

Alabama State Bar Responds to Mortgage Foreclosure Crisis

By Thomas J. Methvin

For some Alabamians, the American dream of owning a home has become a nightmare. One in 60 Alabama homeowners is projected to experience foreclosure on their home as a result of a high-cost loan. In Alabama, foreclosure proceedings can be concluded in as few as 21 days.

Since foreclosure filings continue to increase throughout the state, Alabama State Bar President Mark White of Birmingham recognized that we need more lawyers to assist consumers with foreclosure issues in these tough economic times. I was asked to chair a six-member Mortgage Foreclosure Task Force to focus on ways lawyers could deliver pro bono assistance to distressed homeowners. Task Force members include:

Bowdy J. Brown, Montgomery;
Gail Hughes Donaldson, Montgomery;
Robert Edward Kirby, Jr., Columbiana;
Henry Callaway, Mobile; and
Kenneth James Lay, Birmingham.

I must acknowledge the considerable efforts of task force member Gail Hughes Donaldson who assisted in the preparation of this article. All task force members worked hard and did a great job. We conducted weekly meetings because of the “crisis” nature of the situation. I would also be remiss if I did not acknowledge the considerable efforts of state bar employees Laura Calloway, Linda Lund, Tracy Daniel, Brad Carr, and Keith Norman in

tackling this problem. They were dedicated to this cause and did great work.

We clearly understood borrowers’ concerns about financial issues such as foreclosures. To make matters worse, many homeowners threatened with foreclosure cannot afford to hire a lawyer.

The task force was faced with a dilemma. Clearly, the problem called for pro bono work. However, the time window for concluding a foreclosure is very short. Therefore, the task force was concerned the state bar’s Volunteer Lawyers Program could not be mobilized in time to be effective.

The solution came through Legal Services Alabama (LSA). LSA already had received a grant from NeighborWorks America to provide counseling and assistance to consumers faced with foreclosure (NeighborWorks America was created by Congress in 1978 as the Neighborhood Reinvestment Corporation). Additional support and funding came from the Alabama Civil Justice Foundation and the Alabama Access to Justice Commission which allowed LSA to employ the services of a full-time staff attorney to assist with litigation. We thank them for their support.

After discussion with LSA Executive Director James Fry, the task force recommended that the state bar support the LSA’s existing pro bono efforts by producing a series of broadcast messages alerting homeowners to the assistance available





through LSA. The state bar will tap into its partnership with the Alabama Broadcasters' Association (ABA) to run these announcements on the ABA's 400-member TV and radio stations. Though the messages will ultimately be broadcast throughout the state, the task force decided to concentrate on the Huntsville/Madison County area to start.

Listeners are advised to call a toll-free number (1-877-393-2333) so they can talk to a LSA staff attorney who can assist them in negotiating with their lenders. For homeowners who have a claim to be litigated, LSA can also provide them with pro bono representation in court.

Meanwhile the task force also has produced a brochure which addresses commonly asked questions about foreclosure. This title has been added to the state bar's public information pamphlet series and is available on the bar's Web site, www.alabar.org/brochures/foreclosure.

So, what can we do to help our clients understand the foreclosure process? First, know that there are more options available to a client the earlier he or she addresses the delinquency of the mortgage payments. In addition, penalties and fees will be kept to a minimum the earlier a pending foreclosure is addressed. Many mortgage companies are open to some alternate payment plans that will enable a client to avoid foreclosure. Lenders are eager to help, because when they foreclose on a house, they typically lose a great deal of money.

Bankruptcy is one option available that will stop foreclosure. Since the bankruptcy laws changed in 2005, there is more required of filers to get the protection bankruptcy provides. Many bankruptcy practitioners who represent consumer debtors will file a Chapter 13 bankruptcy

with only a small portion of their fee being paid prior to the petition being filed. A Chapter 13 bankruptcy allows a consumer to stop a foreclosure and cure the arrearage owed over a period of time, sometimes up to 60 months. Finally, attorneys should make sure that the foreclosure process is carried out according to the terms of the mortgage or deed of trust.

In Alabama, the borrower has the right to redeem the property after the foreclosure sale, up to one year after the foreclosure sale date. This right to redemption can be waived, however, if the borrower fails to vacate the premises within ten days of receiving a written demand to do so following the foreclosure.

Of course, prevention is the best medicine. That's why Congress is now demanding that lenders help educate borrowers about such things as how to choose a mortgage loan or a refinance strategy that's appropriate, manageable and, more importantly, affordable.

The state bar's motto, "Lawyers Render Service," is very meaningful here. Our lawyers are committed to ensuring that equal access to justice is not a hollow expression. The sub-prime mortgage crisis has presented us with yet another opportunity to experience firsthand the satisfaction that comes with helping someone in need by providing pro bono assistance. The Volunteer Lawyers Program is seeking to create a panel of attorneys who will agree to handle foreclosures in an attempt to augment Legal Services Alabama. Please take the time to complete and return the VLP enrollment form that accompanies this article.

See: *Alabama Code* (1975) Title 35 (Property) Articles 1, 1A, 2, 3 §35-10-1 *et. seq.* ▲▲▲



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