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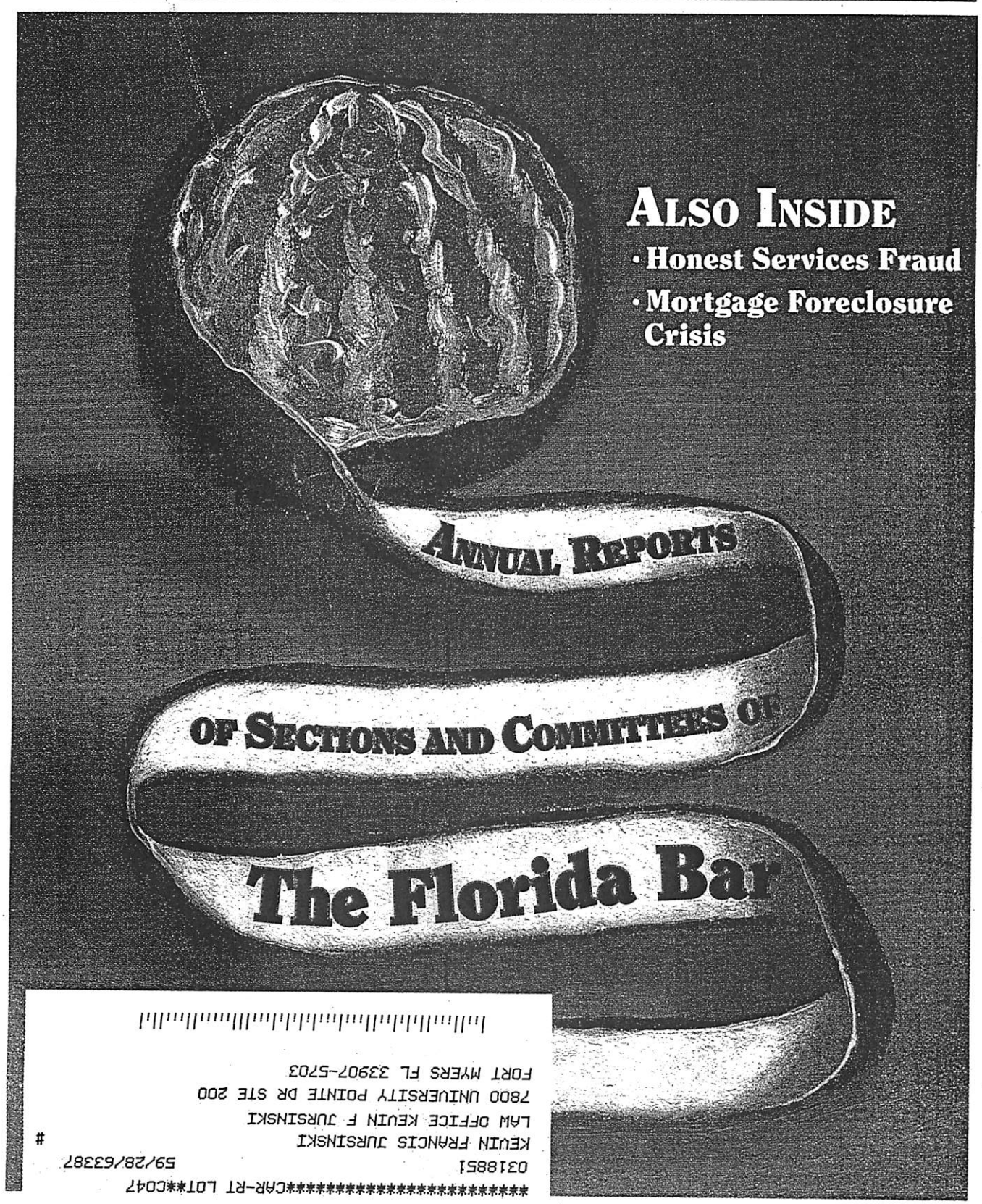
ADVANCING THE COMPETENCE AND PUBLIC RESPONSIBILITY OF LAWYERS



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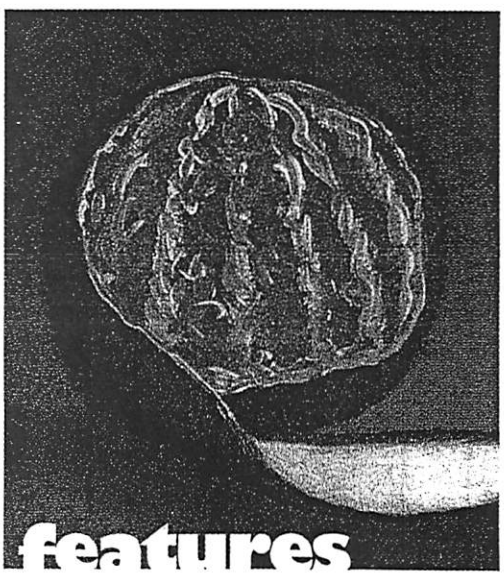

features

Cover by Joe McFadden

by Kevin F. Jursinski

The Mortgage Foreclosure Crisis in Florida: A 21st Century Solution

The current national mortgage foreclosure crisis has been felt the hardest in communities throughout Florida.[1] The crash in Florida's real estate economy has been fueled by a staggering 400-plus percent increase in foreclosures during the last three years.[2] Consequently, the court systems in many jurisdictions have been overwhelmed and have incurred significant expenses and backlogs.[3] It is estimated that the backlog of mortgage foreclosure cases in Florida results in added costs and lost property values of $9.9 billion dollars per year, as well as adversely affecting an estimated 120,219 permanent Florida jobs.[4] This crisis is anticipated to get worse, and a proactive solution is necessary to address the problem.

This article will review the purpose of foreclosures, the current status of foreclosures in Florida, the current process for addressing foreclosures, approaches being considered, and a proposed solution for the 21st century.

Purpose of Foreclosure

A mortgage foreclosure is an equitable remedy that seeks equitable relief from the court to foreclose the interest of the mortgagor and any and all parties claiming by, through, or under such mortgagor to enable the mortgagee not only to foreclose its interests, but also for the mortgagee to acquire title to the collateral securing the mortgage loan.[5] Nevertheless, the general rule in Florida is that a foreclosure must not be unconscionable or inequitable.[6] Mortgagees have a duty to act in good faith and equitably with its contracting parties.[7] This includes mitigation of damages and efforts to avoid exacerbating damages.[8] A mortgagee should not recover for the consequences of a mortgagor's act that are readily avoidable by the mortgagee.[9] Similar to a standard breach of contract action, an underlying purpose of the mortgage foreclosure is to put the nonbreaching party in the same position it would have been in without the breach.[10]

Status of the Current Foreclosure Crisis and Problems Ahead

The current real estate crisis was fueled by subprime loan defaults.[11] A recent study indicates that the current foreclosure crisis will be followed by yet another influx of foreclosures, arising out of defaulting adjustable rate mortgage loans.[12] The projections are that Alternative A mortgages and Option ARM mortgage defaults will mirror or exceed subprime mortgage defaults, which will result in a "second wave" of residential mortgage foreclosures.[13]

A "third wave" of foreclosures[14] will result from those people who decide to "strategically" allow a foreclosure to take place — essentially residential or commercial property owners who at one time had been able to make their mortgage payments but, due to a large reduction in the equity of their property, choose to "walk away" from their mortgage obligations. A recent study by Deutsche Bank indicates that by the year 2012, almost 50 percent of all residential properties nationwide will have a negative equity between the mortgage balance and the property values.[15] Current studies show that over 60 percent of the homes in Florida to be below or at negative equity at this time.[16] The Florida Foreclosure Task Force noted, "The flow of foreclosure cases and homes in the Florida pipeline to foreclosure filing shows only signs of increasing."[17]

This large volume of mortgage defaults has created delays in our court system and has resulted in foreclosures now typically taking between 12 and 18 months or more to wend their way through the court system. When a borrower defaults on his or her mortgage, the borrower faces not only a foreclosure against the borrower's property, but also a potential deficiency judgment after foreclosure. Where a deficiency exists, and in order to recover a deficiency, additional legal proceedings must be pursued following the foreclosure. In foreclosure actions generally, a deficiency or deficiency decree is determined by subtracting the fair market value[18] of the subject property on the date the mortgagee obtains title as determined by the court from the total amount due the mortgagee, generally in the form of a final judgment.[19] The burden of proving that fair market value is less than the debt is on the secured party.[20] A deficiency decree in a mortgage foreclosure action is left to sound judicial discretion,[21] which may reduce the deficiency established if equitable considerations warrant such reduction, and if the court offers reasons for justifying its reductions.[22]

Throughout the foreclosure process, a borrower is exposed to a larger deficiency amount due to the accrual of interest, taxes, insurance (current or "force placed"), as well as the cost of maintenance on the property due to such delays. For some, homeowner

or condominium association dues may also accrue. Furthermore, the property may functionally depreciate since properties in foreclosure are not maintained to the same standard if the property was occupied[23] and may suffer from market depreciation during the extended foreclosure process due to a drop in residential home prices. Abandoned, foreclosed properties may likewise suffer devaluation by vandalism and theft. These factors result in the mortgage balance increasing and the value of the property decreasing, all contributing to a larger deficiency judgment exposure to the borrower, as well as real loss in collateral value to the lender.

In an apparent attempt to address the problem of statewide budgetary issues, the Florida Legislature increased filing fees for foreclosure actions.[24] While the clerk's filing fee on most civil actions remains at $400, foreclosures are charged a higher rate in a new three-tier system: $400 for foreclosure actions up to $50,000; $905 for foreclosure actions more than $50,000 but less than $250,000; and $1,905 for foreclosure actions more than $250,000.[25] These increased filing fees substantially increase the exposure to a deficiency judgment by those least able to pay (*i.e.*, those individuals who are the subjects of the foreclosure actions) and immediately increased litigation costs to the lender without any viable plan in place to utilize these additional funds to address the statewide foreclosure crisis.

Court clerks statewide opposed the increased filing fees because they are not earmarked to be utilized by the individual clerks of court who are charged with collecting such increased fees.[26] Instead, the increased filing fees are mandated to be collected and paid to the State of Florida, the Department of Revenue, and the State Court Trust Fund. These additional filing fee charges ultimately penalize and act as a surcharge on the foreclosed homeowner, adding to the debt that the homeowner has to repay to the lender, either in the form of a larger deficiency judgment or larger liability for debt forgiveness.[27]

Programs Attempting to Address Foreclosure Issues

A number of current programs exist at the federal, state, and local levels to address the foreclosure crisis, but almost all of these programs are either outdated or have been less than effective in addressing the large number of foreclosures that exist today. For example, the federal government has promoted a mortgage modification program, "Making Home Affordable."[28] This program has recently been updated, but has fallen far short of its initial projected expectations of modifying seven to nine million mortgages. As of the writing of this article, less than 200,000 mortgage modifications have been undertaken with a much smaller number of modifications actually completed nationwide, evidencing the ineffectiveness of this program and its failure to be a viable solution to the foreclosure crisis.[29] Despite being the hardest hit economy of all 50 states,[30] Florida is the 50th state per capita in receiving federal TARP money and assistance.[31] Therefore, Florida must look at correcting its own foreclosure procedures and not look to federal intervention or assistance to "bail out" Florida from the foreclosure crisis.

Florida's Chief Financial Officer Alex Sink sponsored a series of statewide seminars to provide educational opportunities and information to those affected borrowers.[32] In addition, Gov. Charlie Crist formed a foreclosure task force, "H.O.P.E.," which studied the problems and identified some of the issues, but it is not clear if any of these recommendations have been implemented.[33] Thus far, neither of these programs has matured into a viable means for addressing the foreclosure dilemma.

A number of jurisdictions in Florida have attempted to address the mortgage foreclosure problem with only minimal success. Some jurisdictions have imposed restrictions on foreclosures, required certain procedures be undertaken by the lender, and, in some progressive jurisdictions, the courts have been encouraging mediations of foreclosure cases.[34] In Lee County, the court created a program known as the "Rocket Docket," an expedited court procedure enabling up to 500 foreclosure cases to be heard in a single day by a single judge. The impact of this procedure has been questioned by *The Wall Street Journal*[35] and has been the subject of a television exposé on TRU-TV. None of these local court programs has proven to be the viable answer to the foreclosure problem.

The Florida Supreme Court has created the "Task Force on Residential Mortgage Foreclosure Cases."[36] The foreclosure task force has made suggestions to protect the rights of homeowners and lenders and to ease the burden on the courts, pursuant to its August 17, 2009, report.[37] The report identified and emphasized a need to have a uniform statewide mediation program implemented as one suggested solution. On December 28, 2009, the Florida Supreme Court issued an administrative order requiring mediation for foreclosure of residential properties.[38]

The Florida Bar has been proactive in developing a program to provide legal assistance for those homeowners who may not be able to qualify and pay for legal assistance. This program is known as F.A.S.H. (Florida Attorneys Saving Homes) and has been instrumental in helping many homeowners. Unfortunately, due to the vast number of foreclosures, F.A.S.H. has not made much of an impact statewide.[39]

Some lenders have created their own programs to address the mortgage default of borrowers and foreclosures on their residential loans. Due to slow development and implementation of such programs, and hampered by the vast number of defaults facing each lender, both homeowners and governmental offices have been critical of the pace of the lender response.[40]

All of the above programs still require cooperation of the lender, and all take time. Moreover, none of these programs affirmatively address the time or costs that necessarily accrue by doing it the way that it has always been done. While stare decisis is an important doctrine, today's economic situation mandates a fresh look and a new solution. The real issue is how to effectively bring the borrower and lender together to efficiently resolve a mortgage foreclosure dispute.

Contrary to many schools of thought

promoted by certain jurists and lender advocates who believe that "once a mortgage is in default, there is no defense, nor is there anything to mediate," other viable options exist, including, but not limited to:

- Modification of the mortgage interest rate or principal, resulting in a reduction of the mortgage payment.
- Short sale of the property with either release of the mortgage with waiver of liability for any deficiency against the borrower or a structured payment arrangement for an agreed upon deficiency.
- Stipulation for conveyance of a deed to the lender and release of borrower from any deficiency or structured payment arrangement for an agreed upon deficiency.
- Stipulation as to entry of an agreed upon foreclosure judgment with a release of liability against the borrower for any deficiency or a structured payment arrangement for an agreed upon deficiency.

A positive and proactive solution must be found to effectively deal with the foreclosure crisis that currently grips Florida, and based upon all projections, will continue to wreak havoc on our real estate marketplace. The weaknesses in our existing judicial foreclosure process have come to light given the vast amount of foreclosures currently in the system.

Deed in Reduction — A New Paradigm for the 21st Century

Given the "perfect storm" of flat or declining real estate prices coupled with the long delays to process foreclosures in the court system, borrowers are faced with a significant exposure to larger deficiency judgments or tax liability from forgiveness of debt. In such circumstances, the borrower should look to minimize and mitigate their exposure to such damages. Lenders should likewise be motivated to reduce the accruing loss in value of its collateral. Barring viable defenses to the enforceability of the mortgage and/or note, one solution is for the borrower to tender an unconditional fee simple deed to the lender. This unconditional fee simple deed and the tender process have been labeled by this author as "deed in reduction" to reflect the fact that the unconditional fee simple deed is delivered to reduce the damages of both the borrower and lender. Unlike a "deed in lieu of foreclosure" that requires the lender to waive and relinquish all claims against the borrower, the tender of an unconditional fee simple deed is provided to the lender without any conditions or restrictions. The lender accepts the deed, but retains all rights and remedies that the lender may have against the borrower for a deficiency.

Rather than a protracted and delayed foreclosure process, the borrower can take a proactive and positive approach by tendering the deed in reduction to the lender to reduce deficiency judgment damages. When the first mortgage is the only lien on the property, the mortgage is in default, and the borrower will not be able to continue payments on an enforceable mortgage, a borrower can tender a deed in reduction to the property without merger of the mortgage and without a waiver of the lender's mortgage, nor a waiver of any deficiency claim against the borrower by expressing such intent in the deed.[41] By transferring a deed in reduction to the lender, the borrower enables the lender to:

- Recapture the lender's collateral immediately without any further court costs or litigation expense.
- Avoid the expense of court delays.
- Avoid the increased damages that accrue during the long foreclosure process, including interest accrual, attorneys' fees, court costs, taxes, and other related expenses.
- Open the possibility that the lender in such a situation may elect to modify the mortgage.

At the time the lender receives the deed in reduction, the lender has a number of options, including acceptance of the deed without waiver of its deficiency claim or refusal of acceptance of the deed and initiation of a foreclosure action. Under long standing Florida law, the delivery of a deed by a grantor and the acceptance by a grantee are essential requirements to convey effective title and, as such, a lender is not required to accept a deed without the lender's consent and acceptance.[42] When a deed in reduction is tendered and accepted by the lender, the lender may still pursue any remedies it may have for the deficiency and propose its own resolutions to the default, including a mortgage modification.

The platform to address foreclosure disputes, whether in the deed in reduction format or other approaches, is the implementation of a suggested statewide program encouraging the lender and borrower to submit to mediation,[43] an efficient procedure to deal with the foreclosures and deficiencies rather than clogging the court system with another foreclosure. As no case law or statute currently requires a lender to accept an unconditional fee simple tender of deed or to voluntarily submit to mediation, both the borrower and lender would have to agree to adopt this procedure as a positive and proactive solution.

Proposed Legislation for Deed in Reduction

The author has proposed legislation to:

- Allow for the borrower to voluntarily elect to tender a deed in reduction to the lender when such viable option exists.
- Require the lender to accept the deed in reduction or propose a modification of the mortgage or other acceptable loan workout to seller and buyer. If no modification or loan workout is proposed or acceptable, the lender would be required to accept marketable title to the property, subject only to the lender's first mortgage, which mortgage would not merge with the deed.[44]
- Require the borrower and lender in such a situation to engage in a mandatory two-step alternate dispute resolution procedure: 1) The first step is nonbinding mediation to address any potential deficiency decree or loan workout opportunity based upon the difference in the value of the property on the date of the tender of the deed in reduction and the amount of the mortgage as of the date of the tender of the deed in reduction; and 2) if the mediation is not successful (mediation is estimated to be successful in approximately 73 percent of foreclosure cases),[45] the second and final step

would be that the borrower and lender promptly submit to binding arbitration on the issue of the amount of the deficiency owed by the borrower to the lender.

The expedited procedure under the proposed deed in reduction legislation would result in the following:

- The lender immediately would recapture its collateral (the property) with no significant litigation expense, attorneys' fees, or court costs, nor would it be in a position to propose a mortgage modification or loan workout.
- The carrying costs — including interest, taxes, insurance, maintenance, court costs, and attorneys' fees — would be greatly reduced and, in some cases, eliminated.
- Market and functional depreciation would be minimized.
- The lender would reserve its rights to pursue a deficiency decree which would be addressed by prompt mediation, or, if mediation is not successful, binding arbitration.
- There would be an elimination of a foreclosure action, elimination of the current inherent delay in the foreclosure process with attendant cost savings for both the lender and borrower, as well as relieving overcrowded court dockets of yet another foreclosure suit.

The tender of a deed in reduction can be a win-win-win scenario for the lender, borrower, and court system. However, the legislation and authority to implement such a program is not in place. As such, borrowers must request the lenders to voluntarily agree to mediation or file a motion to compel mediation. The suggested legislation contains a mediation component, which is one of the recommendations of the foreclosure task force.

Refusal of Lender to Accept Deed Raises Equitable Defenses for the Borrower

If a lender refuses to accept a deed in reduction, the lender may take action to initiate a foreclosure suit, sue on the note, or take any other action the lender deems appropriate pursuant to the loan documentation. However, if a lender refuses to accept a deed in reduction, an equitable argument can be advanced by the borrower that the lender should not be entitled to recover a deficiency decree for the additional interest accrued, attorneys' fees, court costs, and other expenses related to the subject property incurred during the lengthy foreclosure process. These fees and costs continue to accrue as a result of the lender's refusal to accept the deed in reduction. A borrower can argue that the lender could have avoided such foreclosure and resultant fees, costs, and expenses by simply accepting such a deed and recapturing its collateral with a complete retention of the lender's deficiency claim and nonmerger of its mortgage and, thereby, making a good faith effort to mitigate damages.

As noted earlier, a mortgage foreclosure is an equitable remedy in which a mortgagee seeks equitable relief from the court to foreclose the interest of the mortgagor and all subordinate interests to allow the mortgagee to acquire title to its collateral and pursue a claim for deficiency if one exists.[46] The mortgagor, who tenders a deed in reduction, can assert that the lender should not be entitled to recover damages in the form of a deficiency judgment for the difference between the value of the property on the date of the foreclosure sale and the amount of the mortgage as of such foreclosure sale.[47] Rather, the mortgagor can raise an equitable defense that the lender should be limited to recapture only the difference in value between the value of the property on the date that the deed in reduction is tendered and the then existing amount of the mortgage, since any other recovery would allow the lender to recover damages that would be unnecessary under the circumstances.

The defense to be raised by the mortgagor, if the mortgagee refuses to accept a deed in reduction and initiates a foreclosure action, is that the mortgagee in such foreclosure action has the duty to act equitably. Further, the lender, as mortgagee, has the duty to minimize and mitigate damages.[48] The starting point for these defenses is that the general rule in Florida is that a foreclosure procedure must not be unconscionable or inequitable.[49]

The lender, as mortgagee, has a duty to act in good faith and equitably with its contracting party.[50] This includes the duty of the mortgagee to take reasonable steps to prevent or mitigate damages resulting from the default by the mortgagor.[51] It can be argued that such duty to mitigate damages also includes a mortgagee timely accepting the deed in reduction of its collateral (which originally was pledged for its debt), without any liens, mortgages, or encumbrances thereon, save and except the mortgagee's own mortgage and with a reservation of the right to pursue a deficiency, thereby avoiding additional damages.[52] As such, a mortgagee should not recover damages resulting from its own acts, which damages may be readily avoidable, such as the anticipated consequences of the continued accrual of interest, costs, attorneys' fees, taxes, and insurance, as well as functional and market depreciation that occurs during a drawn-out foreclosure process, all of which can be eliminated by acceptance of a deed in reduction to reduce a prospective deficiency amount.

The principle of avoidable consequences is that one seeking damages (in this case the mortgagee seeking a deficiency judgment) as a result of another's actions cannot recover those damages that he or she could have avoided by the exercise of reasonable care. Failure to act equitably and in an appropriate manner is not in keeping with the concept of avoidable consequences.[53]

The effect of a conveyance of a deed in reduction is to place the mortgagee in title to the subject property free and clear of all liens except for the existing first mortgage and with a reservation of all of the lender's rights. By refusing the deed in reduction and electing to seek foreclosure, the lender will not realize any greater benefit than what it can already receive by accepting the deed in reduction. The refusal to accept a deed in reduction may also subject the property to waste during the foreclosure process. A court of equity has the inherent power to address issues of waste.[54]

A deficiency decree in a mortgage foreclosure action is left to sound judicial discretion.[55] The court may reduce the deficiency established if equitable

considerations warrant such reduction and if the court offers reasons for justifying its reductions.[56] A deed in reduction tendered to the lender and refusal thereof by the mortgagee resulting in the accrual of unnecessary damages may be argued by the mortgagor as a reason to justify a reduction of a claimed deficiency.

The Second Mortgage Dilemma

In certain instances, the borrower is faced with a second mortgage on the property. In such circumstances, the borrower cannot mitigate its damages by tendering true marketable title to the first mortgagee without the release of the second mortgage.

In the event of a second mortgage — and in the event equity exists for the second mortgagee (the value of the property exceeding the amount of the first mortgage) — the borrower can seek to tender a deed in reduction to the second mortgagee. If the second mortgagee refuses to accept the deed, then the borrower would be in a position to request the second mortgagee to elect its right of redemption. The request to exercise the equity of redemption would be for the second mortgagee to pay off the first mortgage to protect its second mortgage equity position.[57] In a case where no equity exists for the second mortgagee (the value of the property is equal to or less than the first mortgage), the mortgagor can file a motion to request the second mortgagee release its claim against the subject property, but maintain its claim on the mortgage note because there is no effective collateral security value for the second mortgage.

In such a situation, by releasing its second mortgage, the second mortgagee would still be able to pursue its claims on its note. In the event a second mortgagee refuses to exercise its equity of redemption — if one exists — or alternatively fails to release the second mortgage if no effective collateral value exists for the second mortgagee, the mortgagor's argument could be asserted that the second mortgagee cannot clog the system and prevent the deed in reduction tender to the first mortgagee by refusing to release its second mortgage against the subject property. The borrower's argument may be that the actions of the second mortgagee under such circumstances would be to prevent mitigation of damages by the mortgagor by directly increasing the overall exposure to the mortgagor and increasing damages to the first mortgagee by inherent delays caused by the actions or inactions of the second mortgagee.

Conclusion

Due to the mortgage foreclosure crisis affecting our state, the current mortgage foreclosure procedures in Florida and the prior legal framework have become outdated, and there is a need for an alternative solution. Given the vast amounts of foreclosures and the adversarial nature of a foreclosure default, oftentimes the lender and borrower do not have the time, inclination, or — in the cases of pro se borrowers — the knowledge to engage in such effective mitigation procedures. A proactive and positive format of engaging in prompt, efficient resolution of a mortgage default to minimize and mitigate damages for all parties, utilizing a deed in reduction followed by an effective loss mitigation program of mediation (and, if necessary, arbitration) is an efficient way to minimize and mitigate damages.

Short of new legislation (such as suggested by the author's proposed legislation for deed in reduction) that could offer borrowers an alternative to the existing method of foreclosure and streamline the foreclosure process, we must look to the courts in Florida for guidance. As an alternative to the current drawn-out foreclosure process and absent new legislation, Florida courts should consider adopting uniform statewide guidelines to encourage mediation, or, at the very least, allow cases involving foreclosures to proceed to mediation, whether they are residential or commercial. Mediation is appropriate in instances when the borrower can make a prima facie representation to the court that the borrower is in good faith interested in resolving the foreclosure action in an expeditious manner. Mediation opens up a whole host of options to successfully resolve a mortgage dispute.

In foreclosure actions, our courts should recognize legitimate efforts made by a borrower to minimize and mitigate damages and consider such efforts as a basis to reduce any claimed deficiency sought against a borrower in a foreclosure action. Such proactive efforts by a borrower will not only minimize damages for the borrower and lender, but also directly relieve the backlog in our courts. ❑

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[3] *Clerks vs. Courts*, GULF COAST BUSINESS REVIEW, July 3-9, 2009, at 1, http://www.review.net/section/detail/clerks-vs.-courts/.

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[6] *Clark v. Lachenmeir*, 237 So. 2d 583, 584-85 (Fla. 2d D.C.A. 1970), *disapproved on other grounds, Weiman v. McHaffie*, 470 So. 2d 682, 684 (Fla. 1985); *Pezzimenti v. Cirou*, 466 So. 2d 274, 276 (Fla. 2d D.C.A.), *rev. dismissed sub. nom., Musca v. Cirou*, 475 So. 2d 695 (Fla. 1985).

[7] *See County of Brevard v. Miorelli Eng'g, Inc.*, 703 So. 2d 1049, 1050 (Fla. 1997).

[8] *See Zinn v. GJPS Lukas*, 695 So. 2d 499, 501 (Fla. 5th D.C.A. 1997) (*citing* RESTATEMENT (SECOND) OF TORTS, §918 cmt. e (1977) (avoidable consequences)).

[9] *State ex rel Dresskell v. Miami*, 13 So. 2d 707, 709 (Fla. 1943) (avoidable consequences).

[10] *Air Caledonie Int'l v. AAR Parts Trading, Inc.*, 315 F. Supp. 2d 1319, 1338 (S.D. Fla. 2004) (commercial lease).

[11] John Dunbar and David Donald, *The Roots of the Financial Crisis: Who is to Blame?*, THE CENTER FOR PUBLIC INTEGRITY, http://www.publicintegrity.org/investigations/economic_meltdown/articles/entry/1286/; *see also* Ryan Barnes, *The Fuel that Fed the Subprime Meltdown*, http://www.investopedia.com/articles/07/subprime-overview.asp.

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[18] "Fair market value is generally defined as what a willing buyer would pay to a willing seller, neither party being obligated to act. . . . Inherent in the concept of a willing buyer and a willing seller is that both buyer and seller are aware of all relevant facts regarding the property at issue." *Finkelstein v. Department of Transp.*, 656 So. 2d 921, 924 (Fla. 1995) (citing *United States v. Virginia Elec. & Power Co.*, 365 U.S. 624 (1961)).

[19] *See Morgan v. Kelly*, 642 So. 2d 1117 (Fla. 3d D.C.A. 1994) (citations omitted).

[20] *See Liberty Bus. Credit Corp. v. Schaffer/Dunadry*, 589 So. 2d 451, 452 (Fla. 2d D.C.A. 1991).

[21] *See* FLA. STAT. §702.06. *See also Scheneman v. Barnett*, 53 So. 2d 641, 641 (Fla. 1951); and *Thomas v. Premier Capital, Inc.*, 906 So. 2d 1139, 1140 (Fla. 3d D.C.A. 2005).

[22] *See Chidnese v. McCollem*, 695 So. 2d 936, 938 (Fla. 4th D.C.A. 1997). *See also Gorman v. FDIC*, 746 So. 2d 1157, 1158 (Fla. 4th D.C.A. 1999).

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[43] SUPREME COURT TASK FORCE FINAL REPORT.

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[45] SUPREME COURT TASK FORCE FINAL REPORT.

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[47] *Morgan v. Kelly*, 642 So. 2d 1117, 1117 (Fla. 3d D.C.A. 1994).

[48] *Clark v. Lachenmeir*, 237 So. 2d 583, 584-855 (Fla. 2d D.C.A. 1970) (holding that a court sitting has discretion to strike a foreclosure if it finds that acceleration and foreclosure of mortgage are unconscionable or inequitable).

[49] *Delgado v. Strong*, 360 So. 2d 73, 75 (Fla. 1978).

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[52] *Air Caledonie Int'l*, 315 F. Supp. 2d 1319 (S.D. Fla. 2004); *Jenkins v. Graham*, 237 So. 2d 330, 332 (Fla. 4th D.C.A. 1970) (mechanic's lien).

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[55] *Scheneman v. Barnett*, 53 So. 2d 641, 641 (Fla. 1951) (per curiam); *Thomas v. Premier Capital Inc.*, 906 So. 2d 1139, 1140 (Fla. 3d D.C.A. 2005)(quoting *S/D Enters, Inc. vs. Chase Manhattan Bank*, 374 So. 2d 1121, 1122 (Fla. 3d D.C.A. 1979).

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