

Losing Your House When the Bank Already Lost Your Paperwork

By Alison Fitzgerald, The Center for Public Integrity | 9/10/14 at 12:37 PM

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Florida Circuit Court Judge Diana Lewis was in a hurry. She had 93 foreclosure cases before her in the next two hours and she made it clear that she wasn't going to let anything slow her down. "This is a 2009 case. You've had years to negotiate," she told one lawyer trying to delay a foreclosure judgment because his client and the lender were working out a deal.

Later, she agreed to an extension on a foreclosure sale but admonished the defense lawyer. "I'll give you 30 days. That's it. Don't come back. I don't want to see your face back here."

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At least twice that morning at the Palm Beach County Courthouse she refused to delay foreclosure trials in cases where the banks and homeowners together requested extra time. Lewis' manner may be brusque, but her actions aren't unusual among foreclosure judges in Florida, who in the last year have been working under explicit directions from the state Legislature and Supreme Court to get rid of old cases and clear the court dockets, largely by awarding tens of thousands of homes to banks.

"The state's entire court system has been compromised," says Matt Weidner, an outspoken foreclosure defense lawyer who practices in Tampa and St. Petersburg and blogs about the system. "They're stripping away private property rights and transferring billions of dollars in assets from individuals to large entities."

A year into its latest effort to clear the wreckage left from the housing crash and subsequent recession that left hundreds of thousands of Floridians facing foreclosure, the state's so-called foreclosure initiative is laser-focused on clearing the court system of cases and cutting the time it takes a bank to foreclose.

What began as an effort by the Florida Legislature and judicial leaders to help the state's economy by moving properties out of foreclosure and back into the market has turned into a Kafkaesque nightmare for people struggling to hang on to their homes.

State legislative and judicial leaders have largely ignored the ramifications of throwing thousands of families out of houses and turning the foreclosed properties over to banks and mortgage servicers to maintain and sell into an already swamped market. "They dealt with it as a court system problem," said Mike Fasano, a former Republican lawmaker from New Port Richey. "It was, 'How can we speed up forcing people out of their homes?'"

To clear the backlog of foreclosures, the state has set up a parallel legal system in which judges hear only foreclosure cases — often more than 100 motions a day — in courtrooms set up solely for that purpose, under rules that differ from those that guide civil law in other types of cases in Florida and across the country.

Homeowners and the lawyers who advocate for them say they aren't getting a fair hearing in a legal system tilted toward banks from start to finish. "They just slam the defendants," said Margery Golant, a lawyer in Palm Beach and Broward counties. "They deny them their rights, have hearings in absentia and just flush them down the garbage disposal."

"How can this happen?"

Ricardo Lopez could barely contain his fury as he walked from the St. Petersburg courtroom in late July after Judge Karl Grube for the second time in five months set a date to sell his family home. "How can this happen? He didn't even listen to you. This is a total fraud!" the 12-year St. Pete police officer fumed as he paced around Weidner, his lawyer, in the courthouse hallway while his wife sat rigidly behind sunglasses on a nearby bench and his two small kids' wide eyes took in the scene. "I could go in and arrest that lawyer. I can call the economic crimes unit right now," he said, brandishing his cell phone.

Lopez got to this point because he was injured in 2009, missed two months of work and got behind on his payments to JPMorgan Chase. As he recovered and began paying, he says, the bank allocated the money to his past due debt, late fees and other charges. He tried to send something extra each month, but no matter what, he remained more than 90 days late. “It was never an issue of, Can we afford the house,” he said. “They wouldn’t make anything current. It was constantly past due.”

Finally, he stopped paying, and asked for a loan modification. JPMorgan foreclosed.

At the trial in March, Weidner argued that JPMorgan couldn’t foreclose because it didn’t have an original promissory note, the only original document required in a foreclosure trial.

Whoever has a promissory note can demand payment. So if JPMorgan didn’t have Lopez’s note, maybe someone else did. JPMorgan’s lawyer claimed she had the original note, then realized it was a copy, according to the trial transcript. She then told the judge the bank had lost the note. Then she changed her mind again and announced she had found it.

The document she produced wasn’t the original, Lopez said. His signature was in black ink, while it was blue on every other document, and the paper was a different size.

Grube disregarded the discrepancies and allowed the document into evidence.

“So we’re making a factual determination that this is, in fact, the original?” Weidner asked.

“Overruled, sir,” Grube responded.

Weidner also argued that new federal regulations barred JPMorgan from foreclosing because Lopez had asked for a loan modification. “This is a federal regulation,” the judge said. “Whether or not it applies to this court, being a state court as opposed to a federal court, is a question.” Grube said that he as a state judge might not have the authority to enforce the federal regulations.

What was lost in the technicalities is that Grube was deciding whether Lopez, his wife Christine and their two young children would be kicked out of the home they have lived in for more than 12 years. He ruled for the bank and scheduled the Lopez home for sale on

Sept. 3.

Two days after the trial Lopez got a letter from a company called Bayview Loan Servicing saying it now owned the loan. JPMorgan had sold it a full month before the foreclosure trial to the U.S. office of Housing and Urban Development, which in turn sold it to Bayview.

So JPMorgan foreclosed on a mortgage that it didn't own. JPMorgan spokesman Jason Lobo declined to comment because the loan was transferred to Bayview.

Lopez went back to court on July 29, armed with the Bayview letter, document experts and the notary from the 2008 loan closing to ask Grube to retry the case. The judge refused. Lopez's case had been pending since 2010 and Grube made it clear in several hearings that day that he was looking to get aging cases resolved. He signed a second, conflicting, order to sell the house on Sept. 29.

Lopez contacted Bayview, which agreed to consider a loan modification. The two parties went to court on August 28 to ask that the sale be canceled and circuit judge Thomas Minkoff agreed. Judge Grube stepped in however, reversed that decision, and reinstated the original sale date of Sept. 3.

The day before the sale, Lopez went back to Minkoff and got the sale order reversed.

Settlement funds used to speed foreclosures

Grube was working under explicit orders to get rid of old foreclosure cases. Florida's so-called foreclosure initiative was launched in July 2013, when the state Legislature and budget commission allocated \$36 million of the \$334 million the state won when it settled previous allegations of foreclosure fraud against the five biggest banks. The money was allocated specifically to "expedite foreclosure cases through the judicial process."

The state Supreme Court set a target of disposing of 256,000 foreclosure cases each year for three years. That works out to about 700 cases per day — if everyone works weekends and vacation days. The courts have hired retired judges solely to hear foreclosures and case managers. These clerks and judges schedule hearings and trials even if both parties don't want them. "I often feel like the biggest adversary is not the bank or its counsel, but

the judge, the court system,” said Mark Stopa, who practices foreclosure defense in Orlando. “When the court is moving cases along so quickly, the court is saying, ‘Hey banks, come to court. Get your justice.’”

It’s not the first time Florida’s courts have tried to speed up foreclosures. In fiscal 2010-2011, the state spent \$9.6 million to hire senior judges and clerks to push through foreclosures in what became known as “rocket docket.” The state cleared 250,000 cases that year. When that money ran out, the “rocket docket” went away.

In the first three months of the latest push, the clearance rate of foreclosure cases — a ratio of cases closed to new cases filed — jumped in every district. In the 17th Judicial Circuit, for example, the clearance rate rose to 405 percent from 148 percent in the prior three months.

One judge in Broward County, Sandra Perlman, **closed 786 cases in a single day**, according to data collected by the state. Overall, Florida judges disposed of 193,922 foreclosure cases in the first nine months. The overwhelming majority of those were judgments against homeowners.

In statements from the bench and other public forums, judge after judge has made it clear that speed is their priority. The rights of homeowners come, at best, second.

“We’re under a mandate from court administration, Supreme Court, to get the older cases out. Because we might lose funding for that,” Lewis, the judge in a hurry, told the Sun-Sentinel in August.

Judge Terence Perkins, chief judge of the 7th Judicial Circuit, which includes Daytona Beach, congratulated his colleagues in a spring 2014 newsletter on their progress. “Last year, we challenged each other to roll up our collective sleeves and dispose of these cases,” the chief judge wrote. “We knew that the rest of the branch and our fellow trial judges were ALL watching and we were told our political credibility hung in the balance.”

Most foreclosures uncontested

It remains a mystery why state officials determined that a bunch of foreclosure files sitting on the court dockets amounted to an emergency. If banks wanted to pursue their foreclosures they were free to do so. And Florida judges are empowered to dismiss cases if the parties don't take action for a year. But banks and loan servicers don't have a great incentive to take ownership of a home, and the maintenance costs and liability risk that goes with it, in a stagnant real estate market.

However, in 2012 and 2013, a series of policy changes from the Federal Housing Finance Administration and from Fannie Mae and Freddie Mac provided some motivation to speed the process. FHFA oversees Fannie and Freddie, the two housing finance giants that buy most mortgages from banks to bundle into securities and sell on the secondary market. The agencies, which charge fees to lenders to buy and guarantee the loans, together are the center of power in the mortgage market.

In September 2012, the FHFA proposed new fees that would increase the costs of mortgages in Florida and four other states because it takes so long in those places to foreclose.

The proposal was withdrawn after enormous opposition, including from Florida's chief financial officer, Jeff Atwater, who said in a comment letter to FHFA the plan would "raise the lifetime cost of mortgages by potentially thousands of dollars... This consequence is especially troublesome for Florida, where the housing and construction sectors have suffered enormous losses in recent years."

In June 2013, Freddie Mac issued new guidelines that encouraged loan servicers to "use the bulk trial foreclosure method" in Florida by which the servicer schedules numerous foreclosure cases for the same court session to clear out the backlog of cases, and offered a direct financial reward for doing so. The company offered to reimburse servicers \$1,750 for their legal fees for each case and pointed out that quick resolutions to cases would reduce the \$30-per-day fee it charges for delayed foreclosures.

Freddie Mac spokesman Brad German said the guidelines are designed to prevent abandoned homes from languishing, and to save money for taxpayers, who are currently footing the bill for the agency because it's operating under government conservatorship.

Fannie Mae has similar fees for delays beyond 660 days to foreclose and sell a home in Florida. The company includes “Florida Bulk Trials” as an expense category in its servicer guidelines, according to notices on its website. And early this year, the FHFA dropped a \$5.95 a month per loan fee to lenders in most states but left it in place in Florida because of the state’s slow foreclosure process.

Backlog and bad paperwork

In launching the foreclosure initiative, state court officials laid blame for the backlog of cases squarely in the laps of mortgage lenders, saying they weren’t pursuing cases and they often didn’t have the proper paperwork to prove they had the right to foreclose.

Florida was a center of the financial crisis that started slowly in 2007 with house prices stalling and homeowners falling behind on their payments. The crisis spread across the rest of the country in 2008, when Lehman Brothers Holdings Inc. went bankrupt, setting off a cascade of giant bank failures and leading the government to bail out the entire financial system.

As residents fell behind, banks filed thousands of foreclosure complaints in Florida courthouses then let them languish as stagnant court files. When they did have hearings or trials, the lenders often couldn’t come up with the proper paperwork to prove they were the owners of the loan.

That paperwork mess, and indeed the entire financial crisis, was the direct result of creative investors’ turning mortgage debt into a tradable commodity. Mortgages were placed in pools and securitized. Very often the deeds to the homes, promissory notes or other key mortgage documents, got lost.

When the market collapsed and homeowners stopped paying, many banks couldn’t come up with the records they needed to prove they had a right to foreclose.

“They were rushing around so much to securitize that the paperwork they were supposed to keep was never kept,” said Thomas Ice, a Palm Beach County lawyer.

Banks and their lawyers turned to so-called robo-signers, employees whose sole job was to sign fraudulent documents the banks created to establish a paper trail to allow them to foreclose. Some of these people signed thousands of documents a day.

When the massive fraud was revealed, the Justice Department and 49 states sued the five largest mortgage servicers, Bank of America, JPMorgan Chase, Ally Financial (formerly GMAC), Citigroup, and Wells Fargo.

That case led to the massive settlement that now is helping those same banks speed up their foreclosures on Florida's homeowners. "The robo-signing scandal was all about banks cutting corners and getting hand-slapped," Ice said. "The money is being used to get them what they wanted anyway."

Even though it was the banks that came to the courts with forged documents, it's almost impossible to find an example of a Florida judge ruling against a bank and granting a home to a family. "That doesn't occur very often," said Kris Slayden, who oversees foreclosures for the Office of the State Courts Administrator. "That's why those cases make news."

While robo-signers have largely disappeared, judges are now allowing so-called robo-testifiers to appear in their courtrooms to attest to the validity of the documents the banks are using to justify foreclosures. Many "robo-testifiers" never worked in the bank departments for which they're testifying. Some never worked for the banks at all before being hired and trained in what to say on the witness stand. Still, they travel from courtroom to courtroom explaining to judges how banks track payments and keep mortgage records. "That goes against every rule of evidence since the beginning of time," said Ice, the Palm Beach County foreclosure lawyer.

Losing faith

Many homeowners struggling to save their homes have lost faith in Florida's legal system, among them Carmen and David Abdo. The Palm Beach County couple is facing simultaneous foreclosures on three homes. They got into this mess not because they couldn't make their monthly mortgage payments, but because all three of their lenders added expensive and unnecessary insurance policies to their loans three years in a row. One of the policies cost more than \$16,000.

The Abdos — David is a retired firefighter and Carmen is an interior designer — had insurance on all their houses, and informed the banks each year that they didn't need the expensive policies. It would take months to straighten out the problem and in the meantime all three banks were charging them thousands of dollars extra each month. Then the cycle would repeat the following year.

The payment on one of their loans went from \$1,800 to \$2,500, to \$4,800 and reached \$7,800 when they finally cried uncle and stopped writing checks.

“We just couldn't pay anymore,” said Carmen, who sat in her shop filled from floor to ceiling with vintage dining sets, second-hand ball gowns and collectibles like monkey-shaped plant holders.

Her meticulous records, punctuated with hot pink sticky notes that match the lipstick she favors, include stacks of correspondence with the lenders, copies of insurance policies and ever increasing demands for payment.

She never had a chance to show her records to a judge. In December, the Abdos went to court in Volusia County to ask Judge Raul Zambrano to rule against the bank because they never should have been charged for the unneeded insurance. Zambrano declined and scheduled a trial for the following week. “This judge has never ruled in favor of a homeowner,” Carmen Abdo claimed, in explaining why she didn't want to risk a trial.

Afraid they'd lose everything before an unsympathetic judge, the Abdos instead filed for bankruptcy in federal court the morning they were supposed to go to trial. Now they're hoping a federal judge will listen to their story. “It was horrible for us to have to do that,” Carmen said. “That's not the kind of people we are.”

Needing banks to listen

Many believe that those who lost their homes in the financial crisis were simply greedy people who bought houses they couldn't afford. Certainly there were many whose ambitions were bigger than their incomes and took out loans they could never pay back.

However, thousands were driven into foreclosure because of the recession — they lost their jobs, their tenants moved out, they couldn't sell. Many others defaulted because of bank incompetence, or perhaps outright fraud. They could have made their payments, or made slightly smaller payments if the banks would have worked with them.

“Most of the cases I've taken on are just people who wanted someone to sit down and talk to them about a work-out,” Golant said.

Today, Carmen and David Abdo remain in limbo as their bankruptcy petition winds its way through federal court.

And Ricardo Lopez is racing the calendar while negotiating with Bayview mortgage in hopes of keeping his home. There's still an order in the St. Petersburg courthouse to sell his home on Sept. 29.

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It is just a matter of time until people start shooting the judges stealing their homes from them. If the banks cannot produce the required promissory note, they should lose the loan. Judges are breaking the law by favoring the banks in these cases.

Someone is bound to hold a grudge against a judge doing this...it is just a matter of time.

If the law doesn't work, then what do you have? Anarchy...and revengeful homeowners.

Someone needs to fix the judicial system.

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So the Judges are violating Federal law. Why are they being allowed to do so? How can they even be allowed to remain on the bench? The Judges need to be charged with accessories to fraud and jailed. All of the cases should be nullified.

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