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How One City May Punish Banks for Foreclosures

By TIM PADGETT / MIAMI

It's hard to drive down a residential street in Miami Gardens, Fla., and not see two, three, four houses in foreclosure. Some have been on the auction block since last year; they are once handsome, pastel-colored ranch houses that are now surrounded by waist-high weeds or boarded-up windows. "The tarp on that busted roof is about to disintegrate, it's been there so long," says Andre Williams, a Harvard-educated real estate attorney and Miami Gardens city councilman, pointing at one of the houses and shaking his head at the state of the solid middle-class, African-American community he grew up in. "We had a 70% homeownership rate in this city. We took a lot of pride in that."

But the city of 110,000 people just north of Miami is staring at another figure today: a 13% home-foreclosure rate. That's the second highest in Florida, a state that now has the nation's highest rate of homes — 23% — either in foreclosure or delinquent on mortgage payments. Many of the mortgages that have collapsed in Miami Gardens were subprime; city leaders like Williams say they were ethically questionable deals pushed by banks that too often knew their clients were in over their heads. ([Read "Four Steps to Ending the Foreclosure Crisis."](#))

For that reason, Williams believes those lenders need to step up and do more to help struggling local homeowners revise their loans and hang on to their houses — and he wants to give his frustrations some legal teeth. Williams has proposed a city ordinance that could penalize banks that fail to offer modifications before starting foreclosure proceedings. Local governments have no formal legal oversight over banks, but under Williams' ordinance, if a lender's number of foreclosure actions in Miami Gardens over a designated period exceeds the number of loan modifications it offers to financially burdened or delinquent homeowners, the city would pull its accounts or other business from that bank. "The taxpayers put these banks back on solid ground with the bailouts," says Williams, "and now it's time the banks did the right thing themselves."

Despite his grass-roots support, it's uncertain if Williams can muster a council majority next month to pass the ordinance, which would likely be the first such law to emerge amid the Great Recession. (A Pennsylvania

judge last year mandated a program in Philadelphia that requires lenders there to at least participate in a modification-mediation process before resorting to foreclosure.) John Mechem, spokesman for the Mortgage Bankers Association in Washington, D.C., argues the ordinance is "ill-conceived" because it would "encourage banks not to do business [in] the city, which would limit competition." But even if it doesn't pass, the effort reflects the impatience many communities have with the banks they believe helped lure them into the housing horror. And it echoes the Obama Administration's exasperation. Treasury Secretary Timothy Geithner recently chided banks for their poor loan-modification performance: so far only 9% of the 3 million-plus at-risk mortgagees have received relief, like rate or principal reductions to reduce monthly payments, despite the federal Making Home Affordable Program. This year MHA made \$75 billion available to the nation's 38 major home lenders for that express purpose. ([Read "Is Florida the Sunset State?"](#))

Miami Gardens officials acknowledge that they don't know what percentage of their at-risk homeowners have gotten loan modifications. (Williams' ordinance would also require the banks to provide that data.) But the spike in foreclosure signs tells them it's too few. And given the city's grinding 15% unemployment rate, many believe they have no choice but to try to leverage banks into taking MHA more seriously.

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Their goal is to help homeowners like Ruby Milligan, a single, 61-year-old retired middle school teacher who suffered a mild stroke a few years ago. During the housing boom, when her three-bedroom Miami Gardens house was appraised at what she now acknowledges was an unrealistic \$294,000, Milligan says she took out adjustable-rate home-equity loans to help with medical bills. They raised her mortgage principal to far more than the house is now worth in the housing bust. Her mortgage interest has since adjusted up sharply, and she's saddled with monthly payments that eat up more than 50% of her income, and which she has already fallen behind on.

Milligan's lender has already started foreclosure without offering a loan modification, primarily because it feels Milligan's retiree income is insufficient. Milligan says it would be sufficient if she could get a loan revision, which she believes the bank has an obligation to consider. "I never really understood the kind of adjustable-rate loan I was given, which I feel was a bit predatory, given my economic circumstances," she says. "I'm even willing to buy the house outright from them for what I'm told they'd probably get it for at auction, around \$100,000. Anything to keep the house. My neighborhood's got too many foreclosed homes as it is." She points to one that lenders have yet to sell — but which she and her neighbors fear has become a nighttime lair for drug-addict squatters. ([Watch a video on people facing foreclosure in Tampa.](#))

Milligan knows that the bank's first impulse, from a business standpoint, is to try to auction the house and at least get some long-term mortgage-interest revenue out of the sale. That's a big reason so many banks have balked at loan modifications in spite of MHA: they'd rather roll the dice with another owner since studies show many modified mortgages still go south, just delaying the inevitable. But in cases like Miami Gardens, says Milligan's lawyer, Miami real estate attorney Rashmi Airan-Pace, lenders need to realize that as foreclosures mount and infect neighborhoods, their chances of auctioning those houses dim significantly. "Given what fair

market value of these homes has become today," Airan-Pace says, "they especially need to change their mind-set about reducing principal," which she complains too few are willing to consider so far.

Still, advocates like Airan-Pace say the banks, perhaps because of Geithner's grousing or because they've gotten up to speed on MHA's procedures, have stepped up their modification activity in recent weeks. That's giving them hope that MHA perhaps has a future after all. "This month we've actually been raking them in," says Airan-Pace, who's now confident that she'll be able to work something out for Milligan.

But Williams, who is running for U.S. Congress next year, says the banks still need a push. In an editorial last week, the Miami *Herald* also broached the subject, saying that if lenders "do not step up their efforts to help stressed-out homeowners," then Congress should consider a "change in federal law that would allow bankruptcy judges to reduce the principal owned on home mortgages." In other words, if Williams can't get his law passed in his hometown, perhaps he'll have better luck later if he wins a seat on Capitol Hill.

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