

Fair deal on foreclosures: Chance for Legislature to address a state crisis

By **THE PALM BEACH POST**

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The Legislature has at least one good idea for dealing with the home foreclosure crisis that has sapped the state's economy, overwhelmed the courts and devastated families.

A bill sponsored by Rep. Darren Soto, D-Orlando, would establish a "foreclosure bill of rights" that would require banks make a good-faith effort to renegotiate mortgages on homesteaded properties, as a means of trying to keep owners in their homes. House Bill 75 would require that litigants in all foreclosure actions on homesteaded property — meaning someone's primary residence — go through court-ordered mediation. The Florida Supreme Court recently issued an administrative order also requiring mediation, to reduce the backlog of foreclosure cases wending their way through the courts.

Florida has the second-highest rate of foreclosure, with more than 500,000 total cases. Many economists have called President Obama's \$75 billion Making Home Affordable program a failure, since only 31,382 mortgages have been modified permanently since the program began. As The Post's Kimberly Miller reported, only 8,405 of those homes are in Florida, where many property owners are choosing to walk away rather than stay in a house on which they owe far more than it's worth.

The answer, finance experts say, is for banks to reduce the principal on mortgages. If that happens, homeowners will have equity and therefore, an incentive to stay.

Rep. Soto's bill addresses this issue by requiring banks to get new appraisals on homesteaded properties that take into consideration short sales and foreclosures in the surrounding area once a lender files for foreclosure. "The plaintiffs shall make a good faith effort to negotiate a settlement," says the bill, "which shall include efforts to renegotiate the loan at a principal equivalent to the actual market value."

Before granting a foreclosure, courts could consider whether the lender made such a good-faith effort and whether the renegotiated loan is commercially reasonable. Under the legislation, courts also could consider whether the original loan terms were reasonable and whether there was any fraud.

That would be especially important, since so many loans were made by unscrupulous lenders in the subprime market. Banks that reduced the principal of a mortgage could put a lien on the home for the difference from the original principal, and recoup that amount if the home is sold.

Unfortunately, Rep. Soto's bill has no Senate counterpart, and the legislative session begins on March 2. Rep. Soto also is in the very outnumbered minority party in the House, and last year lobbyists for lenders beat back all such legislation. The foreclosure bill of rights, however, is fair to homeowners and lenders. If Republicans don't like the bill, they should try to improve it, not try to kill it.

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