

Florida Foreclosure Process Moving Out of the Courts If Governor Scott's Plan Okayed by Florida Legislature: Misses the Bigger Problem

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Right now, the State of Florida is one of many states requiring lenders seeking to foreclose on a property for nonpayment of a mortgage note to do so via a formal legal process. A lawsuit must be filed. An official order signed by a judge must be obtained, approving of the foreclosure itself.

This is the way that things have been done in Florida for many years. Now, Governor Rick Scott and several key members of the Florida Legislature want that to change. And, it looks like their campaign may succeed - meaning that in the near future, Florida will be a non-judicial foreclosure state.

Why Should Florida Change From a Judicial Foreclosure State?

The Governor's position is simple. There are so many foreclosure actions that have been filed in Florida courthouses that the system has become overwhelmed. Lane Wright, press secretary to Governor Scott, has explained to one Florida newspaper that they are finding it's taking over 600 days for a foreclosure to be processed, start to finish, in Florida.

That's almost 2 years.

The Governor's position is that when there is this big of a bottleneck, then citizens are hurt because lenders get stuck and aren't able to go about their business, making new loans. Their position is that judicial foreclosures are stalling our economic recovery, so it's time to simplify the process.

Critics Challenge The Wisdom of This Change

This is not an easy sell in Tallahassee. Last year, a bill to change Florida to a nonjudicial foreclosure state died in the Legislature. The Governor is returning now, his second time at bat on this controversial issue.

Many do not believe that moving the foreclosure process outside the courthouse is smart for Florida. They argue that doing so removes needed oversight, and gives even more power to the lenders at the expense of the homeowners, a situation where there is already an imbalance of negotiating power.

A bigger concern: money. Courts profit from foreclosure actions. In bad economic times, what are the various counties to do if they no longer have incoming revenue from foreclosure fees?

What Will Happen? There Will Be Some Change in the System - But It's Missing the Bigger Issue

It's taking years, not months, for Florida banks to complete the foreclosure process right now in Florida. No one can argue that this is a big problem -- both for the lender as well as the homeowner.

Some are already looking for ways to get some change here, to get things moving forward, with one suggestion now on the table being segregating foreclosures into contested and noncontested matters. When the homeowner is not contesting the foreclosure, the lender would be allowed to institute a process outside the courtroom, foreclosing on homes in a manner analogous to the established process used now to repo motor vehicles.

Still, the elephant in the room is the lenders' crisis situation, not the one down at the courthouse. Banks are buckling from the tremendous number of mortgages that have defaulted -- left holding the bag not only on unpaid notes but on dealing with real estate when banks never were in the business of being real estate investors, land developers, or landlords.

Add to that volume of defaults the problems of servicers and lawyers snowballing the crisis with robo-signing and fraudulent acts, and lenders go into a whole new level of crisis.

There's more. People are still defaulting. In a recent article in the *Sun Sentinel*, an elderly couple admits that they are not paying their note and have no intention of doing so. They're waiting for the foreclosure notice; in fact, they are waiting to be forced out.

Looking to the courthouse backlog may be needed, but it's not the solution to Florida's foreclosure crisis and it will not solve the banking crisis we are experiencing. Banks are stuck because their customers are breaching their loan agreements in unprecedented numbers. This is the problem that has thrown the Florida economy into the ditch, and we're not rebounding until it's dealt with.