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Court-ordered mediation can cut foreclosures

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Lee County courts should step in where the Legislature and federal government have failed.

They should order non-binding mediation not just in the relatively few cases set for trial, but in cases where the borrower has demonstrated an ability to live up to modified loan payments or a willingness to quickly dispose of the house in a way acceptable to the lender.

This will not solve the foreclosure crisis or even rescue most problem loans. But meeting with a neutral court-certified mediator gives lenders and borrowers a chance to have a meaningful discussion.

The borrower gets what so many say eludes them, a chance to talk to a person who can make a decision and resolve the matter. Borrowers describe a torturous series of miscommunications with lender representatives who aren't current on their cases and who have no authority.

Lenders have a right to an expeditious settlement of their claim. They loaned the money, and the borrower is not living up to the deal. Even if the borrower is going to lose the house, it might be done in an orderly fashion, with less damage to the borrower's credit, a quicker resolution for the bank and less chance of a neglected or vandalized house.

Michael McMullan, CEO of Bank of Florida Corp., emphasizes the need for borrowers in trouble to be open and honest about their resources and their ability to pay. "If they're withholding information, we have to be as aggressive as we can."
So good faith is important on both sides.

Of 67 counties in Florida, Lee is the most progressive in the mediation of civil lawsuits, says Kevin Jursinski, a Fort Myers attorney who represents both lenders and borrowers. "(Mediation) is highly successful, especially in Lee County. Why not use it for foreclosure?"

Clerk of Court Charlie Green says, "I have nothing against mediation, but it is not going to work in many foreclosure cases, maybe 10 to 15 percent." Green says the rocket docket has worked well, clearing cases that were beyond any hope of settlement.

But a heavy backlog of cases "is never a reason for denying constitutional rights and due process," says Lane Houk, a Fort Myers mortgage analyst.

Jursinski thinks volunteer mediators working for little or no pay could be recruited from the ranks of retired attorneys or other professionals. Further increases in court costs could fund mediation and give lenders the incentive to try it.

In Florida's 19th Judicial Circuit, which includes Martin, St. Lucie, Indian River and Okeechobee counties, borrowers and lenders are required to meet before their first court appearance. Twenty-two of the first 31 mediated cases were settled with renegotiated loans.

Three of the state's 20 judicial circuits have enlisted the nonprofit Collins Center for Public Policy to offer mediation.

The results are nonbinding, and the foreclosure process can continue despite scheduling of mediation.

Mediation should not be a delaying tactic.

Most of the people facing foreclosure are not going to keep their homes. But a substantial percentage, 25 percent, says Jursinski, might avoid foreclosure if they and their lenders could get together effectively.

A Lee County task force on foreclosure has proposed requiring judges to send cases to a mediator if both sides show up in court. The proposal has not been adopted yet locally, but the state Supreme Court will hear a similar one. The move is overdue.
