

[back to article](#)



Printed on page A1

Lies a new tool in foreclosure

Lawyers, in rush to regain properties, can exploit judges' workload

By [Todd Ruger](#)

Published: Sunday, May 10, 2009 at 1:00 a.m.

Foreclosure lawyers want to take back property as fast as possible, and sometimes they do not let the facts slow them down.

In case after case, lawyers representing banks are giving false statements in court about who owns mortgages, or whether the homeowner is willing to negotiate, or whether they have completed all the legal steps to put a foreclosed house back on the market.

The errors and fabrications in the court files are seldom caught by judges with hundreds of foreclosure cases before them.

The judges say they can only hope to catch a few of the offending lawyers in hopes of keeping the rest honest.

The courts usually rely on defendants to point out problems in the cases against them. But in foreclosure court, many homeowners make no attempt to defend themselves. Judges cannot step into that role.

"Even the IRS can't audit every return," said 12th Circuit Chief Judge Lee Haworth. "We're an impartial party. You don't ask the referee at a baseball game to tell whether the people coming in the game are on drugs."

Since the real estate market in Florida began to slide in 2006, the number of foreclosure cases has gone up 600 percent.

In the first quarter of this year, 4,991 foreclosures were filed in the Sarasota-Bradenton-Venice market, which remains among the top 25 for foreclosures in the nation.

At the same time, judges handling the cases have seen their budgets fall 13 percent.

Most of the foreclosures are filed by out-of-town attorneys from a handful of firms who rarely appear in court in person.

Minutes after a foreclosure attorney told her everything was in order in a recent case, Circuit Judge Donna Berlin was ready to sign off.

Then she happened to glance at the file, and realized that the two properties were in Miami, a few hundred miles outside her jurisdiction.

"I didn't have time to go through and read it," Berlin told a group of attorneys at a meeting last weekend. "And it was not something that I normally look at."

Foreclosure defense attorneys say that even homeowners who plan to walk away from a property should be checking the court file and making sure the lenders' attorneys are sticking to the truth.

"It's all across the country, it's not just here," said April Charney, a Jacksonville attorney who is a nationally recognized expert in foreclosure defense.

"It's whatever's expedient."

Troubling findings

Nobody knows how common it is for foreclosure cases to be based on untrue statements or incomplete proof.

More than half of all foreclosure defendants simply walk away, and never show up in court to defend themselves.

Richard Kessler, an attorney in Washington, D.C. who retired to Sarasota, enlisted a few friends to go through 180 foreclosure cases in Sarasota County looking for errors.

They found three out of four cases proceeded with incomplete or improper documentation.

For instance, the survey found that only one in 12 cases had the documents to prove the company foreclosing on the property was also the company holding the mortgage note.

In half of the cases reviewed, the plaintiff said the mortgage note had been lost.

Kessler contacted Haworth and offered to have his business double check the paperwork for the courts, proposing that his fee could be charged to the company filing the case.

Haworth declined, saying he cannot add such a filing fee, and the courts have no money to pay for the service.

Instead, Haworth is recruiting volunteer law students to review all the cases for foreclosure judges this summer to verify documents.

"We think having cops on the beat will help," Haworth said.

'Any old pleading'

Haworth changed court rules earlier this year to address some of the problems with the out-of-town firms that handle most of the foreclosures in Manatee and Sarasota counties.

He required them to meet with homeowners and try to settle the case.

Lenders widely ignored the rule, and the number of foreclosures being resolved went from 400 a month to just over 100.

Lenders also must file complete paperwork, including proof that they met or tried to meet with the homeowner. Otherwise, their hearings get canceled, costing them money.

But some foreclosure attorneys have simply filed paperwork saying the homeowners declined to have the meeting, whether that was true or not.

Ronald and Sandra Smith requested the mediation meeting with their lender in January. Then they sent financial documents in preparation for the meeting.

A few weeks later, the attorney for the lender, HSBC Bank, filed court papers saying the Smiths had "no interest in the program or declined."

There is no way to know whether it was a mistake or deliberate, said the Smiths' attorney, David Morrill of Legal Aid of Manasota. But he is asking for the case to be dismissed because of it.

"I don't believe an attorney would deliberately do that," Morrill said. "I just don't know what happens to all this paperwork we send them."

Other false statements provided to the courts are more suspect, like the attorney for Deutsche Bank who, to avoid having to refile a case, claimed the international financial giant had changed its name to Aurora Loan Services.

A judge in Miami fined Wells Fargo bank \$95,000 late last year because of sloppy paperwork filed by Florida Default Law Group, one of a handful of companies that handle the majority of foreclosures in the state.

Judge John K. Olson blasted Florida Default, saying the firm seemed to believe that "filing any old pleading without undertaking any investigation into its accuracy is perfectly acceptable practice."

Wells Fargo and the Florida Default Law Group told the judge that the mistakes were employee errors, and that staff at all levels were warned to be more careful.

Phone and e-mail messages left by a reporter for lender attorneys involved in those cases, including Florida Default Law Group vice-president Ronald Wolfe, were not returned.

The notorious Kellogg case

The most notorious case in Sarasota County is that of Betty Kellogg, a 71-year-old disabled widow who twice had her villa put up for foreclosure sale, even though she worked out a settlement with her lender.

Kellogg bought the villa in 2000 after her husband and other relatives died. To pay her medical bills and consolidate her debt, she took a \$180,000 loan against her home.

The mortgage broker had inflated her income on the application -- she makes \$380 a month working part-time; the mortgage broker said she made \$2,300 a month.

Kellogg could not afford the loan payments.

"I asked them, 'Why would you accept me, I don't really have enough money to qualify for this. They said, 'Just pay for a couple months and we'll refinance again,'" Kellogg said.

So when she fell behind and the foreclosure lawsuit was filed last year, she begged with the bank to help her.

"I am just lost. I don't know what to do," Kellogg wrote to the lender, Washington Mutual. "Please help me."

The bank told her it would not proceed with the foreclosure case while they negotiated.

But at the same time, the bank's lawyers were telling Judge Berlin that Kellogg was not defending herself, and were granted a default judgment. They put Kellogg's home up for sale.

Kellogg went to an attorney.

Berlin cancelled the sale when she found out what happened.

Less than a month later, the bank filed another motion, saying that the first sale had been canceled because it was not advertised.

Berlin signed the order, and the bank scheduled another sale.

Kellogg, who got a lawyer through Gulfcoast Legal Services Inc., went back to the judge again, and the sale was canceled. Again.

"I got so afraid, and I have no money to pay attorneys to fight for me," Kellogg said. "It's very confusing. I am not talking to anybody on the phone anymore."

This story appeared in print on page A1
