



The Florida Bar



Michael G. Tanner
President

Joshua E. Doyle
Executive Director

Gary S. Lesser
President-Elect

October 6, 2021

Honorable Charles T. Canady
Chief Justice, Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1925

Re: Consideration of a statewide managed mediation program for eviction cases

Dear Chief Justice Canady:

I recently asked the Bar's COVID-19 Recovery Task Force to review the Statewide Managed Mediation Program of Residential Foreclosures adopted in 2009 following the Final Report and Recommendations of the Florida Supreme Court Task Force on Residential Mortgage Foreclosure Cases (August 17, 2009). In particular, I asked our Task Force to consider the viability of a similar program for eviction cases. As you know, the national moratorium on evictions ended on August 26, 2021, which may result in a significant increase in the number of eviction cases statewide.

Our Task Force found many similarities between the foreclosure crisis in 2009 and the expected increase in evictions beginning this year. It also recognized significant differences, including the relative simplicity of evictions compared to foreclosures, the availability of summary procedure in evictions, and the fact that individuals represent a more significant percentage of landlords than mortgagees.

I have attached the comments of the Task Force for your review and I request the Court's consideration of such a program for evictions. I offer the services of The Florida Bar to assist in any review or efforts you deem appropriate.

Thank you for your consideration.

Very truly yours,

Michael G. Tanner

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President, The Florida Bar

Attachment



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Executive Director

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President-Elec

COVID-19 TASK FORCE RECOMMENDATIONS CONCERNING A POTENTIAL STATEWIDE MANAGED MEDIATION PROGRAM OF EVICTIONS

The COVID-19 Task Force appreciates the opportunity to provide comments for President Tanner's attention, regarding consideration of a potential statewide managed mediation program of evictions akin to the Statewide Managed Mediation Program of Residential Foreclosures adopted following the Final Report and Recommendations of the Florida Supreme Court Task Force on Residential Mortgage Foreclosure Cases (August 17, 2009) (the "Final Report"). It is our understanding we have not been asked to advocate for a position but rather simply to provide comment on the potential use of a program akin to that which was proposed in the Final Report.

In the Final Report, the Task Force on Residential Mortgage Foreclosure cases recommended a statewide managed mediation program to be implemented through a model administrative order issued by each circuit chief judge. As stated in pages 8-9 of the Final Report:

Under this program, all foreclosure cases involving residential homestead property will be referred to mediation, unless the plaintiff and borrower agree otherwise, or unless pre-suit mediation was conducted. All cases will be assigned to mediation to be conducted by a Florida Supreme Court certified circuit court mediator. Referral of the borrower to foreclosure counseling prior to mediation, early exchange of borrower and lender information by way of an information technology platform prior to mediation, and the ability of a plaintiff's representative to appear at mediation by telephone are features of the model administrative order. Borrowers will not pay a fee to participate in the managed mediation program. Appended to the Model Administrative Order are best practice alternative dispute resolution forms and mediator training standards.

The Task Force also recommends differentiated processing of three distinct categories of foreclosure cases: (1) homestead properties that are referred to mediation and are likely to resolve through the managed mediation program; (2) vacant and abandoned properties that can move through the courts quickly through expedited foreclosure processes; and (3) other foreclosure cases, which may include tenant-occupied or non-borrower-occupied properties, in

which the borrower has been unable to communicate with the plaintiff to resolve the case, and which may be referred to the managed mediation program at equal cost to both parties. In order to facilitate improved case management of foreclosure cases that will not be resolved through the managed mediation program, the Task Force proposes a number of changes to the Rules of Civil Procedure and the Forms for Use with Rules of Civil Procedure, as well as —best practices‡ forms that may be used at the discretion of the circuit court to improve efficiencies in case processing.

Among notable additional recommendations by the Task Force was for Plaintiff to bear the costs associated with the mediation (See Final Report at 35-36).

The COVID-19 Task Force recognizes there are significant similarities between the prior foreclosure crises and the expected forthcoming flood of evictions; however, it also recognizes significant differences, including the relative simplicity of evictions compared to foreclosures, the availability of summary procedure in evictions, and the fact individuals represent a more significant percentage of landlords than mortgagees. Premised on these facts, it is the opinion of the COVID-19 Task Force that a statewide managed mediation program of residential evictions merits further consideration, including:

1. Evaluating whether the legislature intends to further address the concern; and, if so, to encourage a collaborative effort between the Court and the legislature to devise a procedure that is in synch;
2. Evaluating the details and efficacy of the Sixth Judicial Circuit’s 2019 mediation pilot program for landlord-tenant disputes;
3. Evaluating the details and efficacy of the Eleventh Judicial Circuit’s recently initiated online case resolution platform for eviction cases, courtHELP;
4. Determining whether a mediation process could be sufficiently expedited to avoid conflict with the landlord’s entitlement to summary procedure provided by Section 51.011, Florida Statutes, or whether mediation could be viewed as an impediment to an already-expedient eviction resolution procedure; and
5. If implemented, considering whether narrowing mediation availability would be appropriate based on one or more of the following qualifications:
 - a. Residential tenancies, without precluding use in commercial tenancies, the procedures of which are adapted to balance the interests of the parties;
 - b. Defendant has appeared in the case, individually or through counsel;

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- c. Defendant has not been defaulted; and, if applicable, has complied with the requirements of Section 83.60(2), Florida Statutes, by either (i) paying into the registry of the court the accrued rents alleged in the complaint to be due and continuing to pay amounts as they come due or (ii) filing a motion to determine rents and complying with the court's order thereafter;
- d. Defendant still occupies the leased premises;
- e. Parties have not mutually agreed to waive mediation;
- f. Costs are paid up front for mediation services;
- g. Costs are borne equally by both parties;
- h. The landlord and tenant have exchanged pertinent information via an IT platform prior to mediation; and
- i. The managed mediation session occurs at or before the time of the final possession hearing so as not to unduly burden the court and parties with multiple appearances.

In sum, the COVID-19 Task Force is supportive of further exploring a potential statewide managed mediation program, through consideration of the foregoing.