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Foreclosure rights

Submitted by **The City Wire staff** on Mon, 05/31/2010 - 11:17am.

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guest commentary by Ethan Nobles, director of media relations for the Arkansas Realtors Association

Kathy Deck, director of the Center for Business and Economic Research at the University of Arkansas, said she expects a high number of foreclosures to remain with us through at least part of 2012.

Deck knows what she's talking about so we at the Arkansas Realtors Association (ARA) get concerned when we here such projections. Foreclosures, as far as Realtors are concerned, lead to all manner of bad things.

There is, of course, the human element to consider — when we see foreclosure statistics tossed around by commentators and analysts, it's important to remember that each home lost means there's an individual or (typically) a family going through a rough time. From a public policy standpoint, then, everyone from banks to homeowners love to see alternatives to foreclosures.

There are also property values to consider. If you have a lot of properties in an area taken back through foreclosure, you're sure to see average sales prices fall.

In March, Legal Aid of Arkansas asked the ARA to co-sponsor a "preventing foreclosure" seminar in Fayetteville. We were more than happy to join that effort, as were some other groups such as the bar associations of Benton and Washington counties, Bank of Fayetteville and Credit Counseling of Arkansas.

The Legal Aid folks held that seminar in April in hopes of training attorneys interested in joining the effort to defend against foreclosures. First and foremost, seminar attendees learned that the worst mistake someone facing foreclosure can make is to take no action.

When a homeowner begins missing payments and is struggling to make ends meet, that's the time to contact the mortgage servicing company and begin working out arrangements. The longer a homeowner waits to work out a solution, the fewer options he or she will have.

April Carrie Charney, senior staff attorney at Jacksonville, Fla., Area Legal Aid and a Legal Aid of Arkansas alum, said people going through the foreclosure process do have defenses. She signed on as a seminar presenter for the purpose of passing on some techniques that have been successful in Florida to Arkansas attorneys.

"I'm going to fill up their quivers with more arrows than they'll ever need to stop or prevent foreclosures," she promised prior to the seminar.

One thing that banks are obliged to do is to step in as soon as a mortgage goes into default and work with the borrower to bring the note current. Often, that step is avoided, but borrowers have the right to demand that it be taken.

Also, Charney said, a good number of mortgages simply aren't transferred correctly. Let's say, for example, Joe Borrower takes out a mortgage through Fred's Bank and Trust. Mortgages, quite often, are bundled up and put into trusts to provide a basis for investment in the mortgage-backed securities market.

Fred's Bank and Trust goes out of business and Joe Borrower's loan goes into default —if the mortgage was not transferred correctly into the aforementioned trust, who has standing to bring a foreclosure action? With Fred's Bank out of business, can anyone legitimately bring a foreclosure action? In some cases, might the borrower wind up with a house free and clear of any mortgage obligation?

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Robert Doggett, an attorney with Texas RioGrande Legal Aid in Austin, was less enthusiastic about the “free house” tactic.

“What do I have that knocks them out of their normal routine? Mills run through cases in a hurry. If you can take (a case) out of that routine, you’ve got leverage,” Doggett said.

Law firms that bring large numbers of foreclosure actions, he said, are zipping through a record number of them. They often don’t have time to slow down and deal with cases that are zealously defended by attorneys looking for any deficient mortgage transfers, incomplete documents and other items that should be examined closely by a judge.

Whether we’ll see lawyers in Arkansas jump up and start aggressively defending against foreclosures is anyone’s guess. It also remains to be seen how the courts will react to some of the tactics suggested by Charney.

Still, we do know there are a lot of foreclosures out there and it appears Arkansas attorneys are starting to take a hard look at how to fight them in court — and make a few bucks in the process.

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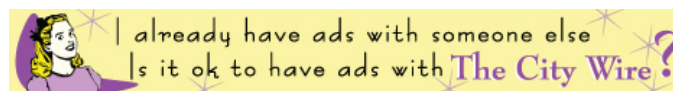


Memorial Day

I was really wondering when Memorial Day became just about our veterans that have lost thier lives? Memorial Day is a day to remember all our loved ones. I have not seen one news article that remembers our ancestors that helped make this a great nation. And yes thak you to everyperson that has served this nation and helped make it what it is.

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