

MEMORANDUM

Agenda Item No. 11(A)(11)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: October 6, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution accepting various
recommendations of the final
report of the Miami-Dade
Grand Jury related to
mortgage foreclosure crisis

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson and Co-Sponsor Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/up



MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: October 6, 2009

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(11)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(11)
10-6-09

RESOLUTION NO. _____

RESOLUTION ACCEPTING VARIOUS RECOMMENDATIONS OF THE FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY RELATED TO MORTGAGE FORECLOSURE CRISIS; DIRECTING THE MAYOR OR DESIGNEE TO IMPLEMENT THE ACCEPTED RECOMMENDATIONS RELATED TO MIAMI-DADE COUNTY TO THE EXTENT FEASIBLE GIVEN CURRENT BUDGET CONSTRAINTS

WHEREAS, the Miami-Dade County Grand Jury for the Fall Term 2008 issued a report dated June 10, 2009 entitled “Recommendations for Extinguishing Florida’s Foreclosure Fires” (“Grand Jury Report”), a copy of is attached and incorporated by reference herein; and

WHEREAS, the Grand Jury Report reviewed the mortgage foreclosure crisis both nationally and specifically in Miami-Dade County as well as the initiatives that have currently been undertaken at various levels and branches of government to address the situation; and

WHEREAS, based on its review, the Grand Jury Report made various recommendations, some of which related specifically to Miami-Dade County government, including the following recommendations:

1. The County should establish a Foreclosure Hotline that residents can use to obtain information about foreclosure prevention, financial counseling, housing counseling and free legal assistance.
2. Until a Foreclosure Hotline is created, the County should ensure that operators staffing its 3-1-1 Answer Center are able to provide such information to County residents. And, after the hotline is created, the 3-1-1 Answer Center should be prepared to direct such inquiries to that hotline.
3. To increase the effectiveness of the CHAMP Program, the County should conduct an advertising and marketing campaign to educate the public about the benefits and legitimacy of the mandatory mediation of mortgage foreclosure cases.

4. The County should modify the homepage of its website to include information about foreclosure prevention. We also recommend the County consider Ohio's foreclosure prevention website as a starting point for possible enhancement of the County's Foreclosure Prevention Now website. The County could secure many benefits for its residents by creating a website with similar basic information and links to other helpful sites.
5. The County should prepare a mailer advising residents of available foreclosure prevention assistance. The mailer should be included in all utility bills and the County should fund the costs of formulating and disseminating the mailer.
6. Homeowners who are eligible to receive forgivable loans from OCED's foreclosure prevention fund should receive financial counseling as a requirement of the program.
7. The County should move expeditiously towards using community centers and libraries as sources for information about foreclosure prevention programs; and

WHEREAS, implementing the recommendations listed above to the extent possible given the County's current budgetary constraints significantly could assist residents of Miami-Dade County facing foreclosure,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Accepts seven (7) recommendations of the Final Report of the Miami-Dade County Grand Jury related to the mortgage foreclosure crisis that pertain to Miami-Dade County government as set forth above.

Section 2. Directs the Mayor or Designee to implement these seven (7) recommendations of the Grand Jury related to Miami-Dade County to the maximum extent possible given current budget constraints.

Section 3. Directs the Mayor or Designee to provide a progress report on implementation to the Board within 60 days of the effective date of this resolution.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson and the Co-Sponsor is Commissioner Rebeca Sosa. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

JMM

Jess M. McCarty

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE**

**FINAL REPORT
OF THE
MIAMI-DADE COUNTY GRAND JURY**

FALL TERM A.D. 2008

**State Attorney
KATHERINE FERNANDEZ RUNDLE**

**Chief Assistant State Attorney
DON L. HORN**

**Assistant State Attorney
SUSAN L. DECHOVITZ**



**LYNETTA PURCELL
FOREPERSON**



**GAYLE A. BAINBRIDGE
CLERK**

FILED

June 10, 2009

**Circuit Judge Presiding
GISELA CARDONNE ELY**

Officers and Members of the Grand Jury

**LYNETTA PURCELL
Foreperson**

**REINALDO M. SANCHEZ
Vice Foreperson**

**CAROLYN L. MARTIN
Treasurer**

**GAYLE A. BAINBRIDGE
Clerk**

MARGARET ABRAHAM

MARICELA GONZALEZ

TRENIAS ASHLEY

RODRIGO MENDEZ

ENRIQUE BENITEZ

ROBERT PARENTI

LEONOR BUITRAGO

FEBE L. PEREIRA

RICHARD COSSIO

FREDERICK POLLACK

DAYRA CRUZ

SANDRA SILVA

DEBORAH FEREBEE

FREDRIC SYKES

SABRENA GEDDIS.

NIESHLA KEYS VANCE

DAVID GONZALEZ

**Clerk of the Circuit Court
HARVEY RUVIN**

**Administrative Assistant
ROSE ANNE DARE**

**Bailiff
NELIDO GIL, JR.**

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RECOMMENDATIONS FOR EXTINGUISHING FLORIDA'S FORECLOSURE FIRES

I. INTRODUCTION

Our country is presently facing a mortgage foreclosure crisis of epic proportion. Coupled with record unemployment numbers, the impact on the nation's economy has been so devastating that President Barack Obama and his administration have developed a \$75 billion housing rescue plan; created a nationwide foreclosure prevention program called "Making Homes Affordable" and supported a federal mandate by encouraging lenders nationwide to support a moratorium on mortgage foreclosures.

Unfortunately in the past eighteen months, Florida has led the nation in the number of foreclosure filings, which has affected single-family homes, condominiums, rental properties, apartment buildings, and investment properties alike. Due to the crisis caused by an inordinate amount of foreclosures, the drop in values of homes statewide has created lower property taxes and related thereto, lesser amounts going into local and state revenue streams.

In addition to the financial impact, the resulting foreclosures are creating emotional turmoil for families who are being evicted and thus straining the County resources in the number of families who are left homeless. As the number of foreclosures rises countywide, we are experiencing a significant number of abandoned dwellings, thereby creating ghost towns and blight in communities across the country. These conditions will likely further accelerate the decline in home values, have a negative impact on our local economy and make Miami-Dade County neighborhoods less desirable places to live.

In an effort to avoid these consequences for Miami-Dade County, this Grand Jury decided to take a look into the foreclosure issue locally and statewide. Our mission was to see if we could develop some recommendations to cause a reversal of the ills plaguing our community and other communities that are dealing with this problem.

In this Grand Jury report we will:

- Provide data on foreclosure cases filed in Miami-Dade County;

- Review local and statewide initiatives of our court system designed to more effectively process foreclosure cases;
- Identify other available resources to help owner-occupied residents facing foreclosure;
- Review local and statewide efforts of Florida Attorneys who are assisting homeowners facing foreclosure; and
- Make recommendations to further enhance the efforts presently being undertaken by our circuit courts and county government.

II. MORTGAGE FORECLOSURE CASES DATA FOR MIAMI-DADE COUNTY

The magnitude of the foreclosure crisis in Miami-Dade County can be understood by reviewing the staggering increase in the annual number of foreclosure filings from 2005 to the present. The total number of foreclosure cases filed in Miami-Dade County courts in 2005 was 7,829. In 2006, that number grew to 9,814 and in 2007 jumped to 26,391. In 2008 the number of filings more than doubled to 56,656. Total annual foreclosure cases filed in courts in Miami-Dade County have increased more than six hundred twenty-three percent (623%) from 2005 to 2008.

Unfortunately, the significant increases in mortgage foreclosure filings have not abated for 2009. During the first quarter of this year, 19,049 mortgage foreclosure cases were filed in courts in Miami-Dade County, which is more than the combined annual totals for 2005 and 2006.

The increase in the number of foreclosure sales over the past three (3) years is also very significant. Total foreclosure sales grew from 1,057 in 2006 to 11,471 in 2008, a 985% increase in that period. The number of foreclosure sales per month also drastically changed. For 2006, there were 511 total sales in the month of February. That is the lowest number of monthly sales within the past three years. The highest number of foreclosure sales in one month during that same 3-year period was in October of 2008. Total foreclosure sales for that month were 1,315.

In 2008, there were 82,000 total civil circuit court cases filed of which 56,000 represented foreclosure cases. This massive increase in the number of foreclosure cases

filed has created enormous struggle for the twenty-two judges who hear such cases and the clerk's office who handle and process the paperwork. Additionally, the number of civil cases filed is clogging the system and thereby straining the resources available to settle cases quickly and efficiently.

The actions, inactions, decisions and indecision of lenders contributed significantly to this firestorm. Lending institutions and loan servicers were ill-equipped and unprepared to deal with mortgage delinquencies on such a massive scale. Moreover, personnel at the lending institutions were, for the most part, not trained to perform workouts. Their training required them to do so only after the borrower became seriously delinquent. For those borrowers who were astute enough to realize that they would not be able to pay their mortgages, their calls and pleas for assistance fell on deaf ears. Unfortunately, they were unable to find someone who was qualified to make a decision on the phone who could help them and thus were consumed in the raging wildfire sweeping the nation.

This perfect storm of circumstances served as an incentive for many persons operating within the system to create a more efficient and effective manner of resolving mortgage foreclosures. Following a discussion below about a non-profit organization that has been intricately involved in this issue, we will review some of the programs that have been set up around the state.

III. STATEWIDE INITIATIVES ADDRESSING MORTGAGE FORECLOSURE CASES

A discussion about the statewide initiatives designed to help the courts manage the influx of mortgage foreclosure cases would not be complete without first discussing the Collins Center for Public Policy ("Collins Center"). Distinguished Floridians who envisioned the need for an independent entity to find impartial solutions to controversial problems established the Collins Center in 1988 as a non-profit organization. Since its inception, it has been involved in a number of statewide initiatives and now has become intimately involved in assisting courts throughout our state in handling the growing number of foreclosure cases.

A. THE COLLINS CENTER FOR PUBLIC POLICY

The Collins Center, with offices in Tallahassee, Sarasota and Miami, is described as “a think tank with muddy boots.” Its primary goal is to analyze issues and problems in the State of Florida, develop ways to correct or solve them and then get involved in implementing and effectuating the solutions. The Collins Center operates primarily through the grants it receives from major charitable organizations, such as the Knight Foundation, McArthur Foundation and the Kellogg Foundation. The Center finds smart solutions to important issues facing the people of Florida.

In years past, the Collins Center has been involved in administering large-scale mediation on issues affecting Floridians. For instance, in the aftermath of several hurricanes that struck Florida in 2005, the Collins Center was responsible for establishing and coordinating tens of thousands of mediations between major insurance companies and their insured property owners. The mediation sessions were held all over the state and over a two-year period, they processed over 21,000 mediation requests with a settlement rate of over 90%.¹

As a result of the enormous increase in mortgage foreclosure filings in Florida, the Collins Center has looked at the many problems occurring in our court systems and in our communities. They studied and analyzed the problem for approximately two years. During that time period they discovered that several states, which did not have the massive number of mortgage foreclosure filings as Florida, had nevertheless created mandatory mediation or diversion programs for processing their foreclosure cases.²

1. Rocket Dockets Are Not The Answer

The Collins Center’s interest in addressing the foreclosure crisis was heightened after Board members read an article that appeared on the front page of the Wall Street Journal. The newspaper article focused on the backload of civil cases due to the increased filings of mortgage foreclosure cases in one Florida county. The article reported that judges in that county created a special calendar appropriately called the

¹ http://www.collinscenter.org/mediation/mediation_show.htm?doc_id=467316

² They discovered that Pennsylvania, Ohio and New Jersey had created programs. Information about those programs can be found at <http://courts.phila.gov/pdf/forms/civil/Residential-Mortgage-Foreclosure-Diversion-Pilot-Program-Materials.pdf>, Savethedream.ohio.gov, and <http://www.nj.gov/foreclosuremediation/> respectively.

“rocket docket” for processing their huge backlog of foreclosure cases. To process dockets of approximately **1,000 cases a day at times**, judges were devoting on average only **15 seconds** for the resolution of each of those cases.

In one courtroom, borrowers who show up are asked two questions “*Are you current in your mortgage payment?*” and, “*Do you currently reside in your house?*” After these questions are answered, the judge then sets the maximum number of days the borrower has to work out a deal with the lender. Failure to reach such an agreement requires the borrower to move out of the house. In the article the judge thanked the borrowers for coming to the hearing but did not afford them an opportunity to speak, nor did he review any of their documents.

During our investigation we were privileged to hear the testimony of a Miami-Dade County judge who has handled many foreclosure cases. The judge presented documents that are usually reviewed by judges (even in default cases³) before a motion for summary judgment is granted. Based on the sheer number of documents, it is impossible for one to even review all of the pages within 15 seconds, let alone make a determination that those documents establish plaintiff/ lender’s entitlement to relief. For many Floridians, owning their home is a fulfillment of the American dream. When considering the resolution of these cases that may result in families losing their home, equity and fairness require that our courts devote much more than a two question inquiry followed by a refusal to review documents or even hear from the defendant borrowers who appear before them. This process does not equate with the prompt and efficient administration of justice for which the courts should strive. Such actions by the court only serve to undermine the public’s confidence in our judicial system. To its credit, the Collins Center sought to develop a better model to assist judges and our court system in resolving the pending mortgage foreclosure cases.

Toward the achievement of that effort, members of the Collins Center began meeting with the Chief Judges serving within the twenty judicial circuits of Florida. Those members suggested that the courts bring the Collins Center’s successful managed

³ A default case is one in which the defendant fails to file a written response to the mortgage foreclosure complaint. If the plaintiff is able to establish through appropriate documentation that he is entitled to the relief he seeks, a motion for summary judgment is filed and the plaintiff wins by default.

mediation model to the civil courts to help alleviate the backlog of mortgage foreclosure cases. We commend the Collins Center for its decision to offer its knowledge and expertise in this area and are more than pleased to report that many of the circuits have adopted managed mediation foreclosure programs that have already met with success. For every “successful” mediation there is one less case on an already crowded court docket and one more family that will have the opportunity to remain in their home, thereby helping to bring economic stability to that neighborhood.

2. Early Resolution Is The Best Way

Many of the defendants in foreclosure cases are not represented by an attorney and many of them fail to file an Answer to the complaint. Thus, the vast majority of the foreclosure cases are defaults. Nevertheless, it still takes time for these cases to wind their way through the system and for the lenders to obtain their foreclosure. As a result of handling so many cases, the courts have come to recognize that very often, the first real contact between the lender and borrower occurs at the end of the process, the hearing for summary judgment. By that time it is too late for the court to take any steps to try to get the matter resolved. Usually, the only option is to grant summary judgment and schedule the foreclosure sale.

For these reasons, the Collins Center encouraged the courts to develop processes and procedures that are designed to facilitate the early resolution of cases. Further, to the extent possible, ideally those processes (mediation and/or other alternative dispute resolution efforts) would occur outside of the civil court system. This model allows the courts to better manage their non-foreclosure caseloads and permits those litigants the opportunity to have their cases resolved more quickly.

Through the efforts of the Collins Center, Chief Judges in circuits across the state began issuing Administrative Orders mandating the mediation of foreclosure cases.⁴ We will review some of those programs below, beginning with the program now operating within Miami-Dade County.

⁴ A more detailed discussion about those new programs is set forth hereinafter on pages 10 - 13.

B. THE 11TH CIRCUIT COURT'S C.H.A.M.P. PROGRAM

On May 1, 2009, Miami-Dade County joined the list of circuits that have created new programs to process mortgage foreclosure cases. Through the issuance of Administrative Order No. 09-08, courts in the 11th Judicial Circuit⁵ began a mandatory mediation program for all mortgage foreclosure actions filed in Miami-Dade County. The program entitled "CHAMP" (Circuit Homestead Access to Mediation Program) is only available on cases involving homesteaded properties⁶ in the 11th Judicial Circuit and applies to all such cases filed after May 1, 2009. Fortunately, the Administrative Order establishing CHAMP also makes the mediation program available to litigants whose mortgage foreclosure actions were filed before May 1, 2009 and are still pending. These "pre-dated" cases may be referred to mediation depending on the availability of foreclosure mediators. The Collins Center will be administering the mediation program for CHAMP.⁷

1. How CHAMP Will Operate

Under the terms of the Administrative Order, CHAMP will be mandatory for every mortgage foreclosure filed on homesteaded property in Miami-Dade County. The requirements of this new program begin as soon as service of the complaint has been made on the main defendant. Once service of process has occurred the following events will take place:

- a) If a written stipulation objecting to mediation is not filed within five (5) days of service of the complaint, the case will be automatically referred to the Collins Center for mediation;
- b) Mediation will be conducted by a Florida Supreme Court certified circuit civil mediator who has agreed to participate in CHAMP and who has been trained in mediating residential mortgage foreclosure actions;
- c) Upon receiving notice that a complaint has been filed the Collins Center will commence efforts to make telephonic contact with the defendant / borrower;

⁵ There are twenty judicial circuits in Florida. Miami-Dade County is in the 11th Judicial Circuit. The 11th Circuit only comprises one county. Many other circuits have numerous counties located within their jurisdiction.

⁶ Homestead properties are properties for which the owner claims a homestead exemption. For starters, the aim was to create a program that could assist owner occupied borrowers, as opposed to borrowers who were speculators or owners rental property.

⁷ The Collins Center's managed mediation program is simply another type of alternative dispute resolution process.

- d) Upon making contact, the Collins Center will advise the defendant / borrower of the availability of financial counseling and mediation.
- e) With the consent of the defendant / borrower, a counseling agency experienced in mortgage delinquency and default resolution counseling will assist the defendant / borrower in the preparation of financial documentation which will immediately be made available to the plaintiff / lender to assist in renegotiating loan terms⁸;
- f) The Collins Center will schedule the mediation for all parties named in the foreclosure action. Plaintiff's counsel, a representative from the lender who has settlement authority and the Borrower must be physically present at the mediation.
- g) If the mediation results in an impasse, the matter may proceed to final hearing or summary judgment on the court's docket.
- h) If the mediation results in a partial or final agreement, the agreement will be reduced to writing, signed by the parties and a report of the agreement shall be submitted to the court and/or a stipulation of dismissal shall be filed.

In summary, these procedures are to be followed on every mortgage foreclosure case filed after May 1, 2009.

This mandatory mediation of mortgage foreclosure actions involving homesteaded properties is free of charge to defendant/borrowers because the administrative cost of CHAMP is borne by the plaintiff / lenders. A seven hundred fifty dollar (\$750.00) fee is forwarded to the Collins Center upon the filing of the complaint. One hundred twenty-five dollars (\$125.00) of the fee is used to pay the Counseling Agency that assists the defendant / borrower with preparation of the financial documentation forms needed for the mediation. The Florida Supreme Court Certified Mediator is paid a flat fee of three hundred fifty dollars (\$350.00). Regardless of how long the mediation session lasts, the cost never goes up. The remainder of the \$750 fee is used by the Collins Center to help defray the administrative costs of running the programs.

2. CHAMP Is Safe and Free to Defendant/Borrowers; It Needs A Marketing Campaign to Get The Word Out

⁸ The Financial Documentation forms used during mediation are available for download at the Collins Center's website, www.collinscenter.org. For persons who are not yet in foreclosure, but have a need to engage in negotiation with the lender to avoid it, we recommend they access the site and use the forms to prepare for such negotiations. Taking such steps may help a homeowner avoid a future foreclosure action.

The Collins Center's managed mediation foreclosure program has been touted as "safe" and "free." With the prevalence of the scam artists ("alleged" mortgage foreclosure prevention specialists), individuals on the verge of foreclosure risk losing more of their hard-earned money if they fall prey to one of these financial schemes. The Collins Center has a proven reputation and a successful record in managing disputes. Therefore, homeowners do not have to worry in dealing with their representatives. However as a practical matter, the Collins Center must now perform its services in an environment where most individuals will be suspect of anyone or any organization offering assistance while they are in the midst of their economic crisis. Because the Collins Center's model requires that its Community Service Representatives attempt to make telephonic contact with homeowners / borrowers, there may be greater reluctance on the defendants receiving those calls to embrace the offer of assistance being made. We believe this is a major issue that must in fact be addressed.⁹

There is a major difference between the program run by the Collins Center and the scam artists who claim to provide mortgage foreclosure prevention. The Collins Center's managed mediation program is "free" to all defendants / borrowers and the scam artists charge fees up front. Hopefully, this aspect of the CHAMP program will help dispel the fears of those homeowners who find themselves as defendants in mortgage foreclosure litigation. Getting the word out about the Center will also give credence to CHAMP.

As previously indicated, the Collins Center operates primarily upon funding it receives from charitable foundations. Unfortunately, it does not have the financial resources to advertise or conduct a marketing campaign extolling its services and expertise in this area. However, to the extent that the CHAMP program and the work of the Collins Center will benefit Miami-Dade County residents, we strongly believe it is in the best interest of county government to underwrite the costs of such a campaign. In fact, we strongly recommend that the county do so.

⁹ Foreclosure rescue scams have become so prevalent that the County has created its own task force to combat the crime and assist those who have been victimized. Further, it has become such a nationwide problem that the federal government has allocated more than \$490 million to assist the states in fighting mortgage fraud and these scam artists.

In a Miami-Herald article printed a few weeks before the release of this report, we discovered that separate and apart from any other funding sources, each of the thirteen members of the Miami-Dade County Board of County Commissioners has a discretionary funds account that annually is in excess of seven hundred twenty-five thousand dollars. Assuming the information from The Miami Herald is accurate, the discretionary funds account allocated for each commissioner is in addition to the approximately one million dollar annual budget each commissioner receives for salaries, to purchase office supplies and pay other expenses. If each county commissioner would agree to combine resources and contribute a set amount of discretionary funds, they could amass a pool of money that could be used to defray the cost of an advertising and marketing campaign for this worthwhile program. Additionally, we believe the Mayor and County Manager can assist in finding available county funds for this endeavor. Using County discretionary funds for this purpose would guarantee that Miami-Dade County and its citizens would receive a return on their investment. Further, it could assist those already in foreclosure as well as those who, absent any assistance, may face foreclosure in the future.

C. Other Court Initiatives Around The State

The programs that were established in the various judicial circuits in Florida were also implemented as a result of Administrative Orders entered by the Chief Judges in each of those circuits. Our limited review of the Administrative Orders for some of those programs revealed that each program is different. Nevertheless, each has components that we believe would be beneficial to borrowers/defendants in all circuits in our state. We will now review components of mortgage foreclosure programs set up by circuits in other parts of the state.

1. A Lack of Uniformity Among Circuit Court Initiatives in Florida

In connection with our consideration of the statewide impact from foreclosures and initiatives occurring outside of Miami-Dade County, we reviewed Administrative Orders¹⁰ issued by the Chief Judges of the Fourth¹¹, Sixth¹², Seventh¹³, Twelfth¹⁴,

¹⁰ Most of those Administrative Orders were attached as exhibits to an emergency petition filed with the Florida Supreme Court. The petition and exhibits can be found at http://www.mortgagelawforum.com/documents/Emergency_Petition_to_Amend_re_mediation_foreclosure_actions.pdf.

Fifteenth¹⁵ and Eighteenth¹⁶ Judicial Circuits. They all have a common denominator; each Order takes note of the increase in mortgage foreclosure actions being filed within their respective circuits.¹⁷ However, notwithstanding this common theme, the Administrative Orders are all unique. There is no uniformity in the initiatives being set up by the Chief Judges of the various judicial circuits.

We recognize that this could be a huge problem for major lenders who find themselves engaged in foreclosure litigation around the state. For every circuit in which the lender files a mortgage foreclosure action, there is a different program in place. There are new and different forms to file as well as new processes and procedures to follow. This lack of uniformity is not beneficial to the plaintiff /lenders who are involved in foreclosure litigation in multiple counties nor is it manageable for the attorneys who represent them in these cases.

2. The Florida Supreme Court's Task Force on Residential Mortgage Foreclosure Cases

The Florida Supreme Court in its wisdom recognized the need for “uniform court rules, policies and procedures to manage cases to protect the rights of homeowners and lenders and to ease the burden on the courts.”¹⁸ With that aim in sight, on March 9, 2009, the Supreme Court issued its own Administrative Order and established a Task Force on Residential Mortgage Foreclosure Cases. The Task Force was charged with

¹¹ The Fourth Circuit covers Duval County.

¹² The Sixth Circuit covers Pasco and Pinellas Counties.

¹³ The Seventh Circuit covers St. Johns County.

¹⁴ The Twelfth Circuit covers DeSoto, Manatee and Sarasota Counties.

¹⁵ The Fifteenth Circuit covers Palm Beach County.

¹⁶ The Eighteenth Circuit covers Seminole County.

¹⁷ The “whereas” clauses of the Administrative Orders acknowledge: “more and more foreclosure cases are being filed” (4th Judicial Circuit); they “have increased at an unprecedented rate...[and] in the last year alone, mortgage foreclosure case filings increased approximately 118%” (6th Judicial Circuit); “there has been a significant increase in foreclosure cases being filed” (7th Judicial Circuit); the “Circuit is experiencing an unprecedented number of foreclosures, many of which affect homestead properties” (12th Judicial Circuit); “due to the dramatic increase in foreclosures” (15th Judicial Circuit); and “residential mortgage case filings have increased over 200% in Seminole County in the first half of 2008” (18th Judicial Circuit).

¹⁸ This push toward uniformity was also encouraged by a collection of Florida lawyers and legal service providers who filed an emergency petition with the Florida Supreme Court asking the court to enter an order requiring mandatory mediation in all foreclosure cases filed in Florida courts. A copy of the petition can be found at http://www.mortgagelawforum.com/documents/Emergency_Petition_to_Amend_re_mediation_foreclosure_actions.pdf.

recommending to the Supreme Court policies, procedures, strategies and methods for easing the backlog of pending residential mortgage foreclosure cases.¹⁹ Operating on an expedited time schedule set by the Supreme Court, the Task Force issued its interim report on May 8, 2009.²⁰ We will take this opportunity to note some of our observations (both good and bad) regarding the requirements of some of the Administrative Orders presently in force around the state and highlight some of the Notice Requirements of those Orders.

3. The “Notice” To The Defendant/Borrower

Many of the circuits now require that every foreclosure summons and complaint served on a plaintiff also include a “notice.” Although the circuits may have different names for the document,²¹ the notices are designed for one primary purpose: to provide information to homeowners that they may use to avoid losing their homes.

In looking at the combination of Notices, we recognize that they convey the following significant information:

- a) They advise the defendants / borrowers **in plain language** that they may lose their home as a result of the legal action that has been initiated against them;
- b) They advise the borrowers that they still may be able to save their home;
- c) They provide contact information (name, address and phone number) and advise borrowers of the availability of free legal advice from legal aid or legal services providers;
- d) They provide “legitimate” contact information where borrowers may obtain housing counseling and caution borrowers to be aware of foreclosure rescue scams;
- e) For those who may have already been victimized by such scams they provide contact information where they can obtain assistance.
- f) They warn borrowers that their failure to act immediately may cause them to lose legal rights they may have.

¹⁹ Judge Jennifer Bailey of the 11th Judicial Circuit was appointed as Chair of the Task Force. She testified to the Grand Jury regarding, among other things, the CHAMP Program and the work of the Task Force.

²⁰ The Interim Report may be found at http://www.floridasupremecourt.org/pub_info/documents/05-08-2009_Foreclosure_TaskForce_Interim_Report.pdf.

²¹ The “notice” documents in the other circuits are titled as follows: Notice of Legal Assistance Regarding Foreclosure Cases (4th and 7th Circuits); Important Notice to Homeowner (6th and 15th Circuits); and Notice to Homeowners Facing Foreclosure (12th Circuit). The 11th and 18th Circuits do not have any such notice requirements.

As representatives of our community and as homeowners who, depending on circumstances could be in danger of losing our homes, we believe any uniform policy or procedure adopted by the Florida Supreme Court that addresses mortgage foreclosure litigation should:

- 1) Include a separate one-page document entitled Notice of Legal Assistance Regarding Foreclosure Cases (or some similar title);²²
- 2) Contain advice and information in the Notice that, at a maximum, includes the specific categories *a* through *f* listed above; and
- 3) Ensure such information and advice is presented in clear and plain language.

As representatives of our county, we believe each of these components is necessary for defendants/borrowers to gain a full appreciation of what is occurring and the tragic consequences that may ensue if they fail to engage the assistance of a lawyer or act expeditiously. Those components will also help the courts and clerks effectively manage the flow of mortgage foreclosure cases coming into the system and thereby reduce the time and effort they may otherwise have to expend guiding unrepresented borrowers through the litigation process.

Further, we believe by adopting uniform policies, procedures and Notices, the plaintiffs/lenders will realize the inevitability of mediations on foreclosure cases filed in Florida. Such a realization may create an incentive for the lenders to make more diligent efforts to be responsive and communicate with their borrowers regarding possible renegotiations and workouts of those loans before litigation commences. This could result in a reduction of the actual number of foreclosure cases filed. Finally, to the extent uniform practices are adopted, even in cases where such discussions have not yet occurred, the parties will be required to participate in such negotiations before such cases will be allowed to proceed.

²² One of the Notices we examined (for the 6th Circuit) was in excess of one-page and contained a great deal of information. Yet, we found this document to be a bit overwhelming due to the lay-out and the quantity of information that was included. We believe notices will lose their effectiveness if the borrowers have to wade through so much information or have too many choices. For instance, the Notice for the 6th Circuit contains the name, phone number and e-mail address of fifteen (15) entities that provide housing counseling. We find that to be a bit much.

IV. MIAMI-DADE COUNTY'S FORECLOSURE ASSISTANCE AND PREVENTION TASK FORCE

In addition to the efforts of our local courts, we are pleased to report that our county government has also been involved in the battle to stem the tide of mortgage foreclosures. As reflected in a May 19, 2009 memo from County Manager George Burgess to the Board of County Commissioners, the Mayor convened a Foreclosure Assistance and Prevention Task Force last summer. The purpose of the Task Force was to determine ways to effectively use federal, state and county funds to address the problem with residential foreclosures in Miami-Dade County. Below, we highlight some of the work of the Task Force as well as address steps being taken by various county agencies and departments to assist homeowners threatened by foreclosures.

A. The County's "Foreclosure Prevention Now" Website

The Task Force developed a Foreclosure Prevention Now website²³ that serves as a one-stop source for persons facing the loss of their home due to foreclosures. Without using the name of the website, we decided to log onto the county's homepage to determine how easy (or how difficult) it would be for someone who was having problems to find information about preventing foreclosure. There was no specific information on the homepage about foreclosure prevention. However, a more diligent search revealed that the county's homepage includes a section for sites on the county's website that had received the greatest number of hits. There, under swine flu, how to pay property taxes, voter registration and other topics, was the single word "foreclosure." Clicking on foreclosure took us to the Foreclosure Prevention Now website. We strongly believe this should be changed.

As significant as the foreclosure problem is in our county, we should not gamble on the site remaining popular enough to stay near the top of the list of frequent hits. Information on foreclosure prevention should be clearly visible on the county's homepage. Further, for county residents who do not have internet access there needs to be a hotline number they can call. Both the website and the hotline number should be part of a marketing campaign by the county and each of the commissioners. Again, due

²³ This website can be accessed at www.miamidade.gov/foreclosure

to the prevalence of scam artists preying on this vulnerable population, we would encourage the Task Force to get the word out that helpful information is available and that the information is coming from a reliable source. One suggestion might be to include a mailing with the next utility bill. The mailer can simply advise, "If you are facing foreclosure, or know someone who is, you can get information from Miami-Dade County by logging on the website www.miamidade.gov/foreclosures or by calling 311." Such a simple act could go a long way toward getting the word out that there is credible information available to assist those homeowners threatened by foreclosure.

B. The 3-1-1 Answer Center

Similar to the exercise that we engaged in on the county's website, we wanted to see how easy (or difficult) it would be to obtain information about foreclosure prevention from the county's 3-1-1 Answer Center.²⁴ A call was made to the center on the afternoon of a regular workday. When the call was answered a request was made for information on foreclosures or foreclosure prevention. The operator appeared to not understand what was being requested. After an appreciable amount of time she finally provided the name and number of the National Fair Housing Alliance. She did not direct us to the county's Foreclosure Prevention Now website. Neither did she refer us to any of the county agencies or departments that have been involved in presenting foreclosure prevention workshops and seminars.²⁵ Before the County can do an effective job of educating the public about available resources to help prevent foreclosures, it must first educate its own employees. Most importantly, as many of the homeowners needing help may not have internet access, the 3-1-1 Answer Center operator may be the only life-line they have.

C. OCED's Foreclosure Prevention Fund

In addition to the website, we understand that the County's Office of Community and Economic Development is also getting involved through the establishment of a \$500,000 foreclosure prevention fund for qualified homeowners. This money will be coming from the State Housing Initiatives Partnership ("SHIP") Local Housing

²⁴ The Answer Center is designed to assist county residents who are seeking information or assistance on matters involving county government. Operators staff the center from 6 AM to 10 PM weekdays and 8 AM to 8 PM on the weekend.

²⁵ More information on these agencies, departments and their efforts is included herein on pages 16-19.

Assistance Plan. Once implementation begins, eligible homeowners who are delinquent on their mortgage payments and are at risk of foreclosure will be able to seek financial assistance in the form of a forgivable loan equivalent to 3-months worth of mortgage payments up to a maximum of \$5,000. However, the funding is only available to low income homeowners, those with household incomes at or below 120% of the county's area median income.²⁶ Additionally, the borrower's delinquency must be due to an emergency or exigent circumstance such as a loss of employment or a health issue.²⁷ With a cap of \$5,000, this program will be able to assist at least 100 homeowners who are at risk of losing their homes. However, without housing counseling or assistance in renegotiating the mortgage loans, we believe this will only be a band-aid approach that will only postpone the inevitable foreclosure filing. We recommend these components be added to the program for any person who is awarded a forgivable loan from OCED's Foreclosure Prevention Fund.

D. Getting The Word Out Through Community Centers / Libraries

To ensure that help is available to residents throughout Miami-Dade, the county is moving towards using Community Action Agency Community Centers as venues where county residents can obtain basic information on foreclosure prevention programs and obtain referrals to financial counseling services. We note that libraries could also be used for this purpose. These efforts should prove to be a great resource in combination with the county's foreclosure prevention workshops sponsored by the Housing Finance Authority (HFA) and others.

E. Foreclosure Prevention Workshops

Many of the county residents who are struggling to avoid foreclosure have reached out to their local and federal elected officials for help. Those pleas resulted in county commissioners and members of Florida's Congressional delegation reaching out to the HFA and its sister organization, the Miami-Dade Affordable Housing Foundation,

²⁶ A chart attached hereto as Exhibit 1 shows U.S. HUD's Median Household Income for Miami-Dade County for FY 2009.

²⁷ As reported in a recent Florida Bar News Article, many homeowners throughout the state who are facing the threat of foreclosure ended up in that position due to family illness, death or job loss.

<http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/Articles/B95D49233951753D852575AC006AD6D>

Inc. (MDAHFI). For more than a year now, those two entities have partnered with the county's Department of Consumer Services ("DCS") to sponsor foreclosure prevention seminars. The format and purpose of the seminars, forums and workshops have morphed over time.

The Miami-Dade Housing Finance Authority (HFA) has been involved in foreclosure prevention in Miami-Dade for years. Similar to the Collins Center, as a result of a newspaper article it became aware of foreclosure prevention programs operating in Philadelphia.²⁸ After reading the article, staff members of the HFA contacted the officials in Philadelphia to get information about their program. The HFA discovered that other jurisdictions had created innovative programs to handle an increase in mortgage foreclosure cases. For instance, Ted Strickland, Governor of Ohio, created Ohio's Foreclosure Prevention Task Force to help keep Ohio families in their homes. Similar to the situation here in Florida and across the nation, his task force members heard repeatedly from both lenders and counseling agencies that if consumers seek help early, then they have a much greater chance of avoiding foreclosure.²⁹ The Collins Center and the HFA have tried to implement this approach through the managed mediation and foreclosure prevention workshops respectively.

Initially, the HFA's focus and aim was to present workshops that involved homeowners who needed help with their loans and the lenders who were responsible for issuing those loans. To assuage any foreclosure rescue scam fears on behalf of the borrowers, the HFA requested that the lenders mail out notices to their borrowers advising them of the dates, times and locations of the workshop seminars. On average, more than three hundred homeowners turned out for these Saturday forums. Many of the borrowers devoted the entire day to seeking results for their plight.

²⁸ In fact, a September 27, 2008 New York Times article reported that in June 2008, the Philadelphia Court of Common Pleas' created a diversion program that required all owner-occupied properties scheduled to be foreclosed and sold by the Sheriff's Office to have their mortgages reviewed by borrowers, lenders and the court before they could be sold. The article advised that the program had averted the sale of almost 80% of the properties referred to it in its first three months of operation.

²⁹ Ohio's program, *Save the Dream: Ohio's Foreclosure Prevention Effort*, also sports a very informative website by the same name. It includes information on foreclosure rescue scams, Ohio's Foreclosure Mediation Program, legal assistance, local resources and other helpful information for owners and tenants. <http://www.savethedream.ohio.gov/>

It was reported that many of the borrowers that left with modified loan terms appeared to have been saved. However, six (6) months later many of the same borrowers were having problems again. It is unclear whether this resurgence was due to lenders and borrowers settling for forbearance or that the modification of the loan did not reduce their payments sufficiently. With this model not working as well as it had hoped, the HFA changed the style of the forum and the format of those workshops.

F. Free Legal Seminars

MDAHFI, the HFA and DCS are now presenting free foreclosure "legal" seminars. The sponsoring organizations are now bringing together lawyers and homeowners who fear imminent foreclosure proceedings. The lawyers, primarily members of the Dade County Bar³⁰ and many of the minority bar associations³¹, are providing free legal service to all who come out to the sessions. This effort is reportedly more effective than the prior format. The lawyers are more knowledgeable and thereby also more effective in creating long-term solutions. The attorneys are also available to review documents to determine whether the homeowners were victims of predatory lenders. Word of this effort has spread throughout the nation as a result of the seminars being featured on one of the national morning news programs. Further, the HFA is now receiving calls from other attorneys who do not live in Miami-Dade but who want to offer their service to these families in need.

The most well-attended of the seminars was one conducted in partnership with the office of one of our Florida Congressmen. He has also been receiving numerous calls from his constituents regarding foreclosure issues. He reached out to the HFA and MDAHFI and together they sponsored a forum at Miami-Dade College's Downtown Campus. More than twelve hundred persons showed up for what amounted to another all day event. The Congressman underwrote the expenses for the food, drinks and other

³⁰ The Dade County Bar has a pro bono lawyer initiative called Put Something Back. "Put Something Back", the joint pro bono project of the 11th Judicial Circuit and the Dade County Bar Association was established in 1991 pursuant to the order of the Florida Supreme Court mandating pro bono programs for all circuits in Florida. That program provides a network through which Miami-Dade County lawyers can provide free legal services. In lieu of providing services, attorneys can also make monetary donations to this pro bono effort.

³¹ The local minority bar associations include, among others, the Cuban-American Bar Association, The Wilkie D. Ferguson, Jr. Bar Association (formerly known as the Black Lawyers Association), the Haitian-American Bar Association and the Florida Association for Women Lawyers (FAWL).

refreshments as neither the HFA nor MDAHFI has the funding resources to foot the bill for such expenses. This is another opportunity for our county government to become more involved.

The free legal seminars and workshops have been held at churches, community centers, colleges and public facilities all over the county. In addition, MDAHFI and the HFA have conducted forums for county employees by providing lunch seminars for, among others, the transit department and the aviation department. These forums and workshops could reach more people and have a broader impact if there was someone to assist with defraying the costs. The County has the buildings, locations and the funds to do so. The aim of the free foreclosure legal seminars is to reduce the number of homeowners who will actually end up as defendants in foreclosure litigation. If we can reduce the number of foreclosure cases filed, we can reduce the number of homes repossessed by lenders. The benefit to the County will be stable communities and a housing market that may begin to turn around.

We encourage the county accordingly to work with the HFA, MDAHFI and DCS towards sponsoring more free foreclosure prevention seminars in larger venues that will attract more homeowners. Further, we encourage the county and especially the individual commissioners, to assist in advertising and marketing the forums as well as the benefits homeowners can receive from attending.

G. A Focus On Rental Housing

One final observation as to the county's efforts relates to those homeowners who, despite all these efforts, will still end up losing their homes. The county is aware of the court's CHAMP program and is committed to supporting that initiative. To its credit, the County is also assisting the homeowners and tenants³² being displaced by foreclosures find affordable rental housing. We encourage the commissioners to make sure that this information is also made available to their respective constituents.

³² Unfortunately, foreclosure actions are also being filed against owners of apartment buildings and those who rent homes. The CHAMP program is not available to those mortgage foreclosure defendants. If they lose their case their tenants, who may have been paying their rent all along, will be evicted from their rental homes and apartments.

V. THE EFFORTS OF OTHER FLORIDA ATTORNEYS

Thousands of members of the Florida Bar have been rallying to assist on a volunteer basis, owner-occupied residents who are facing foreclosure. In 2008, the Real Estate Property Trust Law (“REPTL”) Section of the Florida Bar responded to a request from Florida’s Chief Financial Officer, Alex Sink. CFO Sink solicited the help of the Florida Bar to address the avalanche of foreclosures facing Florida homeowners involved by reaching out to Floridians all over the state who were faced with the possibility of losing their homes. REPTL formed FASH, Florida Attorneys Saving Homes. FASH is a joint project of The Florida Bar, The Florida Bar Foundation, Florida Legal Services, the Real Property, Probate and Trust Law Section, the Business Law Section, the Young Lawyers Division, Attorneys Title Insurance Fund and Florida law schools.

As of May 15, 2009, there were about 1,000 volunteer lawyers statewide handling more than 1,611 FASH cases. Through the Bar’s website³³ or by calling the hotline number, 1-866-607-2187, Florida residents receive basic information to determine whether they are eligible to receive free legal service from FASH. As of November 2008, FASH has received in excess of 10,000 calls and over 5,000 intake forms. Due to the growing number of homeowners waiting to be assigned to a volunteer attorney, the Florida Bar is ramping up its effort to get more attorneys involved in this pro bono project.

The primary goal of the volunteer lawyers is to effectuate communication between lenders and homeowners. FASH lawyers serve as negotiators for struggling homeowners and try to work with lenders to renegotiate the terms of loans, agree to forbear or take some other course of action that will obviate the need of the lender to pursue foreclosure proceedings.

A twenty-day clock starts when homeowners are served with a complaint. Therefore, due to the huge number of requests coming in to the Florida Bar and the delays in processing those requests, presently FASH lawyers are only being assigned to people that have not yet been sued. For borrowers who find themselves involved as

³³<http://www.floridabar.org/tfb/TFBConsum.nsf/0a92a6dc28e76ae58525700a005d0d53/b84e143f383ff617852574aa004ecc57?OpenDocument>

defendants in foreclosure litigation, other free and low-cost legal services are available to them through the Florida Bar's website.³⁴ The website also includes links to other local, state and national assistance efforts. We applaud the Florida Bar and the efforts of its lawyers and committees in assisting Florida residents in need.

VI. CONCLUSION

Some may argue that by creating these mandatory foreclosure mediation programs, the courts are overstepping their bounds as neutral arbiters. In fact, the role of our judges is to serve as referees in litigation and rule on legal matters presented during the life of the cases on their dockets. Many may see these initiatives as veiled attempts to keep the defendants / borrowers in their homes in lieu of allowing the plaintiffs / lenders to pursue their mortgage foreclosure actions without the impediments and delays being imposed by the courts via these new procedures. Our response is twofold.

Firstly, even with a mandatory foreclosure mediation program in place, judges maintain their neutrality. They are not involved in the mediation session, they do not select the mediator and they are not privy to any of the discussions that occur at the mediation. If a case is not resolved at mediation, the court will continue to play the same role as it does in other cases. This includes deciding issues of law and, if appropriate, making findings of fact. Even in cases where defendants fail to file a written response to the complaint, plaintiffs do not win automatically. They must still present sufficient evidence to the court to establish that they are entitled to the relief they seek. Mandatory mediation of foreclosure cases is simply another form of alternative dispute resolution (ADR). ADR has been around for years and mandatory arbitration and mediation have become routine in courtrooms across the nation. Requiring parties in litigation to participate in such programs does not impact the neutrality of the judges presiding over those cases.

Secondly, to the extent that these mediations are successful, the result operates as a win-win for both parties involved in the litigation. From the perspective of the

³⁴ The Florida Bar's Consumer Protection Law Committee has resources to aid homeowners and the attorneys helping them weather the housing crisis. Such information may be found at <http://www.floridabar.org/TFB/TFBConsum.nsf/0a92a6dc28e76ae58525700a005d0d53/1e8d310ab53d82df85257589004bf76b?OpenDocument>

defendant / borrower, that homeowner will have the opportunity to keep his / her family from being evicted. That brings emotional stability to the family and more economic stability for the neighborhood. Further, if resolution of the litigation involved renegotiation of loan documents, then the lender has created a situation where the borrower will be able to meet his mortgage obligation and will lessen the risk of foreclosure. From the lender's perspective, they have taken a non-performing asset and made it a performing asset and do not have to worry about a foreclosure sale. The lenders also are spared the trouble and expense of trying to find a new purchaser for that home. All of those issues and problems are avoided if the mediation is successful.

In addition to benefitting the litigants, creating these mandatory mediation programs throughout the state will benefit our civil court system. Other litigants may have their cases resolved more quickly as a result of the mandatory mediation on the foreclosure cases. Not every mediation will be successful. However, for everyone that is, there will be one less case for the court to handle. As mediation becomes more successful, this will allow judges to devote more time to other cases such as slip and fall, breach of contract, medical malpractice and other civil cases pending in the system. Again we see this as a tremendous benefit and strongly recommend that the Supreme Court move expeditiously toward mandating the mediation of these foreclosure cases in all of the judicial circuits in the State of Florida.

It is clear that the mortgage foreclosure crisis affecting our nation and state continues to negatively impact our economy, our communities and our civil courts. It is also clear that the end of this crisis is nowhere in sight. For those reasons, we applaud the Collins Center, the Supreme Court and our local courts and county government for their collective efforts and initiatives aimed at reducing the number of future mortgage foreclosure filings and resolving those cases that are presently in the system.

Miami-Dade County, its county agencies involved in the foreclosure prevention workshops and the lawyers volunteering their services have done a great job in getting the word out and educating families faced with foreclosure. They have achieved this limited success with volunteer lawyers, volunteer work from county employees and on one occasion, an infusion of cash from a congressman. As it relates to the reduction of

future cases, we believe greater coordination and collaboration, including funding from Miami-Dade County, will bring even greater success.

VII. RECOMMENDATIONS

A. MANDATORY FORECLOSURE MEDIATION PROGRAMS IN FLORIDA COURTS

1. The Florida Supreme Court should require mandatory mediation of all residential mortgage foreclosure cases in Florida. The mediations should be restricted to homesteaded properties.
2. Cost of mediation should be borne by lenders and remain entirely free of charge to defendants / borrowers.
3. Financial counseling should be provided to defendants / borrowers prior to mandatory mediation.
4. As part of any statewide mandatory mediation of foreclosure cases, we recommend that plaintiffs / lenders be required to provide a Notice to Homeowner with service of the mortgage foreclosure complaint. The Notices, at a minimum, should do the following:
 - a. Advise the defendants / borrowers **in plain language** that they may lose their home as a result of the legal action that has been initiated against them;
 - b. Advise the borrowers that they still may be able to save their home;
 - c. Provide contact information (name, address and phone number) and advise borrowers of the availability of free legal advice from legal aid or legal services providers;
 - d. Provide “legitimate” contact information where borrowers may obtain housing counseling and caution borrowers to be aware of foreclosure rescue scams;
 - e. For those who may have already been victimized by such scams provide contact information where they can obtain assistance.
 - f. Warn borrowers that their failure to act immediately may cause them to lose legal rights they may have.

B. COLLINS CENTER

1. To ensure transparency, we recommend the Collins Center provide to the courts, on a monthly basis, overall results of their managed foreclosure mediations. We understand that this information will also be available on the Collins Center’s website.
2. To enhance the public’s knowledge and awareness of the mediation programs, the Collins Center should ensure that such information is included on its website’s homepage.

B. MIAMI-DADE COUNTY GOVERNMENT

1. The County should establish a Foreclosure Hotline that residents can use to obtain information about foreclosure prevention, financial counseling, housing counseling and free legal assistance.
2. Until a Foreclosure Hotline is created, the County should ensure that operators staffing its 3-1-1 Answer Center are able to provide such information to County residents. And, after the hotline is created, the 3-1-1 Answer Center should be prepared to direct such inquiries to that hotline.
3. To increase the effectiveness of the CHAMP Program, the County should conduct an advertising and marketing campaign to educate the public about the benefits and legitimacy of the mandatory mediation of mortgage foreclosure cases.
4. In lieu of piecemeal approaches by individual Commissioners, the County and the Commissioners (using their discretionary funds) should direct and oversee the co-ordination of foreclosure prevention workshops and free legal seminars for residents in all areas of the county. The County should underwrite the expenses related to these presentations and work with the HFA, MDAHFI and DCS, which have already been involved in conducting such workshops.
5. The County should modify the **homepage** of its website to include information about foreclosure prevention. We also recommend the County consider Ohio's foreclosure prevention website as a starting point for possible enhancement of the County's Foreclosure Prevention Now website. The County could secure many benefits for its residents by creating a website with similar basic information and links to other helpful sites.
6. The County should prepare a mailer advising residents of available foreclosure prevention assistance. The mailer should be included in all utility bills and the County should fund the costs of formulating and disseminating the mailer.
7. Homeowners who are eligible to receive forgivable loans from OCED's foreclosure prevention fund should receive financial counseling as a requirement of the program.
8. The County should move expeditiously towards using community centers and libraries as sources for information about foreclosure prevention programs.

ATTACHMENT

Median Household Income Measures for Miami-Dade County

The median income values shown below are estimates developed by U.S. HUD and used in determining the "income limits" that apply to the CDBG and federal housing programs.

Median Household Income FY2009

Place	Area Median Income
Miami-Dade County	\$ 50,800
Broward County	\$ 65,400
Palm Beach County	\$ 67,600
Cape Coral-Fort Myers, FL MSA	\$ 60,700
Deltona-Daytona Beach-Ormond Beach, FL MSA	\$ 55,200
Gainesville, FL MSA	\$ 59,800
Jacksonville, FL HMFA	\$ 65,100
Naples-Marco Island, FL MSA	\$ 70,800
Orlando-Kissimmee, FL MSA	\$ 60,700
Sarasota-Bradenton-Venice, FL MSA	\$ 62,300
Tallahassee, FL HMFA	\$ 63,600
Tampa-St. Petersburg-Clearwater, FL MSA	\$ 59,200
Florida	\$ 58,800
United States	\$ 64,000

Source: US Department of Housing and Urban Development (HUD)

Miami-Dade County: HUD 2009 - 50%, 80% and 120% of AMI Income Thresholds by Household Size

	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
50% of AMI	23,600	26,950	30,350	33,700	36,400	39,100	41,800	44,500
80% of AMI	37,800	43,150	48,600	53,950	58,250	62,600	66,900	71,200
120% of AMI	56,600	64,700	72,800	80,900	87,350	93,800	100,300	106,750

Source: <http://www.huduser.org/publications/commdev/nsp.html>

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
(A) MITCHELL LEE SIMPSON and (B) JULIUS LATAVIUS SIMPSON	Murder First Degree	True Bill
CRISTOBAL ALFREDO PALACIO	Murder First Degree Child Abuse / No Great Bodily Harm Child Abuse / No Great Bodily Harm	True Bill
QUEVARIS DEANDRE TURNQUIST	Murder First Degree Murder/Premeditated/Attempt/ Deadly Weapon or Aggravated Battery Murder/Premeditated/Attempt/ Deadly Weapon or Aggravated Battery Murder/Premeditated/Attempt/ Deadly Weapon or Aggravated Battery Murder/Premeditated/Attempt/ Deadly Weapon or Aggravated Battery	True Bill
SEDREK AWIN SINGLETON	First Degree Murder	True Bill
SEDREK AWIN SINGLETON	First Degree Murder	True Bill
(A) KENDRICK CLARENCE SILVER and (B) ONIEL PEDLEY	First Degree Murder (A&B) Robbery Using Deadly Weapon or Firearm (A&B)	True Bill
(A) BERNARD MAREL JONES, also known as "NARD" and (B) JIMMIE BOWEN, also known as "DUTCH"	Murder First Degree (A&B) Murder First Degree (A&B) Murder/Premeditated/Attempt / Deadly Weapon or Aggravated Battery (A&B) Murder/Premeditated/Attempt / Deadly Weapon or Aggravated Battery (A&B) Attempt Felony Murder w/Deadly Weapon or Aggravated Battery (A&B) Attempt Felony Murder w/Deadly Weapon or Aggravated Battery (A&B)	True Bill
(A) ALEXANDER L. ALLEN and (B) MICHAEL CHRISTOPHER REID	Murder First Degree Robbery / Firearm / Attempt Robbery / Firearm / Attempt	True Bill
EMORY LASON PACE	First Degree Murder Petit theft	True Bill
MICHAEL ANTHONY DEAS	First Degree Murder Firearm/Weapon/Ammunition/ Possession by Convicted Felon or Delinquent	True Bill
(A) RODIL ONILSON DURAN-PUERTO (B) MAURICIO MEZA	First Degree Murder Attempted Armed Robbery	True Bill

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
LIONEL JOSEPH SAINT-NELUS	First Degree Murder Burglary With Assault or Battery Therein While Armed	True Bill
ANDREW JAMAR MCWHORTER	First Degree Murder	True Bill
JASON BECKMAN	First Degree Murder Unlawful Possession of a Firearm While Engaged in a Criminal Offense	True Bill
GRADY NELSON	Murder First Degree Murder/Premeditated/Attempt Murder/Premeditated/Attempt Sexual Battery-Victim Under 12 Years Sexual Battery-Victim Under 12 Years Sexual Activity with Child by Person in Familial or Custodian Authority	True Bill
ANNICE WATKINS	First Degree Murder Robbery Using Deadly Weapon or Firearm	True Bill
WENCESLAO FERNANDEZ	First Degree Murder	True Bill
(A) EMMANUEL DARBONNE, (B) BRAYSHUN NWAMAH, (C) TAVARIS RAYSHOD CROMER	Robbery Using Deadly Weapon or Firearm First Degree Murder	True Bill

ACKNOWLEDGMENTS

We, the Miami-Dade County Grand Jury for the Fall Term 2008, would like to thank Honorable Judge Gisela Cardonne Ely and Miami-Dade County State Attorney Katherine Fernandez Rundle.

We would especially like to thank Chief Assistant State Attorney Don L. Horn, our legal advisor, for his expert guidance and broad knowledge. He has personally inspired our belief in the criminal justice system. His professionalism and skills made our task enjoyable and easier to perform. We also wish to thank our Administrative Assistant, Rose Anne Dare and our Bailiff, Nelido Gil, who graciously attended to the myriad of administrative details of the Grand Jury.

We also would like to thank Assistant State Attorney Susan Dechovitz and Court Reporter Tina Settel for their assistance. We gratefully acknowledge all of the dedicated law enforcement and government agencies of Miami-Dade County, all of whom contributed greatly in assisting this Grand Jury in the performance of its duties.

Our grand jury's term was filled with representatives from our multi-ethnic community. Our term proved to be a most memorable and worthwhile experience to all of us that were chosen to serve our community.

Respectfully submitted,



Lynetta Purcell
Miami-Dade County Grand Jury
Fall Term 2008

ATTEST:



Gayle A. Bainbridge
Clerk

Date: 6/10/09