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Foreclosure Looming? You Can Buy Time



News Channel 8 Photo by MICHAEL EGGER

Jacci O'Brien's house in Belleair Beach is under foreclosure.

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TAMPA - Ernie Harpster fell behind on his mortgage payments last year, so he tried to persuade his bank to give him time to sell his home and pay off what he could.

Instead, the lender filed a foreclosure lawsuit. Harpster then did something troubled homeowners may never think of doing: He fought back.

Harpster has been living payment-free for nearly a year in his Wesley Chapel home. His case is

trickling through court, and there are no signs he will be kicked out anytime soon.

"Not having a mortgage payment meant I didn't have to file for bankruptcy because I could pay other bills, like credit cards and the electric bill," said Harpster, whose income as a real estate agent dried up along with the market. "But I'm not trying to take advantage of the situation. I tried to do what I thought was right. To me, it's the bank's fault this has stalled."

How did Harpster buck the bank and delay foreclosure? He forced his lender to prove its case. By doing so, he joins a growing segment of homeowners who are delaying their evictions for months or, in some cases, years. In the process, they're buying precious time to save money to relocate or sell their homes.

On the surface, foreclosure seems simple - you don't pay, and the lender takes your home - but more lawyers are finding ways to slow the process. In fact, some Florida lawyers say foreclosure defense is becoming so hot that they're beefing up their practices and advertising their services to meet the demand.

"A lot of people just roll over because they know they're wrong, they haven't paid their mortgage," said Timothy Kingcade, a Miami lawyer. "If you're accused of a crime, do you walk in court and say, 'I did it!?' You have a right to make the bank prove its case."

State Is Second-Highest In Filings

As foreclosure filings skyrocket, Kingcade said more desperate homeowners seek help.

There were 14,960 foreclosure filings in the Tampa metro area during the second quarter, according to California-based RealtyTrac. That's up 159 percent from the same period a year ago. The Sunshine State had the second-highest number of foreclosure filings among all states in August, with 44,000 default notices, auction sale notices and bank repossessions.

In Florida, lenders have to get a court's permission to take a home. In the majority of cases, the borrower doesn't even show up in court. When foreclosure suits aren't contested, the process takes, on average, about seven months.

That's a lot longer than in some states, such as Georgia, where lenders can evict homeowners in as little as a month. Still, homeowners who want more time, or think they're being treated unfairly, can try to delay foreclosure.

The most prevalent method is as simple as making the lender prove it owns the mortgage, said Chris Hoyer, a Tampa lawyer who has made a YouTube video to help homeowners. He also has posted forms at www.consumerwarningnetwork.com to guide homeowners through the process if they don't have an attorney. Hoyer's office concentrates on class-action suits and doesn't typically do foreclosure work.

About 80 percent of foreclosure lawsuits don't contain the original mortgage note - the proof that the lender has a right to foreclose, lawyers said. This is because mortgages often were sold in bundles to investors during the housing boom. The notes were sometimes misplaced.

The produce-the-note strategy is a delay tactic on its face, but Hoyer said it can protect homeowners. In Tennessee, for example, he said a woman lost her home in foreclosure only to receive a foreclosure filing later from another lender who claimed the rights to the home.

In other cases, Hoyer said, mortgages were sold to servicing companies and homeowners weren't

notified. They later received foreclosure filings because they had been making mortgage payments to the wrong company. Once they got behind, fees started to pile up.

One motivation to fight, Hoyer said, is to hang on until help arrives. The federal government soon may be offering relief to some financially strapped homeowners.

Although lenders say they want to help homeowners avoid foreclosure, Hoyer said sometimes they make it more difficult.

He said client Jacci O'Brien of Belleair Beach is an example.

When she fell behind on her mortgage payments last fall amid a family illness, she tried to catch up. However, her mortgage had been sold, and the new lender, Wachovia, wouldn't take her money, she said, and filed to foreclose.

"It wasn't a case that I didn't have the money to pay them," she said. "It was a case that they wouldn't accept my money. It was shocking."

A judge delayed the foreclosure in June because Wachovia had not produced the note. Hoyer said he's waiting on paperwork outlining what O'Brien owes, including penalties that grow each month. She hasn't made a payment in nearly a year.

"Jacci wants to stay in her home," Hoyer said. "She wants to pay her mortgage."

Another reason to fight is the amount of excessive fees some lenders charge, said Katherine Porter, an associate professor who specializes in bankruptcy at the University of Iowa College of Law. In nearly half the foreclosure cases she studied recently, she found hefty or vaguely described fees.

It's difficult to say how many lenders begin foreclosure on loans they can't prove they own. To get a better idea, Porter recently combed through 1,733 bankruptcy files for homeowners who faced foreclosure. She found 40 percent contained no proof the plaintiff owned the mortgage.

"My impression is that most mortgage companies would be able to come up with documents to prove it eventually, but it's also my impression that lenders are being sloppy and not following all the rules because they're swamped," Porter said. "This opens up doors for consumers to fight."

Lender Response Can Vary

Homeowners who protest sometimes find their cases pushed to the bottom of the pile, said Lutz lawyer Ralph Fisher.

These lenders "are freaking out," he said. "We're asking them how they own this mortgage, and they can't answer."

One of Fisher's clients, David Clark, hasn't paid the mortgage on his investment property in Land O' Lakes in nearly a year. The foreclosure paperwork was puzzling; the mortgage company said it had lost the original note.

"So what happens if some other bank comes along later and says they in fact own the mortgage?" Clark asked.

So far, the lender hasn't responded and renters avoid him because they don't want to get kicked out when the bank takes over the house.

Tampa lawyer Stanley Galewski said one of his clients has been in his home - payment-free - for 27 months. He asked the lender to produce the note and other paperwork, and the lender hasn't answered.

"It's like the lender just lost interest," Galewski said.

But is it right for homeowners to fight the bank simply to delay the inevitable, especially if they know they just can't afford the loan? And is it ethical for lawyers to help them?

Iris Hernandez, who files foreclosure lawsuits statewide on behalf of lenders, said some lawyers give troubled homeowners false hope and actually cost them more money. Fighting, she said, also means missing out on opportunities to refinance the loan, work out a payment plan or negotiate a short sale.

John Muratides, a Tampa real estate lawyer with Stearns Weaver Miller, said delaying the case in a declining real estate market could cost homeowners more than their houses.

That's because when the house is eventually foreclosed, it likely will sell for less than it would today. Lenders could file a deficiency claim to force the homeowner to pay the rest of the amount owed.

That, Muratides said, would push many homeowners into bankruptcy.

For Harpster, who's waiting on his mortgage company to make the next move, fighting has made life simpler in some ways.

His teenage son has been able to stay in his neighborhood school another year. He has been able to stave off bankruptcy and put money away to relocate to an apartment.

But fighting foreclosure didn't take away the stress. Now, he said, both he and the lender will suffer even bigger losses.

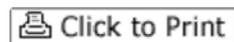
So he waits.

"I have my boxes packed, and most of my stuff is ready to go," he said. "I have no idea how much longer I have in my house."

Reporter Shannon Behnken can be reached at (813) 259-7804. Keyword: Foreclosure, for past coverage, a video on fighting back and a database of local properties in foreclosure.

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