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Foreclosure 'tsunami' swamps South Florida courts

State adds money, mediation, case managers to ease the pressure

By Harriet Johnson Brackey, Sun Sentinel

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Rodriguez lost her insurance billing job two years ago and was in danger of losing her house — until a judge forced her lender to try to work out new loan terms in court-ordered mediation.

"I was so nervous and worried and I couldn't sleep," she said. After months of anxious nights, the mediation session was the "light at the end of the tunnel" that led Rodriguez to work out a new deal.

Soon, she expects to have the final paperwork and an affordable payment for her Cooper City home — just as she starts a new job.

Rodriguez is one of the lucky few South Floridians who has emerged from foreclosure court with a settlement. But thousands of other Broward, Palm Beach and Miami-Dade county homeowners are still stuck in the court system, hanging on to their hopes and their homes, and straining the resources of South Florida courts.

Starting next month, there will be two new efforts to turn back the foreclosure crisis. But even those changes won't eliminate the backlog.

Statewide, more than 700,000 foreclosure cases have been filed in the past two years, one out of four in Broward and Palm Beach counties. In South Florida, the number of foreclosure cases has increased tenfold in five years.

In Broward, about 52,000 cases were filed last year, up from 5,300 in 2004. In Palm Beach County, about 30,000 foreclosure cases were filed last year, up from about 3,200 five years earlier.

"It's overwhelming the courts," said Broward Circuit Judge Jack Tutor. He estimates he and the other circuit civil judges are each juggling 5,000 to 6,000 cases at one time — two of three are foreclosures.

The impact of the backlog is evident every day at the courthouse.

In Broward, lawyers lug boxes of new cases to courtrooms on the fifth floor of the main courthouse four



mornings a week. The 13 judges can each end up with dozens of foreclosure hearings in a day. Many of the homeowners facing foreclosure, like Rodriguez, haven't paid their mortgages for a year and sometimes longer.

The lawyers who represent lenders are handling huge numbers of filings, although none would publicly discuss the foreclosure crisis.

A recent news release on the earnings of a unit of one South Florida law firm gives a glimpse of the volume of casework. DJSP Enterprises, a publicly traded company that provides services to the law firm of attorney David Stern of Plantation, said Stern's firm represents all but three of the top 20 mortgage servicing companies in the nation.

The company said it has more than 1,000 people working in its back-office operations, including some in the Philippines, who prepare documents and enter data. It said revenues in the first three months of this year were \$71.6 million, a 30 percent gain over last year.

Clerks of court in Broward and Palm Beach counties have automated foreclosure sales, moving them online from the courthouse. Judges have created ways for attorneys to set court dates without having to call their harried clerks.

In Palm Beach County, one judge handles foreclosure cases full time, another spends half the week on them and 10 other judges devote a day a month to the hearings. All the judges share in the obligations to sign paperwork.

Few homeowners come to court. Attorneys said they used to, but few homeowners now fight a pending foreclosure case amid the years-long crisis.

When no one contests the foreclosure, the routine paperwork in Broward is sent to a retired judge who has been called into service. He works in an improvised "courtroom" — a hallway flanked by lunchroom-style tables loaded with documents.

A sign by the Broward clerk of court's office says it'll be two months before a court-ordered foreclosure sale can take place. The law says sales are supposed to happen within 20 to 30 days after the judgment, but there are just too many now.

"That's routinely waived," said Miami-Dade Circuit Judge Jennifer Bailey. In Miami-Dade, it can take three months to schedule a sale, which she said "is better than six months, which it was at one point."

To cope with the pressure, the court system statewide is making some changes.

Judges are making plans to hire retired judges and case managers to handle more of "the tsunami of foreclosures," in the words of Bailey, who led the statewide task force that recommended mediation.

South Florida courts are going to get \$2.2 million — of a \$6 million budget amendment that is working its way through the state court budgeting process — to work on the issue. The money is expected to be available by July. The courts' goal is to eliminate more than half the backlog.

Also starting next month, lenders or loan servicers will be required to go to mediation with Florida borrowers before they can ask a court to issue a foreclosure judgment against a homesteaded property. The lenders don't have to give borrowers a loan modification, but the two sides must try to work out a new deal, under the watch of a trained mediator.

Only after going to mediation can the issue be taken up in court.

Some circuits already make mediation widely available. "We encourage it for anyone who wants it," said Judge Peter D. Blanc, chief judge of the 15th Circuit, which includes Palm Beach County. Blanc expects to announce shortly an extensive program to meet the Supreme Court's requirement.

In Broward, the American Arbitration Association will begin the mediation program next month. In Miami-Dade, the Collins Center for Public Policy has been running a mediation program for foreclosures for a year.

Getting the two sides to talk to each other is a huge change, attorneys say. And, if Miami-Dade's example holds true, about half of the homeowners who go through mediation will end up with a loan modification.

"Most of the time, now, it's very difficult for the homeowner and their attorney to get a hold of the lender," said Debra Kaporowski, regional director of advocacy at Legal Aid Service of Broward County and Coast to Coast Legal Aid of South Florida. "The lender's attorney doesn't call you back to try to get these things modified."

Until now, mediation has always been available on a case-by-case basis. Rodriguez' attorney, Roy Oppenheim of Weston, asked a judge to order it, but he says most homeowners didn't know it was an option.

"Mediation makes all the difference in the world," he says. "There are so many opportunities to resolve matters in mediation, a lot of creative ways."

It doesn't work for everyone, however. The results, in Miami Dade, after one year of a widespread mediation program in foreclosure courts: 28,436 cases referred to mediation, 559 settled before the mediation and of the almost 4,000 mediations, 54 percent are settled.

"Bottom line, there's no one fix," said Bailey. "But those cases that should be settled would be settled early in the process, so you don't waste judicial resources."

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