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# Foreclosed property owners have right to court access

Commentary by Timothy Kingcade

The 14th Amendment of the U.S. Constitution provides all citizens with the protection that "no State shall deprive any person of life, liberty, or property, without due process of law." As Americans, this statement gives us the unalienable right to have our day in court whenever our life, liberty or property is at risk. So why would Gov. Rick Scott, along with an array of other top lawmakers, propose new legislation that would change Florida laws and eliminate judges from the foreclosure process? More specifically, why would our governor lessen consumer protection at a time when the banks and Wall Street have so dramatically damaged our economy?



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Florida is one of 20 states that require all foreclosures to proceed through the judicial system. The proposed legislation, titled the Fair Foreclosure Act, would change Florida to a non-judicial foreclosure state. This means cases would not have to proceed through the court system; borrowers

would receive notice of default in the mail, no less than 30 days later the borrower would receive notice of foreclosure which the lender would file in the county records, and thereafter the foreclosure would be completed no less than 90 days and no more than one year after the filing of the notice of foreclosure. No courts need be involved.

Scott's argument is that the foreclosure process takes too long to complete — an average of 638 days in Florida — and in turn, costs banks and homeowners significant amounts of money. The goal of this new legislation is to expedite the foreclosure process so that properties can be placed back onto the market in hopes the sale of these properties will stimulate the economy.

But is it correct — or even legal — to replace individuals' rights to their day in court for the sake of expediting the foreclosure process? The new legislation creates a significant monetary obstacle that blocks a property owner's right to access the court system. If the legislation were to be approved, property owners may be allowed to file their foreclosure case in court, but the filing fee alone would cost them almost \$2,000. Property owners who are facing foreclosure are already struggling fi-

nancially so how can we expect them to pay for their right to access the courts on top of attorney fees and costs?

The proposed legislation would be a direct benefit to the banks. But it leaves property owners without the desperately needed time to fix their finances or catch up on their mortgage. Judicial foreclosure proceedings provide property owners with three main benefits. First, a judge will review the case, which cuts down on administrative errors and discriminatory results. Second, the judicial foreclosure system offers incentives for lenders to work out agree-



Scott

ments or modifications with the borrowers, a win-win situation for all involved. Finally, the judicial foreclosure system buys the property owners precious time, allowing them to stay in their home and reorganize their lives and finances before being forced out.

The absolute right of property owners is to have their day in court before their property is taken away from them. Property owners facing foreclosure are facing extreme economic hardship and if the law does not provide them with



access to the courts there would be no way they could pay their way to gaining access to a judge. The judicial foreclosure system provides property owners with some elemental safeguards and — above all — the ability to access their right to the courts before being deprived of their property. There is no reason why this system, supported by our Constitution, should be changed.

It appears as though Scott is listening only to the banks and forgetting about the essential rights of his citizens. He has no qualms about leaving property owners at the mercy of the banks and without their rightful day in court.

All in all, the value of expediting the foreclosure process will never exceed the value of the rights that it would take away from all Florida property owners.

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