

Passidomo's Proposed Fair Foreclosure Act Helps All of Us - Not Just Banks

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Florida State Representative Kathleen Passidomo (R-Naples) has not given up on trying to get legislation passed up in Tallahassee that will help resolve that part of the ForeclosureGate mess which has created a backlog of foreclosure filings in Florida courts and an approximate 700 day turnaround time for banks seeking to foreclose on homes where no one is paying on the home loan.

Translate that: banks in Florida right now are sitting on loans that are going with NO payment for approximately 23 MONTHS before they can legally hold the collateral that was put up for the event that payments stopped coming into the bank.

Two years without getting paid and sitting in limbo, it's no wonder that banks are in trouble these days. Which is one of the reasons for Rep. Passidomo's bill.

What Representative Passidomo's Fair Foreclosure Act Proposes

Introduced in October 2011, the legislation will be considered as part of the 2012 legislative process and is currently proceeding through the committee gates to a full vote. You can read the full text of Rep. Passidomo's proposed Fair Foreclosure Act online in its entirety here.

In sum, if passed, the new law would not gut the judicial foreclosure process; however, when a foreclosure lawsuit is filed and the homeowner fails to answer the lawsuit or assert any sort of defense to the foreclosure action - something that happens quite often when the Florida homeowner abandons the property - then the current procedure would be changed.

In these situations, under Representative Passidomo's Fair Foreclosure Act, the process is changed and the requirements in what the lender must file with the court in order to foreclose upon the property is lessened. This makes it easier both for the lenders and for the judges to get these foreclosures finalized and the homes into the hands of the banks and back out on the market.

If one of these foreclosures did manage to hit a bump, the new law would allow interested third parties, like homeowners' associations who are concerned about the abandoned property in their community, to come before the court and ask for a court-ordered case management conference to try and get the case moving forward.

From HB 213's general description:

Designates act "Florida Fair Foreclosure Act"; revises requirements for acknowledgement of satisfaction of mortgage, lien, or judgment; provides requirements for mortgage foreclosure complaints; requires party foreclosing on specified owner-occupied dwellings to provide specified notice; provides for finality of foreclosure; requires certain actions to set aside foreclosure to be treated as actions for money damages; provides requirements for preparation and recording of instrument acknowledging satisfaction; prohibits certain claims following foreclosure based on enforcement of lost, destroyed, or stolen note; provides requirements for deficiency decrees in foreclosures of certain occupied units; revises procedural provisions relating to foreclosure proceedings; provides for determination of reasonable attorney fees for foreclosing certain owner-occupied properties; provides for election by foreclosing lender to proceed without public sale in certain circumstances; provides for liability of persons wrongly claiming under lost, stolen, or destroyed notes; provides for sanctions for raising unsupported claims or defenses & delay of litigation.

Answering Critics of The Fair Foreclosure Act Proposal

Of course, there are those that do not agree with Representative Passidomo's proposed legislation, arguing that all that the bill does is help evildoing banks and their foreclosure-happy attorneys to do bad things to Florida homeowners.

It's true that in these situations, the banks would be allowed to meet a much less stringent standard in their burden of proof before legally foreclosing on a home. It's also true that much of the "robo-signing" morass has been due to lenders not being able to meet the legal burdens of proof under current real estate law.

Nevertheless, the new law is not written to help bad actors slide away from doing the right thing. Instead, it is trying to solve a very real problem here in Florida: people have been walking away from their mortgages and leaving their homes empty. Sometimes squatters move in. Sometimes it's only insects and vermin. These homes sit there, abandoned, bringing down property values and increasing community dangers for months and months - in some cases now, years and years.

That's not right and it's not good for Florida. Add to that the reality that Florida needs a solid and strong banking industry and we just don't have that right now. In what reality is it acceptable to have a company wait for almost two years without being able to take collateral on a promise to pay that has been breached?

We are in a crisis now due to the huge foreclosure backlog in our judicial system and Representative Passidomo is trying to solve that problem. It's not the complete answer, but it is a step in the right direction.