Appendix G

Survey Comments

Florida Supreme Court Residential Mortgage Foreclosure Task Force

Comments

The following comments were submitted to the Task Force by a myriad of individuals with various concerns and perspectives regarding residential mortgage foreclosure issues and cases. Comments were received from April through July, 2009, and were submitted via email to the Dispute Resolution Center's on-line mailbox. Additional comments, some very extensive, are on file with the Supreme Court and may be viewed upon request. Because many comments address numerous, complex issues and often diverse viewpoints, they are not edited but rather are presented here in their entirety.

Case Management Issues

Generic case management issues

- My main comment is that the Foreclosure Defense Attorneys should not be allowed to offer their services to borrowers who are in default. They say that they can help but the reality is that the only way to cure a default is by a loan modification or for the borrower to pay what is owed to the lender. The Foreclosure Defense Attorney's know this and they are still advertising to borrower's who do not know this. The most notorious are the, Ticktin Law Group and Bruce Korte, from South Florida to name a few. There should be regulation against Foreclosure Defense Attorney's.

- Information on web for pro-se litigants re: what options may be available to them.

- We need PSAs to warn homeowners about unscrupulous counseling organizations.

- Lawyers representing lenders and lenders representatives need to be educated on the value of "dignified departure." Allowing the homeowner a few months to relocate and using "cash for keys" as an incentive, will ensure that the asset is properly maintained and in good condition when title is transferred.

- I strenuously avoid giving legal advice from the Bench. Difficult to do!

- While 20% of our population in Collier County is Latino/Hispanic, I am puzzled that 75-85% of our foreclosures appear to be Latino/Hispanic surnames; not sure what this means, just an observation.

- I have real misgivings about "the process" for handling these claims. While it is a given that most of the mortgagors will freely admit that they haven't made their payments for 9-15 months, the Final Judgments that are being entered are problematic. We are so busy

with foreclosures, we have yet to address the potential deficiencies, which will be another "enigma wrapped in a riddle".

- My overall experiences are as follows:

    1. I have approximately 350 new foreclosure cases added to my docket monthly!
    2. 95% of the foreclosures result in defaults and Summary Judgment.
    3. Of that number, I would suspect 90% of the "owners" are just walking away with no effort to stay in the property by renegotiating.
    4. Of the remaining 5% of the non-default cases, some attempt to save their home or short sale and the others just want to delay to stay in the home rent free and file many motions and engage in delay tactics. I am seeing more fraud where people are in foreclosure and they "lease" the home to an unsuspecting tenant who pays first, last, security, and rent until the writ of possession is served.
    5. We have an active Foreclosure Task Force in Collier County – we are attaching Legal Aid information for the homeowner with the summons to try to direct them to lawyers for early legal advice.

- I am writing in response to the Florida Bar News article asking for experiences which might help the Foreclosure Task Force. One practice that I noticed that appears to me to be a fraud on the court is inflated service of process fees. In one case the affidavit of fees listed about $290 in fees for 3 service attempts and one skip trace for a defendant who was a corporation with a registered agent at a current address. Nothing more that delivering it to that address was needed but they ran up $290 in fees.
  In another case I noticed that the judge granting the foreclosure judgment crossed off about $700 in process fees and reduces it himself to about $70. That looks like an easy way this can be cured. But in the first case, the property didn't go to judgment, the owner redeemed it before foreclosure, by paying the inflated fraudulent fees! I'm not sure what can be done about that but this does look like a major ongoing scam.

Barriers to Efficient/Effective Case Management

- Lending institutions will not talk with borrows until a final judgment is entered and a sale date is set. Lenders then attempt to negotiate with borrowers in about 80% of the cases.

- Lending institutions typically do not have the original note document. Some of judges require the original note or a very detailed affidavit from the current and previous lenders.

- Lenders overcharge for service of process, charging three times the appropriate amount. Some of our judges remedy this by disallowing excess charge in final judgment.

- Volume of cases and scheduling issues for the final hearing/summary judgment hearing - the lenders file cases in bulk seeking judgments. The cases are not ready to go forward

because - assignments aren't there, original note is not there, nothing to determine status, etc. So, 50-60 cases have been scheduled and half cannot be heard because of these issues. Therefore, there is a waste of judicial time.

- Lack of judicial resources.

- The mortgagors can't communicate with the mortgagees as they cannot get to the person that can make a decision.

- Lack of authority to negotiate by the attorneys representing the mortgage companies

- Homeowners are not aware of their options and most are pro se as they cannot afford an attorney.

- Volume. We have greatly reduced the amount of time we have to spend on uncontested matters by instituting our Certificate of Compliance procedures. It's still a lot of work, but that's the nature of it. Many circuits have apparently set up foreclosure divisions and put a senior judge on it. That's all well and good, but I don't think it's feasible for us.

- Requirement that sales be set no sooner than 20 days nor later than 35 days

- Lack of standardization in handling these cases. No standardized complaint/final judgment, etc.

- A defendant's inability to communicate with the plaintiff to determine if settlement was possible.

- The plaintiff attorney not trying to reach the defendants (communication)

- High volume of foreclosure cases being filed without additional funding for judicial support (i.e. Magistrates, case managers) to actively progress or manage cases through the court system.

- Attorney driven dockets (as a result of #1) impacting court performance standards and goals (e.g. clearance rate, age of pending caseload, time-to-disposition).

- Docket congestion and delays due to high volume of self-represented litigants who have a lack of legal guidance or understanding of the court system or process.

- Homeowners who may have defenses to foreclosures and who are amenable to exploring alternatives often have difficulty in communicating with residential lenders to resolve cases.

- It should be a requirement that all counsel involved in these cases personally appear before the Court in any and all proceedings relating thereto.

- The majority of foreclosure cases currently being brought in the State of Florida are now being handled by 'foreclosure mills', primarily located in southeast Florida. These mills: i) do not generally answer calls (except by recorded statements intended to intimidate); ii) do not generally answer requests for return calls, or return calls in a timely manner; iii) do not contact, or cooperate with, defendant party counsel at any level (despite written representations to the contrary in their written documents filed with the Courts); iv) allow non-attorney personnel to handle what few personal communications they either instigate or deign to respond to (without making clear to the party on the other end whether they are, or are not, a licensed member of The Florida Bar); v) do not internally designate a responsible attorney to the cases being handled; and, vi)waste Court time, and subject the Florida Court system to disapprobation, by setting Telephone Hearings *en masse:* some or all of which Hearings are then routinely cancelled at the last minute and without prior Notice to either the Court or parties involved.

- It would be nice if the judges/courts, etc.., would start to penalize and sanction the debtors and especially their attorneys who clog the court system with their frivolous form pleadings in attempt to delay foreclosures. Every once in a while you may get a borrower who has a valid defense, but these days the radio, tv and internet are filled with ads from attorneys and other groups who offer to "delay" the foreclosures, even though such action is a violation of the Florida Bar Rules of Ethics. All these attorneys do is file form pleadings with a bunch of possible defenses even though they have no good faith knowledge that the defenses are claims are even true....all they do is file them to delay the cases and let people live for free. If the courts want start to sanction and not put up with the actual "BS" pleadings, then maybe foreclosure attorneys and their clients would be able to possible work with those borrowers who are acting in good faith.
  Why can't the judges see that many of these borrowers probably cashed out $50k from a re-finance....never made a payment...haven't paid taxes for 3 years...haven't paid insurance, but the judges are giving the lenders are hard time b/c an "i" isn't "dotted" on a letter??? I have never seen such bad faith by attorneys or borrowers and some of these judges are "buying it".... What do we need to do to get them to see the truth??

- Is it too late to get in on the mortgage foreclosure survey? I have a situation I would like to include. Today I was heard by a judge on a motion to dismiss due to the lender not having the original note or a valid assignment of mortgage. The plaintiffs attorney didn't even show up, however the judge called her and she said she "forgot" she didn't provide any arguments against my motion, other than to say it was premature, and said that they had found the original now and it was being sent from the lender (after they already signed an affidavit stating that they had it in their office last month and lost it themselves) I am upset by the fact that the judge called the attorney and I'm sure he would not have called me. It should have been dismissed due to her not showing up and she should have had to appeal it, just as I would have had to if I didn't show up. We must stop these judges from making up their own procedures and giving attorney's more rights than pro

se defendants. These banks are committing fraud on affidavits, not showing up to court and not following Florida statutes and Brevard Judges are letting them get away with it, knowing full well what they are doing. Please let my story go along with the survey as yet another example of judicial corruption and lender fraud. Thank you for your time and consideration.

- With all your respect please allow me to introduce myself, my name is Elizabeth M. Villa, I do Forensic Loan Audit and Compliance Reports for Consumer's and Lawyers also for Lenders and Investors. The reason why I desired to write to you is because after a public search and coming across "The Task Force Report" and reading it, I can see that the information I can contribute to your analysis can be of interest to the courts problem solving quest. I enclosed my resume and a short study I did. Please analyze the content and if you feel that it can be used to help you to analyzed the core of the foreclosure problem, that is all our problem specially if we are in the field. I would like you to know that I had personally been impacted by the foreclosure issued in more then one way. Please research the time variance deficiency that is present in our Florida Statutes and if you analyzed nationally you will see that the time variance deficiency affecting foreclosure is nationwide, The fact that time variance rules the mortgage industry has not been given the importance that it should and is affecting the courts. Document that are time sensitive sample are notification, T&L, Good Faith, etc. Sample: The banks have a Modification Department that is not communicating with the Legal Department and that is not regulated in our statutes to stop or hold procedures while consumers are in the process of being approved for a forbearance or short sale or modification, there is no where instructions in our statutes to buy time for consumer to get an answer. If you have that time half of the foreclosures will be gone since the completed approval process would have an approval or denial than only a denial application can moved forward to the legal department to proceed with the legal process.

  At this point no check points have been established to screen what foreclosures are in the process of been modified by lenders or how many have been approved or denied. If you have those check points you could be Part of the issue is that bank do not want consumer to have forensic loan audit done in their loans as defense if the rush they give no time to consumer to fight back for compliance and forensic findings that could help review each case.
  The banks have the collateral, the insurance and the sale of the property, beside they now have the guaranty by the government that loans originated under this market can be bought by investors and be cover, that alone incentives the private sector to invest therefore accelerated the amount of foreclosures, therefore because those crash and dent loan now can be sold in pools to investors the system has accelerated the process of foreclosing properties. Also no one is taken in account all the new associations foreclosures that do not notify the first mortgage of the foreclosure process they have started against the consumer. Adding to the problem, a check point requiring answers in writing by the first and second mortgage will stall the process before it becomes another issue in court. Please do not take these in the wrong way. But it is important to see all angles of this problem.

- Please find below, double lines, correspondence sent to several U.S. Senators. A simple solution to resolving Florida's Foreclosure Crisis is to stop foreclosures. I'm not sure how or if the State of Florida has the authority to stop foreclosures within our State but doing nothing really isn't an option either. Home values are continuing to plummet with no real help in sight.
  We are facing foreclosure and have attempted to work with Aurora Loan Service (service provider for Freddie Mac) since July 2008 with no success. President Obama's program is seriously flawed if a lender has filed a foreclosure lawsuit against a Floridian Homeowner. Please let me explain.
  Obama's program requires a Defendant (Homeowner) pay three monthly payments to a Plaintiff (Lender) with none of the following or as follows:
  1. No written agreement or commitment to terminate or dismiss the pending foreclosure action against the Defendant (Homeowner) prior to the Defendant paying the Plaintiff (Lender) three monthly payments. Without any written agreement to the contrary, the Plaintiff can accept those payments, then foreclose anyway.
  2. No written agreement from the Plaintiff to modify the existing (original) loan, on behalf of the Defendant, prior to Plaintiff receiving three monthly payments from Defendant which are conditioned by Plaintiff to avoid foreclosure. That's serious duress. Defendant is required to pay Plaintiff three monthly payments with no firm commitment for any modification.
  3. Plaintiff provides "No Disclosure" of any potential amount being financed, the interest rate, the number of years or monthly payments being required for repayment, any terms or conditions, any "truth in lending" documents, in other words, no consumer protections what so ever.
  4. Plaintiff requires Defendant to "Trust Me" and I will modify your loan, if you qualify, after paying three monthly payments. That's unconscionable and a breach of "good faith and fair dealings".
  These issues create a serious problem for a Homeowner Defendant, under serious stress and perhaps duress, to accept a seriously flawed modification program to solve a foreclosure issue.
  Help is seriously needed from the State of Florida to assist Floridians in dealing with aggressive lenders. If you can help, please contact me via e-mail.

- Below please find an e-mail sent to both Senator Sheldon Whitehouse and Senator Dick Durbin.
  I also want to thank you for all your hard work on behalf of all homeowners struggling to keep their homes from foreclosure. Your leadership and insight on this issue to change Federal Bankruptcy Code allowing Federal Judges the right to a "Judicial Modification" of Primary Residential Home Loans is absolutely necessary. I am sorely disappointed with fellow Republicans who allow their ignorance and Mortgage Industry Lobbyist to hoodwink their vote and seriously fail homeowners….
  The Mortgage Banking Industry sold a defective product called a "Sub-Prime Loan." It has and is destroying the "Financial Wellbeing" of millions of homeowners who purchased that type of home loan. Many homeowners could have qualified for

Conventional or Government type financing but were directed (steered) into these defective Sub-Prime loans. Homeowners relied on what they thought were licensed professionals providing professional counseling, to their detriment. If the Pharmaceutical Industry sold a defective product which destroyed a Consumers Health & Wellbeing" that industry would be held fully accountable for the damages it caused, but not so with the Mortgage Banking Industry, why?

One issue that hasn't surfaced yet is "what happens to unsecure debt issued by the Credit Industry if in a Federal Bankruptcy Proceedings a secured Mortgage Lender is given "Superior Priority" by allowing that secured Lender the right to deny any "Loan Modification" from the Debtor in Possession due to existing Bankruptcy Laws. Without the Debtor in Possession's right to modify a Primary Residential Home Loan, unsecured creditors are left without hope of repayment. If a Debtor's home value has fallen 40% and his Mortgage exceeds the home's value, repayment to unsecured creditors is virtually eliminated.
It is no wonder that CitiGroup supports "Judicial Modification" by a Federal Judge in a Bankruptcy Proceeding. Homeowners desperately need changes in Bankruptcy Laws to keep from drowning in debt.

- It would seem you did not receive my attached letter; I am so excited to hear from you; I will print and mail my angry, venting letter first thing in the AM. I never expected to hear from anyone. THANK GOD someone finally had the good sense to establish a way to voice legitimate concerns before more people are needlessly hurt/destroyed by incompetent bank employees. I have no idea who you are but I cannot wait to tell just how 'out of control' WAMU/Chase is! I would appreciate any advice or guidance you can offer toward two modification loans. Our attorney just shook his head during our meeting this afternoon in Orlando, Fl. He is a bankruptcy attorney and having difficulty with several banks who are apparently as messed up as WAMU. GOD save us from untrained, unconcerned employees who are running amuck and ruining lives. THANK YOU SO MUCH FOR RESPONDING TO ME. I am shocked and hopeful that you have some kind of authority to gather information and get it to someone who is capable of fixing this miscarriage of unfair lending practices & procedures. Are you helping everybody or just Freddie Mac & Fannie Mae. 3 applicants each requested congressional investigations last Monday with US Senator Bill Nelson because of modification blunders and unethical banking policies that change by the hour and applicants are 'never' communicated with.

- Additional comments: Never been referred to loss mitigation/home reduction agencies and never been able to contact any such organization. A defense pleading form asking for such a referral and "stay" in the meantime would be interesting and useful.

- I just received the newest edition of The Florida Bar News and was thrilled to see the Foreclose Task Force request for information.
  I am a lawyer in California who is also licensed in Florida. During my years in Florida, I purchased two homes and put most of my savings into them. Upon moving back to California (I am originally from CA), I thought to sale my Florida homes (I had 'good'

loans) and pay any outstanding debts, pay for the move (which was done to be closer to my now elderly parents), and restart my life in CA. I will not go through each and every detail of the horror of the last year, but I want to impress upon you these facts during my experience:
1. As you can imagine, my plans went south, and I ended up having to fight for short sale status.
2. I have access to fax machines, computers, cell phones, a real estate agent, and all postal requirements.
3. The 'lag' time from a buyer's offer to my lender's response has been outrageously slow (I could never get away with it in my own work). When we (my agent and I) would finally hear from the lender, the lender would again ask for several lengthy documents that I had provided it on numerous prior occasions.
4. On one property, we have had multiple offers, but because of these delays, and, now, the mortgage insurer not cooperating - that is, according to the lender - (my lender has refused to tell me who the MI is or what the problem closing the deal was), we have not been able to even sale this property for over a year.
5. In the meantime, the lenders had both filed foreclosure actions against me.
6. I finally sold one of the properties last week.
7. As to my other property, I am now being represented by a lawyer. I see no way of resolving this matter without one. My point is this: if someone who has all the tools to deal with these lender's (machines, agents, education, etc.), still can't get any real response for over a year, what kind of response can someone with limited means expect? Many days I felt like just walking away. Many people told me to just walk away. I now understand why so many people have just walked away. Many situations are like mine: a 'normally' priced home cannot survive this market. But, people have many reasons why they must sale. My home, and the equity in it, could not compete with the foreclosures, and I was doomed. But, we do not deserve to be treated as these lenders have treated us. AND, to file foreclose actions with one hand, and stall on sales with another is unconscionable, bad faith in my book.

- I am an attorney licensed in Florida. I became unemployed last June 2008. Prior to that I was a partner in Fowler White Boggs and Banker's West Palm Beach Office. After the firm moved out of West Palm Beach, FL, I was forced to seek immediate employment as I had only 6 months before purchased my first Florida home. I then took a position in the financial services industry as a Senior Attorney. This position was also downsized. From June 2008 until November 2008 I was out of work. I immediately called the current mortgage holders Chase Bank and Coldwell Banker. I was told when I was behind not to make partial payments. I had and have been refused any modification by Coldwell Banker Mortgage even though the interest is at approximately 9% interest and I had paid ahead years of payments. Chase offered a 2% reduction in interest for the first year and then 1% for the next year. Both companies have placed high penalties on the amount owed plus late charges. I have recently applied for a new modification based on changed financial circumstances. Instead I was offered a payment plan to triple my payments. I had reported this to the Better Business Bureau and the matter could not be resolved. I have been employed since November and have been attempting to work out a

modification that would be reasonable and permanent in nature. My home has fallen in value from $290K to less than $125K and I owe over 2X the value. I believe that Chase and Coldwell if using proper business judgment would attempt to work this out. However, it appears that they want to show a loss so that they can obtain bailout funds or other assistance rather than prevent foreclosure. I am not a deadbeat and have kept payments on all my other accounts including my homeowners association up to date. Something needs to be done to make sure that mortgage lenders deal in good faith with borrowers. My lender even knowing I am an attorney has not treated me properly at all. They will not put anything in writing, they keep asking for additional documentation for any modification program and then offer nothing. I believe that the courts should force mediation. I have received my Intent to Foreclose from the lenders. It is only a matter of time before I am in court. The lenders don't care about working out a plan consistent with business judgment. The courts should assure that this is done. I need help and so do others. We are counting on the courts doing the right thing to protect not only the lenders but the borrowers and the neighborhoods that will suffer if foreclosure is the answer.

- Hello, I am an attorney that represents the Plaintiff's in foreclosure actions. Some of the main issues that I encounter is that the borrower's utilize mediation as a method of extending the foreclosure process without an intent in staying in the home. They do not provide financials and mediation ends up being fruitless and at additional expense to the Bank. Also, many counties require mediation through the Collins Center. The problem with this is that even if the borrower does not show up for mediation, the banks are still charged the fee. Furthermore, even if the borrower has entered into an agreement with the Bank, the Collins Center will not let the Bank cancel the mediation as they indicate only the borrower can do so. This does not seem to be impartial to me, as mediations should be. Lastly, the biggest difficulty I see in the foreclosure process is Judge's refusing to hear more than a certain amount of cases. For example, one Judge has limited the amount of foreclosures we can schedule to only 7 per week. Needless to say, in thousands of cases, we cannot move forward on the foreclosure and offer the property for resell, even though it may be abandoned, because we are on a 2 year waiting period to actually schedule the foreclosure.

- Can you please provide me information as to any rights I may have while in a foreclosure status. I have my mortgage with American Servicing, I am in a interest only loan, my house is worth less than what I owe, could not get a refinance for a fix rate. I applied for modification with my lender and was declined, I called them and explained that i have my elderly mother and a son and that I wanted to keep the home, their response was to short sale or foreclose. I called an approved HUD counseling and they informed me that with the information I provided that I indeed qualified for a modification, so I proceeded to resubmit the modification, eliminated some voluntary payroll deductions in order to provide the lender with a higher net income, and to my surprise they informed me that I was in a foreclosure status, and to contact the legal office of David J. Stern, plantation, florida. The letter states that I need to contact my paralegal to the case #106, I have left over 10 messages and counting and still this office and paralegal has not returned a phone call. I then called lender explaining that how can a resolve this or come to a payment

agreement if this law office does not return my calls, and the collections department responded that I have to deal with the situation because is no longer in their hands. Then what are my options? wait for the terrifying letter in the mail, that I am evicted? Please I need HELP!!!

- My name is Jacqueline Buyze. I am a Florida licensed attorney and certified circuit mediator. I serve on Collier County's Foreclosure Task Force and chair its mediation committee. In that capacity, I have been researching foreclosure mediation models for the past year. I have also been retained to mediate a number of foreclosure cases throughout the state. These are my observations:
  1. The lack of consistency throughout the state (and even within circuits) is causing a great deal of confusion. Timeframes and requirements set forth in the various Administrative Orders are seldom if ever complied with.
  2. Homeowners need help from competent qualified financial counselors and lawyers prior to court and mediation. Most are pro se and have no knowledge about free or affordable services available to them. **(We need PSAs to warn homeowners about unscrupulous counseling organizations.)**
  3. Loss mitigation packets required by lenders vary and are not readily accessible.
  4. Communication is difficult and often breaks down completely prior to the foreclosure filing.
  5. Counsel for lenders are overburdened. In large foreclosure firms, files are consistently transferred from lawyer to lawyer, and department to department, after the complaint is filed. Files are also transferred between firms as banks merge or close. This creates a great deal of confusion for everyone involved.
  6. Continuous reassignment of files frustrates negotiations. Opposing counsels cannot obtain the identity or contact information for newly assigned counsel, and homeowners are completely lost in the shuffle.
  7. As a result of the securitization of mortgages, lender's representatives have only limited authority and risk liability for exceeding that which is permissible under the assignment or trust documents.
  8. Homeowners involved in negotiations send and resend information as directed by lender, but the information is often lost or misplaced as files are transferred.
  9. Code enforcement boards should be encouraged to reconsider old outdated policies and work with lenders who take possession of property. Collier County has adopted a policy whereby fines for code violations are waived upon agreement of the lender to remediate any existing violations and maintain the property. The program has been very successful to date.
  10. Lenders are taking cases through foreclosure but are delaying taking title to property to avoid liability for fines and liens on the property. Vacant abandoned properties then fall into disrepair and invite criminal activity.
  11. Lawyers representing lenders and lenders representatives need to be educated on the value of "dignified departure". Allowing the homeowner a few months to relocate and using "cash for keys" as an incentive will ensure that the asset is properly maintained and in good condition when title is transferred.

12. Courts are overburdened and unable to devote the time necessary for substantive review of issues. Legitimate defenses are not given the consideration they deserve.
13. Involvement of a mediator restores communication, which is necessary for loan modification or settlement.
14. We need to balance power by ensuring that all pro se homeowners have representation. Working through local bar organizations, we can easily enlist the assistance of lawyers who can provide limited representation probono / or for a reduced affordable rate.
15. Lawyers providing pro bono or limited fee assistance should be given immunity through legislation.
16. Modification is an obvious starting point, and when not possible, there is still a lot to discuss. Lenders and lawyers must be properly counseled on the points of negotiation.
17. In my opinion, the best results can be achieved through mediation, but EVERYONE involved in the process must be educated.
18. Whatever process is adopted, it must be clearly stated, easy to follow, beneficial to all, efficient, affordable, and effective. In my mind, mediation is the answer and education is the key.

- Early mediation intervention would help greatly. I am a part-time mediator and Judge Raul Zambrano of the 7th Circuit is beginning to send residential-owner cases to mediation before summary judgment. I have been appointed to five so far. My first one is next week. However I believe meditation should be ordered much earlier in the process. It probably should be ordered within 30 days of the response to the complaint. The reason I say that is as an attorney who is defending some of these residential-owner foreclosures I have noticed very little communication between the mortgagor and the mortgagee. The banks will contact the home-owner by mail and offer to settle and even send a package of materials to fill out. The owner will do as requested by the bank and not hear from them. They will contact the bank, be told the package never arrived and then sent a duplicate to fill out. Meanwhile the foreclosure process has begun and the owner is served with a complaint. Then the owner is trying to work with the refinancing arm of the bank and the legal arm of the bank neither of which know what the other is doing. It can be very frustrating. Early mediation in the litigation process would help foster communication between the bank and the residential owner. The upshot of that is the owner may be able to renegotiate the loan, save his house and credit and the bank will have one more toxic loan off their books. The downside to the owner is that they might get removed from their house earlier. These cases move very slowly even if the defendant does nothing. Matter of fact my partners and I sometimes discuss if it is better to do nothing for the owner who won't be able to save their home rather than draw the attention of the foreclosure mill that is prosecuting the case. If the court were to order mediation in all residential-owner cases I would suggest that it be made clear that the mortgagee send someone with total authority to settle and renegotiate the loan. I can see circumstances where someone would be sent with authorization for a few predetermined settlement outcomes but would have no authority to settle for a workable but imaginative outcome that would work for everyone. Thank you for allowing me to make suggestions. If we could just resolve 10%

of these foreclosures it would help the people of the this state and the country as a whole. The country will never get out of the credit mire we are in until this issue is resolved.

- Attached for your information is an analysis I prepared some months ago for Congressman Tom Rooney which describes my experiences with the foreclosure situation in Florida. I frequently found myself expending unproductive time and effort trying to identify a representative with authority to negotiate a resolution on behalf of the multiplicity of entities on the lenders' side of the table. As I note in footnote 1 to my "treatise," the style of the cases sometimes suggests the tragicomedy of the bundled security: "[1] In the case described in Para. I (A) above, the summary final judgment in foreclosure was issued to "Deutsche Bank National Trust Company as Trustee under Pooling and Servicing Agreement dated as of May 1, 2004 Morgan Stanley ABS Capital1 Inc. Trust 2004-HE3 Mortgage Pass-through Certificates, Series 2004-HE3." In the case described in Para. I (B) above, the original primary lender was People's Choice Home Loan, Inc. By the time the foreclosure was filed, the plaintiff in the case was "HSBC Bank USA, National Association as Indenture Trustee under the Indenture relating to People's Choice Home Loan Securities Trust Series 2005-4, Mortgage-backed Notes, Series 2005- 4." That foreclosure plaintiff then assigned its interest to MTGLQ Investors LP, who eventually assigned its interest to Avelo Mortgage, a Texas company." If this information is useful to you please use it as you see fit. I can be reached at 561-584-0183 should you have any questions. Please accept my thanks for your excellent work on this matter.

- I am begging everyone for your help in this matter. To make a very long story short my husband left me 3 times last year and the last time was for good. I was granted a divorce June 4th. I spent a year of my life cleaning up his mess. I had to claim corporate and personal bankruptcy and up until then I had excellent credit. I lost our automotive business, car, job and my life and I am trying very hard not to have my house go into foreclosure. At the time of filing bankruptcy my attorney was aware of the contract on the house and never told me I would lose rights to my house. At my bankruptcy hearing I made known to my attorney and Trustee Alexander Smith that I wanted to sell my house. At this point Mr Smith has not made a decision. The offer is $5000 more than what Countrywide wants in the short sell. The buyers are ready to walk away and I am frustrated that the state of Florida would put me through foreclosure when there is a valid offer on this property. Mr Smith told me that my real estate agent could call him, which she did several times. I still have no answer and time is running out. All I want is to do the right thing and be able to move on in my life. I did not ask for this .. My husband at the time did this to me. Please help me.

- I was reading about the Task Force that has been put in place in an attempt to resolve the issues involved in the massive home foreclosures taking place in Florida. I was excited to see that this problem is being addressed at some level in our state. I hope that the experiences I have had over the last six months will give you some insight into the many problems that currently exist. I am a Florida licensed Real Estate Broker and my husband is a residential home builder. As you can imagine, we have been struggling to keep afloat

in this housing crisis. Unlike many others, we have managed to keep our businesses going by working more and cutting back on all the non essentials. We are optimistic that we can continue to grow with the economy. Earlier this year I attended a weekend seminar to learn about Mortgage Modifications. It was very innovative and I was excited to show homeowners how they could save their home by modifying their current-mortgage: I started with my own mortgage~ so I could actually experience all the steps necessary to get the process completed. After several months it was apparent that there were many unscrupulous people out there preying on these homeowners. This made it impossible for me to continue my business. I didn't want to waste all the knowledge I had. so I decided to continue with my own mortgage and a few that I had started. I didn't charge anyone for this assistance. This gave me firsthand experience acting on my own behalf with the lender, as well working as a mortgage modifier. There are so many problems with the process that the typical consumer could never get through it.

1. The lenders don't have the staff to manage the amount of calls that come through each day.
2. The staff has no training or experience *with* mortgage modifications.
3. The staff is overworked and underpaid and their attitude reflects it.
4. There is no motivation or accountability for the lender to help the homeowner.
5. The homeowner is afraid of losing their home and talking to the bank.
6. The homeowner has no idea who to call or how to fill out the required paperwork:.
7. Because the lenders are understaffed they only deal with delinquent accounts.
8. The response time from the lender is 30 - 60 days between each communication.
9. The foreclosure process goes forward even though the homeowner is trying to complete the modification process. In addition to all of this the servicers hide behind a veil that they call "the investor". They have guidelines that they will not share with the mortgage modifier or the homeowner. They feed off the desperation of the homeowner like sharks. I have had several experiences where I was bullied by representatives that call themselves "negotiators". That title is completely inaccurate; there is no negotiating with them. The homeowner is completely at their mercy. If they actually get a modification package from the lender they must accept it even if it isn't what they expected or need. This explains why there are so many "re-defaults". The negotiators are insulting to the homeowner and judgmental about how they got into the financial difficulty. President Obama talks about programs to help the homeowner. but they do not address the declining housing market in Florida. Also. be bas programs> but there are no accountability on the part of the lenders and servicers. No one is enforcing these programs and looking out for the homeowner. The programs he has so far are a dismal failure. Somehow we need to force the lenders and services to actually deal with the homeowner in a polite, respectful manner. They act as if they had no part in this mortgage fiasco and that the homeowner is looking for a bailout. Actually, everyone benefits if the homeowner does not go into foreclosure. It is much easier for the lender and servicer to foreclose on the homeowner and let the attorney take care of it. That gets the file off their desk and that is all they are concerned about. One negotiator told me the other day that he had 475 files on his desk and I was number 186. With that he also told me the foreclosure process doesn't stop. Thank you for allowing me to share my experience. I hope you find it helpful.

Expediting disposition of uncontested cases

- I have heard many negative comments made about the system being used in Lee County, but it actually makes far more sense. All the cases that are not contested are set for hearing, sometimes hundreds in one day. If a Borrower comes to the hearing and indicates a desire to work the loan out, those judgments are not entered, but are deferred and often sent to mediation. If the Borrower does not care enough to come to the hearing, the judgment is entered. Many uncontested cases are removed from the backlog this way, and those houses are put back on the market to be sold at reduced prices to new owners that can afford them.

- Consider changing to an administrative (non-judicial / quasi-judicial) process.

- It would be useful if a single judge in each county would be assigned to all foreclosure cases

- NO MORE TELEPHONIC HEARINGS

- Allow attorneys and lenders to appear at court hearings and mediations by telephone as provided by the rules of procedure, to keep the costs down for all parties. Many counties now prohibit telephone appearances in foreclosure matters, which is a violation of the rules established by the Supreme Court. This raises the cost of litigation, and makes it more difficult for borrowers to cure the default.

- A Motion for Summary Judgment cannot be set for hearing until all of the necessary paperwork is filed with the Court (I witnessed a judge two weeks ago cancel 63 of the 65 Summary Judgment hearings scheduled before him due to Plaintiffs failing to file the necessary paperwork).

- Summary Judgment hearings should be held one day a week.

- As for the mortgage foreclosures, something needs to be done to keep the lenders from dragging on cases for a year or more. Lenders should have to file motions for summary judgment within a certain number of days after the case is at issue. They should then be required to request a hearing date within a certain number of days after that. They should then need to mail out the Notice of Hearing within a certain number of days after that. This would not only keep the case moving, it would keep us association lawyers more updated as to the progress of the case without having to constantly email the lender's attorney asking for updates. This would save my firm and their firm time, and time = money.

- Penalties should be assessed by the court against those lawyers who consistently violate the rules of the court. It simply wastes the limited resources of the court. It is not unusual

for our firm to appear for several Summary Judgment hearings before Circuit Courts throughout the state, and the court will enter our Summary Judgments and deny the Summary Judgments of the other 10 or so hearings on the same docket because the other firm(s) failed to follow the rules. It is the court's responsibility to reprimand lawyers who consistently do not follow the rules.

- Provide for Sanctions against Counsel working for Predatory Lenders.
  Every Florida attorney should know better than to bring actions which he or she knows to be in bad faith, the perpetuation of a fraud upon the courts and indeed, using the Courts to further an ongoing criminal enterprise.
  Whether it be misprision of felony, conspiracy or other breach of ethical rules, there needs to be a means of sanctioning conduct of attorneys who flaunt the disciplinary and ethical rules against bringing actions in bad faith.

- Require plaintiff's to prove their standing prior to filing a foreclosure action

- Using a Attorney No Equity Certificate, Have a specially designated EX PARTE DEFAULT FORECLOSURE JUDGE appointed in each County in every foreclosure case, the foreclosing attorney can Execute a CERTIFICATE with EXHIBIT A copy of Amt Affidavit and EXHIBIT B Copy of Property Appraiser 2008 just value If the UNPAID PRINCIPAL is GREATER than the 2008 PROPERTY APPRAISER VALUE. The foreclosure File can go to the DEFAULT FORECLOSURE JUDGE NO HEARING NEEDED but same Notices go out for Sale. That would knock out 70 % of cases out of the system. It is a matter of a Balance between Due Process versus reasonable person standard. A reasonable person (mortgagor owner or subordinate lien holder) would not redeem the mortgage for the unpaid principal when County Property Appraiser valuation is LESS than that unpaid principal. Maybe a Motion Order for a No Equity Ruling by foreclosure judge could put it on ex parte default fast track.

- Suggest the Supremes authorize a special division of Sr. Judges to hear mortgage foreclosures all over the State. Stopping fraudulent "lost note" claims.

- Clarifying what documents the banks should attach to the complaint (such as assignment executed before the filing of the Complaint and copies of promissory notes containing all endorsements and allonges)

- Requiring the production of certain "proof of loan ownership" documents as a matter of course (such as MERS tracking data) and "proof of agency" documents (such as powers of attorney or other authorizations to represent).

- Requiring that the note owner be joined in any action brought in the name of an agent or other third party.

- Prohibiting the practice of servicers or third-party foreclosure service providers from executing assignments as officers of their principals.

- Prohibiting the practice of banks' counsel of moving for default against every defendant, whether they have responded to the Complaint or not, forcing the court clerks sort out who should be defaulted.

- Requiring transparency from MERS regarding ownership of mortgage loans.

- Prohibiting the use of service of process to deliver advertisements to homeowners entreating them to contact Plaintiff's counsel to "negotiate" their loans.

- Stopping *ex parte* contact with the Court through the submission of orders to which the opposing party has not agreed or through failure to serve parties who have made an appearance in the case.

- Stopping communications by banks' attorneys directly with represented homeowners without consent of their counsel.

- First and foremost, the attitude that any delay of foreclosure cases is good MUST NOT inform and underlie our policies. Bankruptcy Court is already full of that thinking and borrowers can always go there when they have finished dragging out the State Court proceedings. Clerks are taking several weeks to enter defaults, in some cases, over a month. The Miami-Dade County Clerk is particularly unapologetic about this practice. Broward County judges coerce Plaintiff's counsel in foreclosure cases to "agree" to sale dates later than the statutory requirement.

- Policies that create additional hearings along the way are harmful, not helpful. Specifically, in several counties, judges are requiring a hearing after issuance of a Certificate of Title in order to obtain a Writ of Possession. Courts are also requiring hearings on defaults that should be entered by the Clerk. These policies tax the limited resources of the system without actual benefit to the system, and in fact make it much harder to get a hearing that is needed.

- In some counties, it takes 4 months to get a hearing on a Summary Final Judgment hearing after the case is at issue, regardless of whether there is any contest -- that is unacceptable in the extreme.

- Mandate judges to sanction foreclosure attorney law firms for failing to respond to defendant's counsel. If Defendant's counsel can show two letters have been written/faxed to the foreclosing law firm and no response is received, then let the Defendant's attorney get sanctions for filing/attending a hearing to compel whatever. So often the firms ignore you and only speak with you outside at a hearing, then agree to an order, and waste the attorney's time, the broke client's money, and the court's time as well as postpone time that other attorneys could use since some courts cut off the number of hearings allowed on their dockets. I have only once gotten sanctions even when the plaintiff's counsel fails to show up for a couple hearings as the judges say, you have to understand how busy they

are right now and how many hearings they have to attend. As a defense attorney, I have one client whose concern is saving their home, not someone else losing theirs. I had one of the large law firms disregard 2 court orders to compel providing a payoff amount as we (the second mortgage holder) could not get a payoff amount from them. Only when that judge awarded me sanctions did that law firm wake up and then threatened to turn the file into a contested file and start charging my client hourly.

- Provide that unless the foreclosure firm knows that the property is a duplex or more than a single family home that they cannot get costs for serving 4 unknown tenants on each file. Since all/most of the foreclosure firms have "bought" the process servers, all files have 4 unknown tenants so that they make an extra $120.00 - $160.00 per file in costs.

- Follow Palm Beach County's guideline and set up a separate foreclosure division so that you have one or two judges who really understand real estate law plus clear up the other judge's dockets to move along every other type of case. To even get on Judge Alemon's motion calendar, yes motion calendar, the first hearing date is in September.

- The statutes require that foreclosure sales be in 20 - 35 days -- follow the statute. I also represent private lenders who pay me a premium to move a case through only to get a first sale date of 63 days. This only increases the deficiency owed by the borrower. Don't give borrowers more time just because they ask unless there is a signed real estate contract, a firm loan commitment, and an affidavit by a licensed mortgage broker or Realtor that this is a real contract that they anticipate closing. The ones that ask or make up fake contracts don't care about a deficiency but they have had plenty of time to make plans. Time is money.

- The creation of a Foreclosure Division where judges based on [non-contested cases] would be able to quickly review these cases and expedite them. Because many judges do not care for this type of case, consideration could be given to simply rotating them through the division on a bi-weekly base. Alternatively, a master could be appointed to hear these cases, and a small charge of say, $25.00 could be assessed to pay for these cases before the master. This way, they could be handled without taking up the time of the court. Some counties have adopted a “rocket docket” for foreclosures, where the issues presented at hearing are limited and hundreds of cases can be disposed of daily.

- My suggestion is for the DRC to divert the foreclosures which show indicia of predatory lending practices into a task-specific working group.

- I know it is very difficult to draft valid questions because in the vast majority of cases the defendant never responds to the complaint or appears at hearing, which skews the data you will receive in response to many of your questions. In general, I have found the lender’s attorney will work with me and the defendants if a situation calls for that (i.e., defendant says waiting on response from lender). I am strongly opposed to required mediation in any of the cases in which summary judgment is appropriate, as forced mediation before summary judgment strikes me as judicial activism and borders on

impairment of contract. It also will result in increased societal and lender costs, in most instances without any benefit. In most of these cases the lender does not want the property because the value is significantly less than the mortgage.

Facilitating efficient resolution of cases where desire and ability exist

- It is my opinion that the judicial workload, in foreclosure cases, could be greatly reduced if plaintiffs' attorneys were required to serve a standardized "*Loss Mitigation Worksheet*" on mortgagors/defendants with the initial service of the *Complaint to Foreclose*. Mortgagors/defendants would be given the clearly stated option of furnishing the completed (in good faith) *Worksheet* to the P's attorney within the twenty (20) day response time provided for in the *Summons*. Upon receipt of the *Worksheet*, P's attorney would be obliged to provide it to his client and advise the court that it has been received and no further action will be taken (in the court) until "further notice". If settlement does not result, P's atty would be responsible for so advising the defendants and for filing and serving a request to defendants to respond to the *Complaint*, within ten (10) days. (See Fla R Civ P 1.190(a).) Once a responsive pleading is received from defendants, P's attorney is responsible for setting and coordinating mediation.

- Implement a procedure whereby the plaintiff must provide notice to the defendant of the person to contact to discuss settlement.

- From conversations I have had with plaintiffs' counsels, I understand that of the foreclosures, perhaps 20% are not government guaranteed or VA or with PMI (private mortgage insurance). Separate out the cases which fall into that limited class. Set them up for mediation. The restrictions on workouts will be less onerous and where there is a defendant with a paycheck, the possibility for quick settlement exists.

- The following are new guidelines approved by the Judges of the Fourth Judicial Circuit for homeowners' mortgage foreclosure cases in our Circuit:

  (1) When a Complaint for Mortgage Foreclosure is filed, the Clerk's Office will send this Notice to the filing attorney advising of our policy in this Circuit.

  (2) The attorney for the Plaintiff is required to provide defendant/ defense counsel with a direct line (phone number) to him/her.

  (3) The attorneys are to coordinate any hearings together with the Judicial Assistants. No hearing will be scheduled without the opposing attorney being involved.

  (4) No hearing on a Motion for Summary Judgment will be scheduled until the attorneys and parties have gone to a mediation conference, unless a Default has been entered.

(5) Prior to the mediation conference, and in a period of time sufficient for the lender to put together a modification package, Plaintiff's counsel for the mortgage company/lender shall send to defendant/defense counsel such financial documents as necessary to assess the ability by Defendant(s) to afford a modification.

(6) The mediation process shall last a minimum of one (1) hour, with the mediator having been provided with a mediation statement prior to the conference, the primary purpose of mediation being for the parties to work out a modification of the loan.

(7) The mediation can be scheduled in a room at the courthouse to be designated by either the Chief Judge, or the Chief Civil Judge, or at the assigned mediator's office, by agreement of the parties.

(8) When the mediation has concluded, the Mediator shall file a Report to Court with the presiding judge of that case, according to the Mediation Rules promulgated by the Florida Supreme Court.

(9) The mortgage company shall pay the mediation cost prior to the mediation, directly to the mediator at a flat rate of $500. Additional mediation conferences can be scheduled directly with the mediator, at the mediator's hourly rate.

(10) As it is under the Mediation Rules of the Florida Supreme Court, either counsel can file a motion with the presiding judge of that case to seek to have that judge dispense with this mediation requirement.

- Attached is the Mortgage Foreclosure Checklist I developed and require prior to entry of a foreclosure judgment. By doing so, many problems and errors are avoided.

Model Case Management Tracks

- Require lenders and owners to include unpaid maintenance fees and special assessments in any work-out plans or schedules of repayments

- Require attorneys for foreclosing lenders to respond within 30 days to requests for information from associations involved in the foreclosure.

- The court ought to require a first mortgagee to obtain judgment in 90 days, or contend with dismissal and an order subordinating the mortgage to the lien of the Association (Constitutional? Don't know. But, something needs to be done.)

- I would like to see a formal procedure which is the same for each Judge. I only handle a few foreclosures a year. The same judge who entered a foreclosure three months ago, now requires that the default be entered...but that wasn't true a few months ago. Please tell me the procedure and I will follow it. And please make it the same for each Judge.

- It will be necessary to have plaintiffs give the necessary information. Since special issues exist in different guaranty situations, it probably would be helpful for future programs to have plaintiffs specify in each case what guaranty, government program or PMI relates to the case. I would suggest that this be a requirement when any foreclosure case is filed if you agree with the concept of tracking mediations and settlements along the lines of programs and contractual rights affecting foreclosures.

- One possible solution to the problem would be to "fast track" the non-home owner / non-owner occupied investment properties from the start of the judicial process. These types of cases are currently mixed in with the true homeowner cases and are taking far too long to work their way through the system.
  Any unnecessary delay in the foreclosure of a vacant property only brings down the property values of the homes surrounding it and also cripples the associations, as no assessments are being paid. Any unnecessary delay in the foreclosure of properties owned by people who could never afford the mortgage at any interest rate cripples the banks and leads to the lack of lending to qualified borrowers, which in turn brings the entire real estate market to a standstill and forces property values even further into the ground. **The only solution to the foreclosure problem is to speed up the foreclosure process for uncontested foreclosure cases.** The Department of Housing and Urban Development reported that almost 80 percent of the nation owned a home in 2008. The HUD recommends that at any one point in time, no more that 70 percent of the nation should own a home. Therefore, 10 percent of the nation who owned a home in 2008 should have been renting and these are the houses that need to be foreclosed as soon as possible in order to solve the housing crisis. **What I would recommend is** a combination of the way Lee County and Palm Beach County operate in regard to foreclosures. In Palm Beach County, a letter is delivered to all borrowers as an attachment to the Complaint and Lis Pendens which states that mediation is available to them if they request it and provide financial information prior to the mediation. This protects those home owners that wish to work something out with the bank and avoids the process of calling up the lender and waiting on the phone for hours only to reach someone who isn't able to help you. In Lee County, they take it one step further. They set hundreds of foreclosure cases for hearing each day. If no one shows to contest the foreclosure, the judgment is entered and a sale date is set. If someone shows to contest the foreclosure, the motion for summary judgment is immediately denied and the case must be special set, often times after a mediation is ordered. A combination of the two systems would protect all borrowers who wish to enter into any kind of loss mitigation plan but also prevent the clogging up of the court system and clerks office with unnecessary foreclosure hearings and filings. It would also provide the stabilizing force behind repairing the current real estate market.

- Uniformity is essential

- A carve out should be explored for those lenders who hold their own Notes and Mortgages from origination to foreclosure and beyond. It seems that those lenders who are not part of the stream of lenders who have assigned their Notes and Mortgages and

who have either lost or unable to locate their loan documents, should not be penalized with the various procedures and costs being associated with mediation and now the increased filing fees. Moreover, it appears from reading the various articles and the various Administrative Orders from the various Circuits that there is a mistaken belief that all lenders know, or should know, whether the property is "owner occupied" at the time of the foreclosure action being filed. Although this may be true for First Mortgage holders, those holding second mortgages; especially home equity loans, do not have this information. As you are aware, at least one Circuit requires the lender's attorney to attest to the fact as to whether the property is owner occupied from the onset without being given the opportunity to indicate that such information is unknown. As an attorney, I truly cannot say that the property is owner occupied from the onset. We typically do not know until service of process is completed. Accordingly, it makes more sense to utilize the homestead election from the County Appraiser's Office as the triggering event.

- There is nothing in the regulation about a Homesteaded, paid in full property for more than 10 years in which a Board of Director's and its association want to foreclosure upon. Are you adding those words in this new draft??? For you to have a bigger picture.

- Example 1 is the board of director Sharon Dodge of our condominium threatening to foreclosure "see attached". **Below is a quick briefing of our case NO: 07-34758 CA (10)** My 78 years old disabled father, Pedro Paiva de Brito is an immigrant from Brazil and does not speak nor write English. He has undergone a quadruple bypass surgery and is now wearing a pacemaker and currently on about 13 prescription medications. In September 29, of 1995, he purchased the only one tangible personal property he ever had, a modest 400 sqf studio in Miami, Florida. The current estimated value of the studio is about $50,000. There is no mortgage since the property was paid in full at that time. He applied for the $25,000 Homestead exemption but that does not stop the association to foreclose his property. In mid 2004, Pedro ran into a series of financial and medical problems. As a result, he fell behind in paying his homeowner association dues of $670.11 a month plus special assessments. On June 26, 2008 Venetia Condominium Association, Inc. has accepted my offer to settle this matter in accordance with the enclosed Stipulation for Settlement in which I have been making payments even though they attempted to modify such Settlement when Venetia Condominium changed President and Property Manager. On April 13, 2009 Venetia Condo thru Attorney is requesting the FULL PAYMENT no later than April 30, 2009 otherwise will foreclose on my family unit 421. We never imagined and were stunned by a process that quickly mushroomed when the homeowners association filed this foreclosure Notice by April 30, 2009. This is but one more shocking example of aggressive and predatory homeowner association attempting to foreclose on homes for assessments fees of past mismanagements. If the special assessments had not kept racketing upwards at an irrational manner by such homeowner association my father would not be in such increasing danger of losing his only place to leave. Even though my parent may have been in the wrong, or didn't know, this is legalized burglary. Legal or not this is morally wrong, and should never happen. There's no way that Venetia association, in its entire existence, could do enough good to compensate for what they've done to many families.

In my opinion, it's simple, "The penalty doesn't fit the crime." As a Federal Law Enforcement Officer with the Federal Government I barely make enough to support my family including my parents, unemployed wife and 2 ½ years old son could assist us in saving my father studio. It is long overdue for legislation to ban foreclosure in these situations. Foreclosure is the last resort for banks, for municipalities, a last resort for everybody except these foreclosure lawyers and associations. If judges don't step in, if legislatures don't step in, this is really going to hurt the market. Homeowner association lawyers have cottoned on to the fact that foreclosures in homeowner associations can be very lucrative. This is criminal. The scam can only get worse and worse. My father need help to get his studio back. We've built this studio with a lot of love and hard work. We have blood and sweat and love invested in this place. Could you assist us in anyway, I will be free tomorrow to come in and discuss the problem at any time.

- I represent homeowner and condominium associations. One of the biggest remaining problems is that during the mortgage foreclosure, no one is paying any current assessments. The cases may be pending for months while the mortgagor and mortgagee may be trying to agree to a resolution; however, the homeowners' assessments are never a part of the agreement nor does anyone pay them. Everything is confidential, so the association can never get any information from the mortgage company's attorneys about anything. I had a case where the mortgage company started a mortgage foreclosure but did not obtain title so that they would not owe any more assessments themselves other than the previous six months allowed by statute. I had to ultimately foreclose on my lien, take title, dispossess the unit's mortgagor and then wait for the mortgage company to finally take title some months later. Associations need some relief from this. One final point. Many associations are obligated to do major maintenance on the units e.g. roofs. When the mortgage company takes title, paying at most six or twelve months of assessments, they then take title and sell the unit requiring by document that the association pay for the new roof while the association may not have received any assessments for years before. ASSOCIATIONS NEED RELIEF.

Model Administrative Orders, forms, and final judgments

- First - each foreclosure should require that the filing include PROOF that the Fair Debt Collections Act has been complied with - i.e. - file a copy of the certified letter showing date mailed, date received or service via publication, if the person cannot be served AND show that the required 30 days has expired. Second - in condominium foreclosures - a copy of the condominium association's response and approval for said mortgage must also be filed with the foreclosure. Both mortgages in our association are in excess of the permitted mortgage amount, one of which, the mortgagee did NOT seek any information or contact whatsoever prior to giving the mortgagor the mortgage! The tax assessed value of that unit was $95,000.00, yet the mortgage is being foreclosed in the amount of $144,000.00! The association does not allow any mortgage to be in excess of 80% of the tax assessed value of the unit, yet the mortgagee exceeded that amount without the condominium association's knowledge. They, therefore should NOT be permitted to foreclose the association's interest by virtue of a first mortgage position/ and furthermore,

should not be entitled to any priority over the association due to the fact that they side-stepped the required process in putting a mortgage on the subject property.

- What we need is a **universal form** like other counties have where the Final Judgment is all inclusive and standardized so that the foreclosure firms do not add, delete, or change anything from them. For example, some forms automatically provide for the cancelation of the judicial sale if the plaintiff is not present (in Flagler I later learned that he Clerk cancels it if they don't see the plaintiff's representative despite the fact that there is no provision in the FJ). Some FJ now have included Court Call fees – I strike those as soon as I see them. Some FJ have as much as $1,000 for service of process – what a bunch of hogwash. And so on….. A standardized form statewide that prohibits some of this stuff would go a long ways towards streamlining the system. Sortakinda like the injunctions forms.

- I believe that the influx of new defense counsel in the area of foreclosures, should also be required to execute Certifications attesting to the fact that they have reviewed the loan documents attached to the Complaint in making an informed decision when proceeding with their defense of the action. It is becoming more evident each day that these new breed of attorneys are utilizing form discovery and pleadings that apparently were provided at a seminar without being customized to the particular case.

- Have a checklist that is done prior to a motion for summary judgment that all pre-requisites, i.e. no outstanding motions, all documents to prove standing

- I was admitted in 1986 and practiced awhile in Pinellas County where we often resolved cases using a court-approved form "Stipulation in Lieu of Judgment" to relieve the court of further congestion and simplify the plaintiff's remedies in the event of default. Judge Roy Ulmer, Judge Tom Penick, and Judge David Seth Walker will be able to confirm how this relieved the court's docket tremendously ... *when the lawyers involved were clever enough to use it.*
  In those simple cases, the stipulation agreed to only three things:
  1. How much was to be paid
  2. Terms of payment
  3. Consequence of default, being immediate judgment and writ of execution without recourse to further discovery or trial.

  The stipulation could be entered with or without a mediator. Once entered, the court signed a form order decreeing that the parties were bound by the terms of their stipulation. If the defendant paid, the plaintiff and defendant won. If the defendant defaulted, the plaintiff got the judgment without further expense. Either way, the court won, because the docket was cleared with virtually no time required by the assigned judge. All that remained was for the now judgment creditor to use post-judgment discovery and levy with the execution through the sheriff.

- Establish a state-wide uniform set of rules that will allow the uncontested cases to smoothly flow through the court system. This should include a worksheet that would

require the lawyers to have all of the proper documentation 100% available at the hearing. The documentation may include the original documentation (note & mortgage), the appropriate affidavits to prove up the case, a uniform type of Final Judgment, Notice of Hearing, etc

- Comments re: Fla. R. Civ. P., Fla. R. Jud. Admin, Fla. R. App. P., and Fla. Code of Judicial Conduct. And, there application in the 13th Circuit Court in Hillsborough County in Florida. While the issues in my case are specific to the 13th circuit court, they are not isolated to the 13th circuit court, they permeate to the 2nd DCA. The records demonstrate both courts discriminate and treat differently pro se defendants and isolate them as suspect classifications violating their due process rights. Four other 2nd DCA mortgage foreclosure cases can be found where pro se defendants were treated differently and denied their rights to meaningful hearings. Not just one, but multiple failures during their proceedings. Meaningful hearings defined by *Baron v. Baron, 941 So 2d 1233, 1236 (Fla. 2nd DCA 2006)* itself and by the U.S. Supreme Court in Fuentes v. Shevin, 407 U.S. 67 (1972), and Goldberg v. Kelly, 397 U.S. 254 (1970). The Stack case took almost five years and the Vollmer case took two years. **(1).** Vollmer v. Key Development Properties, Inc., 966 So.2d 1022 (Fla. 2nd DCA., 2007) 15 **(2).** Vollmer v. Key Development Properties, Inc., 908 So.2d 1073 (Fla. 2nd DCA 2005) **(3).** Stack v. Homeside Lending, Inc., 976 So.2d 618 (Fla. App. 2nd DCA 2008); **(4).** *Stack v. Homeside Lending, Inc.*, 846 So.2d 663 (Fla. 2d DCA 2003)The representative cases, as is my own, were initially litigated by pro se parties, denied by the circuit courts, then on appeal were denied again by the 2nd DCA. But only after the pro se parties hired attorneys who filed new briefs were their cases given new trials. In a review of the appellate brief, the same claims of due process were expressed, but the 2nd DCA refuse to give credit to the pro se party's brief's. The issues are different treatment against a suspect classification with discriminatory action under color of law by a Florida State employee of the circuit courts, against a Pro se defendant. These actions of discrimination are supported by the District Courts, when the circuit courts do not provide findings of fact, conclusions of law or written opinions, but yet deprive the pro se of their property. Disregard Pro se Defendants motions, pleadings and request for hearings that result in violations of Title 11 362 Bankruptcy automatic stay by the plaintiff-attorney and the circuit court judges. Refusal to allow or permit pro se parties to schedule hearings and cross examine plaintiff as witness. Judges and plaintiff attorneys are allowed to conduct ex parte communications, without notice to pro se party, where draft orders are signed and issued. Exclusion of evidence from pro se party, where pro se discovery is quashed. Refusal of the court to rule on motions pleading- federal questions, fraud by attorneys, refusal to issue final orders that allow the plaintiff-attorney to avoid due process, after twelve years. Refusal to grant or rule upon five §38.10 motions to disqualify trial judge. Judges refusal to comply with Fla. R. Jud. Admin, Rule 2.330, and reassign the case to another judge after 30 days. When judges do not provide in their denial orders, findings of fact, conclusions of law and written opinions they disrupt and prevent the appellate process. When judges wish to destroy or punish a Pro Se or non-white person, they turn over case management to the opposing attorney and allow such violations of due process that they know are so unbelievable, that other judges (Chief Judge) will disregard the

complaints, motions and claims of the pro see party, even to the extent of the 2nd DCA in this case. While I do not want these comments to come off as a complaint from an angry litigant, the facts are the facts. It is standing policy, not just in one division of the 13th circuit court, but unfortunately in many of the county and circuit divisions, that as a pro se party, the pro se's are treated differently as a suspect classification and discriminated against by specific judges. Notice to the Chief Judge does nothing to address the issue or to explain why the actions are not departures from law. They just ignore the motions seeking clarification. I will say that as a pro se party, I did come before Judge Claudia Isom and she was respectful and fair with this pro se party. I am glad to see that she has some input in the evaluation process. (Judge Isom was not a mortgage issue.) 16 The problems lie with Judges Richard A. Nielsen, Charles Bergmann and Chief Judge Manuel Menendez. Pro se litigants, Plaintiff and Defendants are not allowed to schedule hearings. Contact with Judicial assistants by telephone, are met with disregard and violations of due process. These JA tell pro se parties that the judges do not permit pro se parties to scheduled hearings, and that the pro se must file a motion/pleading and then the judge will determine later if a hearing is warranted. In the cases of property forfeiture, the defendant has a right to be heard in hearing. This matter has been resolve in *Goldberg v. Kelly, 397 U.S. 254 (1970)* A sample of different treatment is that an attorney can go on-line and use the judicial calendar to schedule anything they want Further, judges in mortgage foreclosure cases conduct ex parte communications with the plaintiff attorney, turning over case management to that attorney and adopting and signing draft orders without the notice of participation of the pro se defendant. Conflict with Code of Judicial CONDUCT FOR THE State of Florida as amended through July 3, 2008**:** Canon 3.B.(7) Adjudicative Responsibilities. The 13th Circuit does not allow Pro se parties to plead fraud, jurisdiction or exercise their rights under §38.10 to disqualify a judge. Once you file a motion to disqualify the trial judge and that judge is noresponsive, that judge is permitted to continue to proceed with retaliatory actions against the pro se party. Conflict with *Livingston v. State 441, so 2d 1083, SC of FL 1983; and* Tableau Fine Art Group v. Jacoboni, 853 So 2d 299 Fla. 2003. Retaliatory actions such as; (1) ignoring specific timely motions, (2) denying pro se motions that present federal questions of active Title 11, Sec 362 -jurisdiction and §45.0315, or pleadings under §45.031 irregularity and Fla. R. Civ. P. Rule 1.540 and then later successive §38.10, and rule 2.330. Once these types of motions are filed, it is impossible for that pro se party to convince any attorney to take on the case, because those attorneys are afraid of retaliation by the circuit court judges. In this case, this matter has been going on for twelve years (1997). The court refuses to conduct a hearing on the lost note affidavit. An affidavit that was filed by a third party. It just so happens that the lost note was not lost, but part of a Credit Default Swap, (CDS) which means that once the Plaintiff (Bank) files a foreclosure default, they can claim the principal amount insured under that CDS. Therefore, receive an unjust windfall, by claiming the mortgage note is lost, when in fact it is in the hands of the insurance company. This is fraud upon the court. But if the pro se cannot schedule a hearing, then the pro se cannot examine the plaintiff as witness and if the circuit quashes all discovery and subpoena, the evidence never gets into the record via a hearing. However, in this case, the pro se defendant proffered to the circuit attachments, certified by the custodian of these records with numerous motions. If the pro se defendant cannot schedule a

hearing, they cannot present evidence or question the plaintiff about five timely tendered full payments to execute §45.0315. Cannot dispute an ex parte issued judgment that was entered without hearing. Therefore, in order to protect the pro se property and due process right, the State circuit court pro se hires an attorney to file a Chapter 13 bankruptcy, in order to exercise §45.0315. After 24 months in bankruptcy, the Plaintiff-attorney flies to lift the automatic stay, which was denied by the bankruptcy court. After 31 months the Bankruptcy court orders the parties exercise §45.0315, as defined in the Chapter 13 Plan. But instead, of complying with the bankruptcy courts order, the plaintiff conducts ex parte telephonic conversations with the State Circuit court to reschedule a foreclosure sale. From this Ex parte communication the circuit court signs plaintiff- draft orders the same day, again without hearing or notice to the pro se defendant. However, upon receipt of the orders from the circuit, the pro se defendant files a motion noticing the circuit court of bankruptcy jurisdiction, five tendered §45.0315, rejected by the plaintiff-attorney, evidence by attached §701.04 letters, and the pro se defendant request for hearing and 17 orders to compel and intervene for right of redemption. The pro se defendant filed appraisals of the property requesting §45.031(8) valuation, requested mediation and reconfirmation after 31 months of no State court record activity, and payments of $16,024.00 made during the current active bankruptcy. The court again refuses to permit scheduling of a hearing by the pro se defendant. And never issued an order on numerous motions filed with these pleadings. Violations of Fla. R. Jud. Admin, Rule 2.215 where the judge must rule on every matter submitted within a reasonable time. After all this, the circuit held several hearings, but at the request of the plaintiff attorney, for sanctions and show case hearings against the pro se defendant. In each case discovery was quashed and clerk issued subpoena were quashed prior to the hearings. The circuit court in quashing subpoena, waived plaintiff testimony, prohibiting any cross examination or affidavits from the plaintiff on the subject matter, i.e. Bankruptcy fees. In one instance, the court took the sanctions under advisement because the pro se party proved the affidavit filed was fraudulent and not from the plaintiff, but from an outside third party claiming fees. This order remains under advisement pending for three years. These hearings were held because the plaintiff ask for sanctions and additional attorneys fees during the bankruptcy (*28 U.S.C. § 157(b)(2)* makes the assessment a core proceeding and *11 U.S.C. §1322(b)(2), Section 506(b*) prohibits the state court to consider) and the circuit court issued a show cause order, because the pro se defendant presented to the Hills Co Sheriff Dept., a certified order from the Bankruptcy court to stop the writ of possession. Disregarding the circuit court reissued the writ of possession, with orders that the Pro Se Defendant must file a new petition of bankruptcy after the date of the circuit courts orders. The problem here is by filing a new bankruptcy petition, that new petition automatically terminates the automatic stay because it is presumed to be filed in bad faith, as defined by *Title 11 Chapter 3 Subchapter IV §362*. This order by the circuit judge subjects the pro se party to Title 11 Chapter 1 §110 Penalty for persons who negligently or fraudulently prepare bankruptcy petitions**.** This is a trick by the circuit judge to get the Pro se untrained party to waive his rights under the automatic stay. This act by the circuit judge acknowledges notice of the bankruptcy and shows clear lack of jurisdiction. I would have file a new petition, if I had not read the petition currently active. In most cases, the pro se will sign a bankruptcy petition without reading its

because his attorney tells him to do so. The record demonstrates that in the ex parte communications between the judge and the plaintiff attorney that the attorney mis-represented to the judge that the pro se defendant's bankruptcy was dismissed with prejudice. However, if the circuit judge had permitted the pro se defendant to participate in the conversation or held a hearing after 31 months of no state court activity or at the least followed the rules under Fla. R. Civ. P. Rule 1.420(e) for failure to prosecute and conduct proper hearings, the court would understand the dismissal was against a deceased party in the bankruptcy court and not against the pro se defendant. The court was presented with these facts via a motion request for hearing that attached a certified copy of the bankruptcy courts docket and orders. The court never ruled on the motions filed by the pro se party. Again, conflict with Fla. R. Jud. Admin., Rule 2.215. Over the next four years, the pro se files motions with these same pleadings and request. The motions are never rule upon. The pro se defendant files numerous motions with the Chief Judge, under Fla. R. Jud. Admin, Rule 2.545(c) for failure to advance the case. The circuit court issues orders on the motions submitted to the chief judge, using the terms "moot", "without merit in law and fact" or simply denied. The problem here is that a limited record exists with no legal opinions and no findings of fact or conclusions of law to appeal. The main due process issue is, the circuit court refuses (as recorded in a transcript hearing) to issue a final order. NO order has the word final in it or titled. No order in the record resembles (1). Administrative Order S- 2008-145 Final Orders; (2). Administrative Order S-2006-035 Uniform Motion Calendar (3). Uniform Final Judgment of Foreclosure form or (4). Certificate of Compliance with Foreclosure Procedures in form or substance. In short, the pro se defendant has filed appeals seeking Fla. R. App. P. Rule 9.110 final orders Each appeal was revised by the 2nd DCA to proceed under Rule 9.130 non-final. Each order appealed never expressed any opinion, findings of fact or conclusions of law, and never addressed the federal questions presented. The circuit orders only used the terms "Denied", "Moot" or "without merit in fact or law". And, in most cases, the orders never deny the subject matter, but deny the complaints filed with the Chief Judge under 2.545 for failure to advance the case. The subject matter is still pending. In each case of an issued order, the pro se defendant would file a motion for rehearing and or clarification, and request for a written opinion. These motions were met with an order that states "denied". Without a written opinion, the DCA ruled "Affirmed" or PCA. These unelaborated decisions were met with motions requesting rehearing, clarification and rehearing En Banc, citing conflict with other decisions for the same districts and other districts and the Supreme Court on the same questions of law. The 2nd DCA responded in each case with "Denied". Thus without written opinion, there is no ability to establish jurisdiction under the Supreme Court. The Pro se then files request for judicial records which establish the reporting of the circuit judge about the case and if final orders were issued. The Chief Judge ignores the motions. The pro se files motions with the Chief Judge and circuit judge to request under Fla. R. Jud. Admin, Rule 2.545(c) priority case status and reassignment to another judge because there are five pending §38.10 motions served upon the judge and in the record. The Chief Judge delegates to court attorney who submits a letter stating that only Family Law cases can be listed as Priority Status and then delegates the motion to the same circuit judge for ruling. That judge then rules the motion as untimely, never addressing the subject matter or federal questions

reiterated over the previous three years or the pending motions never ruled upon that were timely filed. Finally, the pro se defendant makes repeated expressed requests over two years to request from the court a final order. The court rules the motion as "moot". Again, without a written opinion or addressing of the subject matter, the 2nd DCA rules the appeal denied. With out opinion and not eligible for jurisdiction with the supreme court because of the unelaborated opinion. The pro se files two writs, mandamus and certiorari, but files them with the circuit clerk, thinking the process was the same as a notice of appeal. The clerk request the pro se change the heading and refile. The writ's are assigned a case number, and judge, and then later dismissed for filing in the wrong jurisdiction. The pro se party files a motion to transfer citing FL. Const. Art. V, Section 2(a), Fla. R. App. P. Rule 9.040(b)(c), and numerous case law. The 2nd DCA denied, and denied clarification, denied request for oral argument, denied request for stay to hire attorney, (the pro se found an attorney who ask pro se to request ability to consolidate cases, seek final order from circuit court or allow attorney to file reply brief, citing precedence of the court permitting this in Better Government Assoc Sarasota County v. State Case No. 2D01-3285 2nd DCA (Fla. App., 2001)), the 2nd DCA prior to denying the motion, the 2nd DCA ten days after the order issued Mandate prior to ruling on the motion for rehearing and clarification, again without written opinion. The Supreme Court had to issue an order stating the DCA had not ruled on the rehearing and clarification motion. The DCA issued its denial order on the rehearing motion within days of the Supreme Court order. The issues are these: the Florida courts conduct trials and hearings in a manner that is arbitrary and capricious. These courts believe they can waive due process and treat differently suspect classification pro se parties with disregard. While I started out with an attorney, the process broke down because my attorney was incompetent and failed to pursue the lost affidavit, when they claimed that no attorney would submit a false affidavit. So the attorney did not schedule a hearing on the matter. Because a court has the egregious nature to conduct case management without both parties and hold ex parte hearings is criminal. These judges understand their acts under color of law, will be affirmed, if they intentionally do not provide any written opinion, ignore pro se motions and do not explain their reason why the judge waives hearings, quashes pro se discovery, and terminates all due process for the pro se. Then by acts of disregard issues orders of writ's of possession, where party must give up a property value at $1.2 million for a principal balance of $144,000. Then not hold hearings and allow the plaintiff to conduct secret sales of the property. This disregard terminates the ability to participate in §45.0315 rights of redemption. The property was allowed to be sold July 7, 2007. Sold without notice, to either the court or the pro se defendant in a secret sale for $257,000, when the judgment was $224,606.46. The circuit will not conduct a surplus hearing nor issue a final order. The sale was found out only because the plaintiff sold the property to the pro se defendants new lender who attempted to execute §45.0315 five times. I am very open to talk with any one or have this publicly listed.

- Having been a former county judge, I have some familiarity with landlord/tenant law. There are some evident parallels between claims of a failure to pay one's rent and claims of a failure to pay one's mortgage/note. In mortgage foreclosure cases it is common for the defendant to assert a litany of affirmative defenses – some of which may or may not

be valid. The same is true for landlord/tenant defenses. Florida's legislature has honed in on the primary issue that drives evictions and that is whether the tenant has paid the outstanding claimed rent. In every foreclosure action lack of payment of the debtor's mortgage/note is the primary issue.

F.S. 83.60(2) requires a tenant in residential eviction to pay the claimed rent into the court registry. Once the amount claimed is paid, the defendant/tenant can then assert all his or her affirmative defenses. Otherwise, the only recognized defense is that of payment. Specifically, F.S 83.60(2) provides: In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a write of possession to issue without further notice or hearing thereon. In the event a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenant or tenants receiving rent subsidies shall be required to deposit only that portion of the full rent for which the tenant is responsible pursuant to federal, state, or local program in which they are participating. The statute is instructive. The task force might want to consider proposing a similar statute on foreclosures.

Representation Issues

- Predatory practices by non-lawyers "attempting to assist" the borrower
- Lenders' lawyers not having the authority to promote a resolution
- It should be a requirement that the foreclosing party be represented by legal counsel located in the County where the foreclosure is taking place
- When I am at a foreclosure hearing, I will often answer questions from the pro se Defendants. The questions are usually about procedure. Although the Lender's attorney is there answering their questions, I think they prefer a 2nd opinion. You might consider consolidating the foreclosure hearings even more and ask for volunteer attorneys to help pro se litigants.

- Provide a general fee schedule for payoffs/reinstatements. The foreclosure firms want $1,500 for a payoff/reinstatement when the complaint is just filed yet will only get $1,200 from the court if they complete the file including the sale. For example, attorney's fees for filing the complaint cannot exceed $400; for filing the MSJ cannot exceed $800, and cannot exceed $1,200 after judgment is entered unless the judge orders otherwise. Probate attorney's fees are provided by statute. I glance at the criminal stuff and know that independent criminal counsel fees are controlled by statute. If you argue with the firm that the fee or costs is excessive then they say, we'll just make this a contested hourly file if we have to go to court on the question of our fees and if you go to court, the judge gives them the fees. It doesn't pay to fight and yet it sure isn't fair to make more money for doing less work because you have someone who can refinance or reinstate their loan or sell their house.

- Provide Training Seminars in Defenses against Predatory Lending.
  Because predatory lending is often very subtle, it is important that legal counsel be taught to recognize just what sort of earmarks distinguish simple poor judgment on the part of borrowers, from deceptive and unscrupulous lending practices. Course, such as those taught by April Charney of Jacksonville, need to be replicated and widely disseminated.
  http://floridaforeclosurefraud.com/tag/april-charney/
  This should include an aspect of training directed to judicial personnel so that they could immediately recognize the presence of fraud in such actions, particularly when dealing with pro se defendants in county courts, and to provide latitude to County Judges to make decisions sua sponte with respect to dismissal of actions or even assignment of private counsel where it is clear that the plaintiff seeking summary eviction is itself in breach of one or more criminal statutes.

- We need to balance power by ensuring that all pro se homeowners have representation. Working through local bar organizations, we can easily enlist the assistance of lawyers who can provide limited representation pro bono / or for a reduced affordable rate.

- Lawyers providing pro bono or limited fee assistance should be given immunity through legislation.

Alternative Dispute Resolution Issues

Generic/background ADR issues

- Reaching the representative from the bank on the phone and keeping them there until the mediation is finished

- The fee not being received pursuant to the administrative order

- I was able to find a copy of the Foreclosure Mediation Task Force's interim report of May 2009 on the internet. I was not aware this report had been generated and submitted, and

would like to know how one might access this information going forward. Is there an opportunity to notify the mediator community? I checked the DRC website and did not see any mention of this report, nor have I seen anything posted in any other Florida link. I read the report and the task force is to be commended for their work thus far. The report shows a tremendous amount of research as well as thought has gone into this overview. As I read it, though, I was surprised to see the only place they communicated information about the formation of the task force was in the Florida Bar news. Since a significant number of Florida mediators are not Florida Bar members, the information was not forthcoming. I, for example, learned about this task force through a newsletter based out of Illinois. Coincidently, that is the same place I learned about this interim report. My first request, therefore, is whether the communication model can be improved to ensure all current mediators be made aware of this effort. I would also like to suggest that the task force broaden their scope of input by including more than just attorneys when soliciting feedback. For example, several of the questions asked in the attorney survey, such as what is a reasonable rate for foreclosure mediators, would they be willing to receive specialized training to become eligible to mediate foreclosure cases, would they be willing to do pro bono in exchange for receiving paid cases, and if yes, what percentage would they accept, could also be answered by current circuit certified mediators since this area is no longer limited to attorneys. With the vast array of certified circuit civil mediators across the state, it just makes sense to be more inclusive when surveying potential foreclosure mediators since many non-attorney mediators have special skill sets that should make them desirable for this program. As stated in my previous feedback, I hope this task force creates a reasonable training program of not more than one day, or perhaps even half a day, focused solely on the technical aspects of foreclosure mediation. To require much more would be an unnecessary burden and cost to current certified mediators. Thank you for allowing me to express my views. And thank you for the important work you are doing.

- In response to your requests for comments, I submit the following _ for consideration.
  1. In Post-filing mandatory mediations require the Borrower to meet with an accountant or a Credit Counselor approved by the Court or appear with an attorney who has reviewed the financial status of the Borrower.
  2. Require the financials presented at the mediation to be in the Lenders hands for appropriate review X days prior to mediation.
  3. Require the Lender to provide its forms to the Borrower with service of the Complaint or accept the forms already available from the Collins Center.
  4. Advise the Borrower that he/she must have pay stubs, tax returns, bank statements, etc. at the mediation.
  5. Rewire that the there be at least one telephone conference between the Lender's Representative and the Attorney representing the Lender prior to the mediation.
  6. Consider developing and/or endorsing a plan for pre-suit mediation.

Training Objectives and Standards

- I believe no separate certification is needed to conduct these mediations; circuit civil should suffice. It would be helpful if there were a designation, however. One would obtain the designation by attending a half-day training on mortgage foreclosure law and issues (much as, for example, Collins Center did for its hurricane mediation program) or by demonstrating a certain minimum experience with these issues, either as a lawyer, mediator, or mortgage professional.

- I am writing to provide input on the Mortgage Foreclosure Task Force established to evaluate the need for a statewide program to address the foreclosure crisis. I am all for consistency and standardization across the many circuits in Florida and am anxious to see what the committee recommends. I am a certified Circuit, Family, Dependency and County mediator residing in the 6th circuit. I am also a licensed mortgage broker and as such, offer expertise that could be valuable to this team. Based on this expertise, I would like to suggest the following: Foreclosure mediators should (optimally) be Circuit Civil certified mediators, primarily because of the complexity of mortgage cases and the need to work between multiple parties, including consumers, banker personnel, attorneys and other professionals. Dependency mediators are also trained in multi-party mediations, and if their (other than mediation) training or experience warrants it, could be considered if the need for additional mediators should arise. Any training program resulting from this task force should be based on two primary areas:
  1. Length of training. Foreclosure mediation training should focus solely on providing technical information--there should be no requirement for basic mediation skills training. Assuming only certified mediators will be considered for the program, it should be assumed the mediator has already completed a course where basic skills have been addressed. Therefore, the technical training should be expected to take between no more than one full day of training at most.
  2. Cost of Training. The fee for foreclosure mediation training should be kept to a minimum and should be consistent across the circuits and providers. Training fees should be sufficient to ensure the training provider a profit; however, the training program should not be a cash cow. This is a program to address a state-wide crisis and the training should reflect our industry's (ADR) commitment to solving the problem.
  Mediators with specialized skills and training, for example those in banking or mortgage brokers or mortgage processors, should provide input during the development of said training, and minimally, should be invited to participate in a pilot training program before it is finalized and disseminated across the state. The training should not be created in a vacuum without the expertise of those who know the industry from both a financial perspective and a mediator's perspective. It will result in a more focused training program. I admire the task force's commitment to this program and appreciate the enormous task at hand. I believe if the task force keeps these simple suggestions in mind they will be able to create a more focused and affordable program that will garner results in a short amount of time. Thank you for allowing me the opportunity to provide input. Please feel free to contact me if you have any questions or require additional information. I wish the task force success and look forward to learning more about the solution they devise.

Exchange of Information Prior to Mediation

- Your mediators/lawyers need to provide at mediation … information to the homeowner regarding the issue of "standing" by foreclosing party.

- Help for tenants who are paying their rent but the mortgagor is not paying the mortgage i.e.: notification to the tenant that the homeowner's property is subject to a foreclosure; homeowner could not evict tenant while foreclosure pending as long as the tenant is putting rent money into escrow.

- In response to your requests for comments, I submit the following _ for consideration.
  1. In Post-filing mandatory mediations require the Borrower to meet with an accountant or a Credit Counselor approved by the Court or appear with an attorney who has reviewed the financial status of the Borrower.
  2. Require the financials presented at the mediation to be in the Lenders hands for appropriate review X days prior to mediation.
  3. Require the Lender to provide its forms to the Borrower with service of the Complaint or accept the forms already available from the Collins Center.
  4. Advise the Borrower that he/she must have pay stubs, tax returns, bank statements, etc. at the mediation.
  5. Rewire that the there be at least one telephone conference between the Lender's Representative and the Attorney representing the Lender prior to the mediation.
  6. Consider developing and/or endorsing a plan for pre-suit mediation.

Existing Rules/Emergency Petition

- Whatever process is adopted, it must be clearly stated, easy to follow, beneficial to all, efficient, affordable, and effective. In my mind, mediation is the answer and education is the key.

- Perhaps TRAINED mediators and mandated education on the part of borrowers (where they are forced to be realistic about what they "need" as opposed to what the "want" is the answer. Lenders should be forced to re-negotiate loans in a reasonable manner, borrowers should be prepared to live within their means FOR A CHANGE.

Alternative Dispute Resolution Residential Mortgage Foreclosure – Administrative Order

- Require mediation or some other mechanism prior to final judgment for borrowers who would like to work out a solution.

- Mandate all Plaintiffs to mediate when homestead property is involved. This should be a condition precedent before a Summary Judgment hearing may be held.

- Adopt the approach taken by some counties, where the foreclosing mortgagee serves a notice with the complaint, giving the borrower an opportunity to request mediation, and requiring the borrower to provide the lender with up to date financial information so that the lender can make an informed decision on the borrower's ability to make payments. This notice can also identify the name and phone number of a mortgage company representative who may speak with the borrower to discuss what loss mitigation options may be available to the borrower. Before mandating costly mediation, the court should require the parties to speak with each other in an attempt to resolve the delinquency.

- Mandatory mediation between the borrower and lender

- Require that all persons that come for mediation representing a bank have full authorization and not be limited by "company policies" - otherwise sanctions

- I suggest the ADR rules require the mortgagee initiate the ADR process at the first payment default or, at least the mortgagee be required to make an evidentiary showing it has made a reasonable attempt to meet with the mortgagee and arrange for, and offered, a compromise on its fees and costs. My expectation is this early engagement of the mortgagor by the mortgagor could avoid more late fees and attorney fees.

- I am writing to strongly urge those charged with the responsibility of drafting uniform rules to govern mandatory mediations of mortgage foreclosure lawsuits… to consider an opt-out provision for financial institutions and mortgage/servicers who have pre-suit mediated the delinquent loan within a short time period (3 – 6 months), prior to the filing o f a lawsuit…. Without such an opt-out provision, there will be absolutely no incentive for lenders and mortgage services to modify and work out delinquent mortgages prior to filing suit. Presently, many lenders pre-suit mediate delinquent loans, especially those involving larger outstanding debts, with mediators who are well versed and experienced in banking matters. I personally handle several such matters to successful resolution each month. However, if lenders are now forced to mediate again after an unsuccessful mediation only a few months earlier, the unintended effect will cause lenders to stop trying to avoid lawsuits altogether. Mediators like myself, with expertise in banking and with thousands of mediations under our belts, have little incentive to become part of the Collins Center program, since we are booked 2 to 3 months in advance and command hourly rates well in excess of the flat rate paid to Collins Center mediators regardless of the length of the mediation. If a lender/servicer decides to engage the services of a more sophisticated and experienced mediator prior to the filing of a foreclosure lawsuit in the hopes of avoiding same, where the mediation proves unsuccessful, it would be futile for them to be required to go through the motions again and be subjected to greater cost and delay of time to partake in a process that has already been utilized with no success.

- I believe mediation should be quick. All [attorney] fees should be abated once mediation is ordered. I believe mediation will address all these various issues if approached correctly, including coming to mediation with authority to compromise.

- If the loan is securitized, require the attendance of the trustee at mediation.

- To require an advanced non-refundable mediation fee does not benefit the lender or the borrower since most of the cases I have handled results in a loss mitigation workout, a walk-a-way from the property or a bankruptcy filing. With the increased filing fees, it is my opinion that this requirement should not be part of any uniform procedure. Moreover, several of my cases reveal that the borrower, because of financial condition changes, simply cannot make any reasonable repayment or even the ability to reinstate the loan balance. Most are so far behind on their first mortgage or current on their first mortgage, that they are ignoring and do not have the ability to pay on the second mortgage balance. I have found in several cases that the borrower does not even want to appear for a mediation because they simply do not have the money for any repayment. It is evident in some cases that the homeowner is simply taking advantage of the situation living for free for months without paying anything on their mortgages. A more logical approach which is utilized by at least one Circuit is to have a mediation election form provided to the borrower with appropriate disclosures allowing the borrower to make an informed decision as to whether they truly are capable and willing to attempt a workout resolution. In an attempt to "think outside of the box" I have concluded that as a true balance between lenders and borrowers that would be cost effective for all would be a pre-foreclosure mediation attempt process whereby the lender, through counsel, coordinates a pre-suit mediation with the Mediation Department in the various Circuits with the proviso that if a workout agreement is met with a subsequent default or if it is evident based on the finances of the borrower that any workout is not feasible
or when the borrower fails to appear at the mediation (after notice by certified mail by the mediation department) that in any of these events, mandatory notices and mediations should not be required and exempt from any subsequent foreclosure process. I believe, and I am not speaking on behalf of any of the clients I represent, that it will benefit both the borrower and lender from a cost perspective as it minimizes the attorneys' fees and cost. Such a process would also benefit the Courts as either workouts will be resolved without suits being filed. Alternatively, for the cases that are filed with a Certificate of the Pre-Suit Mediation or attempted mediation, then the Courts are assured that lenders and borrowers have attempted to negotiate and, hopefully in most cases when the borrower appears, there has been direct contact for a workout. Of course such a suggestion would not work if a lender is required to go through the same process a second time after a foreclosure action is filed.

  Should such a suggestion be feasible or even if not feasible and mandatory mediation is still required, it does not make economic sense to have the lender representative appear "live" at the mediation conference. Believe it or not, having lender representatives appearing "live" at a mediation conference truly takes away valuable time that the loss mitigation department needs to handle the influx of attempted workout telephone calls. Accordingly, I recommend that the lender attorney be required to appear live and the lender representative appear by telephone. This will enable the lender representative to handle multiple mediations in one day and also still handle workout calls. It also

minimizes the prejudice to lenders when borrowers fail to appear.

- I suggest that the Borrower be notified that mediation is available to them, and if they come forward and request it, the case should only then be ordered to mediation. The Borrower should also be required to have some money at stake. Perhaps a reasonable rental should be placed in the court registry while the case is delayed pending mediation? At the very least, the Borrower should have to pay one-half of the Collins Center and mediation expense.

- Mediation as a general rule disposes of more than 80% of matters referred. Even being conservative more than half of owner-occupied foreclosure actions could be disposed of within 60 days of filing if this rule was enacted, freeing up Court time for other matters.

- Any process enacted should recognize the fact the the Plaintiff's attorney is just that, the Plaintiff's attorney. Many efforts across the state seem to treat the Plaintiff's attorney as an extension of the court system, asking us to perform tasks that are in conflict with our role as Plaintiff's counsel, and placing burdens on us that no one would ever consider applying to a malpractice, personal injury or criminal case. Can you imagine asking the State Attorney to certify, under threat of sanctions, how the Public Defender can get in touch with the Defendant? These Orders as they exist are insulting to the ethics and integrity of the Plaintiff's counsel.

- Notice be given to the Borrower of their options, then the Borrower must come forward, provide financial information and a meeting is required before final judgment can be sought. This recognizes the fact that there is an existing contract between the parties that can only be modified by mutual consent.

- Since the mortgage companies and banks created this massive foreclosure problem by not only offering, but advising people to take out mortgages to pay off their credit card bills and consolidate other bills, they should be required to negotiate and/or mediate the foreclosure amount prior to any court hearing and prior to the entry of any default against the condominium association or unit owner. REQUIRE MEDIATION with recommendation that they refi the mortgage at 30 year lowest interest rate at no more than 80% of the tax assessed value of the unit for the current year - or at thirty cents on the dollar for a short sale - which is probably more than they would get at auction after a foreclosure is entered.

- The new $750.00 fee is excessive for small business lenders. I represent a small South Florida family owned mortgage business. They do not want to take properties back and work aggressively with the borrowers to reduce interest rates, extend payments, etc. I would suggest that instead of making the Collins Center review mandatory, that there be a form attached to the front of the summons, in a bright color, which tells the homeowner that the Collins Center service is available and that the homeowner MUST select this service (at no charge to them) by calling a specific telephone number or filling out a specific form (whatever manner you suggest). At that point, the Plaintiff would then be

forwarded a copy of the signed form from the Defendant and the Plaintiff must pay the $750.00 fee and proceed with the rest of the procedure.

- In these foreclosure cases, the court already has power to order mediation, and mediation *should be required* to avoid even the appearance of over-reaching on the part of the lender. A mediator can assure the court that the defendant either had advice of counsel or refused same and that defendant had knowledge and appreciated the consequence of entering the stipulation, etceteras.
  I propose the mediator be provided with a court-approved form for the pre-trial "Stipulation in Lieu of Judgment" that would include the following:
  1. Total principle due as of the date of stipulation.
  2. Legal description.
  3. Identification of original mortgage and note.
  4. Terms of payment including principal (with possible interest rate adjustments), stipulated attorneys fee, and projected costs.
  5. Consequence of default: (1) immediate judgment of foreclosure, (2) money judgment for the full amount then due (3) issuance of writ of possession giving plaintiff immediate access with assistance of law enforcement, (4) dissolution of any filed *lis pendens*, (5) reservation of judgment to enter such further orders as may be required to enforce, *and such other matters as you drafters of the stipulation may deem appropriate to be added to effectuate the best result for all parties and the court*.
  If defendant meets the obligation incurred by the court-approved form stipulation in lieu of judgment, both the plaintiff and defendant win. If the defendant defaults, the plaintiff gains all that might otherwise have required extensive discovery and delays. Either way the court wins.

- Mandatory mediation of foreclosure cases is a bad idea -- no lender is even going to the foreclosure process before trying to work something out with the borrower, and state court mediators are not well prepared to do mortgage modifications. It is an especially bad idea to make the lender pay an extra $750 in advance along with its filing fee to get a case filed. It is an extra "tax" on the lender intended to reduce use of the Court system to enforce lender legal rights, which BELIEVE ME lenders are only doing as a last resort as it is.

- First, a **stay of proceedings** should be entered when the referral to mediation is made. Second, mediators should file a **notice of continuance** so the court is advised that the mediation conference was adjourned. It is important to note that the rules prohibit the continuance of a mediation for more than 45 days absent written agreement of the parties. **Written stipulations** can be prepared and signed during the mediation with permission given to the mediator to file it (in the event additional time is needed) at the expiration of the 45 day deadline. In regard to lack of responsiveness of lender and its counsel, the orders of referral should explain how **homeowners may seek sanctions** in the event lenders of its counsel fail to respond within a certain amount of time to reasonable requests for status of lenders' modification process. Impasse should not be declared until it is clear that the parties cannot reach agreement.

Most lenders/servicers have already sent out HUD and foreclosure information to the mortgagors prior to the referral for foreclosure; with that in mind: The 12th circuit has done the 'cleanest' job of inviting mortgagors into the mediation process; an instruction list is provided as it is easy to follow. The 1st circuit is wasting time trying to set up early mediations w/ mortgagors who aren't bothering to show up. The 18th circuit is wasting time requiring mediations before hearing – mediation should only be ordered when mortgagors answer the complaint and have something to mediate. There are other idiosyncrasies throughout the state, but the 12th Circuit's approach has them all beat. All circuits should follow their lead.

- I have two more comments to share. 1. When mediations are adjourned, which is often done to allow the lender time to review the financial information provided by the borrower in the loan modification process, it is my experience that the lender and its counsel become non-responsive to subsequent requests for information and status updates. Homeowners are disadvantaged because they believe that the court proceedings will not continue while negotiations are pending. In reality, most courts do not enter a stay of proceedings and matters proceed without proper notice to homeowners and/or their counsel. Any new procedures should anticipate and address the issue. First, a **stay of proceedings** should be entered when the referral to mediation is made. Second, mediators should file a **notice of continuance** so the court is advised that the mediation conference was adjourned. It is important to note that the rules prohibit the continuance of a mediation for more than 45 days absent written agreement of the parties. **Written stipulations** can be prepared and signed during the mediation with permission given to the mediator to file it (in the event additional time is needed) at the expiration of the 45 day deadline. In regard to lack of responsiveness of lender and its counsel, the orders of referral should explain how **homeowners may seek sanctions** in the event lenders of its counsel fail to respond within a certain amount of time to reasonable requests for status of lenders' modification process. Impasse should not be declared until it is clear that the parties cannot reach agreement.
  2. Judges and mediators need clarification as to how the rotation lists are to be used in light of JEAC-Opinion 2008- 01. Some have interpreted this opinion to mean that judges cannot appoint mediators. This interpretation would render the rotation lists meaningless. Equally ridiculous is the inclusion of mediators on the list who do not live in the circuit. I would like to see a rule adopted that would **require mediators to contribute no less than 10 hours of volunteer services a year to the small claims or county mediation program in the circuit** in which the wish to receive appointments. That would reduce the number of mediators in the courts' rotations lists and give opportunity to those who reside in or near the subject circuit.

Parameters of Residential Mortgage Foreclosure Mediation Manager

- Re: screening with a credit counselor before mediation. The Banks like it. If people are in the home and one has a job, then they need a workout…there is NO MARKET for real estate and the banks do better if the home is occupied and kept up, even at a loss on the principal and interest…

- Involvement of a mediator restores communication, which is necessary for loan modification or settlement. The best results can be achieved through mediation, but EVERYONE involved in the process must be educated.

- Judges and mediators need clarification as to how the rotation lists are to be used in light of JEAC-Opinion 2008-01. Some have interpreted this opinion to mean that judges cannot appoint mediators. This interpretation would render the rotation lists meaningless. Equally ridiculous is the inclusion of mediators on the list who do not live in the circuit. I would like to see a rule adopted that would **require mediators to contribute no less than 10 hours of volunteer services a year to the small claims or county mediation program in the circuit** in which the wish to receive appointments. That would reduce the number of mediators in the courts' rotations lists and give opportunity to those who reside in or near the subject circuit.

- I do not agree with the Collins Center monopoly on mediation, contact with borrowers and concept of encouraging borrower/defendants to go unrepresented to mediation. I initially support the 11th Circuit mediation program until I realized that Collins Center has monopolized through a no-bid basis the process and that the courts are actively involved in streaming business to them with the encouragement to go unrepresented to mediation to submit documents and statements to the bank and their attorney. In summation, mandatory mediation is good in foreclosure cases in same fashion as all other civil disputes.