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Mandatory Mediation

BY MONICA HATCHER mhatcher@MiamiHerald.com

As a special task force formed by the Florida Supreme Court collects ideas about how to alleviate the tremendous backlog of foreclosure cases in courts statewide, the Miami-Dade Circuit Court is already moving ahead with plans to require mediation between borrowers and lenders before foreclosures can proceed.

The program will help ensure that borrowers have an opportunity to get a loan modification or other assistance before they lose their homes to foreclosure, said Judge Jennifer Bailey, the task force chairwoman who also oversees the civil division for the 11th circuit.

Bailey said the court will launch the pilot mediation program on May 1 as a way of uncovering any faults and experimenting with it before it is considered as a statewide measure.

"We're getting 6,000 cases a month. We can't afford to wait," Bailey said.

Amid rising unemployment and sinking home values, the new program comes as foreclosures in Florida continue to soar.

Figures from RealtyTrac released Wednesday ranked Florida -- along with California, Nevada and Arizona -- as states with cities that had the nation's highest foreclosure rates at the end of the first quarter.

Nine of the top 26 foreclosure cities ranked by RealtyTrac were in Florida, with the Cape Coral/Fort Myers area ranking third in the country. The Miami-Fort Lauderdale area ranked 22nd.

The new program, Bailey said, was necessary to ensure that lenders and borrowers were communicating -- something that doesn't appear to be happening now, judges say.

"Buyers complain about not being able to get in touch with their lenders, or get decisions made about their loans, or having to send information to them over and over," Bailey said. "Lenders complain they keep trying to get borrowers to talk to them but borrowers won't respond. We want to get the parties to sit down and talk to each other."

Under the mediation program, called CHAMP, for 11th Circuit Homestead Access to Mediation Program, lenders will be required to notify the Collins Center for Public Policy, a public policy group with an office in Miami, within five days of filing a foreclosure.

The center will notify homeowners that mediation and financial counseling is available. The center will also arrange the mediations.

120 DAYS

Lender representatives with the authority to approve a settlement, including a loan modification, must be present. Those that don't comply with this rule face having their cases thrown out of court. Overall, the process should take no longer than 120 days and cost a lender no more than \$750.

Only homeowners with a homestead exemption will have access to the program.

Earlier this month, the Florida Supreme Court formed a task force to explore mediation options that could be implemented statewide. Several districts have different programs in place making it difficult for national lenders to comply with the patchwork of rules.

MORE EXPENSIVE

Marc Ben-Ezra, a Fort Lauderdale attorney who handles foreclosures for lenders, said the Miami court's actions were well-intentioned but thinks the program will make an already expensive process more expensive, since lenders will be required to front \$750 on thousands of loans. That eventually could make it more expensive for home buyers to get loans in Florida.

MAKING CONTACT

"Before a lender files a foreclosure, they have already done enormous amounts of work to contact a borrower and reach some kind of loss-mitigation agreement," Ben-Ezra said. "And, they continue to make those efforts during the course of the foreclosure."

Lenders say they have already picked up the pace of loan modifications among delinquent borrowers. A report from HOPE NOW said that in February lenders and servicers modified loans for 134,000 borrowers nationwide and crafted repayment plans for about 110,000 more, staving off foreclosures.

Bailey's reply: "If loan modifications are working, then foreclosure cases aren't going to get filed. I want nothing more than to be put out of business."