

Foreclosure Defense Firm Claims CFPB Rule Violations

By: Samantha Joseph



A Miami foreclosure defense law firm is gearing up to take on lenders that it claims are violating federal mortgage servicing rules issued in January.

Jacobs Keeley has moved to block several foreclosure sales, citing rules issued by the Consumer Financial Protection Bureau to protect borrowers.

Partners Bruce Jacobs and Court Keeley say they're prepared to file lawsuits in federal court against lenders that continue to pursue foreclosure sales while clients await decisions on mortgage modifications.

Under CFPB rules, mortgage lenders must confirm each applicant can afford a mortgage before issuing the loan. They also must comply with new protections for struggling homeowners, including rules that could prevent foreclosure sales if borrowers take steps to modify their mortgages.

"Under the rules, mortgage borrowers will be protected from costly surprises and runarounds by their servicers," the CFPB said.

In September, the bureau took action against Michigan-based Flagstar Bank for repeatedly blocking borrowers' attempts to mitigate losses and save their homes. It ordered Flagstar to pay \$27.5 million to about 2,000 borrowers.

In South Florida, the Jacobs Keeley attorneys say mortgage servicers are benefitting from the region's clogged foreclosure dockets and judges' attempts to whittle the backlog despite federal rules giving homeowners a break.

"Servicers are counting on the fact that nobody is going to sue them and, if they're sued they'll say, 'We filed for a continuance that was denied,' " Jacobs said. "The truth is that if they're following the regulations, they should dismiss the case and refile it. The law says you can't go forward, period. I understand the court's frustration. These servicers have taken years and years clogging up the courts with cases they can't move forward, but every day these new federal regs are being violated and people are losing their homes."

Instead of delaying foreclosures as homeowners await word on applications to modify mortgages, some courts push through cases—giving lenders a loophole to press on with foreclosures.

"The courts have their own goal, which is to reduce the case load. For whatever reason, they don't want this dual tracking to get in the way of that reduction," Jacobs said. "The servicers are saying they have a cover for ignoring the regulations. But Miami has been the epicenter of foreclosures. If the courts don't want to follow the regulations, the servicers still should."

But lenders say they're spending heavily on compliance teams and foreclosure litigation while suffering losses to their bottom line.

"Quite frankly lenders don't make money when there is a foreclosure," said Kenneth Pratt, senior vice president of government affairs for the Florida Bankers Association. "Our industry has made a decision that's it's best for us to have the foreclosure system be effective. We want to see the real estate market return, and we have a fervent belief that the only way the market is going to return is if the foreclosure process is fair and efficient."

Bankers prefer not to foreclose, but they say they're forced to litigate if borrowers default and state courts deny motions for continuance.

"We're dedicated to following the law, and we'll do whatever the judge has asked us to do," Pratt said. "We support anything that would be efficient, but it's sometimes very difficult to get to that efficiency when you have so many rules in place. The CFPB continues to hand down rules. That's something that's very frustrating for our industry—the rules of the game continuing to change."