

Homes bill is praised, panned

Naples rep proposal speeds foreclosures

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A proposal by state Rep. Kathleen Passidomo to put some Florida home foreclosures on the fast track drew both praise and condemnation Friday from authorities in the emotionally charged issue.

Passidomo, R-Naples, in her first term, proposed in a bill introduced Thursday that a speeded-up procedure be allowed in cases in which the borrower had abandoned the property, agreed in writing to the procedure or surrendered the property.

The law would apply to one- to four-family dwelling units.

Reaction from both proponents and opponents was fast and furious.

Speeding things up would quickly dump even more homes on the market at a time when prices are already depressed, said April Charney, a Jacksonville-area legal aid attorney who's an expert on foreclosure issues.

"You're just going to open the spigot," Charney said. "Flooding an already saturated market doesn't make any sense to me."

Besides, she said, the bill is so vague in many of its provisions that it doesn't protect the rights of homeowners facing foreclosure.

For example, determining whether a home has been "abandoned" isn't an easy call to make, she said.

"You break your hip and go in the hospital for three weeks and nursing home another three weeks. Have you 'abandoned' your home?" Charney asked.

The law allows abandonment of a home to be declared if the lender files "an affidavit from an individual having personal knowledge of the contents thereof, under penalty of perjury."

Passidomo's legislation drew praise for its potential to relieve the logjam of foreclosure cases now in the courts.

"I think it offers a choice," said Lee County Clerk of Court Charlie Green. "It helps."

Lee County's court system was one of the hardest hit by the wave of foreclosures in 2007 after the housing boom here collapsed and many property owners became unwilling or unable to keep up their payments.

The number of cases backlogged in the county courts peaked at about 29,000 three years ago. That number is down to about 11,000 now because of the "rocket docket" here that expedites foreclosure cases.

Green said Passidomo's bill provides a path that could reduce one of the worst aspects of many foreclosures.

The alternate procedure offers a way to eliminate deficiency judgments. Under current state law, the lender may recover the difference between what the property sells for at public auction and the amount owed by the borrower.

As to the details of the procedure, Green said, those likely will be negotiated to ensure both sides are treated fairly.

"It's a starting place to talk about when the Legislature opens," Greens said.

Chain of custody

Fort Myers-based attorney Carmen Dellutri, who handles foreclosures, said he's troubled by the bill's provision that the bank wouldn't have to actually prove the

chain of custody of the note - how it was assigned from the original lender to other entities.

"We're going to accept these assignments as true?" Dellutri asked. "Are you kidding me? You're only going to perpetuate fraud."

Kevin Jursinski, a Fort Myers-based attorney who handles foreclosures, said he has some qualms about the bill's provisions but that it's "a very aggressive and well-thought-out bill" that should improve the situation.

"The question's going to be, 'Did you really get service?'" he said, referring to the right of the person being foreclosed on to get notice that the action's been filed.

Jursinski said one thing the bill lacks is that there's "nothing for a borrower to get out in front of it" by getting into mediation with the lender to resolve his situation.

But Alex Sanchez, president and CEO of the Tallahassee-based Florida Bankers Association, said banks are eager to resolve their problems with borrowers without prompting.

"I'll tell you what banks would do" when faced with possibly having to foreclose, Sanchez said. "The first option they'd try is to work it out with the customer. Foreclosure is considered only after we've exhausted all options."

Maintain properties

Passidomo's bill would help solve the biggest problem, Sanchez said, which is that under current foreclosure procedures, properties sometimes deteriorate for years before the bank can get them back and resell to someone who will maintain them.

But Charney said the real problem is fraud in the foreclosure process and in the way mortgages were sold by the original lender to Wall Street, which bundled them up and sold them as securities.

"The more we try to do things without the use of our courts, the more we devolve into anarchy," Charney said. "It's just moving it (fraud) under a thicker rug."

Here are some of the main features of the bill:

- An alternate method of foreclosure would be established to speed up the process in some cases.
- Where homes had been abandoned or the owner wasn't fighting the foreclosure, streamlined procedures could cut months off the process, which often lasts a year or more.
- In many cases, deficiency judgments would be eliminated: Lenders couldn't come after a borrower for more money after the lender received title to the house.
- Lenders would be able to simply file an affidavit to establish that a home was abandoned, or that the lender was the right entity to file the foreclosure.

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Look for this story online to download a copy of Rep. Passidomo's bill.