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Bill to fast track foreclosures has sparked a rare internal Florida Bar fight

Foreclosure defense lawyers hired Miami lobbyist Ron Book to, in part, counter Tallahassee lobbyist Peter Dunbar, who was hired by the Florida Bar's Real Property, Probate and Trust Law Section to push a bill to fast track foreclosures.

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2013-03-28 12:00:00 AM

A controversial bill that aims to fast track foreclosures has sparked a rare internal fight among members of an influential Florida Bar section.

On one side are Bar members who assist homeowners facing foreclosure. Opposing them are members of the Bar's Real Property, Probate and Trust Law Section who not only decided to support the foreclosure bill this year but also hired a lobbyist to get the bill passed in Tallahassee.

Members of the Real Property section say the bill offers many new protections to distressed homeowners and buyers of repossessed homes.

But foreclosure defense lawyers claim the bill would benefit lenders, title companies and retired judges while eroding homeowners' due process rights.

Currently there are two statutes dealing with foreclosure filings. One sets forth a more lengthy process, which is commonly used today and places the burden of proof on the lender.

The other expedites foreclosures by requiring homeowners to prove why their properties shouldn't be foreclosed. The latter law is the one that would be amended by HB 87 and its companion SB 1666. The amendments would make the "show-cause" law more appealing to lenders, who rarely takes that route now because of its complexity. The legislation is all about "fast tracking foreclosures with minimum judicial review," said Hollywood foreclosure defense attorney Evan Rosen.

HB 87 is moving quickly through the House. But SB 1666 still needs to clear three Senate committees before it would receive a full vote.

Rosen and other real estate and foreclosure defense lawyers have hired prominent Miami lobbyist Ron Book to fight the bill. He will counter Tallahassee lobbyist Peter Dunbar, who was hired by The Bar's Real Property, Probate and Trust Law Section.

Book said his job is not to kill the bill but to help make it fairer to consumers.

"I'll try to make some further adjustments to the bill ... and make it work best from a consumer perspective," he said.

Some foreclosure defense lawyers, especially those active in the Real Property section, are furious the Bar took a position on the issue. One is Weston foreclosure defense attorney Roy Oppenheim, who claims the section's support would give legislators more ammunition to pass with the bill.

"It is tipping the center even more towards the banks," said Miami foreclosure defense attorney Bruce Jacobs.

Oppenheim and Jacobs are members of Florida Consumer Justice Advocates, a nonprofit group that opposes the bill.

Oppenheim said the Bar section's action could reflect badly on foreclosure defense lawyers. He heads the section's Foreclosure and Debtor/Creditor Rights sub-subcommittee. Oppenheim said he and the committee were never involved in the decision to support the bill. He said a small group of Bar members with close ties to the title industry made the decision.

Show-cause law

Under an amended show-cause law, a lender could request a judge to require a homeowner to prove why a final foreclosure judgment should not be issued.

The judge would hold a hearing within 20 to 45 days to consider the homeowners' defenses and decide whether the property should be sold through a foreclosure auction.

"Under this bill, the presumption of innocence would be destroyed," Oppenheim said.

A homeowner now can file any defense, regardless of its validity, to prevent a judgment from immediately being entered.

Jacobs said homeowners would have just one shot to save their homes under the proposed changes. Now, they have more chances to do so.

Jacobs recently spent a day doing pro-bono work in Miami-Dade Circuit foreclosure court. He represented people who were to have trial on that day before Judge Jennifer Bailey. He helped one woman win a postponement to her trial and helped a man in another case show the lender didn't have sufficient documentation to foreclose. The bank then filed for an involuntary dismissal in the man's case, he added.

"Under the new law, these people would have lost their cases a long time ago," he said.

Dunbar said the "show-cause" route would likely apply to unoccupied homes.

"Show cause is generally for abandoned properties," he said. "You can almost say anything, and you can to stop the show-cause process."

Lengthy fight

This is the fourth year in a row a bill seeking to expedite foreclosures is before the Legislature.

In the past, Oppenheim was among Bar members who reviewed any proposed foreclosure legislation.

"Last year, we had people on my subcommittee who agreed with me that we didn't like a lot of the stuff in the bill, so the Bar never agreed to approve or disapprove anything," Oppenheim said, citing a measure that passed the House but died in the Senate for lack of action.

He was part of the section's Mortgage and Encumbers Subcommittee until last year, when it was dismantled without notice, he said. The section was restructured and the Foreclosure Reform Ad Hoc Committee was created to help shape the proposed legislation. Oppenheim claimed he was left off the ad hoc committee because of his history of opposing foreclosure bills at a time when the section was eager to see the bill pass.

He and all the members of the Foreclosure and Debtor/Creditor Rights sub-subcommittee recently wrote to the section's executive committee protesting the section's action.

West Palm Beach attorney Jerry Aron, who heads the ad hoc committee, said his group took into account as many comments as it could from "vociferous advocates of positions."

"Unfortunately, some of the comments are general in nature or totally one-sided or not tied to the actual language or issues being considered," he said.

Aron said the ad hoc committee spent "countless hours over many months" reviewing and considering input and comments from people and committees.

"It is not the first time the section has supported reform to the foreclosure process or taken a position against certain reforms," he said.

This time, several section lawyers helped draft SB 1666 to reflect HB 87, plus added two provisions concerning the use of senior judges to ease the foreclosure case backlog, Aron and Dunbar said.

The bill also would allow the second publication of notice of sale to be published on a publicly accessible Internet website that meets narrowly defined criteria. Opponents of the change include Associated Industries of Florida, the Florida Press Association and the publisher of the Daily Business Review. Current law already requires newspapers that publish two notices of sale in print to publish the notices on their own websites and on the statewide FloridaPublicNotices.com. Opponents say the change would increase costs to homeowners being foreclosed upon and taxpayers, and is contrary to the intent of the legislation.

Case backlog

Foreclosure defense lawyers worry that homeowners would have one shot at saving their homes in the circuit court, although they could appeal ruling. Many judges with huge caseloads are showing signs of "foreclosure fatigue" and all they want is to close cases, they said. They fear judges could be prone to automatically reject their clients' defenses.

Bar lobbyist Dunbar said SB 1666 could cure any problem related to overworked judges.

The bill seeks to bring back to the bench recently retired judges to help hear cases. When judges retire, they are prohibited from returning to bench for a year, Dunbar said. If during that time they go into private practice, they can't come back at all, Dunbar said. That policy has created a "small pool" of judges who can return to the bench.

"There is a consensus that we don't have enough judges to afford the due process that some cases [deserve,]" Dunbar said. "People are entitled to their day in court and for that you need to have a judge."

Some retired judges are currently hearing foreclosure cases but more are needed, Dunbar said.

But some foreclosure defense lawyers don't agree.

"It is a boondoggle for retired judges," Oppenheim said. "They get to sit on the bench, make X dollars a day and make any decision they want because they are not accountable to the electorate. They don't get voted on or voted off like the Constitution says."

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