

## Guest opinion: Non-judicial foreclosures will kill property rights

Written by: Kevin Jursinski

October 23, 2011

Gov. Rick Scott recently voiced support for the renewed effort of the Florida Bankers Association to eliminate judicial foreclosures in Florida and to convert non-judicial foreclosures.

One reason cited by Governor Scott was that he "wants to make sure that we have an efficient process, so we don't create a reason for banks ... not to lend money in Florida."

Another reason promoted by the banking lobby is that it takes over 600 days from filing the suit to judgment.

Recently, Florida courts have had to borrow \$54 million from the state to fund the court system and, as such, it would be more efficient and less costly if judicial foreclosures were eliminated.

Not one of these arguments are supported by the facts nor should be the basis to eliminate due process rights in Florida.

Court foreclosure procedures have been under attack, largely because of the unprecedented number of foreclosure filings.

It is not the quality of the judiciary or the efficiency of the system, rather the sheer volume of filings coupled with questionable practices of lenders and their counsel that has contributed to the inefficiency in the foreclosure process.

Florida has a statutory expedited foreclosure procedure (F.S. 702.10) which affords lenders and borrowers a procedurally protected fast track method of foreclosure.

This procedure allows the lender to quickly, but judicially foreclose on real property and allows the borrower due process.

Lenders, rather than selecting quality law firms and spreading their work to those law firms who are qualified to comply with and utilize the current system in place, have

instead bid out their foreclosures to large "foreclosure mills," notwithstanding the documented poor results from such practices.

"Foreclosure mills" take on thousands of cases at a time for a fixed fee and employ the "one size fits all approach" to foreclosure filings.

The "foreclosure mill" process fails to embrace the concept of mediation which the Florida Supreme Court encouraged to address the foreclosure crisis.

Can anyone seriously argue that, given the series of abuses already attributed to lenders (which include filing suits against the wrong owners, initiating suits when the Lenders do not own and hold the original mortgage and note, "robo" signings, all the way to falsifying documents by foreclosure mills representing lenders) we now would want to address those abuses by actually eliminating the last vestige of protection the individuals have, which is court oversight of the foreclosure process?

The banking lobby simply can't sell that theory as a basis to do away with the judicial foreclosures.

Another reason cited for eliminating judicial foreclosures is that this would result in a cost savings to our court system.

In 2009, in an apparent attempt to address the problem of statewide budgetary issues, the Florida Legislature greatly increased foreclosure filing fees. Foreclosures at times have funded up to 80 percent of the court system operating trust fund, according to Kris Slayden of the Office of the State Court Administrator.

As such, the argument that foreclosures are cost ineffective is not supported by the facts.

The better argument is that the foreclosure filing fees should be appropriately earmarked to address the foreclosure crisis.

The current judicial foreclosure system serves to preserve two of the most highly guarded rights that the citizens of Florida enjoy: Real property rights and the right to rely upon due process.

The guardian of those rights should be the court system, not the banking lobby.

Every citizen in Florida should give strong consideration to the current proposal to eliminate the judicial foreclosures, premised on the guise of efficiency and budgetary concerns. These arguments are not supported by the facts.