

**Please give this the widest distribution possible. This tactic could be the last line of defense for anyone fighting to keep their home.**

Homeowners' rallying cry: Produce the note Feb 17, 03:13 PM EST

By MITCH STACY - Associated Press Writer ZEPHYRHILLS, Fla. (AP) -- Kathy Lovelace lost her job and was about to lose her house, too. But then she made a seemingly simple request of the bank: Show me the original mortgage paperwork.

And just like that, the foreclosure proceedings came to a standstill.

Lovelace and other homeowners around the country are managing to stave off foreclosure by employing a strategy that goes to the heart of the whole nationwide mess.

During the real estate frenzy of the past decade, mortgages were sold and resold, bundled into securities and peddled to investors. In many cases, the original note signed by the homeowner was lost, stored away in a distant warehouse or destroyed.

Persuading a judge to compel production of hard-to-find or nonexistent documents can, at the very least, delay foreclosure, buying the homeowner some time and turning up the pressure on the lender to renegotiate the mortgage.

"I'm going to hang on for dear life until they can prove to me it belongs to them," said Lovelace, a 50-year-old divorced mother who owns a \$200,000 home in Zephyrhills, near Tampa. "I'll try everything I can because it's all I have left."

In interviews with The Associated Press, lawyers, homeowners and advocates outlined the produce-the-note strategy. Exactly how many homeowners have employed it is unknown. Nor is it clear how successful it has been; some judges are more sympathetic than others.

More than 2.3 million homeowners faced foreclosure proceedings last year and millions more are in danger of losing their homes. On Wednesday, President Obama will unveil a plan to spend at least \$50 billion to help homeowners fend off foreclosure.

Chris Hoyer, a Tampa lawyer whose Consumer Warning Network Web site offers the free court documents Lovelace used to file her request, has played a major role in promoting the produce-the-note strategy.

"We knew early on that the only relief that would ever come to people would be to the people who were in their houses," Hoyer said. "Nobody was going to fashion any relief for people who have already lost their houses. So your only hope was to hang on any way you could."

Tom Deutsch, deputy executive director of the American Securitization Forum, a group that represents banks, law firms and investors, dismissed the strategy as merely a stalling tactic, saying homeowners are "making lawyers jump through procedural hoops to delay what's likely to be inevitable."

Deutsch said the original note is almost always electronically retained and can eventually be found.

Judges are often willing to accept electronic documentation. And lenders are sometimes allowed to produce other paperwork to establish they are the holder of a loan. Still, assembling such documents to a judge's satisfaction takes time, which to homeowners is the point.

Lovelace filed her produce-the-note demand last fall after the bank acknowledged that her original mortgage document had been lost or destroyed. Since then, there has been no activity on the foreclosure - no letters from the lender, no court filings.

The law firm handling the foreclosure for the lender refused to comment.

A University of Iowa study last year suggested that companies servicing mortgages are often negligent when it comes to producing the documentation to support foreclosure. In the study of more than 1,700 bankruptcy cases stemming from home foreclosures, the original note was missing more than 40 percent of the time, and other pieces of required documentation also were routinely left out.

The first big success of the produce-the-note movement came in 2007 when a federal judge in Cleveland threw out 14 foreclosures by Deutsche Bank National Trust Co. because the bank failed to produce the original notes.

Michael Silver, a lawyer for two of the families in that case, said at least one eventually lost their home. Still, he considers that a success.

"From the perspective of the person who's in the home, you may have kept them in the house another 10 or 12 months," he said. "If I can get a result with economic benefits to a client, then I think I won."

Democratic Rep. Marcy Kaptur of Ohio endorsed the strategy in a fiery speech on the House floor during debate on the federal bank bailout last month.

"Don't leave your home," she said. "Because you know what? When those companies say they have your mortgage, unless you have a lawyer that can put his or her finger on that mortgage, you don't have that mortgage, and you are going to find they can't find the paper up there on Wall Street."

April Charney, head of foreclosure defense for Jacksonville Area Legal Aid in Florida, said the strategy has been so successful for her that she now travels around the country to train other lawyers in how to use it. She said she has gotten cases delayed for years by demanding that lenders produce paperwork they cannot find.

"This is an army of lawyers getting out there to stop foreclosures so we can get to the serious business of creating solutions," Charney said. "Nothing good is going to happen as long as we continue to bleed homeowners."

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On the Net:

Consumer Warning Network: <http://www.consumerwarningnetwork.com>

American Securitization Forum: <http://www.americansecuritization.com>