

May 31, 2010

# Owners Stop Paying Mortgages, and Stop Fretting

By **DAVID STREITFELD**

ST. PETERSBURG, Fla. — For Alex Pemberton and Susan Reboyras, foreclosure is becoming a way of life — something they did not want but are in no hurry to get out of.

Foreclosure has allowed them to stabilize the family business. Go to Outback occasionally for a steak. Take their gas-guzzling airboat out for the weekend. Visit the Hard Rock Casino.

“Instead of the house dragging us down, it’s become a life raft,” said Mr. Pemberton, who stopped paying the [mortgage](#) on their house here last summer. “It’s really been a blessing.”

A growing number of the people whose homes are in foreclosure are refusing to slink away in shame. They are fashioning a sort of homemade mortgage modification, one that brings their payments all the way down to zero. They use the money they save to get back on their feet or just get by.

This type of modification does not beg for a lender’s permission but is delivered as an ultimatum: Force me out if you can. Any moral qualms are overshadowed by a conviction that the [banks](#) created the crisis by snookering homeowners with [loans](#) that got them in over their heads.

“I tried to explain my situation to the lender, but they wouldn’t help,” said Mr. Pemberton’s mother, Wendy Pemberton, herself in foreclosure on a small house a few blocks away from her son’s. She stopped paying her mortgage two years ago after a bout with lung cancer. “They’re all crooks.”

Foreclosure procedures have been initiated against 1.7 million of the nation’s households. The pace of resolving these problem loans is slow and getting slower because of legal challenges, foreclosure moratoriums, government pressure to offer modifications and the inability of the lenders to cope with so many souring mortgages.

The average borrower in foreclosure has been delinquent for 438 days before actually being evicted, up from 251 days in January 2008, according to LPS Applied Analytics.

While there are no firm figures on how many households are following the Pemberton-Reboyras

path of passive resistance, real estate agents and other experts say the number of overextended borrowers taking the “free rent” approach is on the rise.

There is no question, though, that for some borrowers in default, foreclosure is only a theoretical threat for a long time.

More than 650,000 households had not paid in 18 months, LPS calculated earlier this year. With 19 percent of those homes, the lender had not even begun to take action to repossess the property — double the rate of a year earlier.

In some states, including California and Texas, lenders can pursue foreclosures outside of the courts. With the lender in control, the pace can be brisk. But in Florida, New York and 19 other states, judicial foreclosure is the rule, which slows the process substantially.

In Pinellas and Pasco counties, which include St. Petersburg and the suburbs to the north, there are 34,000 open foreclosure cases, said J. Thomas McGrady, chief judge of the Pinellas-Pasco Circuit. Ten years ago, the average was about 4,000. “The volume is killing us,” Judge McGrady said.

Mr. Pemberton and Ms. Reboyras decided to stop paying because their business, which restores attics that have been invaded by pests, was on the verge of failing. Scrambling to get by, their credit already shot, they had little to lose.

“We could pay the mortgage company way more than the house is worth and starve to death,” said Mr. Pemberton, 43. “Or we could pay ourselves so our business could sustain us and people who work for us over a long period of time. It may sound very horrible, but it comes down to a self-preservation thing.”

They used the \$1,837 a month that they were not paying their lender to publicize A Plus Restorations, first with print ads, then local television. Word apparently got around, because the business is recovering.

The couple owe \$280,000 on the house, where they live with Ms. Reboyras’s two daughters, their two dogs and a very round pet raccoon named Roxanne. The house is worth less than half that amount — which they say would be their starting point in future negotiations with their lender.

“If they took the house from us, that’s all they would end up getting for it anyway,” said Ms. Reboyras, 46.

One reason the house is worth so much less than the debt is because of the real estate crash. But the couple also refinanced at the height of the market, taking out cash to buy a truck they used as a contest prize for their hired animal trappers.

It was a stupid move by their lender, according to Mr. Pemberton. “They went outside their own guidelines on debt to income,” he said. “And when they did, they put themselves in jeopardy.”

His mother, Wendy Pemberton, who has been cutting hair at the same barber shop for 30 years, has been in default since spring 2008. Mrs. Pemberton, 68, refinanced several times during the boom but says she benefited only once, when she got enough money for a new roof. The other times, she said, unscrupulous salesmen promised her lower rates but simply charged her high fees.

Even without the burden of paying \$938 a month for her decaying house, Mrs. Pemberton is having a tough time. Most of her customers are senior citizens who pay only \$8 for a cut, and they are spacing out their visits.

“The longer I’m in foreclosure, the better,” she said.

In Florida, the average property spends 518 days in foreclosure, second only to New York’s 561 days. Defense attorneys stress they can keep this number high.

Both generations of Pembertons have hired a local lawyer, Mark P. Stopa. He sends out letters — 1,700 in a recent week — to Floridians who have had a foreclosure suit filed against them by a lender.

Even if you have “no defenses,” the form letter says, “you may be able to keep living in your home for weeks, months or even years without paying your mortgage.”

About 10 new clients a week sign up, according to Mr. Stopa, who says he now has 350 clients in foreclosure, each of whom pays \$1,500 a year for a maximum of six hours of attorney time. “I just do as much as needs to be done to force the bank to prove its case,” Mr. Stopa said.

Many mortgages were sold by the original lender, a circumstance that homeowners’ lawyers try to exploit by asking them to prove they own the loan. In Mrs. Pemberton’s case, Mr. Stopa filed a motion to dismiss on March 17, 2009, and the case has not moved since then. He filed a similar motion in her son’s case last December.

From the lenders’ standpoint, people who stay in their homes without paying the mortgage or actively trying to work out some other solution, like selling it, are “milking the process,” said Kyle Lundstedt, managing director of Lender Processing Service’s analytics group. LPS provides technology, services and data to the mortgage industry.

These “free riders” are “the unintended and unfortunate consequence” of lenders struggling to work out a solution, Mr. Lundstedt said. “These people are playing a dangerous game. There are processes in many states to go after folks who have substantial assets postforeclosure.”

But for borrowers like Jim Tsiogas, the benefits of not paying now outweigh any worries about the

future.

“I stopped paying in August 2008,” said Mr. Tsiogas, who is in foreclosure on his house and two rental properties. “I told the lady at the bank, ‘I can’t afford \$2,500. I can only afford \$1,300.’ ”

Mr. Tsiogas, who lives on the coast south of St. Petersburg, blames his lenders for being unwilling to help when the crash began and his properties needed shoring up.

Their attitude seems to have changed since he went into foreclosure. Now their letters say things like “we’re willing to work with you.” But Mr. Tsiogas feels little urge to respond.

“I need another year,” he said, “and I’m going to be pretty comfortable.”