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Move is on for non-court Florida foreclosures

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A proposal by the Florida Bankers Association to allow foreclosures without a court hearing is arousing violent sentiments on both sides of the issue in Southwest Florida.

Proponents say so-called "non-judicial" foreclosure, which would take as little as four months, could help clear a glut of court cases and speed the recovery of the housing market.

Opponents say it's a way for banks to take people's houses without legal safeguards built into the court system - even when a lender's claim to foreclose is shaky.

"They're trying to keep people from their day in court," said real estate agent Jeff Tumbarello, who tracks foreclosures in Lee County and is director of the Southwest Florida Real Estate Association.

"They'd prefer not to face a judge with what they do to people," Tumbarello said.

He noted that in recent court cases, judges in Florida have thrown out foreclosure suits because the bank couldn't prove it owned the loan.

But county Clerk of Court Charlie Green, who's struggling to stay ahead of a flood of new foreclosures and a 23,000-case backload, said there should be a way to foreclose quickly against deadbeats who are destroying neighborhoods by neglecting or abandoning their homes.

"There are people who have not made any payments, any effort to pay, and they've been living there a year to a year and a half and not helping anybody," he said. "I agree with the banks: Those people need to go."

Alex Sanchez, president of the bankers association, said his group has been shopping the idea with legislators but doesn't have an actual bill introduced or a sponsor.

State Rep. Gary Aubuchon, R-Cape Coral, a builder, said he's withholding judgment on the association's plan until he sees something on paper.

"There is not a bill filed yet," he said. "I don't yet quite know, honestly."

Under the association's proposal, a bank could go the judicial route and file a lawsuit as it would at present - that would allow the lender to file a deficiency judgment against the borrower for any money not recovered from the sale of the foreclosed house, he said.

But under the non-judicial alternative, the bank would file a delinquency notice and as early as 30 days later could then file a foreclosure notice. After 90 days the bank could ask for the property to be sold in an auction held by the Clerk of Court, as is done now, Sanchez said.

Under the non-judicial process, generally the bank would not be allowed to file a deficiency judgment,

he said.

Sanchez said the concept of non-judicial foreclosure is sound and he takes issue with the argument that banks just want to kick people out of their homes without recourse.

"Their last option is the foreclosure ejection button," Sanchez said. "We'd rather keep that family in the home until they get back on their feet."

The people being harmed by the current system are the ones living in the neighborhoods where banks can't get control of a vacant home, he said.

"If you've got an eyesore property next to you, you won't like that," Sanchez said.

But April Charney of Jacksonville Legal Aid, an expert in foreclosure issues, said bankers are disingenuous when they claim to be working in the public interest.

"Oh the things that money will try to buy," she said, suggesting that the high fees for foreclosure filings and mandatory mediation in Florida are more of a factor in the attempt to circumvent the courts.

Lenders just want to get as much money out of foreclosures as quickly as possible to stay afloat, Charney said.

"When you're drowning, you just try to drown someone else so you can breathe one more breath," she said.

Kevin Jursinski, a Fort Myers-based attorney who handles foreclosure cases, said the association's proposal "is like George Orwell's 1984: It just eliminates all due process rights in Florida, which is the most protective state for person's home in my opinion. It's just all one-sided for the bank."

But Green said the current situation calls for a new approach - most borrowers being foreclosed on have simply given up anyway.

"Of the 23,000 cases backlogged in Lee County," he said, "I venture to say 20,000 have made no effort to save their property."
