

Editorial: Homeowners in agony

Written by news-press.com

8:06 PM, Apr. 23, 2011|

The ACLU's lawsuit challenging Lee County's "rocket docket" may be about one person facing foreclosure, but it has implications for anyone who has stood before a judge and had only seconds to argue to try to keep his or her home.

Whether this lawsuit succeeds, it should move courts, the state, federal government and lenders to take a bolder, more comprehensive approach toward solving the foreclosure crisis — the epicenter of which is Lee County.

Reforms are needed to ensure there are not perverse incentives to deny borrowers due process.

One of the greatest perverse incentives is a court system funded, and thus dependent on, foreclosure filing fees. Former Florida Supreme Court Chief Justice Peggy Quince once said such a system potentially could lead to "cash register" justice.

The "rocket docket" was implemented in the 20th Judicial Circuit — Lee, Collier, Charlotte, Glades and Hendry counties — specifically to handle foreclosure cases as expeditiously as possible.

Hundreds of cases might be handled in a single day.

In March 2009, for example, 24,140 cases were in the system in Lee County. As of March 31, 2011, that was down to 9,688, according to Lee Clerk of Court Charlie Green.

In terms of foreclosure filings, from April 2007 to March 2011, there were 72,504 of them. The average monthly number was 1,511. The high point was 2,620 in October 2008; the low point was 315 in February 2011.

The ACLU brought its lawsuit April 7 on behalf of Georgi Merrigan of Cape Coral, a woman working four jobs and supporting her husband, who was seriously injured after an auto accident.

According to the suit, Merrigan knew she would not be able to afford her mortgage payments and tried to work a solution out with her lender. She was told to stop making payments before being able to obtain any help.

That never happened, according to the lawsuit. The lender chose to initiate foreclosure proceedings and she was sent on her way to the “rocket docket” and to losing her home. The issue, however, is not whether the lender should be able to foreclose on Merrigan’s home — she did default on her loan.

The issue is whether she is being denied her day in court because the “rocket docket” moves at an assembly-line pace.

“The rules are designed to get both sides a chance to be heard, in effect,” said Larry Schwartzol, a staff attorney with the ACLU’s Racial Justice Program in New York City, who is involved in Merrigan’s case.

“That’s why Georgi is a really powerful symbol of this litigation.”

Although the ACLU seeks relief only for Merrigan, if the Second District Court of Appeal in Lakeland rules in her favor this case has implications for anyone who has gone or will go before the “rocket docket.”

Senior and retired judges presiding over these foreclosure cases have admitted being cranky and frustrated at making judgments on hundreds of cases a day.

Green, however, said they are acting lawfully and professionally to deal with a crisis that required an aggressive solution.

“I think the courts have been maligned,” he said. “They’ve done the very best they can with the issue provided.”

Foreclosure cases are rarely clean-cut, and there are numerous factors to consider. Among them are that the borrower agreed to pay back the loan and now can’t or won’t, and the lender has a right to collect the debt.

However, the shock waves from the Great Recession — unemployment, lost wages, among the effects — have limited people’s ability to pay.

On top of that many people in or at the brink of default either received subprime mortgages or bought at the height of the market and the value of their home is far less than the amount owed.

According to a 2010 Federal Reserve Board report, a “double trigger” occurs when a homeowner has 25 percent negative equity in addition to an economic shock, like unemployment or illness, and that leads to default.

Federal programs have failed to provide loan modifications for the vast majority of distressed homeowners because lenders do not have to participate in them. At the same time, scandals have emerged concerning foreclosure mills, robo-signing of loans and scams.

Borrowers failed to be proactive because they were ignorant about the system.

One thing for sure is that foreclosures are bad for the economy.

They destroy the value of neighborhoods by depressing home prices — and potentially push other homeowners into foreclosure; they decrease property tax collections; unnecessarily put banks in the position of being home sellers; and put distressed homeowners out on the streets.

Eddie Felton, executive director of the Home Ownership Resource Center, who has helped borrowers resolve their issues, sees the situation getting worse.

A combination of lender intransigence, poorly funded homeowner counseling programs, and soon-to-balloon variable interest rate loans will add fuel to the fire. “The economy hasn’t gotten any better — it’s gotten worse,” he said. “If people had jobs, we would not be in the predicament we’re in.”

Felton said one option for distressed homesteaded homeowners is mediation — a remedy the Florida Supreme Court ordered all judicial circuits to offer in 2009.

Real estate attorney Kevin Jursinski had offered the courts a comprehensive solution to the foreclosure crisis as early as 2008. He has advocated for court mediation, and said too many people do not know they have options.

Jursinski said he has unsuccessfully urged the courts to include a printout of the motion to request mediation any time a homeowner is served foreclosure papers.

He said the ACLU lawsuit represents what he and other attorneys have observed for years about the “rocket docket.” “That is a well put together completely well researched damning critique of the ‘rocket docket,’” he said.

“The rocket docket forces people out of their homes as fast as they can,” he added. “They were denied due process.”

“People who come out at the end have no respect for the judicial system, no respect for banks and no respect for the process,” Jursinski said.

The appeals court has ordered the 20th Circuit to respond to the ACLU’s lawsuit by May 8.

Clearly, a comprehensive approach that emphasizes solutions for borrowers, lenders, taxing bodies and the court system is essential to fixing the system.

Anything less is a miscarriage of justice and has the potential to lengthen the foreclosure crisis for a long time to come.

Resources

- For counseling, contact the Home Ownership Resource Center of Southwest Florida at 239-768-2013 or visit horcswfl.org.
- If you are an unemployed or underemployed primary homeowner in mortgage distress, you may qualify for up to \$12,000 in aid from the Florida Housing Finance Corp.'s Hardest Hit Funds. Apply at flhardesthithelp.org, or call 877-863-5244.
- Federal Housing Administration's toll-free hot line: 800-225-5342.
- To file a mortgage fraud complaint, contact the Florida Attorney General's Office at 866-9-NO-SCAM or online at myfloridalegal.com.

Guest opinions coming Monday

Lee County Clerk of Court Charlie Green defends the "rocket docket." ACLU of Florida Executive Director Howard Simon and ACLU staff attorney on racial justice Larry Schwartzol argue that the "rocket docket" robs homeowners of fairness and equity in the court system.

Proposed solutions

- Homeowners need to be proactive when they think they might go into default and start working with their lenders or contact an attorney and/or homeowner counseling agency.
- The courts should provide distressed homeowners with information on how to navigate the court system, such as, a printout of the motion to request mediation.
- Governments should better fund nonprofit agencies trying to work out solutions for distressed borrowers.
- Lenders should work with people who want to find a resolution rather than letting them hang out to dry.
- The state Legislature should change the way it funds the court system to not make it dependent on foreclosure filings fees and keep it independent.