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March, 2009

Lackawanna County Establishes a Mortgage Foreclosure Diversion Program
And
Pending Legislation may make Diversion Conferences Mandatory Across the State

Lackawanna County has joined Philadelphia and Allegheny Counties in introducing a program which will provide an opportunity for all owners of occupied homes to request a court sponsored mediation either soon after the action is filed for newly filed actions or before a Sheriff's Sale for already pending actions. A copy of the order for the March, 2009 sales as well as the Court Rules are attached.

The collective effort of various creditor law firms in Pennsylvania has lead to the implementation in most Courts (but not Philadelphia) of "Opt In" programs. The homeowner must take the initial first step of opting in by certifying their eligibility with the court and meeting with a housing counselor before obtaining a foreclosure mediation date. Although details of each county's programs may vary, the essential elements remain the same. We will notify our foreclosure contact and a home retention contact of homeowner application for mediation and of any mediation date. Servicers may "appear", by telephone, but most cases will resolve before the actual mediation date. There are a total of 67 counties in Pennsylvania and, thus far 3 have announced a program, another 5 are in late stage planning and many more are considering programs.

We expect additional counties to roll out similar programs over the next few months. We understand that the following counties are in some level of planning for conciliation conferences: Blair, Bucks, Clinton, Dauphin, Delaware, Montgomery, Northampton and Lehigh.

Our internal statistics show that less than 10% of the homeowners who participate in conciliation conference reach a long term resolution, such as: reinstating the loan, payoff, short payoff, loan modification or payment plan.

Nevertheless, a bill has been introduced in the Pennsylvania State Senate (**SB 222 of 2009**) which would require Conciliation Conferences before a sheriff sale in every county in Pennsylvania. We are working to educate the Pennsylvania Legislature on this important issue and urge our clients to alert their Government Affairs Office of this pending bill.

Michael McKeever
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IN RE MARCH 24, 2009 SHERIFF SALES : IN THE COURT OF COMMON
PLEAS
IN THE COUNTY OF LACKAWANNA : OF LACKAWANNA COUNTY
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**NOTICE OF RESIDENTIAL MORTGAGE FORECLOSURE
DIVERSION PILOT PROGRAM**

Your property is listed for Sheriff's Sale on March 24, 2009.

If you own and live in your property that is listed for Sheriff's Sale, you may be able to have the sale of your residence postponed so that you can participate in a Court-supervised conciliation conference in an effort to resolve this matter with your lender.

To be considered eligible for this program, you must contact one of the following housing counselors by no later than **February 20, 2009**:

**JESSE J. ERGOTT,
BSW
NEIGHBORHOOD HOUSING SERVICES
CENTERS
OF LACKAWANNA COUNTY
(570) 558-2490**

**MARY SCHINDLER,
NEIGHBORHOOD
OF N.E. PA
(570) 343-8835**

Once you have contacted one of the identified housing counselors, you must promptly meet with that counselor and provide all requested financial information so that a loan resolution proposal can be prepared on your behalf before **March 9, 2009**. If you do contact *and* meet with one of the identified housing counselors *and* provide the requested financial information, you will

have the opportunity to attend a Court-supervised conciliation conference on **April 28, 2009 at 9:30 AM** in the Jury Orientation Lounge, 1st Floor, Lackawanna County Court House, where you will meet with a representative of your lender in an attempt to work out reasonable arrangements with your lender.

Unless you (1) contact one of the identified housing counselors by **February 20, 2009**, (2) meet with that housing counselor *and* (3) provide the counselor with the requested financial information prior to **March 9, 2009**, you will not be eligible for this pilot program and your property will remain on the Sheriff's Sale list for March 24, 2009.

YOU MUST ACT QUICKLY IF YOU WISH TO SAVE YOUR HOME.

BY THE COURT:

_____J.

Terrence R. Nealon

**COMMONWEALTH OF PENNSYLVANIA
FORTY-FIFTH JUDICIAL DISTRICT
COURT OF COMMON PLEAS OF LACKAWANNA COUNTY**

GENERAL COURT REGULATION 09 - _____

Recent developments in the area of mortgage lending, and litigation that has arisen as a result of these developments have necessitated this Court implement a system to streamline the process of mortgage foreclosure litigation within this judicial district. Therefore, pursuant to Rules of Civil Procedure 212.3 and 239, this Court establishes the *Mortgage Foreclosure Diversionary Program* to assist residential borrowers and lenders in mortgage foreclosure actions by providing a forum for the parties to meet in an effort to resolve the matter.

As such, this Court adopts the following Local Rules, governing procedure in mortgage foreclosure actions commenced or transferred to the forty-fifth judicial district:

Rule 1143.1 Applicability

These local rules shall apply to mortgage foreclosure actions on property meeting the following criteria:

- (1) Owner-occupied;
- (2) Four residential units or less; and
- (3) The principal residence of the owner.

These rules shall apply to condominiums, apartments, residential co-operatives, or any analogous residential unit, provided the property otherwise complies with the above listed criteria.

Rule 1143.2 Commencement of Action. Civil Coversheet. Scheduling Pre-Trial Conference. Failure to File.

(a) Prior to the filing of a complaint commencing a mortgage foreclosure action to which these rules apply, the Plaintiff shall acquire a Residential Mortgage Civil Coversheet from the Office of the Court Administrator.

(b) Concurrent with the issuance of the Residential Mortgage Civil Coversheet, the Court Administrator shall schedule a pre-trial conference neither less than 50 days nor more than 60 days from the date the Plaintiff requests the Civil Coversheet.

(c) The Plaintiff shall file the action and present a copy to the Sheriff's Office for service no later than 72 hours after the issuance of the Residential Mortgage Civil Coversheet and scheduling of the pre-trial conference.

(d) In the event the Plaintiff fails to file the action within the time allotted under sub-section (c), such failure shall constitute grounds for the Defendant to request a continuance of the scheduled pre-trial conference.

Rule 1143.3 Defendant Participation

(a) Upon receipt of the complaint the Defendant may participate in the Program by telephoning the number provided on the Residential Mortgage Foreclosure Civil Coversheet within 72 hours of completed service.

(b) After calling the number provided the Defendant must participate in HUD approved mortgage foreclosure counseling within three weeks.

(c) All recommendations or proposals that result from the mortgage foreclosure counseling session or sessions shall be forwarded to the Plaintiff's counsel no later than 10 days prior to the scheduled pre-trial conference.

(d) In the event the Defendant fails to comply with any of these provisions:

- (1) He or she will not be permitted to participate in this program;
- (2) Upon ex-parte motion by the Plaintiff, the pre-trial conference will be de-listed, and;
- (3) The matter will proceed as provided in the Pennsylvania Rules of Civil Procedure.

Rule 1143.4 Time Between Filing of Complaint and Pre-Trial Conference

(a) During the period between the filing of the Complaint and the Pre-Trial Conference:

- (1) The Plaintiff shall initiate no further filings in the matter, including, but not limited to Motions for Summary Judgment (Rule 1035.1), Motion for Judgment on the Pleadings (Rule 1034), and a Ten-Day Default Notice (Rule 237.1).
- (2) The Plaintiff may file a responsive pleading without limitations during this time period.
- (3) The Defendant may file an answer to the complaint or file a preliminary objection during this period, however the time for the Plaintiff to answer shall be extended to twenty days after the date of the scheduled pre-trial conference.

- (b) In the event the matter is delisted from the pre-trial conference list pursuant to the Defendant's failure to participate, the Plaintiff shall be free, forthwith, from any filing restrictions contained within these local rules.

Rule 1143.5 Pre-Trial Conference

- (a) The pre-trial conference shall be presided over by a conference officer.
- (b) The Defendant may be represented by counsel.
- (c) Except where otherwise noted, a stenographic record of the pre-trial conference is not required.
- (d) Persons attending the pre-trial conference shall include:
 - (1) The Defendant and counsel if applicable;
 - (2) Attorney for the Plaintiff; and
 - (3) A representative for the Plaintiff who has settlement authority over the case at issue. The Plaintiff's representative may appear telephonically.
- (e) Issues to be discussed and resolved, if possible, at the conference include:
 - (1) What recommendations or proposals were made by the HUD approved mortgage foreclosure counseling agency in relation to the Defendant's situation;
 - (2) The Defendant's income and expense information;
 - (3) Any ongoing concerns by the Plaintiff in regard to the matter;
 - (4) If any of the recommendations or proposals made in the HUD counseling are practical to the application of this particular case;
 - (5) If further pre-trial conferences would be beneficial or assist in an amicable resolution to the matter; and
 - (6) Any other relevant issue.
- (f) Upon the conclusion of the pre-trial conference:
 - (1) Any agreement between the parties shall be placed on the record;

- (2) If the parties are unable to agree, then their failure to reach an agreement, and the reasons therefore, shall be placed on the record; and
- (3) The restrictions placed upon the Plaintiff under Rule 1143.4 are lifted.

Rule 1143.6 Objections

- (a) Any party whose property has been averred by the Plaintiff as non-qualified under Rule 1143.1 of the Local Rules may object to this designation by filing an objection with the Clerk of Judicial Records.
- (b) An objection shall contain the following:
 - (1) A caption;
 - (2) A statement that the Defendant's property meets the criteria listed in Rule 1143.1 of the Local Rules;
 - (3) A date and time for a hearing on whether the Defendant's property meets the criteria of Rule 1143.1 of the Local Rules, acquired by the Court Administrator's Office; and
 - (4) A certification of service that the Objection has been served on Plaintiff.
- (c) After the filing of the objection, upon the agreement of the parties, the objection may be withdrawn and matter listed upon the pre-trial conferences in accordance with Rule 1143.2.
- (d) At a hearing upon an objection the only question to be entertained by the Court is whether the Defendant's property meets the criteria of Rule 1143.1 of the Local Rules.
- (e) At the conclusion of the hearing:
 - (1) If the objection is sustained, the matter will be listed for a pre-trial conference in accordance with Rule 1143.2.
 - (2) If the objection is denied, the matter will proceed according to the Rules of Civil Procedure.

