

# DAILY BUSINESS REVIEW

**FORECLOSURES** Are lenders following Washington's orders?

## WESTON ATTORNEY SAYS BANKS RESIST **REQUIRED WORKOUTS**

by **Polyana da Costa**

polyana.dacosta@incisivemedia.com

Lenders receiving U.S. government stimulus money are required to offer distressed homeowners reasonable loan workouts to prevent more foreclosures. But critics say that's often not happening.

Claiming lenders aren't working with borrowers, Weston attorney Jonathan Kline is in state court trying to block the first of dozens of foreclosure cases.

Kline has asked judges to dismiss or delay about 10 cases. He argued the lenders — including Bank of America, which now owns Countrywide; Wells Fargo, which owns Wachovia; and Washington Mutual, now owned by JP Morgan Chase — are not complying with the Emergency Economic Stabilization Act of 2008, the bailout bill that originally authorized the Treasury Secretary to spend \$700 billion to purchase distressed assets of the largest U.S. banks.

"In many of these cases the bank is not responding to modification requests or they are saying something like, 'send us two payments and we will consider a loan modification,' and when it comes time to modify the loan they lower the payment by \$100," Kline said.

"Some of these banks are offering Band-Aids where surgery is required," he added.

The bailout bill requires lenders receiving federal money — including those servicing Fannie Mae and Freddie Mac loans — to offer "reasonable loan modification based on three areas, including reducing the interest rate, reducing the principal amount of what is due and elongating the term of the loan," Kline said.

Kline said he is planning to file similar motions in all of the approximately 200 foreclosure cases he has working.

Last week, Kline presented the argument for the first time before Broward Circuit Judge Jack Tuter in a foreclosure case against U.S. Bank, the trustee for Homebank Mortgage Trust, which originated Fannie Mae and Freddie Mac loans.



Some of these banks are offering Band-Aids where surgery is required."

JONATHAN KLINE,  
WESTON ATTORNEY



MELANIE BELL

### Jonathan Kline, P.A., Attorney at Law

2761 Executive Park Drive · Weston, FL 33331

**Broward:** 954.888.4646 • **Miami-Dade:** 305.443.3554 • **Palm Beach:** 561.733.6761

**Nationwide:** 800.581.5297 • **Fax:** 954.888.4647 • **Cell:** 954.275.0356

Jonathan.Kline@JKLawFL.com - www.JKLawFL.com



## FORECLOSURES Are lenders following Washington's orders?

Kline said he may request a second hearing and will use that argument on other cases.

Representatives of the Florida Default Law Group, a law firm representing U.S. Bank in the case Kline argued last week, did not return a telephone call seeking comment.

Kline isn't alone in criticizing national lenders' efforts to negotiate loans with borrowers to prevent foreclosures.

Howard Ullman, a Deerfield Beach attorney and the owner of a mortgage counseling company, said he is "appalled" that many lenders are still resistant to "reasonable" loan modifications, even after the federal government issued specific guidance about two months ago urging lenders to modify loans to prevent foreclosures.

"The effort is embarrassing," Ullman said. "Every day we see billions of more dollars being funded into these lenders, and they are foreclosing like crazy."

More than 23,000 foreclosure suits were filed in South Florida in the first quarter of 2009, a 33 percent increase over the same period last year.

National lenders say they are pushing to work out loans but many borrowers can't afford to stay in their homes, no matter what preventive measures are taken. Foreclosures, the bankers say, are often inevitable.

Like others on the frontline of the foreclosure crisis, Ullman and Kline said part of the problem is that the loss-mitigation staffs of many banks aren't aware of the federal regulations and loan modification strategies.

"They are scripted," Ullman said. "They are basically debt collectors, and they have a job to do."

Ullman cites a recent case where a representative for HSBC advised his client, who had called seeking to modify his loan, to sell his work truck and cut down on the \$400 he spent on food each month, to be able to afford the mortgage. HSBC, Europe's largest bank, has not received funding from the U.S. government and is not subject to the bailout law.

"I hear these absurd stories every day," Ullman said.

Ullman said he is not very optimistic that Kline will be successful in his use of the bailout law to persuade judges to force lenders to modify more troubled home loans.

"I think it's creative and worth a try," he said.

"In these difficult times, anything a lawyer wants to try to help homeowners — my hat's off to him. But the stimulus package is a federally mandated process directed at those who have the opportunity to receive the funds. I don't know how that federal regulation is going to impose state law on lenders within the boundaries of Florida. I do not believe the act ... contemplated making this issue a state right of action that would impose or create any legal persuasion on state court judges."

Kline said he understands the challenge but insists the act is a statutory condition and the foreclosure process should be at least put on hold until a lender complies with the statute and makes efforts to negotiate with the borrower.

### BY THE NUMBERS

How much some banks have received in the federal bailout of the U.S. financial system.

#### **Bank of America (purchaser of Countrywide)**

\$15 billion in October 2008

\$10 billion in January 2009

#### **Wells Fargo (purchaser of Wachovia)**

\$25 billion in October 2008

#### **JPMorgan Chase (purchaser of Washington Mutual)**

\$25 billion in October 2008

### Jonathan Kline, P.A., Attorney at Law

2761 Executive Park Drive · Weston, FL 33331

Broward: 954.888.4646 • **Miami-Dade:** 305.443.3554 • **Palm Beach:** 561.733.6761

**Nationwide:** 800.581.5297 • **Fax:** 954.888.4647 • **Cell:** 954.275.0356

Jonathan.Kline@JKLawFL.com - www.JKLawFL.com



Foreclosure Defense • Bankruptcy • Loan Modifications • Short Sales