



July 22, 2009

Surviving Foreclosure: Lane Houk: Court officials miss human reality of foreclosure

Lane Houk - Guest Opinion

The comments by Lee County Clerk of Court Charlie Green in Sunday's article titled "Court-ordered mediation can help modify loans," came across as calloused and out of touch. He said, "I have nothing against mediation, but it is not going to work in many cases, maybe 10 to 15 percent. ... The rocket docket has worked well, clearing cases that were beyond any hope of settlement."

Take all current foreclosure cases, the new ones being filed every month and the thousands already disposed, and even if we give Mr. Green the benefit of his statistic being correct, apparently helping some 3,000-4,500 families (roughly 10-15 percent of the cases) in this community save their homes and helping their neighbors avoid blight is not worth the extra work of establishing an administrative rule that would help if instituted properly.

The Lee County Foreclosure Task Force officially submitted a proposal to Lee County's Chief Administrative Judge, Judge Carlin, in January outlining the administrative rule idea that has been adopted by a number of other judicial districts. Apparently, the idea was not in line with the current position of "slam them through just as fast as possible regardless of all the consequences we'll have to face later" — also known as the "rocket docket."

The clerk's office and some local judges appear to lack a fundamental understanding of the realities that homeowners face when it comes to trying to communicate with loan servicers and institutions. Dealing with these institutions to try and resolve loan matters is nothing short of a disaster and nearly a full-time job. The lending and collection procedures being discovered are sloppy at best and predatory at worst.

I have been amazed at what these massive companies get away with. The facts speak for themselves: These institutions have run our global economic system into the ground. Now we expect them to do something that is fair or makes sense? Fool me once, fool me twice.

While so many are concerned about the "tactic" of delay by homeowners, consider a favorite tactic these multi-billion dollar institutions have employed to not pay taxes and get away with much more — the use of the Mortgage Electronic Registration Systems (MERS). Lenders have used MERS to circumvent paying state and local mortgage transfer taxes on every mortgage sold or transferred to a new entity. Assignments of mortgage are not being recorded when ownership of the corresponding note changes but rather, are tracked by MERS.

This massive loss of tax dollars affects us all. With the rise of mortgage-backed securitization coupled with no legal recording requirement we can't even tell who owns a mortgage or note most of the time; do you think this obscurity is by accident? But why worry about who really owns the mortgage in the, circa 15-30 seconds, the judge gives each foreclosure case in their rocket docket? Does it really matter?

The Clerk of Court is the public trustee for the county. In other words, Mr. Green was elected by the people of this community to hold the public interests of those in this county in trust.

Today, in Lee County, financial institutions, their agents and law firms are using an array of very

questionable "tactics" and sometimes outright fraud to foreclose using our local justice system as the vehicle. Lost notes, fraudulent assignments of mortgage, false affidavits, misrepresentation, are some of these tactics. Yes, this is really happening. The actual proof of it runs amok in Mr. Charlie Green's system. I guess the question is does anyone in elected office or working in our courts really care enough to roll up their sleeves to address this?
