

Foreclosure's slow pace masks peril



Written by

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2:32 PM, Mar. 20, 2011|

First-time foreclosure filings in New Jersey dropped 5.2 percent last year compared with 2009. Good news? Hardly.

"It's a false read," said Jeff Otteau, a housing market analyst whose East Brunswick-based Otteau Valuation Group calculated the number.

There are not fewer people in danger of losing their homes, according to Otteau. In fact, 70,598 New Jersey homes were repossessed by banks last year, according to RealtyTrac, which predicts a repeat performance this year.

What's happening, Otteau said, is that more banks, facing claims of careless documentation, are deciding to hold off on starting foreclosures. They're not filing against delinquent homeowners until they get their own houses in order.

Foreclosure filings are, in a word, stalled in the proverbial pipeline. The problem likely will linger longer in New Jersey than in other states for two reasons, according to Otteau, who pointed out the Garden State

lost 33,000 private and government jobs last year.

"The country gained 900,000 private and government jobs in 2010," he said. "If New Jersey had moved at the national pace, it should have seen a corresponding gain of 27,000 jobs in 2010. But it didn't. When people are continuing to lose their income in our state, there's no reason for foreclosures to improve."

Second, New Jersey is one of the slowest states in the country when it comes to "curing" foreclosures — bringing them to completion — primarily because it processes them in the courts.

Since December of last year, the courts have delayed the process even more. That's when the state Supreme Court, responding to reports of sloppy documentation on the part of banks, issued a show cause order directing six lenders and service providers to prove their paperwork is correct before any foreclosure cases proceed. The lenders —

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Bank of America, JPMorgan Chase, Citi Residential Lending, GMAC (Ally Financial), OneWest Bank, Wells Fargo — collectively filed 29,000 foreclosure cases in the state last year. A hearing is scheduled for March 29, according to the state Administrative Office of the Courts.

"The court essentially said: 'If you guys can't justify your foreclosure practice to us, we're going to shut down all foreclosures in New Jersey until you figure out this mess,' " said Erik W. Mueller, real estate attorney in Ocean Township in Monmouth County.

"If they really stop the foreclosures altogether, it could take another year to process one," he added. "Now it's typically a two-year process, meaning people are living in their home for two years without making payments."

Mueller said he already has represented clients who have gone four years without making mortgage payments before their foreclosure was cured, or completed.

Cures include a sheriff's sale; a short sale in which a lender approves a third party buying the home for less than what the lender is owed; or a loan modification that allows the homeowner to stay in his home and avoid foreclosure. A homeowner also could negotiate with his lender to simply return the deed to the house back to the lender, a process called "deed in lieu of foreclosure."

Help on loans

The federal government encourages loan

modifications with its Home Affordable Modification Program (HAMP), which began on March 4, 2009, and ends Dec. 31, 2012. HAMP offers banks incentives to help homeowners who owe up to \$729,750 on their first mortgage by reducing their monthly payments to no more than 31 percent of their verified monthly pre-tax income.

But hopes that President Barack Obama's program would help some 4 million distressed homeowners have not been realized. A HAMP modification does not move from trial to permanent status until three consecutive payments have been made. According to a March 4 article in American Banker, at the end of January a total of 539,493 modifications were permanent, less by far than the 740,240 canceled due to failure to make payments.

HAMP is good but imperfect, according to Mueller. For instance, it takes a year or more to process a loan modification in the program.

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"Before HAMP, you'd go to the bank and hope for the best. There were no guidelines," he said. "The Obama guidelines are straightforward, but banks don't come up with answers quickly at all. They lose half your stuff and you have to re-send it two or three times. You don't qualify because they put in numbers incorrectly. They lose your file and you have to start over again."

Any mistake a bank finds along the way ends in a denial, a reality that puts off most people, Mueller said. His law office throws denials in the garbage and keeps going. But as months roll by, a homeowner continues to fall further behind in mortgage payments.

"Banks put on a friendly face, but when you really get into the process, it's horrible. It's a nightmare," Mueller said. "Sometimes a bank will actively pursue foreclosure while the borrower is attempting to modify a loan. In that situation it certainly appears that the bank is not acting in good faith."

One Boonton Township homeowner who has gone through the HAMP process twice — and been rejected both times — needs no convincing that the system is frustrating. She applied to Bank of America because going from 8.9 percent on her mortgage to 4 or 5 percent would have enabled her to keep her home.

"I just stopped being able to pay the mortgage in April 2010 and started applying for modification," she said. "It took six months. First the bank lost everything I sent. I resubmitted and then it kept saying

it needed 'all the paperwork' but couldn't tell me what paperwork. I got rejected for not giving the bank what it needed.' "

Denials based on missing or lost documents occur frequently, Mueller said, even when a homeowner has proof a complete package was submitted.

On the Boonton Township homeowner's second try at a loan modification, she was rejected for being unemployed.

Now she is biding time. Like so many Americans, she gambled on the likelihood of the real estate bubble not bursting. She bought the Boonton Township home for \$350,000 and refinanced twice, the second time in 2007 for \$500,000 to cover the costs of the mortgage as well as living and business expenses.

Three years ago the home was worth \$579,000. Now its value has dropped by \$100,000 and it is no longer worth the amount owed on the mortgage.

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"It's weird when you get to this place where you realize paying your mortgage is not the thing to do," she said. "I've worked through that anxiety and disillusionment that there's anything permanent about a mortgage anymore. Or a house, for that matter."

Today she is seeking a short sale.

Making it easier

Some banks make loan modification easier. A favorite of one foreclosure counseling agency is Chase, one of the first banks to participate in HAMP. At its Chase Home Ownership Centers, homeowners meet face-to-face with loan counselors to iron a mortgage modification instead of talking by phone.

Since 2009 Chase has opened 51 centers nationwide, including two in New Jersey, and it plans to open another 20 this year. The New Jersey centers are in Paramus and Jersey City.

"Nationwide, the centers helped avoid 487,294 foreclosures since 2009," said Mike Fusco, Chase spokesman. "We've avoided foreclosures twice as often as we've had to foreclose."

Homeowners with loans in the seven figures have a unique situation. One Morris Township family decided to use the equity that had built up in the large, historic home they'd bought 13 years earlier at an excellent price. The family doesn't qualify for a HAMP loan modification because its loan is worth too much. So far a solution that would save the home eludes them,

and a sheriff's sale is scheduled for later this month.

The father's line of work is tied to the building business. When that industry weakened, the family struggled to meet the home's formidable \$15,000 monthly operational bills in addition to its repair and maintenance demands. In 2008 the home was worth upwards of \$3 million, which prompted the family to take out a second mortgage and invest in a nightclub venture that promised large returns.

"It seemed like we were utilizing the golden egg we were sitting on," the father said. "We're sitting on all this equity. Why not invest it in a sound investment that pays back better than what we're paying for it?"

Except it didn't, and the family now is left with two mortgages, both in foreclosure.

The scenario presents the special problems that come with curing foreclosures in very affluent neighborhoods. Last year 262 Morris

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County homes were sold back to a bank or to a third-party buyer at sheriff's sales, according to the county sheriff's office.

"I'm not an expert but I do wonder if perhaps nothing is going to happen at this sheriff's sale," the father said. "Most people go to a sheriff's sale and expect to get something cheap and make money on it. Most sales are between \$200,000 and \$600,000. I can't see somebody at a sheriff's sale offering \$4 million for almost anything unless it was a \$10 million house."

Solving the foreclosure problem at all socioeconomic levels is key to economic recovery, analysts say. One in four home sales in the last quarter of 2010 were foreclosed homes, according to Peter Miller, syndicated real estate writer. Typically, they sold at a 32 percent discount, dragging down the value of other homes.

In New Jersey the problem is worst in inner-city markets and fringe markets, which are far from employers, according to Otteau. "I'm talking about the older stock of housing in urban environments," he said, "and the fringe markets in suburban markets. What they have in common is that they attract the lowest-income homebuyer who also is most at risk in an economic downturn."

Mueller, in Monmouth County, said he's done a lot of foreclosures in Neptune Township, Neptune City and Asbury Park, which are replete with low-end homes.

"As soon as the market dipped, their

houses were worth \$200,000, \$175,000, probably \$50,000 less than the buyer had paid just a year or two ago," he said. "In the old days, you could refinance, but that's not an option anymore because there's no value or equity left in the house."

New Jersey won't see a genuine dip in its foreclosure filings for another year, according to Otteau, who believes job creation in New Jersey will start this year.

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MORRIS FORECLOSURES

BOONTON TOWNSHIP

Homeowner: An individual
 Home value: \$464,500 (zillow.com)
 Mortgage: \$500,000 at 8.9 percent
 Last paid mortgage: March 2010
 Status: Two loan modifications denied; working on short sale

MORRIS TOWNSHIP

Homeowner: Family with children
 Home value: \$1,859,000 (zillow.com)
 Second mortgage: \$2.6 million at 9 3/4 percent
 Last paid mortgage: October 2008

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Status: Foreclosure mediation; sheriff's sale set for late March

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