

A TWENTY-FIRST CENTURY APPROACH THAT COULD SOLVE OUR MORTGAGE FORECLOSURE CRISIS AND SAVE OUR REAL ESTATE ECONOMY

By Kevin F. Jursinski, Esq.

The Mortgage foreclosure crisis continues to grip our Country. Nowhere has its negative effects been felt as hard as in Lee County, Florida.

Until proper Legislation is put in place providing a 21st Century solution to the problem (see my proposed legislation below.) the answer to solve the mortgage foreclosure crisis is for each affected property owner to resolve a mortgage default by taking fundamental steps to proactively address the problem.

Statistics indicate that a proactive approach in addressing mortgage foreclosure problems will result in a resolution of fifty percent (50%) of mortgage foreclosure defaults. The problem is that many people don't have the ability, knowledge or patience to go through a mortgage foreclosure work-out or a drawn out court battle. Many also feel intimidated by the process. There is, however, assistance immediately available for these people.

CURRENT AVAILABLE PROGRAMS:

The Florida Bar sponsors the F.L.A.S.H. program for homeowners (primary residences) who cannot afford to retain counsel. In the F.L.A.S.H. program, attorneys have agreed to provide pro-bono services to homeowners who qualify and who have been affected by a mortgage foreclosure. The toll-free number is 866-607- 2187.

There are programs available providing consumers counseling: Homeownership Resource Center: 239-768-2013 and Consumer Credit Counseling Service: 800-741-7040.

Mortgage lenders have representatives available in their loss mitigation departments to address various programs available to address mortgage related problems.

There are outstanding Real Estate Attorneys in Southwest Florida that can assist individuals in negotiating a mortgage foreclosure resolution. Consumers are cautioned to be wary of non-attorneys running "for profit mortgage rescue recovery operations." Those activities are restricted by the recent enactment of F.S. 501.1377.

Regardless of which program is selected, an affected borrower must take a proactive approach to resolve mortgage foreclosure problems.

THE FEDERAL "RECOVERY BILL"- Mortgages on Primary Residences:

Sections 109 and 110 of the Emergency Economic Stabilization Act of 2008 identify ways to modify an affected mortgage. Further, the Secretary of the Treasury has recently announced that up to \$600 billion dollars will be earmarked to "buy up" or modify problem mortgages. The procedures identified in Sections 109 and 110 to modify mortgages contain one or more of the following components:

- a) Reduction in interest rate;
- b) Reduction in principal loan balance;
- c) Restructuring of loan based upon current value and ability of the borrower to pay.

EXAMPLE:

One example of a mortgage loan modification containing these components:

Current mortgage amount: \$300,000.

Property value: \$200,000 (Negative Equity).

Interest rate: 6%; 30 year Amortization

Monthly payment: **\$1798.65** (which borrower can no longer pay)

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MODIFICATION OF MORTGAGE:

Reduce interest rate to 3% for 36 months (interest only).
Reduce principal balance to \$250,000.
Monthly mortgage payment: **\$625** (versus **\$1798.65**).

BENEFITS:

The Borrower can afford to stay in the home and the Lender (barring a recovery of a deficiency judgment against the Borrower), is actually better off than with a foreclosure.

The ancillary benefits, of a successful mortgage modification, are to our court system and our local real estate economy:

- a. This is one less property that goes into foreclosure further relieving the heavy burden on our overworked judicial system; and
- b. This is one less property that is dumped into the oversupply of properties already in the marketplace, which oversupply continues to reduce property values.

MY LEGISLATIVE PROPOSAL:

"Deed In Reduction/Modification in Lieu Program"

This year, I suggested to some of our local elected officials proposed legislation that allows both a borrower and a lender to immediately opt into an alternate dispute resolution procedure. This procedure allows the lender and the borrower to promptly engage in mediation to address a modification of the mortgage or a resolution to the mortgage default. Mediation is a tested program in Florida, having an "80-90% success rate". This mediation procedure could result in a modification of the mortgage or, alternatively, the collateral could be returned to the lender and an agreement made as to any deficiency.

If the modification of the mortgage or a settlement occurs, then there would be no need for further litigation or arbitration. If no modification of the mortgage occurs and no resolution on the deficiency results from the mediation (projected in only 10-20% of the cases), then the parties would promptly submit to arbitration to address the outstanding deficiency.

My suggested legislation would be a much needed alternative to the outmoded foreclosure model currently in use, a procedure that is not effective in today's real estate downturn. The current foreclosure procedure needs an alternative, efficient 21st Century solution. The judicial system and a Court sitting in Equity regarding mortgage foreclosure actions should be looked to only in the event that there is:

- a. A legitimate dispute that requires application of equitable principles in foreclosures; or
- b. In cases that require a formal foreclosure procedure and sale, such as contested commercial or residential foreclosures with defenses that need to be resolved by the Court; or
- c. Situations which require a formal foreclosure to eliminate junior liens or encumbrances on the subject property that otherwise cannot be eliminated by any other means.

Utilizing these proactive and positive approaches will more efficiently resolve the looming foreclosure problem plaguing borrowers and lenders alike, and will enable our economy to more rapidly recover and stabilize.

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