

Exclusive: Foreclosures loom in shadows

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Demand for homes in Lee County is brisk and prices are headed up — that’s usually the sign of a healthy market.

But hovering over that cheerful landscape is a cloud of houses that, while they aren’t officially for sale, are headed that way.

It’s called “shadow inventory” and experts say it could hold down prices for years before it goes away.

Estimates vary on how many homes are in that category or even which ones should be counted, but here are some numbers:

- 5,000 to 7,000 foreclosures in the county have been pulled back by lenders unsure their cases are sound. The cases generally were dismissed without prejudice, meaning they could be refiled when paperwork and ownership issues are resolved.
- About 6,000 more properties are working their way through the county court system.
- Locally owned banks alone were holding \$35.9 million worth of non-accruing real estate debt as of March 31. That’s debt borrowers have stopped making payments on.
- Thousands of houses are owned by people who haven’t yet been foreclosed on but are far behind on their mortgages and have no prospects of catching up.

When those homes are likely to come back on the market, and what effect that would have, is an open question.

Jeff Tumbarello, director of the Southwest Florida Real Estate Investment Association and a real estate agent with Steelbridge Realty in Fort Myers, said a surge likely wouldn’t harm the market.

“People think that going forward there’s going to be a monster dump” by lenders pushing foreclosed properties onto the market, he said. “But institutions aren’t going to all do it at the same time.”

Each lender is in a different situation as far as their need to sell quickly and their legal issues with mortgages they hold, he noted.

Also, Tumbarello said, there’s little evidence lenders that have taken back properties are holding them back to any great extent.

All told, he said, there are about 500 active listings for lender-owned homes on the Multiple Listing Service and another 700 pending — that’s more or less all they own.

Backlog building?

But others say homes waiting in the wings could have consequences for the economy when they come back on the market after legal issues caused by sloppy paperwork.

The problem is so many cases have been delayed that a huge backlog is building up of homes that eventually will go back on the market, said Jack McCabe, a Deerfield Beach-based real estate consultant who tracks home markets on both coasts of Florida.

Statewide, he said, “I’d make a case there could be as many as a million that haven’t made their way through the system but will sometime in the next 12-18 months.”

When that happens, McCabe said, “It’s going to make it very difficult for people trying to sell. It’s definitely going to have a negative effect on values at least through the end of next year.”

Elmer Tabor, owner of Wonderland Realty and former chairman of the board of Riverside Bank of the Gulf Coast, said he’s not worried a glut of new inventory will overwhelm the market in Lee County.

“I represent three different investment groups and they are having a difficult time buying properties,” he said. “When they come out on the market there’s going to be enough investors.”

A greater concern, he said, is relatively few working people in this area are able to buy a home to live in — most sales are to investors or people getting a retirement or vacation home.

Whatever the eventual effect of shadow inventory, a lot of it could have been averted by more mediation between lenders and borrowers, which avoids foreclosure in the first place, said Jonathan Conant, who, with three partners, runs the Conant Mediation

Center in Fort Myers.

The center conducts mediation mandated by the Florida Supreme Court in foreclosures of primary residences.

Banks often have no real incentive to reach a deal, however, because so many loans are insured anyway — the bank gets paid no matter what, Conant said.

The system needs to be reformed to get real dialogue going, he said. “They may say no anyway, but at least give the borrower a fighting chance.”

Rocket Docket

***At a glance:** The so-called Rocket Docket was a campaign, funded by the state, to clear out Lee County’s growing backlog of foreclosure cases. It started in December 2008 and continued through Thursday.*

***Background:** Each of the state’s judicial districts received extra funding to get rid of its backlog. Lee County is in the 20th district, where Chief Circuit Judge Keith Cary brought in retired judges to hold marathon court hearings at which lenders were awarded final judgments or the case was set for trial.*

***Issues:** The program was praised for jump-starting a surge of inexpensive homes onto the market after banks took them back in foreclosure and put them up for resale. But critics said the huge dockets robbed some defendants of a chance to plead their case. The dockets also came under fire for letting lenders’ law firms skirt the law and court rules — sometimes failing to file complete documentation or “robo-signing” paperwork without reading it.*

BY THE NUMBERS

The backlog of foreclosures reached a peak of 26,000 in early 2009 before the program began to grind it down: slowly at first and then faster as the pace of foreclosures slowed. There are now about 6,000 cases backlogged.

HOW IT DIED

Funding for the Rocket Docket ended Thursday after the Legislature failed to renew \$9 million for the program. Starting Tuesday, foreclosure cases will be heard in regular civil court.

CONTINUING CONTROVERSY

In April, the American Civil Liberties Union filed a lawsuit claiming Lee County’s rocket docket systematically denied foreclosure defendants their due process. The suit, filed with the state Second District Court of Appeal, continues.

OPINIONS

“I think there was a need to do something. In the fall of 2008 everybody agreed there was going to be a big backlog. They had to take some action. But a better approach would have been to take a lot of those cases out and put them in mediation.”

— Kevin Jursinski, defense attorney

“What’s always bothered me was that the phrase ‘rocket docket’ was a catch phrase. What people didn’t understand, and I don’t think they still do, is that we were hearing cases that were two, two and a half years in duration. And people had all that time to come up with a solution and they couldn’t. I think it’s put a lot of real estate in the hands of people” who can afford to buy a house at last.

— Charlie Green, Lee County clerk of court