

Kevin Jursinski: Draconian banking bill will harm due process rights of homeowners

Kevin Jursinski - Guest Opinion • February 10, 2010

Every property owner in Florida, from homeowner to investor, has been negatively affected by the current mortgage foreclosure crisis. Even property owners who have been struggling but are current in their mortgage payments have not escaped the lash of the foreclosure whip.

It is estimated that in Florida alone the foreclosure crisis has reduced property values by \$9.9 billion dollars per year and has adversely affected over 120,000 permanent jobs. Current studies show that over 60 percent of the homes in Florida are below or at negative equity at this time.

Rather than provide a positive and proactive solution to these significant problems, the Florida Bankers Association has presented our state legislators with a bill to allow unprecedented non-judicial foreclosures in Florida.

The proposed 53-page bill allows a lender, without judicial oversight, to unilaterally dispose of property "...by auction, by negotiated sale, or by appraisal..." proposed FS 52.201 (2).

Incredibly, not only would this proposed bill eliminate court oversight for foreclosures but actually allows a lender to list and sell a person's home while that person is still in title. Proposed FS. 52.401.

Lobbyist for the Florida Bankers Association have named this proposed new law the "Florida Consumer Protection and Homeowner Credit Rehabilitation Act," an example of George Orwell's critique on political prose ("... to make lies sound truthful..."), since this bill neither protects consumers nor rehabilitates credit. It does wrest the inherent equitable jurisdiction of courts and cedes that authority to lenders.

The proposed bill allows for court intervention, in

limited instances, such as if the lender decides to pursue the homeowner for a deficiency judgment. Proposed FS 52.605.

The President of the Florida Banker's Association, Alex Sanchez, is quoted in support of the bill: "We want to get a property out of the courts and sold to a productive Florida family" presumably based upon his assumption that every homeowner who may go into default is non-productive and should be divested of their due process rights. Quite a broad brush theory and an insult to label all delinquent borrowers as being non-productive.

A large percentage of homeowners are desperately trying, in good faith, to proactively address their circumstances. The proposed bill would defeat those good faith attempts, strip away due process rights and block the new directives recently issued by the Florida Supreme Court encouraging foreclosure mediations.

A disingenuous position asserted by the banking lobby is that this bill is designed to help neighborhoods, condominium and homeowner associations from abandoned properties.

The banking lobby fails to mention the fact that:

- 1) For economic reasons, many lenders choose to delay taking title to properties to defer the loss on their books or to avoid incurring the ongoing monthly expenses of association dues, thereby damaging the very neighborhoods, condominium

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and homeowner associations they now profess to protect;

2) There already exists an expedited procedure for judicial foreclosure contained under Florida law. FS 702.10.

The Florida Bankers Association has blocked positive and proactive attempts to streamline the mortgage foreclosure process.

One such attempt was a proposal identified in The News-Press' Oct. 24, 2008, editorial in which this author, with the assistance of two local legislators, proposed a program that would promptly and efficiently allow borrowers to address a foreclosure situation by requiring both the lender and homeowner to mediate their disputes to resolution in a fast, fair and efficient manner, eliminating or greatly reducing court costs and attorney fees by utilizing mediation.

Mediation has been identified by the Florida Supreme Court Task Force as having a 73 percent success rate in foreclosure actions.

The banking lobby opposed that legislation and has presented this bill, containing draconian measures which destroy due process rights.

Handing over total foreclosure control to lending institutions compounds, rather than solves, the problem and erodes Florida property owners' rights and access to court proceedings.

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