result of the budget. The Task Force met by conference call on 16 occasions, engaging in extended discussions April 3, 15, 22, May 8, 22, 29, June 3, 18, 24, July 7, 14, 21, 28, August 4, and 11. Every conference call lasted at least two hours and frequently longer. A brief emergency conference call was held August 12. It is a fair estimate that the Task Force meeting as a whole spent at least 35 hours in conference calls.

In addition, all members of the Task Force served not only as a committee of the whole, but also contributed substantially via membership on two subcommittees, each addressing key elements of the overall charge. Members'

names are shown below in relation to the subcommittee work with respect to which each has been extensively involved.

The Case Management Subcommittee met by conference call 13 times on April 9, 21, 27, May 5, 19, 28, June 9, 16, 30, July 7, 14, 21, and 28. Another meeting occurred at the working lunch in connection with the April 27 live meeting. Most calls involved substantial discussion of the foreclosure process. Members of the Case Management Subcommittee are:

Judge Claudia Isom, Chair
Rosezetta Bobo
Alan Bookman
Arnell Bryant-Willis
J. Thomas Cardwell
Tammy Teston

The Alternative Dispute Resolution Subcommittee (ADR Subcommittee) met 15 times on April 15, 22, 27, May 1, 8, 20, June 2, 17, 24, July 2, 8, 15, 22, and 29, and August 12, all but once by lengthy conference calls and again during a working lunch at the Task Force's April 27 live meeting. ADR Subcommittee calls routinely lasted 1-2 hours. Task Force members serving on the ADR Subcommittee are:

Dr. Gregory Firestone, Chair
April Charney
Judge Burton Conner
Sandra Fascell Diamond
Michael Fields
Chief Judge Lee Haworth
Perry Itkin
Rebecca Storrow

Overall, one can reasonably calculate that this task force spent over 50 hours in meetings over four months, without considering the individual email correspondence, drafting and re-drafting efforts and cyber-discussion, and research and review of materials on the underlying issues. To add in time for those efforts probably put the time expended at well over 75 hours for the members of this emergency task force.

Judge Jennifer Bailey served as Chair of the Task Force. She also served ex officio and participated in the work of both subcommittees. She would like to express personal gratitude as well as gratitude on behalf of the Court system, and the people of the State of Florida, to the Task Force members, all uncompensated volunteers, who so significantly sacrificed their time, effort, and intellect to this Herculean emergency task.

Outreach Methods

The Task Force faced two severe limitations in its information-gathering function: First, there was no budget or ability to travel. Where many task forces hold multiple public hearings, we could not do so in the face of budgetary constraints. Second, the Task Force had a very short time frame of approximately 20 weeks from the day it was appointed to the deadline for its final report.

In light of those constraints, the Task Force pursued every means at its disposal to get information from the many perspectives in these cases. It sought to publicize its work in press releases and coverage in the Florida Bar News. A number of newspapers covered the work of the Task Force, and the Chair gave multiple interviews to newspapers in Miami and Sarasota.

The state courts website offered several ways in which individuals were able to convey their opinions and information to the Task Force. First, the Dispute Resolution Center (DRC) offered a link to an on-line mailbox whereby suggestions and comments could be directly submitted to the Task Force.

In light of our inability to hold public hearings, the Task Force developed online surveys for lenders/servicers/holders; attorneys, judges and borrowers. The surveys for borrowers were translated into Spanish and Haitian Creole to provide access to the broadest possible range of individuals. Links to the surveys were accessible through the Florida Supreme Court website. Links to the surveys were sent out via email by Task Force members and others to as wide a circle of possible participants as possible. Finally, the Florida Supreme Court issued a statewide press release to inform people of the Task Force's efforts and to encourage them to participate in the surveys or to submit comments to the on-line mailbox. Again, the surveys were publicized in the Florida Bar News in the press, even turning up in the "Action Line" consumer information column of the Miami Herald.

As a result of the above outreach efforts, a total of 1, 018 individuals participated in the surveys; the number of survey participants in each group was as follows: borrowers – 510; mortgage holders/servicers – 40; attorneys – 405; and, 63 judges. Additionally, comments were received from 141 individuals through emails submitted to the DRC online mailbox and through the US Mail.

Task Force Recommendations

Recognizing the limited resources available for creative solutions, the Task Force recommends use of mediation and case management techniques to move settlements to the beginning of the case instead of late in the case, to prevent unnecessary use of court resources.

To that end, the Task Force recommends adoption of a uniform, statewide managed mediation program to be implemented through a model administrative order issued by each circuit chief judge. Under this program, all foreclosure cases involving residential homestead property will be referred to mediation, unless the plaintiff and borrower agree otherwise, or unless pre-suit mediation was conducted. All cases will be assigned to mediation to be conducted by a Florida Supreme Court certified circuit court mediator. Referral of the borrower to foreclosure counseling prior to mediation, early exchange of borrower and lender information by way of an information technology platform prior to mediation, and the ability of a plaintiff's representative to appear at mediation by telephone are features of the model administrative order. Borrowers will not pay a fee to participate in the managed mediation program. Appended to the Model Administrative Order are best practice alternative dispute resolution forms and mediator training standards.

The Task Force also recommends differentiated processing of three distinct categories of foreclosure cases: (1) homestead properties that are referred to mediation and are likely to resolve through the managed mediation program; (2) vacant and abandoned properties that can move through the courts quickly through expedited foreclosure processes; and (3) other foreclosure cases, which may include tenant-occupied or non-borrower-occupied properties, in which the borrower has been unable to communicate with the plaintiff to resolve the case, and which may be referred to the managed mediation program at equal cost to both parties. In order to facilitate improved case management of foreclosure cases that will not be resolved through the managed mediation program, the Task Force proposes a number of changes to the Rules of Civil Procedure and the Forms for

Use with Rules of Civil Procedure, as well as "best practices" forms that may be used at the discretion of the circuit court to improve efficiencies in case processing.

BACKGROUND

Summary of Presentations

The Task Force was unable to hold public hearings due to travel, time and budget constraints. However, in an effort to ensure that specific questions were answered, the Task Force invited limited individual presentations by potential stakeholders. These presentations were by a foreclosure counseling expert, large volume plaintiff firms, a mid-size plaintiff firm, an experienced foreclosure defense attorney, lenders and servicers, and the President of the Collins Center which manages the existing foreclosure managed mediation programs in the First, Eleventh, and Nineteenth circuits. The format of the presentations, which were all conducted by conference call, was to permit the presenter a brief statement at the beginning, followed by question and answer by the Task Force. The Task Force heard from:

Arden Shank, President of Neighborhood Housing Services, Miami, FL
Roy Diaz, Smith, Hyatt and Diaz, P.A., Ft. Lauderdale, FL
Beverly A. McComas, Law Offices of David J. Stern, P.A., Plantation, FL
Ron Wolfe, Florida Default Law Group, P.L., Tampa, FL
Marie Day, Bill Merrell, Todd Boothroy, Tamara Twain and Martha Graham, Wells Fargo/Wachovia Mortgage Foreclosure Team
James Kowalski, Law Offices of James E. Kowalski, Jr., P.L., Jacksonville, FL
Roderick N. Petrey, President, Collins Center for Public Policy, Inc., Tallahassee, Miami and Sarasota, FL

The presentations permitted the Task Force to gather perspective and consensus.

Foreclosure Counseling Expert

One key point of consensus across the board was the importance of certified foreclosure counseling to an effective resolution in a mortgage foreclosure case. Servicers, counselors, and attorneys on both sides agreed that foreclosure counseling served to assist in educating borrowers, documenting and promoting the loss mitigation effort, and aided in the effective effort to resolve these cases.

Foreclosure counselors are trained and certified by the U.S. Department of Housing and Urban Development, and standards for foreclosure counseling, including ethical standards, have been established by the National Industry Standards for Homeownership Education and Counseling (NHSSF). The Task Force learned that most nonprofit organizations that provide foreclosure counseling do not charge a fee. This issue was considered in the Model Administrative Order.

These organizations obtain grants from the National Foreclosure Mitigation Counseling program to cover counseling costs. Foreclosure counseling is offered by dozens of organizations in Florida. While the Task Force believes that the capacity is there to require counseling, it is also apparent that additional counselors will have to be trained and brought on board to meet potential demand. For that reason, a foreclosure counseling fee was included in the recommendations so that the necessary numbers of counselors can be available to assist, as opposed to creating the need without having grant funds available to meet the need. Foreclosure counseling can be, and often is, done by telephone.

Plaintiffs' Bar

The Task Force also learned that there is significant concern about demonization of lenders within the plaintiff's bar. In the view of these attorneys, the cases are simple: one party provided money, the other promised to repay the money. They didn't. As a result, the lender has the right to take their house.

The plaintiffs' representatives also emphasized that lender/investor plaintiffs are not the winners in the mortgage foreclosure crisis. They are losing millions, with no chance to recover losses. The largest losses are incurred in cases where the property is foreclosed and then marketed for re-sale. Plaintiffs and borrowers have a compelling interest in having as many defaulted mortgage contracts resolved as performing loans within the ability of the borrower and the current market conditions. While lenders agree that all loans that can be modified should be modified, issues associated with the volume of defaulted loans, establishing processes and training for mortgage modifications, communication between the parties, and the general economic downturn have resulted in an inability to prevent the situation from becoming a crisis. The plaintiff's attorneys acknowledged that the loss mitigation system is not operating effectively.

Most loans are considered in default in four months; foreclosure proceeds even with continuing loss mitigation efforts. Plaintiffs file motions to vacate foreclosures to permit time for borrowers to determine qualifications for federal

assistance. Telephone appearance makes participation by plaintiff's representative possible. Plaintiff's counsel signs settlement agreements on behalf of the lenders. Lenders/investors use servicers to manage mortgage activity. Servicers, according to the plaintiffs' attorneys interviewed, have the authority to conduct loss mitigation.

There seemed to be general agreement among the plaintiffs' representatives that the means to address the backlog of pending foreclosure cases is to provide responsible borrowers and lenders the opportunity to have meaningful contact, thereby limiting foreclosure case volume. However, the plaintiffs' attorneys felt that any mandatory mediation process should limit mediation to those cases in which the borrower has expressed a desire to mediate, require the borrower to opt in by providing relevant financial data, and require the borrower to contribute equally to the cost of the mediation process. Policies to address the mortgage foreclosure crisis should not assume that borrowers are incompetent. These are not traditional adversarial dialogues; rather they are a discussion to reach a mutually beneficial solution for both parties. In this new breed of troubled assets, there is a possibility for a win/win situation. They also felt strongly that the most effective process for resolving foreclosure cases would permit the plaintiffs' representative to appear at mediation by telephone since: (1) the plaintiff will already have the necessary financial data from the borrower; (2) the plaintiff will be in a position to submit settlement proposals or request additional information from the borrower; and (3) there is no benefit to requiring lenders/investors to hire and train mediation representatives who will do nothing more than relay information to the servicers. Extending the length of time to process foreclosures where the borrower does not have the desire or ability to settle negatively impacts market values so this process should not prolong litigation.

The plaintiffs' attorneys acknowledged that the current crisis requires a non-traditional approach. The system or model should be flexible enough to cover many types of meaningful settlement contacts, should encourage early communication and settlement discussions by creating an opt-in approach that rewards responsible borrowers and lenders. A voluntary pre-suit mediation process would encourage both parties to engage early in the process to avoid costs, and would provide a plaintiff the ability to opt out of any mandatory program by documenting previous efforts to settle. Exchange of information is vital to the success of any potential settlement process. The Task Force was encouraged by the general support for the mediation process, but disagreed that effective case management could rely upon borrowers to individually invoke the mediation process given the limited understanding of that process by most of these borrowers.

The Task Force followed up to determine potential delay due to sales cancellations. plaintiffs' counsel reported that as of late July, Florida's smaller counties, such as Pinellas, Citrus, Escambia, etc. are generally setting sales in 30+ days, in most larger counties sales dates are being set at 60+, Collier County is 90+ for sales dates, and Miami-Dade County is at 200+ days. Further investigation revealed that one of the reasons for the extended sales dates in Miami is an ongoing cancellation rate of over 50-60 percent of the sales set each month.

Lenders and Servicers

The Task Force also made a point to hear from the servicers' perspective. Servicers interact directly between lenders and borrowers based upon lenders' servicing guidelines. They are strong proponents of handling mediations by telephone, and do not believe there is a significant difference between telephone and in-person mediations. The servicers agreed that the best practice is a non-profit HUD-approved counselor working with the borrower as early as possible to keep arrears low and to assist borrower in pursuing a workout. The servicer can approve or deny a workout on the spot based upon financial data provided by the borrower. There is an unacceptably high number of borrowers who do not trust the servicers. Servicers need borrower information 30 days prior to a workout effort. Workouts are encouraged, but the challenge has been when the borrower is not talking with the servicer, or the borrower's financial circumstances will not permit a workout. It is very difficult if the servicer is requested to change the terms of the loan because this cannot be accomplished without investor approval. The key is to get the borrower into a relationship with a foreclosure counselor early. Foreclosure continues unless there is an agreement, even if the servicer and borrower are negotiating a workout. Principal reductions do not occur often. Life of loan history is not always available if there were prior servicers. Data from former servicers is not always reliable.

Further, the servicers acknowledged that loss mitigation departments were created mid-crisis. They acknowledged problems with accessing borrower documents and requiring borrowers to send in the same information repeatedly. The servicers also discussed the segregation of departments within the servicer: in this instance, there was a mediation department, which was separate from the loss mitigation department, which was separate from the group handling the foreclosure lawsuits, which was separate from the real estate owned department, all of which it appears contribute to confusion and lost documents.

Defense Bar

From the defense bar, we learned that many current loan modification efforts are stymied because it is not profitable for servicers to modify loans. There is a disconnect between servicers and investors, and an inherent conflict since servicers earn an enhanced fee during the foreclosure process. The simple lack of ability to know the future presents an obstacle as servicers, lenders, investors and attorneys focus on short-term solutions and profits rather than long-term efforts to repair the economy of which they are a part. In addition, it is difficult for the borrower to obtain a life of loan history since many problems occur when the loan history is moved electronically from one servicer to another. However, servicers should provide the life of loan history to a facilitator or mediator, with reference to the actual documents and the parameters for modification. Servicers have wide latitude to modify loans. The facilitator or mediator needs the source material on what loan modification authority the servicer has.

The defense attorney also noted that servicer employee turnover is high, and plaintiffs' attorneys do not even review the case files. Quality foreclosure counseling would help as long as the interview is geared to understanding financial concepts and the counselor has access to an attorney for substantive issues. Substantive matters, such as standing issues or wrongfully applied payments, can be used as leverage in these cases as an incentive for servicers to modify loans. Telephone appearance is problematic because the mediator loses the ability to read the person and to ask questions. Generally, defense attorneys concur that injustice is occurring because so many borrowers are unrepresented and so completely out of their depth in dealing with servicers and lenders. They suggest that volunteer screening attorneys are needed to assist borrowers from the beginning of the process. There are three tracks of cases. First, those with substantive issues, usually math problems on the part of the servicer; second, those with financial issues, where the need is for long-term loan modification to fit the borrower's ability to stay in the house; and third, those cases in which there is an inability to meet the financial requirements of the loan, and which can be resolved by a short sale or a deed in lieu. There are some cases in which there are substantive legal issues that need to be addressed. He urged that these cases should be abated.

Requiring the borrower to pay a share of mediation expenses is a disaster, unless substantial leverage and increased efforts to shift the playing field away from an overwhelming advantage to the servicer is accomplished.

Managed Mediation Program

The Task Force also reviewed the progress made in connection with the managed mediation programs facilitated by the Collins Center for Public Policy, Inc., which presently operates managed mediation programs in the First, Eleventh and Nineteenth circuits. The coordinating judges, Judge Bailey in the Eleventh and Judge Connor in the Nineteenth, also served on the Task Force and shared information about the successes and problems of the programs.

The Collins Center is a non-profit entity. It was chosen in all three circuits after a presentation to the chief judges of the circuit courts. The presentation outlined the substantial experience and background that the Collins Center has in managed mediation, having previously handled mass mediation involving life insurance and in the recent hurricane years, handling mass mediations for hurricane-related insurance matters for the Florida Office of Financial Regulation. The Collins Center offered the necessary staff experience and support and technology and technical support to test the system through these pilot projects in the circuits. In addition, the Collins Center secured private funding to absorb the costs of initial set up without a substantial investment from the courts or the parties who are utilizing this service. Being able to create the program without start-up court funding is a significant benefit to utilizing this program for the pilot in these circuits.

The outline of the program is established in the administrative orders of the three circuits, all of which vary to some degree. All mediators working for the programs are Supreme Court certified circuit court mediators and complete one-day training in foreclosures. The program is open to participation by any certified circuit court mediator. The mediators agree by contract to perform a minimum number of mediations. There has been a high participation rate among mediators.

The Collins Center focuses significantly on personal outreach to advise borrowers that this is a court-sponsored program that enables the borrower to talk with the lender or servicer to facilitate and identify potential solutions, including modification of the mortgage. It is important to let borrowers know that this program is safe—not a scam, and free to the borrower. It charges currently charges a $750 fee, to be paid up front by the lender. Of that amount, $350 goes to the mediator, $125 to the financial counselor and the remainder is for administrative costs of the program, which pays for staff, the mediation locations, the IT platform, calls and postage for outreach to borrowers, mediation information and court compliance reporting. The mediator's function is to facilitate agreement

of the parties and to provide an opportunity for parties to meet. The mediators do have specialized training in foreclosures.

The program is based on a tight time frame, and the lawsuit is not abated during this process. In order to participate, the borrower must complete foreclosure counseling and provide their financial documentation to the lender. While all three circuits are still generally in the start-up phase, within the first four to five months, the success rate is impressive. Many cases are settling through foreclosure counseling without the necessity of formal mediation. The overall settlement rate as a result of mediation in all three circuits is 73%. If those cases that settle prior to mediation, during foreclosure counseling, are included the settlement rate is 79%. All three circuits and the Collins Center acknowledge that the raw numbers are very limited at this point in time as there are a limited number of cases that have gone all the way through the process due to the recent start dates this spring. There are 434 cases with confirmed mediation dates.

Although the number of cases handled is still very small, the Collins Center success rate is ratified by national data regarding mandatory mediation programs in foreclosure cases. According to the Center for American Progress, the best foreclosure mandatory mediation programs have a success rate of nearly 75%. Andrew Jakabovics and Alon Cohen, It's Time We Talked - Mandatory Mediation in the Foreclosure Process, Center for American Progress at 1 (June 22, 2009).

There are a significant number of cases in which the Collins Center has been unable to reach the borrower. There are a very significant number of cases in which the contact information provided to the Collins Center by the plaintiff at time of filing is so incomplete or inaccurate as to prevent borrower contact without significant additional investigation, and there are other cases where the borrower is simply unable to be contacted. Those cases are being returned to court according to the process designed in the administrative orders. A chart showing Collins Center managed mediation program outcomes, workflow and cases received is appended to this report.

Residential Mortgage Foreclosure Crisis in Florida

As of its Interim Report submitted May 8, 2009, the Task Force reported on the statistics for foreclosures in Florida. The situation has grown increasingly grim since that filing. Florida has the third highest mortgage delinquency rate, the worst foreclosure inventory, and the most foreclosure starts in the nation. National

Delinquency Survey from the Mortgage Bankers Association, First Quarter 2009 (May 28, 2009).

As noted in a July Government Accounting Office (GAO) report on Treasury programs, "Dramatic increases in home mortgage defaults and foreclosures have imposed significant costs on borrowers, lenders, mortgage investors and neighborhoods; and have been a key contributor to the current financial crisis." United States Government Accountability Office Report to Congressional Committees, Troubled Asset Relief Program Treasury Actions Needed to Make the Home Affordable Modification Program More Transparent and Accountable at 1 (July 23, 2009). The foreclosure crisis, which began due to adjusting loan and maturing payment vehicles in the subprime market, has now moved to the prime loan market. People are no longer defaulting simply because of a change in the payment structure of their loan. They are defaulting because of lost jobs or reduced hours or pay.

The National Delinquency Survey of the Mortgage Bankers Association, First Quarter 2009, reflects shattered records for the highest seasonally adjusted delinquency rate on record. The July GAO report confirms the highest default and foreclosure rate in 30 years. GAO Report at 9. The foreclosure start rate is the highest on record. The national delinquency rate of 12.07% of mortgages is the highest ever recorded. Seriously delinquent prime loans were up 271% from first quarter 2008 to first quarter 2009. Seriously delinquent subprime loans were up 846% during the same time period. National Delinquency Survey, First Quarter 2009, at 2. In terms of seriously delinquent loans, the numbers increased 94% over the last quarter of 2008.

The latest news for Florida is horrifying. The National Delinquency Survey determined that of the 3,542,940 loans being serviced in Florida, 374,134 are in the judicial foreclosure process. A total of 98,848 foreclosures were initiated in the first quarter of 2009, during a time period when many moratoria were in place. Another 378,031 loans are delinquent, with 181,044 seriously delinquent (90+ days delinquent). The flow of foreclosure cases and homes in the Florida pipeline to foreclosure filing shows only signs of increasing. Early information from the United States Treasury Department indicates that the following Florida communities will qualify under the Home Price Decline Protection program, beginning September 1, 2009: Jacksonville, Daytona Beach, Deltona, Lauderdale, Cape Coral-Ft. Myers, Tampa, St. Petersburg and Clearwater.

Financial data for the first quarter of 2009 on residential first mortgages serviced by national banks and federally regulated thrifts, as published in the Mortgage Metrics Report produced by the U.S. Office of the Comptroller of the Currency and the Office of Thrift Supervision, establishes that serious delinquencies, the precursor to foreclosure filings, are up 9% from the last quarter of 2008.[1] See Appendix D. Prime loan delinquencies increased nearly 22%, and increased 73% in the past year. Foreclosure filings on prime loans increased 21% from fourth quarter 2008 to first quarter 2009. Foreclosures nationally rose 22% in the first quarter of 2009 and rose 73% in the last year.

There is, however, some good news in the Mortgage Metric Report for the first quarter. Lenders are beginning to recognize the need to reduce monthly payments during loan modifications resulting in a 31% lower re-default rate. Modifications reducing monthly payments increased 10% from the fourth quarter. Loan modifications overall increased 55% from the fourth quarter 2008 through the first quarter 2009, and increased 173% over the past year. Foreclosures pursued to final judgment and sale decreased 12% nationally, likely due to increased workouts.

The State Foreclosure Prevention Working Group, a group of fifteen attorneys general and state banking regulators,[2] has expressed disappointment in the progress even as of its September 2008 report: "While some progress has been made in preventing foreclosures, the empirical evidence is profoundly disappointing. Too many homeowners face foreclosure without receiving any meaningful assistance by their mortgage servicer, a reality that is growing worse rather than better, as the number of delinquent loans, prime and subprime, increases." State Foreclosure Prevention Working Group Data Report No. 3, Analysis of Subprime Mortgage Servicing Performance at 2 (September 2008). The Working Group's findings indicated that only 23% of trouble borrowers receive any loss mitigation assistance. Data Report at 6. The report further notes that, "The mortgage industry's failure to develop systematic approaches to prevent foreclosures has only spurred declines in property values and further increased expected losses on mortgage loan portfolios. Based on the rising numbers of delinquent prime loans and projected numbers of payment option ARM loans facing reset over the next two years, we fear that continued reactive approaches will lead to another wave of unnecessary and preventable foreclosures." Data

[1] The second quarter report has not been released yet.

[2] The State Foreclosure Prevention Working Group consists of the attorneys general of California, Nevada, Arizona, Massachusetts, Ohio, Illinois, Michigan, Texas, North Carolina, Washington, Iowa and Colorado, and the chief banking regulators of New York, Maryland and North Carolina.

Report at 2. Loss mitigation efforts by lenders continue to face staffing training, and communication problems. As of May 2008, only 23% of troubled borrowers received any loss mitigation assistance. Data Report at 6. Eight out of ten delinquent homeowners are not on track for loss mitigation, an increasing number from previous data. Data Report at 2. The Working Group found that throughout much of the nation, loss mitigation is focused on short sales and deeds in lieu of foreclosure: "...we believe that the modification programs offered by servicers have reached only a limited pool of homeowners wanting to stay in their home, and instead of improving and expanding their programs to promote home retention, servicers have increased efforts directed to short sales, as a cheaper and quicker alternative to foreclosure." The Working Group finds that servicers continue to rely heavily on short sales and deeds in lieu, which dispossess the borrower. The Working Group's statistics found an increase of deeds in lieu of 54% from January to May 2008.

At the time of its September 2008 report, the Working Group noted that only about 40% of loss mitigation efforts result in closed loss mitigation despite substantial public and non-profit efforts that have gone into assisting borrowers and the increase in staffing at major servicers. The paperwork required for loss mitigation efforts is often cited as a reason for the failure of loss mitigation efforts to close. Servicers have raised concerns about borrowers failing to complete and return paperwork, while borrowers and foreclosure prevention counselors cite concerns over overwhelmed loss mitigation departments." Data Report at 8. The report concluded that, "Recent events on Wall Street have demonstrated the connection between the financial health of the American homeowner and the health of our financial markets…The mortgage servicing system was not designed to work out loans on this magnitude, and while progress has been made, that progress pales in comparison to the numbers of homeowners needing assistance. The need for systematic approaches and comprehensive solutions to current foreclosure levels is urgent." Data Report at 16.

The challenges facing the Task Force were rendered more acute by a constantly-changing context. The Bush Administration established the Troubled Asset Relief Program (TARP) program on October 3, 2008. GAO Report at 1. The Obama administration announced its Making Homes Affordable Program on February 18; the U.S. Treasury Department announced its program guidelines March 4; on April 15 the Treasury Department launched its administrative website with guidelines for Home Affordable Modification Plan (HAMP) servicing participants; on April 28 the Treasury Department added details about second liens, a new HAMP program component; and on May 14 the Treasury announced

its Home Price Decline Protection program, which adds additional incentives for those who owe more than their home is worth, of crucial importance to many Florida homeowners. However, the rules and regulations implementing these programs are trailing the initiatives.

Not only was the Task Force challenged to understand the foreclosure process as it currently exists and is impacting the courts, but the Task Force had to understand the new programs and their potential impact on settlement as a case management tool. GAO Report. The entire purpose of the HAMP program by the Treasury's Office of Financial Stability is to "…share the cost of reducing monthly payment on first-lien mortgages with mortgage holders/investors and provide financial incentives to servicers, borrowers, and mortgage holders/investors for loans modified under the program."

The role of securitization and its affect on the foreclosure process also represented a learning curve for the Task Force. As noted in the GAO report, "Most mortgages are bundled into mortgage-backed securities that are bought and sold by investors…The originator/lender of a pool of securitized assets usually continues to service the securitized portfolio, including providing customer service and payment processing for borrowers and collection actions, in accordance with the pooling and servicing agreement. The decision to modify loans held in a mortgage-backed security typically resides with the servicer. However, one of the challenges that servicers face in modifying these loans is making transparent to investors the analysis supporting the value of modification over foreclosure. Additionally, the pooling and servicing agreements may place some restrictions on the servicers' ability to make large-scale modifications of the underlying mortgage without the investor's approval." GAO Report at 8.

The efforts that Florida's state courts have made to adjust to the rising tide of foreclosures are reflected in the Summary Reporting System (SRS) data on disposition rates. See Appendix B. Across the board, every circuit has cleared more and more foreclosure cases each calendar year since 2006. The percentage of cases cleared, however, was static or falling, comparing calendar year 2007 to 2008, due to the increased number of filings, and the need to adjust to the influx of cases. Comparing calendar year 2008 to the first six months of 2009, all but three circuits have increased their clearance rates. Ten circuits have substantially increased their clearance rates by double digits. Annualizing the six-month data to project a yearly clearance for 2009, we expect that Florida's judges will clear 239,298 foreclosure cases, an increase of 74,872 cases over calendar year 2008 clearances. Despite the hard work reflected in these increased clearance numbers,

the courts are falling behind in terms of the number of cases filed due to the sheer volume. At the end of the year, there will still be an inventory of 174,182, based on annualized figures, of pending foreclosure cases filed in 2009 that have not been closed, a figure that does not include the increasing pending inventory that has accrued since 2006. Judges simply cannot resolve the filings at this volume level by hard work and elbow grease alone.

Recognizing the limited resources available for creative solutions, the Task Force has recommended use of case management and mediation techniques to move settlements to the beginning of the case instead of late in the case, to prevent unnecessary use of court resources. We have also recommend changes to forms and rules, as well as created a set of "best practices" forms that can be adopted for circuits. We encourage the circuits to use standard forms without variation as much as possible, in order to achieve statewide efficiencies. Both plaintiff and defense foreclosure lawyers decried the current patchwork response of forms and systems, and urged standardization as much as possible.

Attorney Involvement in the Mortgage Foreclosure Crisis

We also encourage the lawyers involved in this work to take responsibility for effectively using judicial resources. Currently, there are hearing dates blocked and squandered due to last minute cancellations for lack of preparation, there are communication problems between lawyers which result in appearances for cancelled hearings because no one was called, there are rampant complaints about unreturned phone calls, emails and difficulties in communicating with firms that handle a particularly large volume of the foreclosure plaintiffs' work. The endless cycle of voice mail and getting switched around is particularly frustrating for pro se litigants. We urge these firms to monitor quality control and assure professional conduct. Complaints alleging lost note should only be filed upon a good faith investigation. These problems have caused the Task Force to recommend a requirement that pleadings be verified.

In addition, in the vast majority of these cases, settlement negotiations are not handled by the firm litigating the foreclosure. As a result, most lawyers who appear in court have no idea of the settlement posture of the case. Many of these cases are being resolved after final judgment, many even after sale. As a result, these cases are consuming every available judicial resource to reach a resolution that may have been available at the beginning of the case. Sales are frequently cancelled at the last minute due to negotiations or a resolution. While we want to encourage settlement, that process should occur at the front end of the case, so that

properties that must be sold on the courthouse steps can get a reasonable sale date without months of delay due to cancellations taking those sales spots.

Finally, it is critical that these firms be candid, clear, and truthful and accurate in connection with pleadings and affidavits filed with the Courts. A leading plaintiff's lawyer and a major plaintiff's law firm have been the subject of a public reprimand and sanctions due to untruthful filings with the courts. Judges continue to see affidavits of amounts due and owing signed by law firm employees, and cost affidavits charging very high service of process fees for process serving firms owned by the law firm principals. To some extent, it is fair to be concerned whether the press of the case load is interfering with a judge's ability to police the conduct of the firms before them in these usually uncontested, unopposed foreclosure cases.

There are also issues on the defense bar side of the equation. Lawyers are advertising for clients to pay them, and they will delay foreclosure. Defenses based on loan closing irregularities are being pleaded without any good faith investigation, in some cases after the statute of repose has already expired. Boilerplate motions to dismiss and discovery requests are filed without ever being set for hearing or for motions to compel. Not infrequently, an answer is filed raising multiple defenses without any discovery, and the attorney then subsequently withdraws from the case due to nonpayment of fees. Nonpayment of fees would seem to be somewhat foreseeable for a defendant who is in foreclosure. Defense lawyers should litigate in good faith, defend in a timely fashion, and not manipulate the courts or the case for simple purposes of delay.

Judges should also recognize their responsibility to ensure that in uncontested cases, the necessary evidentiary basis has been laid for the entry of summary judgment. In particular, judges should take every step to insure that the original note is produced, that the note is held in due course by the plaintiff with a right under the note to foreclose, and that the note is cancelled upon entry of the final judgment. Much discussion has occurred about failures to produce the notes. However, the judges' survey responses indicate that the original note is produced in the vast majority of the cases. Further, judges should to the fullest extent possible, control the behavior of the lawyers before them through sanctions and attorneys fees where there has been noncompliance with the Rules of Civil Procedure and with local rules requiring communication. It is important to recognize that a cancellation may be no big deal to a lender lawyer sitting on the phone in his or her office, or to a local lawyer paid to attend a hearing, but may be a very big deal to a borrower who had to take off work, and who is likely not

getting paid, to come down for a properly noticed court date and who was not advised in advance of the cancellation. Further, judges must be vigilant as to violations of The Florida Bar Rules of Professional Conduct.

Consumer Education about Residential Mortgage Foreclosures

There are many well-intentioned efforts going on across the state to address foreclosures. Many communities have formed foreclosure task forces and foreclosure fraud task forces. These task forces do not appear to have any central coordination. Executive office efforts are not coordinated. Local workshops and community meetings are constant. However, they are completely uncoordinated, and incur resulting inefficiencies particularly in terms of publicity and knowledge-sharing. There is no central coordinating point. It is impossible for any individual to get full information about the foreclosure process in his community without consulting multiple websites and sources. Many borrowers have no idea of what programs are out there, and what help exists. Florida borrowers and foreclosure defendants are being victimized by foreclosure rescue scams and attorneys who take their money and do nothing to defend the case. Further, when borrowers who have been taken advantage of show up in court for the summary judgment hearing, there is no clear place for the judge to send individuals to report scammers, as there are multiple investigating agencies involved.

It is urgent that a central statewide foreclosure website should be cooperatively established cooperatively by the executive and judicial branches to give all Floridians education and access to basic information that is currently strewn haphazardly across the Internet: links on finding certified foreclosure counselors, contacting lenders, accessing online court dockets, basic foreclosure information, reporting illegal foreclosure activity, locating low-cost or free legal services, mediation programs in each circuit, foreclosure events in their community, links to foreclosure forms, links to loss mitigation contact information, accessing information about foreclosure sales, links to websites describing government foreclosure prevention programs and links to property sales information. This information is currently available on the web if one knows where to look, and this largely involves setting up a page with links. This would not be expensive and would of huge benefit, at least for those individuals who had web access. Early inquiry by the Task Force indicated a lack of resources to create such a website. The Task Force urges the executive branch, in cooperation with the judicial branch, to examine the cost involved in the creation of such a page. We need a "myfloridaforeclosure.com" for our citizens.

Widespread consumer education should be provided by the executive branch on avoiding foreclosure scams and providing clear information about where to report mortgage fraud, foreclosure scams, and other illegal foreclosure activity. The Florida Bar should aggressively prosecute attorney misconduct in foreclosure defense scams and mortgage fraud cases. The courts, where possible, should assist and support making information available and routing pro se litigants to community support where appropriate.

Pro Bono Attorney Efforts to Assist Borrowers

In the past year, voluntary bar associations and other attorney groups in Florida have made efforts to encourage *pro bono* attorney assistance to low-income borrowers facing foreclosure, but these efforts have had limited success. A significant problem encountered by these organizations has been the lack of volunteer attorneys to represent low-income borrowers in litigated cases.

The Real Property, Probate and Trust Law Section of The Florida Bar, along with The Florida Bar Foundation and Florida Legal Services, Inc., created Florida Attorneys Saving Homes (FASH), a volunteer program to assist low-income borrowers who are not yet in foreclosure. Statewide, about 1000 volunteer transactional attorneys have provided assistance to borrowers through FASH, but the need for private attorney involvement to litigate *pro bono* cases has been largely unmet. Kent Spuhler, executive director of Florida Legal Services, stated that some of the funds from the 2008 multi-million dollar Countrywide Financial Corporation settlement dispersed by the Florida Office of the Attorney General will go to increase staffing at some legal services offices for assistance to borrowers. However, there is little hope of marshaling significant numbers of *pro bono* attorneys with the skills necessary to defend foreclosure cases. The Miami-Dade Bar Association similarly hopes to provide assistance to borrowers, but has not established a system for providing litigation support. In the Twelfth Judicial Circuit, volunteer attorneys with the Sarasota chapter of the American Board of Trial Attorneys (ABOTA) provide services to borrowers in the circuit's conciliation program, but there are few volunteers for litigation situations. The Cuban American Bar Association's Pro Bono Project provides representation to borrowers who qualify under poverty guidelines, but most borrowers who contact the association are not eligible under those guidelines. The Clearwater Bar Association and the Community Law Program in St. Petersburg have sponsored a "Mortgage Foreclosure Defense" education program for attorneys. In Escambia and Santa Rosa counties, the local bar associations do not offer foreclosure assistance to borrowers, but provide information to borrowers about the mediation

services offered in the First Circuit by the Collins Center for Public Policy. What is clear from these many efforts is that attorneys are available and standing by to assist borrowers, but these resources are not being effectively marshaled.

Judicial Foreclosure in Florida

Florida is a judicial foreclosure state. The remedy of foreclosure is governed by chapter 702, Florida Statutes. At this point, the vast majority of foreclosure cases in the state of Florida are brought by a very limited pool of plaintiffs' firms, who handle approximately 90% of the cases state-wide. Two of the firms control approximately 60% of the cases.

A foreclosure case is initiated by the filing of a complaint. The complaint should contain all the good faith allegations to support the foreclosure, including that the plaintiff owns and holds the note secured by the mortgage, the property description of the property which is subject to foreclosure, and the acts of default. Pursuant to rule 1.130, Florida Rules of Civil Procedure, a copy of the note and the mortgage should be attached to the complaint.

However, a recently developed business practice affects the filing of the complaint. Due to the frequency of sales of notes and mortgages, central depositories developed to hold the actual paper while the transactions between servicers and lenders which bought and sold notes occurred. As a result, plaintiff lawyers told the Task Force, the firms frequently do not have the note in hand at the time the action is brought. As a result, prophylactic lost note counts are filed in most actions filed by firms handling a volume foreclosure practice. This practice leads to confusion among defendants because they may not recognize the entity suing or be aware that this entity now owns or services the loan.

After the complaint is filed, the summons are issued and sent to process servers for service upon the various borrowers. The documentation of service varies among process server companies. In addition, the process servers usually conduct the diligent search in the event that they are unable to serve the borrower personally. The inconsistent quality of the diligent search efforts caused the Task Force to recommend a new form for affidavits of diligent search tailored to mortgage foreclosure cases. Further, at least one law firm is having process served in all its foreclosure cases by a process serving firm owned by the lawyer-principals of the law firm, many times charging expedited rates, as reflected in affidavits of costs filed in those cases. Without a defense lawyer on the other side, these practices may go unchallenged by defaulted borrowers.

Once service is achieved, either through personal service or publication, defaults are submitted if no answer has been filed. In the vast majority of cases, borrowers are defaulted and no defense is submitted to the foreclosure action. People who cannot afford to pay their house payments usually cannot afford an attorney. It is at this stage, when borrowers know a foreclosure case has been filed against them, that borrowers are the most vulnerable to foreclosure workout scams where they pay hundreds or thousands of dollars to an individual or a company for help in trying to renegotiate their loan or to keep their houses, which results in no action on their behalf due to the scam. Any judge who handles foreclosure can share terrible stories of borrowers who appear at summary judgment hearing, having paid as much as $12,000 for a foreclosure rescue, only to learn that nothing was done.

Review and processing of the defaults is a tremendous challenge to the clerk of court offices across the state. There have been complaints about delays in the entry of defaults which generally seem attributable to the volume of filings. In many cases, the plaintiff is electing to proceed to summary judgment after service without the entry of defaults.

A motion for summary judgment is filed with the affidavits of amounts due and owing. There are some legal issues in connection with the filing of the affidavits. For example, one firm uses its office manager as "attorney in fact" to sign affidavits of amounts due and owing for its foreclosure clients. Without a defense attorney on the other side, these practices go unchallenged.

At the summary judgment hearing, the original note should be presented to the Court if it has not been previously filed with the clerk of court into the court file. At this point, due to the burden on the clerks imposed by the volume of the court filings, many firms are only filing copies until the actual hearing, and presenting the original at the hearing. The supporting affidavits and necessary documents to assure service, non-military affidavits, and/or defaults should all be presented to the court as well.

If no opposition has been filed and it appears that summary judgment is in order, then the judge will sign the final judgment. A sale date is assigned and entered into the final judgment, at which time the property will be sold "on the courthouse steps."

Community associations and their members, who are owners of parcels in the communities, are severely impacted by the foreclosure situation because delinquent owners do not pay statutorily required association maintenance assessments, and mortgage holders do not pay assessments until after the foreclosure is over and title has passed, and then the delinquent amount is statutory reduced to a mere fraction of an association's expense to maintain the property. Especially inequitable is that community associations and their members are involuntary participants, never being involved or profiting from the mortgage process; nevertheless, they are statutorily and contractually required to maintain the foreclosed property. This is a windfall for mortgage holders and delinquent owners residing in the property because the remaining parcel owners who timely pay assessments are in fact paying for the property's insurance, utilities, cable television, exterior maintenance, and access to roads and other common facilities, depending on the community. As associations preserve cash flow by increasing assessments on owners who timely pay, the resulting strain has lead to more defaults, threats of violence, and the expense of police attending association meetings to keep the peace, as well further decreasing property values for the entire community because the association cannot afford to maintain entrances and other common facilities.

The slow pace of foreclosure cases in the courts adversely impacts communities. Property owners describe neighborhoods of long-vacant homes with boarded up windows, exposed swimming pools, and weed-choked yards.

It is important to note that the final summary judgment hearing is usually the first actual hearing in the case. For pro se borrowers, it is the first and only opportunity to see the judge. The vast majority of borrowers who appear at the final hearing report that they are in negotiations with their lenders and request more time. Frequently, the attorney appearing for the plaintiff has no knowledge whether loss mitigation efforts are ongoing in the case or not. The settlement discussions which occur in foreclosure cases are handled in-house by the plaintiff/clients themselves, and the attorneys have no role in settlement in most cases. As a result, the attorneys have very little knowledge, and frequently no knowledge, as to the status of the negotiations.

Once the sale date is assigned, the clerk of court takes over the matter. The sale is advertised and ultimately held. There are delays occurring in foreclosure cases because of a limited capacity for a number of sales on any given day. The current form foreclosure judgment permits the plaintiff to cancel the sale unilaterally simply by not showing up, because it includes the language that the

sale will not be held unless the plaintiff's representative is present. As a result, a vast number of properties are in a state of limbo between final judgment and sale. For the sale to be reset, a judge must sign another order. Reviewing the motions to reset sale, an explanation of the cancellation is seldom given. Even if the cancellation is due to workout efforts with the borrower, there is no report of the status of the efforts. As a result, there is enormous waste of sale capacity and duplication of efforts in terms of resetting those sales being unnecessarily consumed in these cases.

To the extent that the sales are cancelled due to borrower workout, the Task Force seeks to find ways to move those efforts to the beginning of the case, before substantial judicial resources are consumed, as opposed to having those efforts focused at the post-final judgment stage.

ALTERNATIVE DISPUTE RESOLUTION PROPOSALS

The most critical case management issue in the foreclosure crisis is the severe and significant communication issues which are impeding early resolution of foreclosure cases. The plaintiffs complain of being ignored by borrowers despite multiple efforts and outreach, the borrowers complain of being unable to get through to loss mitigation departments, being asked to send and resend the same financial information repeatedly and being unable to get a decision on their case.

These problems are magnifying the emergency situation that the foreclosure crisis poses and as a result of this failure to communicate, motions and cancellations are extremely common, cases resolve long after final judgments and sales, and judicial resources are squandered. As discussed earlier in this report, it is fundamental to effective case management that cases that can be resolved should be resolved early, before scarce judicial resources are consumed.

An effective Alternative Dispute Resolution (ADR) Program is the best method that the courts can employ to assure that plaintiff-borrower communications occur, and occur early enough in the case to avoid wasted time and resources for the court and the parties.

The subcommittee considered various ADR options. In particular the subcommittee discussed non-binding arbitration, private judging, special magistrates, conciliation conference and mediation. The Task Force looked at other programs nationwide. The subcommittee also interviewed Albert Orosa of

the American Arbitration Association, which handled mass mediation of Hurricane Katrina cases in Louisiana and Mississippi.

Non-binding arbitration was considered to be ineffective, as its main incentive for settlement is posed by the possibility of the imposition of attorney's fees which are already recoverable in foreclosure actions. Private judging seemed unlikely to resolve cases due to the requirement of consent of both parties. Special magistrates to serve as fact-finders, on pseudo-bankruptcy trustee model was one idea discarded due to the lack of resources to manage and fund such a program and the lack of enforceability of any finding. Conciliation conferences such as the Conciliation Conference program currently utilized in the Twelfth Circuit (which requires lenders comply with court-ordered procedures, including participation in a telephone conference) were also considered. Though mandatory, the conciliation conference is simply a meeting between the parties without benefit of a mediator or other third-party neutral. The Task Force recognized that confidentiality protections were inadequate to promote frank communication between the parties and believed that a neutral and impartial facilitator was needed to manage the negotiation communications

In the final determination, the Task Force determined that the real problem here was capturing an opportunity for communication: for the borrower and the lender to convene in an informal and non-adversarial session to determine what could be worked out if anything. Mediation is the obvious vehicle for optimizing the possibility of meaningful ADR settlement. However the Task Force recognized that section 44.108, Florida Statutes, does not allow the court to collect fees for the provision of circuit civil mediation services and therefore an outside entity, a mediation manager, would be needed to manage the mediation program.

The emergency character of the foreclosure crisis substantially shaped the Task Force's decision-making. We confronted a situation in which an ADR solution had to be proposed that essentially assumes no additional public financial resources and no additional staff resources, given the financial and budgetary constraints facing the judicial branch. This is a crisis. There is no time to go lobby the legislature, propose bills, to explore grants, to do all those things that might identify and obtain other funding sources. In addition, the size, scope, and unique character of the caseload shaped an ADR solution unlike any ever proposed in the State of Florida.

The Task Force cannot emphasize strongly enough that the traditional mediation framework and structure, which has been established over a quarter

century's work and which is acknowledged as a leading national mediation framework among the states, must not be compromised as a result of the hard decisions made here. What we recommend regarding a modification of the plaintiff's appearance requirement must not provide any opening or opportunity for those who wish to avoid traditional appearance in mediation in non-foreclosure matters to use these recommendations to try to erode the superstructure of mediation created in the Florida statutes and years of rules work. Bluntly put, the recommendations of this Task Force on foreclosure mediation, particular in connection with fee-based outside management, with the plaintiff paying the cost, borrower counseling requirement and permitting telephone appearance by emergency administrative order should never be utilized to suggest that these are acceptable across the board solutions outside this particular unique emergency situation. The above exceptions are justified by the emergency nature of the statewide mortgage foreclosure crisis, the need for utilization of a mediation manager who is actively involved in outreach and coordination of the mediation with the borrower and plaintiff and the need to prepare the borrower for mediation via HUD approved counselors.

Since it is an emergency, the Task Force considered the availability of options consistent with existing law and rules, so as to avoid unnecessary delay due to rules changes or statutory revisions. Upon identifying existing legal authority, members looked at court programs already in place, particularly those which may have adequate staffing and budgetary resources potentially re-directed to the foreclosure problem. It was determined that existing court in-house programs were prohibited by statute and budget from foreclosure mediation. Though section 44.108, Florida Statutes, provides for funding of family and county court mediation programs, there is no statutory authority under which the courts may collect fees for mediation services in foreclosure cases.

A variety of circuits had already begun to tackle this challenge. The subcommittee examined the variety of circuit programs state-wide. The programs in the First, Eleventh and Nineteenth circuits utilize a managed mediation model generally adopted by the Task Force. Other circuits have adopted a more limited mediation approach in dealing with a lesser number of pending foreclosure actions. In addition, some circuits, such as the Ninth Circuit, have established volunteer mediation programs. The Task Force questioned whether volunteers could be relied upon to handle the full foreclosure caseload and therefore rejected relying upon volunteers. In addition, while waiting for the outcome of this report, many circuit judges across the state are utilizing traditional civil pre-trial mediation when requested by the parties. One of the consistent complaints from lawyers across the

state is the growing difficulty of meeting the demands of the varying programs in the circuits and keeps track of the patchwork of programs.

In order to cope with the size of the problem, the huge numbers of incoming foreclosure cases, the Task Force concluded that only managed mediation could handle the problem in a consistent manner statewide.

The subcommittee tackled the overall description of the program, and explored various associated issues, including parameters defining managed mediation, mediator availability and training, court-ordered participation, costs, disparate bargaining power (particularly in actions involving pro se borrowers), exchange of essential information, and required appearance by persons having authority to settle.

Statewide Managed Mediation

Managed mediation is essentially defined as mediations, conducted on a large scale basis across the state, which involve substantially similar issues, which can be coordinated by an outside coordinator to best assist the parties to best use their time, effort and resources to achieve resolution. In order to have managed mediation, you must have management who will contact and enroll the parties, make the necessary referrals, supervise the exchange of information, recruit and train the mediators, schedule, monitor compliance, and report and evaluate program effectiveness. While court-funded programs may not assign staff to *mediate* foreclosure matters, court personnel would not be prohibited from assuming a *coordinating* function in this regard. However, every spare staff slot in the judicial branch has been cut through rounds of budget cutbacks. There are simply no available human resources within the state courts system to perform this function. The Task Force agreed, as a whole, that if public funding of managed mediation were possible, that would be the recommendation of the Task Force. There are other jurisdictions, for example in Ohio, that are running statewide mediation through public funding. However, this is an emergency situation. Florida's courts do not have the luxury of waiting while other branches of government try to identify funding streams since the courts must allow people to have access to justice within a reasonable time frame.

The Task Force determined that a statewide model for managed mediation will open communication and facilitate problem-solving between the parties while conserving limited judicial time. Handling these matters in the context of mediation will emphasize the needs and interests of the parties, fairness, procedural

flexibility, party self-determination, full disclosure, and confidentiality. Considering potential benefits and detriments in light of time and budgetary constraints, the Task Force believed these aspects of the eventual recommendation best serve the courts' interest in easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of all parties.

As a consequence, the Task Force recommends approval of a statewide program of managed mediation requiring mediation of foreclosure actions prior to these matters being set for final hearing. The Task Force believes that each circuit should be charged with handling the selection of its own mediation manager, but that the criteria should be consistent statewide in order to avoid differing requirements and achieve economies of scale for the parties. Circuits may, of course, wish to join together to create a regional managed mediation system.

The Task Force recommends specific written parameters for qualifying providers of managed mediation services. These nonprofit entities must be both independent of the judicial branch and capable of sustained operation without fiscal impact on the courts. The provider must be politically and professionally neutral and have a demonstrable ability to efficiently manage the large number of residential mortgage foreclosure actions in the circuit or circuits in which services are to be provided. Providers may include qualifying local bar associations, organizations of professional mediators, and state universities, as well as independent entities organized for the sole purpose of providing statewide managed mediation services. However, potential providers must have the capacity and technology to effectively deal with mediations on a mass scale or at least on the scale for the circuit they propose to serve. Among other administrative matters, all providers will be responsible for receiving referrals to mediation and, within designated time frames, reaching out to borrowers, impartially assigning mediators, facilitating the exchange of documents between parties, scheduling mediation conferences, and developing procedures for verifying compliance.

A key component of this program is the requirement of individual outreach by the mediation manager to inform borrowers of the program and seek to enroll them. Borrowers at this point are extremely distrustful of lenders and their representatives. Many of the borrowers we are dealing with in Florida are based in an oral culture and uncomfortable and intimidated and sometimes terrified about court procedures, fancy forms and written requirements. Many of the borrowers are extremely frustrated from failed efforts to deal with their lenders. It is essential that the mediation manager effectively communicate with borrowers from all walks of life and in multiple languages to explain that this is a court program, that

it is safe and not a scam, that it will be free to the borrower. Managers will be expected to communicate with borrowers immediately after suit has been filed, ensuring both *pro se* litigants and attorneys are fully informed regarding the mediation process and availability of mediation in foreclosure actions.

Model Administrative Order

The Task Force recommends implementation of a statewide model for managed mediation programs by administrative orders issued by the circuit court chief judges in their respective circuits. Uniformity of essential statewide standards would be ensured upon the court's approval of a model administrative order. Selection of a qualified managed mediation provider would be left up to the individual circuits based on an assessment of each circuit's needs in relation to the management capabilities and skills offered by proposed providers. Circuits can and should partner where appropriate to achieve efficiencies.

The proposed model administrative order applies to all residential mortgage foreclosure actions filed against homestead property involving loans which originated under federal truth in lending regulations, which generally include servicers and lenders. Private individual lenders, for example, a seller who took back "paper" would not be subject to the program. The logic of this distinction is this: borrowers and their attorneys are not protesting that they can't get in touch with local individual lenders. The log jam is with national institutions. Condominium foreclosures, homeowners' association foreclosures and statutory lien foreclosures are not included in the administrative order, again because communication is occurring in those cases. The administrative order issued by the respective chief judges constitutes a formal referral to mediation unless the plaintiff and borrower file a written stipulation not to participate, or unless pre-suit mediation has been conducted with the mediation manager. A borrower may opt out of the process by declining to participate upon being contacted by the mediation manager, or by not completing the pre-mediation requirements of foreclosure counseling and submission of financial documentation. Notice regarding managed mediation must accompany the summons served on each defendant. The order further provides the mediation process must be completed before plaintiffs may apply for a default judgment, a summary judgment hearing, or a final hearing in an action to foreclose on homestead property.

The Task Force has included a number of other associated issues in the model administrative order. The Task Force recommends provisions relating to mediator availability and training, disproportionate bargaining power of the parties,

the exchange of essential information between the parties, costs, required appearance by persons with authority to settle, and instances in which pre-suit mediation may be a factor.

A. Mediator Availability and Training

Under the model administrative order, only Florida Supreme Court certified circuit civil mediators specially trained in residential mortgage foreclosure matters may be assigned to mediate these cases. The current number of certified circuit civil mediators is believed adequate based on belief a successful mediation can generally be accomplished within a single session, most cases of this sort requiring no more than two hours. The Task Force developed detailed training standards and objectives for training mediators to mediate foreclosure matters. Those standards are appended to the Model Administrative Order as Exhibit 12. See Appendix J.

B. Responsibilities of the Parties

The Task Force addressed disproportionate bargaining power largely in the context of a balanced allocation of responsibilities between the plaintiff and the borrower.

Plaintiff's counsel must file a completed Form A with the clerk of court and electronically transmit the form to the program manager via a web-enabled information platform. This IT platform must be specified in the any order issued by the Florida Supreme Court, because otherwise, the experience of the First, Eleventh and Nineteenth circuits indicates that plaintiff's firms will not upload the data due to system incompatibilities. However, no mediation manager will be able to come up with a platform that can adapt to every different plaintiff's firm's platform. By analogy, this is like requiring everyone to submit a document in a Microsoft Word program. We recommend use of a common IT platform. A common platform should be identified by OSCA information technology staff and made part of the Court's order.

Form A requires plaintiff's counsel to certify the subject property is homestead property, the names of plaintiff's representatives having settlement authority, and whether plaintiff and borrower participated in pre-suit mediation with the mediation manager. Plaintiff's counsel must further certify the identity of the plaintiff's representative who will appear at the mediation.

The model order requires the borrower to meet with a certified mortgage foreclosure counselor prior to scheduling the mediation. Foreclosure counseling is a critical step in the process, because empirical evidence demonstrates that cases that have received foreclosure counseling are much less likely to re-default. See Robert G. Quercia, Spencer M. Cowan, Ana B. Morena, The Cost-Effectiveness of Community-Based Foreclosure Prevention, Family Housing Fund (December 8, 2005); Home Ownership Preservation Initiative, Three Year Final Report, Partnership Lessons & Results (July 17, 2006); U.S. Department of the Treasury, Comptroller of the Currency Administrator of National Banks, Community Developments, Foreclosure Prevention: Improving Contact with Borrowers (June 2007). Foreclosure counselors also assist the borrowers, many of whom are from an oral culture, in dealing with the financial forms and documentation requirements for consideration of a modification or deal. Servicers, attorneys, counselors and lenders agreed on the importance of foreclosure counseling for the borrower. The borrower must provide financial disclosure to the program manager for transmittal to the lender. Upon written request of the borrower, plaintiffs are required to deliver to the program manager evidence that plaintiff is the owner and holder of the mortgage, a life of loan history, a statement of the plaintiff's position on the net present value of the loan, and any current appraisal. All this occurs prior to the scheduling of mediation.

C. Responsibilities of the Program Manager

The model administrative order further enumerates responsibilities of the program manager. The manager is directed to contact borrowers to explain the residential mortgage foreclosure mediation program and must refer borrowers to a foreclosure counselor. Upon learning a borrower will not participate in foreclosure mediation, the manager must file a notice to that effect. The program manager accepts and delivers party disclosures and is responsible for uploading these on a shared electronic platform. This shared electronic platform is again a key piece. Currently, there is a huge problem of document management in the loss mitigation departments. Borrowers consistently report that they have to send their financial documentation over and over again. In the servicer presentation, servicer representatives acknowledged that because these departments were built after the eruption of the crisis, document management can be very ad hoc, and described their current system as being based on scanning of documents. A safe, encrypted secure web-based platform would get everyone on the same page and working from the same documents. The Eleventh Circuit's program with the Collins Center requires such a platform.

The manager is further required to advise any borrower not represented by an attorney that he or she has a right to counsel and may seek assistance of a volunteer *pro bono* attorney. The mediation manager assigns Florida Supreme Court certified circuit court mediators specially trained in foreclosure mediation, schedules mediation sessions, addresses foreign or sign language interpreter needs, and files notices with the clerk of court. Managers maintain written procedures subject to the chief judge's approval for appointment of mediators. It is contemplated that any certified circuit court mediator would have an opportunity to participate in the managed mediation program. The mediation manager must oversee the mediation training and compliance. The program manager is responsible, as well, for monitoring compliance and submitting periodic reports to the chief judge.

D. Costs

After substantial debate, the Task Force voted that the cost of the program should be borne by the plaintiff. The model order provides for staged payments, part at the time of filing and the balance after mediation is scheduled. Those costs would be fully recoverable in the final judgment of foreclosure. The order further provides plaintiffs shall be entitled to a refund of fees attributable to foreclosure counseling if borrowers do not participate in this aspect of the program. Similarly, plaintiffs shall be entitled to refunds if cases settle prior to mediation or if borrowers cease participation in the program before mediating the case.

In considering the payment question, the Task Force again emphasizes that this is an emergency situation. The need to establish this mediation system as a means of effective communication between the plaintiff and the borrower is to meet the critical need to resolve those cases that can be resolved early in the process. There are a number of reasons why the loss mitigation departments that plaintiff's have established nationwide are not meeting that need, including overwork, understaffing, ad hoc technology and a myriad of problems associated with building those departments after the crisis hit. However, the bottom line is that this managed mediation program is necessary because borrowers cannot effectively try to resolve their cases with the plaintiffs without it. In the meantime, those same plaintiffs squander court resources on cases that can and should be resolved, and often are resolved after judgments or sale. One commenter to the e-mail box reported that one lender won't even talk to a borrower until after the foreclosure judgment is entered. This situation is being caused by dysfunction on the plaintiffs' side.

While the Task Force was not in a position to do a cost/benefit analysis due to the proprietary character asserted in connection with plaintiffs' loss mitigation staffing and efforts, a 2005 study by Freddie Mac researchers, Crews Cutts and Green, cited an industry analysis showing the cost of a foreclosure for the lender averages $58,000. However, the current system is set up premised on borrowers calling in on an unscheduled basis, being asked to submit documents, those documents are submitted and it seems, largely hand-scanned into a data base that may include all the original loan documentation, borrowers calling in again unscheduled to find out what is going on, being told that the information cannot be located, sending the information again, it being scanned, again, and so on and so on. It is elementary economics that an organized systematic approach in which the borrower is contacted, referred to foreclosure counseling, the data is gathered in an organized fashion and forms properly executed, reviewed by the foreclosure counselor, uploaded to the data base for encrypted access by both sides, and a date and time set for discussion and decision-making about the case is substantially likely to result in overall savings to the plaintiffs despite bearing the fee, as well as an improved resolution rate and better quality outcome, which will reduce defaults. The asset moves from non-performing to performing status much earlier in the process.

In sum, this is not a traditional referral to mediation. In traditional mediation referrals for circuit civil disputes the court does not make a party go through counseling and lay out their financial history before it will even schedule a mediation. The minority feels that a split fee is essential to fairness and that the borrower needs to have a stake in the process. The majority of the Task Force determined that the threat of the loss of one's home, along with a requirement for successful completion of foreclosure counseling and the uploading of completed financial information represented a sufficient investment in the process by the borrower and that a financial payment is not required as an additional incentive to resolve the case. Even more importantly is this simple truth: most borrowers are in foreclosure because they are in dire economic straits. If this process is to serve as a meaningful case management tool in terms of getting those cases that can be settled out of the court system early, then requiring borrowers to pay runs the risk of compromising that goal by creating a barrier to participation, or delay to allow the borrower to gather the money together. Greater utilization of mediation will likely lead to increased savings for plaintiffs as more cases will be resolved in a manner less expensive than in litigation. By allowing plaintiffs to satisfy the mediation requirement by participating in the managed mediation process prior to filing, we believe there will be even greater savings to the plaintiffs by avoiding filing fees and attorneys' fees.

E. Appearance

Plaintiff must have a representative present who can bind the plaintiff to any mediated settlement agreement, and may designate plaintiff's counsel as his signatory in advance. The model order permits plaintiff's representative to appear electronically with full authority to settle without further consultation. The borrower and plaintiff's counsel must physically attend mediation. Again, the Task Force only recommends electronic appearance as a necessary evil given the emergency character of the caseload. The appearance exception is justified by the emergency nature of the statewide mortgage foreclosure crisis, the involvement of a mediation manager who is actively involved in outreach and coordination of the mediation process and the requirement that borrowers receive financial counseling prior to mediation.

The Task Force believes electronic appearance is in compliance with existing mediation rules because rule 1.720(b), Florida Rule of Civil Procedure, permits a change in the appearance requirement by order of the court. In addition, the Task Force believes the "order" language contained in rule 1.720(b) encompasses an emergency administrative order directed to a class of cases, such as an order directing residential mortgage foreclosure cases to a managed mediation program.

Implementation of the model order by the state's circuit court chief judges is sufficient to modify the appearance requirement where sometimes simultaneous hearings in thousands of foreclosure mediations nationwide make physical appearance impractical. As indicated above, this recommendation by the Task Force is made solely due to the unique character of this emergency. We roughly calculate that 100,000 cases could be eligible for managed mediation. Many of these cases involve the same ten institutions that are the leading foreclosure filers in Florida.[3] The Task Force recognizes that forcing plaintiffs, many of whom are not Florida institutions, to have a live representative with full settlement authority at each of the mediations would be completely cost prohibitive. In addition, plaintiffs presently do not have the staff to accommodate such a need. Having recognized this issue, however, the Task Force's recommendation is based upon having meaningful electronic participation. The issues of appearance by a plaintiff's representative who does not have full settlement authority, or does not

[3] The Task Force requested each of the clerks of court to list the top five foreclosure filers in their county. The compiled lists showed that the top foreclosure filers in Florida are Deutsche Bank, U.S. Bank, Wells Fargo, Chase Home Finance, SunTrust Mortgage, Bank of New York, Bank of American and Countrywide Financial Corporation, J.P.Morgan and CitiMortgage.

fully participate in the mediation by electronic means were very real concerns to the Task Force. It will be up the mediation manager, and ultimately the court, to make sure that there is compliance with the electronic appearance requirements. The Task Force does not contemplate or believe that the emergency use of an administrative order allowing electronic appearances in this situation should be used to subsequently justify wholesale electronic appearances in other cases which would be subject to traditional mediation. The Task Force would also enthusiastically urge use of visual computer conferencing, such as Skype, web cams and iChat, as an alternative to telephone appearances in foreclosure mediations.

The recommendation of electronic mediation is conditioned upon the premise that no change to the Rules of Civil Procedure governing mediation is required. The Task Force recognizes that the rules as presently set forth work effectively for virtual all types of civil mediation and the Task Force does not recommend any rule change. If the court determines that a rule change is required to allow for electronic appearance, then the Task Force respectfully requests that the court refer the matter back to the Task Force for consideration of other appearance options.

F. Pre-suit Mediation

The model order explicitly encourages pre-suit mediation. The order provides that participation in pre-suit mediation with the mediation manager in a manner consistent with the requirements of the model order can satisfy the plaintiff's requirement to participate in mediation prior to foreclosure litigation. For case management purposes, the best case is the one that is never filed. If the parties utilize pre-suit mediation though the mediation manager, they could reduce costs to parties of pursuing unnecessary litigation and minimize to additional stress on the limited resources of the courts. The Task Force absolutely encourages the lenders to pursue pre-suit mediation in order to avoid expensive filing fees and attorneys' fees. While nothing precludes a presiding judge from again sending a case to mediation after suit is filed if it is litigated, the mediation requirement of the model order would be satisfied by pre-suit participation in mediation with the mediation manager.

G. Information Technology Platform

An information technology platform is proposed to facilitate electronic exchange of plaintiff and borrower information for purposes of participation in mediation. The information platform component is a key component of this process because it is aimed at facilitating secure and efficient access to the information necessary to the mediation in advance of the mediation to assure that the parties fully understand their options. The Task Force cannot emphasize strongly enough how endemic the problem of lost and missing documentation is within the loss mitigation departments, and how frustrating it is to borrowers. More importantly, that chaotic process results in squandered court time and unnecessarily delayed cases. The purpose of the IT Platform is to make sure that everyone is speaking the same language and has the same information. These platforms are in place in the Eleventh Circuit. In addition, Neighborworks America, the national housing non-profit established by Congress, has a platform. This technology is available and out there and can be used.

The Task Force consulted with the Florida Courts Technology Commission through its chair, Eleventh Judicial Circuit Judge Judith Kreeger, and was advised that the platform, as an information system operating outside the state courts system for use by private entities, would not require approval by the commission.

Information that will be exchanged on the platform will include the borrower's financial disclosure information to the plaintiff's representative, and the plaintiff's certifications regarding the property that is the subject of the lawsuit, the identity of the plaintiff representative who will attend mediation with full authority to settle, and the persons who will represent the plaintiff in mediation with full authority to modify the existing loan and to settle the mortgage foreclosure case, as well as the documents and information to be provided by the plaintiff upon request by the borrower prior to mediation.

H. Forms Accompanying Model Administrative Order

1. Form A
    a. Certificate of Plaintiff's Counsel Regarding Status of Residential Property
    b. Certificate of Plaintiff's Counsel Regarding Pre-Suit Mediation
    c. Certificate of Plaintiff's Counsel Regarding Plaintiff's Representative at Mediation

2. Notice of Residential Mortgage Foreclosure Mediation Program to be Served with Summons
3. Borrower's Request to Participate in Residential Mortgage Foreclosure Mediation Program
4. Notice of Borrower's Nonparticipation
5. Borrower's Financial Disclosure for Mediation
6. Borrower's Request for Plaintiff's Disclosure for Mediation
7. Plaintiff's Notice of Attending Mediation by Telephone
8. Plaintiff's Certification Regarding Attending Mediation by Telephone
9. Mediation Report
10. Certification Regarding Settlement Authority (Residence Not Borrower-Occupied)
11. Orders for Referrals, Compliance, and Enforcement
12. Mediation Training Standards
13. Managed Mediation Flow Chart

CASE MANAGEMENT CONSIDERATIONS

The Task Force has determined that for case management applications, foreclosure cases fall into roughly three broad categories in terms of initial triage of the cases:

Borrower-occupied properties: these are the properties where public policy in the form of U.S. Treasury Department and servicer efforts have been most keenly focused and where most financial incentive exists to settle a foreclosure case. All three circuits which have implemented managed mediation programs have focused on borrower-occupied properties. Frequently in these cases, borrowers appear in court reporting that they have repeatedly attempted to contact the plaintiff to work out their case without success due to inability to talk to a person, repeatedly lost documents, or inability to get a decision. These are the cases that are most likely to resolve. Identifying these cases at the onset of filing is challenging. It should not be, given the TARP imperatives that servicers contact their borrowers in default to see if their loans should be modified, however, most plaintiff firms assert that they do not know at time of filing whether the property is borrower-occupied. For that reason, we have focused on properties in which a homestead exemption is in place as being an objective criterion.

Vacant properties a/k/a "walk-aways": There are some properties no one lives in. These represent the other end of the spectrum. The borrower may have chosen to leave the property, or never lived there in the first place, or the property

is unoccupied investment property. These properties should move quickly through the foreclosure process because there are few due process impediments after service is properly achieved due to lack of interest in keeping the property. Moving these cases quickly also recognizes the issues of crime, property value, and community stabilization. For these cases, the Task Force is recommending the use of sections 702.065 and 702.10, Florida Statutes, which provide for expedited treatment of these cases. These statutes are under-utilized and are available in residential foreclosure actions. In addition, depending on the character of each circuit, chief judges may wish to designate a foreclosure division or foreclosure judge to handle those cases which are uncontested and in which the property is vacant.

The third category of cases represents the cases that are neither of the first two categories. These cases may be either tenant-occupied or occupied by other members of the family but not the borrower, or have unspecified occupants. In these cases, the borrower may wish to resolve the case, even by a short sale or deed in lieu of foreclosure, but is unable to effectively communicate with the plaintiff to explore those options. The Task Force recommends that these properties be given the choice to opt into managed mediation at equal cost to the parties. In addition, chief judges should explore in each circuit the necessary structural improvements in calendar management to allow cases to move as smoothly as possible. One possibility is the use of open calendars versus closed calendars, described in the circuit by circuit analyses included in Appendix H to this report. It is important for judges to recognize that foreclosure cases represent a significant proportion of their dockets as opposed to the minimal work they once represented.

Once the cases have been segregated pursuant to the characteristics listed above, they can be further separated according to the litigation quality of the case. A defense lawyer suggested further stratification according to cases where there are financial issues, cases which have substantive legal issues, and cases which are "clean," in which there are no apparent legal issues or financial issues. One of the challenges of managing the volume of foreclosure cases is this: the reality of the numbers of cases being filed leaves no time for judges to manage that case load. There are no additional staff or administrative resources available to manage these cases. Those circuits that are actively managing their foreclosure dockets are doing so by reallocating existing resources. In most circuits, the cases are left to the management of the plaintiffs as opposed to the judges. This can be challenging. One law firm is currently handling 50,000 foreclosure cases. One resulting problem is that many of the plaintiff's firms have so many cases that they are not effectively moving the cases forward either. For example, there are delays

in summary judgment motions because plaintiffs have failed to set or resolve outstanding motions to dismiss filed by defendants, or because there is outstanding discovery past due to which plaintiffs have never responded, resulting in squandered hearing time, or because original documents have not arrived to the court yet.

In a perfect world, cases which have financial issues (issues in connection with the evidence of amounts due and owing or the financial character of the alleged default) and cases in which there are substantive issues of law would be identified early by the judge and set for case management conferences to make sure the cases are moving forward appropriately. One case management system that allows this manner of management without utilizing too many judicial resources is in use in the Fifteenth Judicial Circuit under the circuit's administrative order, Case Management Status Conferences in Homestead Foreclosure Actions by Institutional Lenders, which directs that cases filed on certain days will automatically appear for a case management conference on a future date certain. The circuit's case management order is included in the Appendix to this report.

PROPOSALS FOR RULE AND FORM CHANGES

The Task Force by separately filed petition has proposed emergency changes to the Rules of Civil Procedure, in accordance with its charge under In re: Task Force on Residential Mortgage Foreclosure Cases, No. AOOSC09-8 (March 27, 2009) to propose rules or rule changes that will facilitate early, equitable resolution of residential mortgage foreclosure cases. The Task Force solicited comments on its proposals for rule changes from The Florida Bar Rules of Civil Procedure Committee, which promptly responded to the request for review and comment. The Committee's vote on the proposed changes, and comments and recommendations are appended to this report as Appendix K-22.

The Task Force has submitted one rule change, a proposed amendment to the civil cover sheet, and two new forms to the Supreme Court for approval. The proposed rule change requires verification of mortgage foreclosure complaints. The proposed forms add specificity to Form 1.997, the Civil Cover Sheet, standardize affidavits of diligent search and clarify the grounds for moving to cancel and reschedule a foreclosure sale. The Task Force's proposal for adding specificity to the Civil Cover Sheet was submitted to the Supreme Court Task Force on Management of Cases Involving Complex Litigation, through its chair, former Second Judicial Circuit Judge Thomas H. Bateman. The Task Force on

Management of Cases Involving Complex Litigation had proposed changes to the Civil Cover Sheet, which the Court approved in its opinion, In Re: Amendments to the Florida Rules of Civil Procedure – Management of Cases Involving Complex Litigation, Case No. SC08-1141 (May 28, 2009). The amended Civil Cover Sheet will be effective January 10, 2010. The additional changes to the Civil Cover Sheet proposed by the Task Force on Residential Mortgage Foreclosure Cases will be noted without objection in a response filed by the Task Force on Management of Cases Involving Complex Litigation to comments filed in Case No. SC08-1141.

These rule and form proposals have been narrowly tailored because the work of the Task Force has been directed at the current court emergency caused by the flood of mortgage foreclosure cases in Florida's courts. The Task Force is also recommending a number of forms as "best practice" standard forms that chief judges throughout the state will be asked to consider using, and that are directed at the underlying emergency. See Appendix K-61. As such, these forms are not suitable for inclusion in the Rules of Civil Procedure, which should be used on a long-term basis and stand the test of time, as opposed to being directed at what we hope is a short-term emergency.

Following is a summary of the proposals for changes and additions to the Rules of Civil Procedure submitted to the Court by separate rule petition, as well as an explanation of the reason for the proposal.

Amendment to Rule 1.110. General Rules of Pleading

This rule change requiring verification of a mortgage foreclosure complaint is recommended because of the new economic reality dealing with mortgage foreclosure cases in an era of securitization. Frequently, the note has been transferred on multiple occasions prior to default and filing of the foreclosure. Plaintiff's status as owner and holder of the note at the time of filing has become a significant issue in these cases, particularly because many firms file lost note counts as a standard alternative pleading in the complaint. There have been situations where two different plaintiffs have filed suit on the same note at the same time. Requiring the plaintiff to verify its ownership of the note at time of filing provides incentive to review and ensures that the filing is accurate, ensures that investigation has been made and that the plaintiff is the owner and holder of the note. This requirement will reduce confusion and give the trial judges the authority to sanction those who file without assuring themselves of their authority to do so. The proposed rule was adapted from Florida Probate Rule 5.020.

Form 1.997. Civil Cover Sheet

The purpose of this proposal is to allow the Court to case manage foreclosure cases. Residential cases will be case-managed differently than commercial cases. Those residential cases that are homestead will be managed differently than non-homestead properties. Requiring these designations on the Civil Cover Sheet permits categorization of the cases as early as possible. The Task Force elected to use homestead status as it is an objective analysis of whether the property currently has a homestead exemption with the property tax appraiser, a matter easily determined without requiring locating the borrower.

Affidavit of Diligent Search Form

The Task Force proposes adoption of the Affidavit of Diligent Search as a new form. Many foreclosure cases are served by publication, and currently, affidavits of diligent search are formatted many different ways and include different information. This form was adapted from the Forms 12.913(b) and (c), Florida Family Law Forms. These are categories of criteria that are available to locate a defendant, and only those utilized would be checked. The entire affidavit will be reviewed for diligence upon application for default. The most significant addition is the additional criteria that if the process server serves an occupant in the property, he inquires of that occupant whether he knows the location of the borrower-defendant. Currently, that is not occurring. The logic is that those occupants are probably paying rent to a defendant-owner someplace. The goal is to locate defendants and make sure they are on notice as efficiently as possible.

Motion to Cancel and Reschedule Foreclosure Sale

The Task Force proposes a new standard Motion to Cancel and Reschedule Foreclosure Sale. Currently, many foreclosure sales set by the final judgment and handled by the clerks of court are the subject of vague last-minute motions to reset sales without giving any specific information as to why the sale is being reset. It is important to know why sales are being reset so as to determine when they can properly be reset, or whether the sales process is being abused. Therefore, this form requires that the movant advise the court specifically as to why the foreclosure sale is being sought to reset. Again, this is designed at promoting effective case management and keeping properties out of extended limbo between final judgment and sale.

BEST PRACTICES FORMS

In addition, the Task Force has included a set of "best practices" forms and orders in Appendix K. As previously stated, these are forms aimed at moving

cases forward. Some would have to be tailored to the practices in each individual circuit, for example, the order directed at non-service under rule 1.080, Florida Rules of Civil Procedure, or the orders directed at dismissing settled cases or removing them from the pending docket. Others depend on how the circuit or the individual judge wishes to approach cases, for example, the case management orders. Other forms are directed at solving specific problems; for example, the sample notice of hearing form contains a warning in Spanish and Haitian Creole that the Court does not provide interpreters at these hearings and that if you do not speak English, you should bring someone over the age of 18 to translate for you. This form is directed at a problem that applies in counties with non-English speaking populations. All forms are simply presented for consideration by the Florida Supreme Court and the judges of this state for their potential usefulness.

PROBLEMS AND RECOMMENDATIONS SUMMARY

PROBLEM	**RECOMMENDATION**
Currently across the state, circuits have developed widely varying responses to the foreclosure crisis and resulting case load, in terms of forms and requirements for handling foreclosure proceedings. Given that many plaintiffs have cases all over the state, and that the vast majority of foreclosure cases are prosecuted by a very small number of flat fee firms, these variations increase expense and delay. Courts should utilize sound established case management principles to deal with foreclosure cases.	Uniformity of forms and procedures statewide should be a goal in terms of affordability and efficiency, in light of the number of parties and limited number of firms who are litigating in the various circuits across the state. Further, fundamental case management principles dictate that management of a crowded dockets entails getting those cases that will settle to settle early, and get them out of the court system before substantial resources are consumer; and further dictates that those cases which will be uncontested be moved quickly through the system before substantial delay occurs.
There are many well-intentioned efforts going on across the state to address foreclosures. They are completely uncoordinated, and incur resulting inefficiencies	A central statewide foreclosure website should be cooperatively established by the Executive and Judicial branch to give all Floridians education and access to basic information which is currently strewn

particularly in terms of publicity and knowledge-sharing. It is impossible for any individual to get full information about the foreclosure process in his community without consulting multiple websites and sources.	haphazardly across the Internet: links on finding certified foreclosure counselors, contacting lenders, accessing online court dockets, basic foreclosure information, reporting illegal foreclosure activity, locating low-cost or free legal services, mediation programs in each circuit, foreclosure events in their community, links to foreclosure forms, links to loss mitigation contact information, accessing information about foreclosure sales, links to websites describing government foreclosure prevention programs and links to property sales information.
Florida borrowers and foreclosure defendants are being victimized by foreclosure rescue scams and attorneys who take their money and do nothing to defend the case.	Widespread consumer education should be provided by the executive branch on avoiding foreclosure scams and providing clear information about where to report mortgage fraud, foreclosure scams, and other illegal foreclosure activity. The Florida Bar should aggressively prosecute attorney misconduct in foreclosure defense scams and mortgage fraud cases.
As a result of the modern economic reality of multiple transactions of the note and mortgage from the original lender, most lenders no longer maintain the loan documentation at their home facility. The paper is stored centrally and the transactions noted electronically. As a result, foreclosure actions are filed without the original note being provided to counsel. For that reason, lost note counts are filed in virtually every case, resulting in substantial confusion on the part of the	Plaintiffs must, at the time of filing, ascertain whether they are the owner and holder of the note which is the subject of the foreclosure action and whether it is in their possession, and verify the same to the Court at the time of filing, for purposes of clearly establishing standing at the time of filing.

defendants as to who the plaintiff is, what their relationship is to the loan, and whether they actually own the note at the time of filing, resulting in delays in cases.	
Borrowers who appear at foreclosure hearings overwhelming describe multiple attempts to contact plaintiffs for loss mitigation review without response, with request to send and resend their financial documentation over and over again, and without receiving decisions. This process can drag on for months. Plaintiffs describe having to ramp up loss mitigation departments as this crisis exploded and generally concede that those departments are not fully staffed. Under current procedures, the outreach by loss mitigation departments is not very successful at reaching out to borrowers and getting them to participate. Equally, borrowers contact these loss mitigation departments through random telephone calls which require the loss mitigation representative to attempt to locate and analyze the defendant's information in a chaotic and haphazard fashion.	Mandatory managed mediation in homestead cases should be required statewide prior to final hearing, on an opt out basis; with the initial cost to be borne by Plaintiffs subject to recovery in full in the final judgment. While the Task Force was unable to conduct a cost/benefit analysis due to the proprietary nature of loss mitigation cost information, it would seem that providing a structure in which the borrower's loss mitigation package is assembled with the assistance of an expert foreclosure counselor, delivered to the Plaintiff in advance of the mediation day, and then a mediation occurs with the participation of the loss mitigation representative and counsel at a specific date and time instead of the random process of the current phone efforts would achieve a higher success rate and significantly improved loss mitigation resource utilization for Plaintiffs, as well as the opportunity to take a non-performing asset and move it to performing much earlier in the process. It would also create a structure for those institutions participating in TARP/HAMP to assure compliance with the loss mitigation efforts of those programs.
The managed mediation fee is designed to underwrite specific tasks for which the Court system has no current resources.	Payment of managed mediation fees should be tied to event benchmarks in order to keep the process as affordable as possible. The process may be broken into

	three components: 1) the initial case intake, personal outreach to borrower and enrollment into foreclosure counseling 2) the completion of foreclosure counseling, upload of financial documentation and access by Plaintiff and 3) mediation. While the Task Force's initial recommendation is that the Plaintiff front the initial fee for the managed mediation program, we note that a number of other jurisdictions have mediation programs underwritten by governmental funding sources, such as the state of Ohio. NJ? Florida should explore those options, with the ultimate goal that this program could operate without expense to either party.
Borrowers suffer from a significant imbalance of power when negotiating with their note-holders. Many do not understand the information, can be confronted with take it or leave it deals, and can have unrealistic expectations of the loss mitigation process and/or available government programs. Further, many borrowers, particularly in the subprime market, are not confident in dealing with the significant document-based requirements of the loss mitigation process.	All borrowers in managed mediation must receive certified foreclosure financial counseling and provide their financial documentation prior to the scheduling of any mediation. The foreclosure counselor provided education as to sound financial decision-making, what realistic options may exist, and assists the borrowers in assembling their financial documentation for loss mitigation analysis. Research demonstrates that borrowers who have been through foreclosure counseling are much less likely to re-default.
Currently, loss mitigation departments are challenged with hundreds of thousands of documents being submitted daily nation-wide. Since this crisis sprang fully-formed, document management systems have been	A common information technology platform should be specified statewide for use in all managed mediation programs which is safe and secure; which will allow all authorized parties to exchange and access the financial documentation necessary to resolve foreclosure cases.

built "on the fly" if at all. As a result, when a loss mitigation specialist needs a borrower's documents they are frequently lost or unavailable, and delay and frustration increases as the borrower is asked to resubmit.	
Loss mitigation is not coordinated with the filing and progression of a foreclosure case, resulting in misinformation, scheduling and rescheduling consuming scarce hearing time, and post-judgment motions to vacate or "undo" the entire foreclosure after the sale of the property has already occurred and after full consumption of judicial resources.	Pre-filing foreclosure mediation should be encouraged. Plaintiffs should be provided with an "escape hatch." If they mediated in compliance with standards of fairness prior to the filing, they need not mediate again. The Task Force determined that the best way to assure fairness and compliance with the standards established in the managed mediation program is to require the mediation manager to make its program available to Plaintiffs both before and after filing. If Plaintiff participated in the managed mediation program pre-filing which resulted in an impasse or non-participation by the borrower, Plaintiff can proceed with their case without further referral to mediation.
Most borrowers are unrepresented, and the vast majority of foreclosure cases proceed to final summary judgment after default or without any paper or defense being asserted by the borrower.	To the extent possible, lawyers and bar associations should target pro bono efforts at dealing with the borrowers in these cases, the vast majority of whom are unrepresented, including providing training to attorneys in foreclosure matters.
Foreclosure cases are exceeding the available judicial infrastructure across the state. While state court judges are working hard, adding calendars, and utilizing technology to move cases, ultimately there is	Hearings should be provided within a reasonable time of request, to the extent possible given limited judicial infrastructure and the lack of additional resources. In recognition of resource limitations, parties should engage in

more case traffic than the court system can bear.	quality control, and follow rules of professionalism and ethics to assure that those resources are not squandered. Obviously, there are potential solutions of adding new judges or additional senior judge days to hear these cases, however, in light of Florida's current state budget crisis, such solutions seem an unlikely option.
Cases with "walkaways", vacant or abandoned property can get stuck in the traffic of all the foreclosure cases and delay can occur.	Plaintiffs should be encouraged to utilize sections 702.065 and 702.10, Florida Statutes, to seek expedited resolution where appropriate, particularly in the case of vacant or abandoned property, and case management should afford prompt expedited hearings when called for by these statutes to avoid the issues of crime, declining property values, community destabilization, and simple danger that vacant properties can cause.
In Florida, many properties are part of condominium or homeowner associations. In some areas, dues and fees are not being paid while a property is in foreclosure, resulting in substantial financial adversity to these associations and the paying members of the association remaining in the community.	Where possible, recognition should be given by presiding judges to the impact of delays in foreclosure cases on co-defendant condominium and homeowner associations, and delays in the cases should be limited so as to avoid prolonged non-payment of association fees and resulting burdens on other association members.
Over time, language has been added to final judgments of foreclosure tailored to the needs of individual firms rather than the law or the case; for example, directions to the clerk on how to make out a check, assignment of bid language, etc.	Final Judgment Language should be limited to actual issues pleaded and proved to the Court.

Significant numbers of sales cancellations at the last minute are resulting in delays of sales, and squandered resources; and further are requiring additional resources to reset the cancelled sale.	Parties should not be able to unilaterally cancel foreclosure sales set in final judgments without explanation, so as to assure reasonably prompt sales dates and avoid sales delays and wasted resources due to last minute cancellations.
Foreclosure cases today can be quite complicated and require understanding of the underlying transactions and burdens of proof, even where undefended.	Judges should receive judicial education about foreclosure cases.