

Allegheny County to Implement New Foreclosure Procedures

[On behalf of Dornish Law Offices, PC](#) | Nov 1, 2008 | [All, Real Estate Practice](#)

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As the financial crisis has deepened, and more homeowners have faced foreclosure, the federal government is not the only place where changes are being made to bring some relief to overwhelmed homeowners. State courts are the places where the foreclosure actions take place, and courts all over the country have tried to find ways to preserve the bank's rights to take the properties of those who can't or won't make payments on their loans, while at the same time, giving homeowners every possible opportunity to keep their homes and get their mortgage loans back on track.

Pennsylvania courts have been among those trying new ideas to change some parts of the process to make it easier for homeowners to save their homes. In mid October, I had the opportunity to meet with Judge Joseph James, present Judge of Court of Common Pleas of Allegheny County, and many other local real estate attorneys. The purpose of the meeting was for Judge James to announce to us and describe a Mortgage Foreclosure Conciliation Program which he is preparing to implement in Allegheny County.

In preparation for implementation of this program, Judge James reviewed a similar program which has been operating for several months in Philadelphia. The Philadelphia Program includes training lawyers to be Special Masters, and bringing debt counselors into Court. The program is triggered when foreclosure complaints have been filed and served, borrowers have not answered the complaints against them, and the lenders have gotten judgments and asked the sheriff to schedule the sale of the property. At that point, the Philadelphia courts schedule a meeting, called a conciliation, between the lender, the borrower and a debt counselor on behalf of the borrower. All of this takes place in front of the lawyer who's trained as a Special Master, and the master attempts to find a way for the homeowner to pay the mortgage loan and stay in the home. So far, this program in Philadelphia has shown only a 10% success rate.

Judge James feels we can do better in Pittsburgh by modifying the program in two substantial ways. First, he believes the conciliations in Philadelphia are too close to the foreclosure sales themselves. By having the meetings earlier in the process, borrowers would not only have more time to work out solutions, but lenders would have lower court costs and attorneys' fees, all of which add to the amount the borrower owes the lender. Second, Judge James believes that the conciliations being performed by lawyers trained as Special Masters are not as effective as if the actual Judges of the Court of Common Pleas conducted the conciliations. Judges have more legal and equitable authority than the masters, and can even hold an attorney or a party who is not complying with the program's requirements in contempt of court, and put them in jail without a trial until they agree to follow the court's rules and procedures.

Hopefully, the new program will be introduced by Sheriff Mullen and Judge James in December. The Allegheny County Program will focus on Foreclosure Complaints at the time they are filed, and each will be given a special docketing number to differentiate them from other civil actions, which all share a general docket or "GD" number. Whenever a Foreclosure Complaint is filed and the Sheriff is preparing to serve the Complaint on the borrower, a special card will be attached to the Complaint being served notifying the borrower of their right to request counseling and conciliation before the lender goes further with the foreclosure sale. For all debtors who make the appropriate requests, conciliation will be scheduled in front of a Common Pleas Court Judge, and the attorney for the foreclosing lender will have to bring a representative of a lender having authority to resolve or compromise the loan with them to the conciliation. Debt counselors or volunteer attorneys will be available to the borrowers at the same time. Neighborhood Legal Services Association has been working with the Court for several months in an attempt to assist the owners who face loss of their homes.

The program is also likely to provide an opportunity for investors interested in working with borrowers about to lose their homes to identify those borrowers who are not capable of curing the foreclosures through the conciliation process, and quickly getting to those borrowers with offers to buy their homes and re-rent or re-sell to them after the sale, or even to do Short Sales on those properties. Once the borrowers have been in front of the judge with debt counselors and a lawyer looking at their case, I believe they will have a more realistic idea whether they can save their homes, and

if not, they will be more willing to explore other alternatives before the Sheriff's Sale, rather than after the sale. Real estate investors will be able to see the court orders scheduling the conciliations online, and the homeowners will have access to lawyers for the program, who can also review the alternatives offered by the investors on behalf of the homeowners. This will help to eliminate the fraudulent investors who take advantage of homeowners and offer no real solutions, and also help the homeowners to appreciate the benefits of the legitimate offers made by real investors, whether those offers are to buy and rent or option back to the homeowner, or simply buy the property, end the foreclosure, and allow the homeowner to move without sheriffs' deputies at the door.

As we work through the Allegheny County program, we can hopefully provide some input to make it a program beneficial to homeowners, banks and real estate investors, and make it a model for other counties to follow. Look for more information on this program in the next few weeks.

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