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Chief Judge J. Thomas McGrady (back to camera) explains new Foreclosure Mediation Program to media during a June 23 press conference.

New Procedures for Local Mortgage Foreclosures: Managed Mediation Program to Begin July 1

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CLEARWATER – Mortgage foreclosure procedures for Pinellas and Pasco counties will change on July 1, when the Sixth Judicial Circuit Courts implement a new Foreclosure Mediation Program. The program is designed to help local homeowners who have fallen behind in their mortgage payments and had a foreclosure case filed, but who want to try and save their homes.

Chief Judge J. Thomas McGrady, who signed the administrative order implementing the new program, predicted “The Foreclosure Mediation Program will help the homeowners who want to keep their homes . . . the financial institutions who really don’t want to take possession of more properties . . . and the judges who are being asked to handle a tremendous number of foreclosure cases.” Approximately 33,000 foreclosure cases are currently pending in Pinellas and Pasco counties.



Chief Judge McGrady fields a question as Trial Courts Administrator Gay Inskeep looks on.

In mediation, a neutral third party assists both sides to reach a settlement agreement that quickly brings the case to a conclusion, avoiding longer and more costly litigation in court. Such agreements could lead to modified payment plans, extended loan terms, sale of the property, returning the property without any further obligation on the loan, etc. “It (mediation) allows both sides to mutually resolve their issues,” McGrady said, “while avoiding the expense and uncertainty of further litigation.”

The new procedures also address concerns of a statewide task force, which heard numerous reports that lenders would not respond to borrowers’ requests for discussion of loan modification. “The Foreclosure Mediation Program requires lenders to participate in mediation if an eligible homeowner wants it,” Judge McGrady said.

Eligibility conditions for the program are:

- The borrower must have a homestead exemption on the property and be living in the home;
- The loan must have been subject to Federal Truth in Lending Act regulations;
- The borrower and lender have not completed qualified pre-suit mediation;
- The parties must not have agreed in writing to opt out of the program.

Borrowers who do not meet the above criteria may continue to request mediation through the Circuit Civil Mediation Program.

Judge McGrady also announced a contract with Mediation Managers, Inc. (MMI), a not-for-profit organization that will manage the program. MMI was selected after responses to a Request for Proposals were evaluated. The search for a mediation manager began after the Supreme Court directive for each of the state's 20 trial court circuits to establish such a program. The Sixth is among the first circuits in the state to implement the program, but others will follow shortly.

For each mediated case, MMI will be paid up to \$750, which includes the fee for the mediator and for foreclosure financial counseling for the borrower. The lender will front the costs, but if the case is not resolved through mediation, the Court may apply the costs to the final judgment. The fee for cases that do not complete the program will be determined by the stage at which participation is terminated.

MMI was founded by three local attorney/mediators, J. Richard Rahter, Jon C. Kieffer, and Jack L. Townsend, Sr. Kieffer and Rahter – the principal attorneys of Kieffer & Rahter, P.A. in St. Petersburg since 1985 – have been Florida Supreme Court-certified mediators for 21 years. Townsend, the principal attorney of Jack L. Townsend, Sr., P.A. in Tampa, has been providing mediation and arbitration services in the Tampa Bay area since 1996.

Rahter said all three principals are looking forward to the rollout of the new program. “The Managed Mediation Program will provide a much-needed forum for discussion,” Rahter said. “It gives the borrowers and the lenders a chance to resolve issues, allowing homeowners to stay in their homes. And the banks would prefer a conclusion that keeps the homes occupied and doesn't involve taking control of more property.”

Judge McGrady emphasized the new program does not rule out mediation for cases involving properties that do not meet the eligibility criteria. “Mediation can still be requested by parties to proceedings for commercial properties, or for homes that are not owner-occupied, or for any proceeding filed prior to July 1,” he stated. If a case has not been set for summary judgment, borrowers with cases currently pending before the Court may file a motion requesting participation in the new Foreclosure Mediation Program. Motion forms can be accessed at

[MOTION TO PARTICIPATE IN THE FORECLOSURE MEDIATION PROGRAM](#)

“Remember,” McGrady said, “the Sixth Judicial Circuit (Pinellas and Pasco counties) has offered mediation since 1988 for all civil cases, including foreclosure actions.” Since last October, the circuit's judges have placed an emphasis on mediation, strongly encouraging homeowners to take advantage of mediation and foreclosure counseling. Under the current plan, mediation becomes a consideration when one party requests it; with the new program, qualified foreclosure cases cannot move forward until a mediation session has been held, or the borrower chooses not to participate.

In addition to procedures, sample forms and a step-by-step process, the administrative order signed by Judge McGrady outlines the responsibilities of all parties who might be involved in a foreclosure case filed after July 1. For example, the order mandates that the lender's attorney, the borrower and the borrower's attorney (if there is one) must participate in the mediation session. Administrative Order No. 2010-025 PA/PI-CIR and all required forms can be read or printed out at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2010/2010-025.htm>

The order puts new responsibilities on law firms that file multiple foreclosure actions. Any law firm that has more than five cases on behalf of the same lender must appoint two liaisons and provide contact information to Judge McGrady and MMI. One of the liaisons must be an attorney and the other a representative of the lender or the lender's mortgage service provider.

He said that while it is always wise for borrowers to be represented by attorneys, he recognizes that “the same economic conditions that brought about the foreclosure action may prevent the borrower from retaining an attorney. In that case, it is strongly recommended that anyone who receives notice of a foreclosure action read the administrative order so that they have a full understanding of their rights . . . particularly the right to have their case mediated.”

Noting that the courts, taxpayers, lenders and homeowners all benefit from successful mediations, MMI's Rahter said, “The Managed Mediation Program provides ample opportunities for win-win resolutions.”