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More Florida companies try to cancel mortgage debt with lawsuits

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By [Kimberly Miller](#)

Palm Beach Post Staff Writer

More companies are jumping into the land trust business.

At least two new firms in Florida are trying to cancel mortgage debt with lawsuits that lenders call "baseless" and "nonsensical" but that some borrowers say are their last chance at keeping their homes.

The companies, including one with a Jupiter address, are in addition to the Fidelity Land Trust Company that opened last year in Boca Raton. Together, they have filed scores of lawsuits statewide and collected hundreds of deeds from homeowners, who are typically solicited by phone because they have underwater mortgages.

mortgages.

And desperate borrowers are biting.

Lee County homeowner Tom Meyers contracted with Heritage National Land Trust last month, signing over the deed to his house and writing checks for about \$11,000, he said.

He will be delinquent on his estimated \$560,000 loan as of Friday, using the money for his mortgage to pay the trust instead. After trying for years to get a loan modification following a divorce that left him with one income and an upside down loan, he felt the land trust was his only option to keep the house.

"They've done everything they've said they would do so far," Meyers said about the trust. "I made it clear I better see some results."

Jupiter-based Heritage National Land Trust registered with the state in July and has since collected 33 deeds, including 17 in Palm Beach County.

The business model of the trusts varies, and according to websites, includes cash-for-keys options.

But in one scenario, the homeowner signs over his deed to the trust and pays a fee for paperwork and legal representation. The trust then sues the lender to cancel the mortgage for alleged improprieties, such as not recording the transfer of the mortgage or violations of pooling and servicing agreements.

Once the mortgage is canceled, the homeowner still owes the debt — or note — to the bank, but the trust tries to negotiate down the amount owed and buy the note at a discount. The homeowner then takes out a new mortgage or arranges for another payment plan with the trust.

Some attorneys and title agents are skeptical of the maneuver, saying it's not legally sound and relies on the banks not responding to the lawsuit. They fear homeowners will pay for the land trust service while going further in debt to their lender and have nothing to show for it at the end.

"To think you as a downstream interest holder can destroy a prior creditor or interest holder's rights in the property flies in the face of logic," said Greg Clark, a Clearwater title and foreclosure defense attorney. "The basic premise is flawed."

But proponents of the trusts point to a Levy County case they say proves it works.

A press release issued Tuesday by one of the trust referral companies says Boca Raton attorney Howard Feinmel, who is under a Florida Bar investigation for issues relating to quiet title lawsuits, won a judgment in November that canceled a mortgage. It was a default judgment, typically awarded when the defendant fails to respond within 20 to 30 days and can be reopened if there are legitimate reasons for missing the deadline.

The plaintiff in the Levy County case was Levy County Partners, which had the homeowner deed his house to it before filing the lawsuit, according to property appraiser records. The deed has since been transferred from Levy County Partners to Fidelity Land Trust Company. The foreclosure lawsuit against the homeowner was voluntarily dismissed in June by the lender. The dismissal was done without prejudice, meaning it can be re-filed.

Bank of America, the servicer on the loan, did not respond to a request for comment.

Fidelity Land Trust Company, which was incorporated in December and is believed to be one of the first firms to make widespread attempts to cancel mortgages by suing the banks, has amassed about 240 deeds statewide, including 100 in Palm Beach County.

Sunshine State Land Trust Company registered with the state in June with a Miami mailing address. Although it doesn't appear to have filed any lawsuits, Fidelity Land Trust has signed several of its deeds over to Sunshine, including 15 in Palm Beach County.

AAF Investments Land Trust Company isn't a registered corporation under that name with the Florida Department of State, but has had four Palm Beach County homeowners sign deeds to it and filed two lawsuits, according to the Palm Beach County Clerk of Courts office.

The machinations of the deals can be complicated. For example, Palm Beach Gardens homeowner Ralph Jimenez said he was contacted by the North Palm Beach-based Lincoln Property Consultants about turning his deed over to the company in exchange for cash after a sale. Property records show he signed his deed over to the Fidelity Land Trust Company in March. It was signed back to him by Fidelity July 30. Jimenez said he was told it was signed back to him so it could be transferred to the Heritage National Land Trust, but clerk records show he signed it to a company called Floridian Asset Management Group on July 18.

"What's the worst that can happen?" said Jimenez, adding that he has not paid any fees to the companies.

A message left at a phone number for Heritage National Land Trust was not returned. The law practice that has been representing AAF Investments Land Trust said it no longer represents the firm and couldn't give out client contact information.

Paul Gellenbeck, managing director of the Fidelity Land Trust, said land trust matters are confidential and declined to comment.

Lenders have asked the federal court to hear cases filed in Palm Beach County by Fidelity and Heritage.

One of the cases, filed by Heritage, attempts to cancel a 2007 mortgage for \$447,792 on a Jupiter home. The homeowners signed their deed over on April 12 and Heritage filed its lawsuit June 5.

Attorneys for the bank said the lawsuit is "baseless," "meritless" and "nonsensical."

"This case is an example of a disturbing new trend among borrowers in Florida who deed their homes, which are either in foreclosure or soon will be, to a trust (of which they are purportedly the beneficiary) and then bring suit to quiet-title and invalidate the mortgage," the bank's motion to dismiss says.

In the Fidelity case, bank attorneys wrote: "Fidelity's modus operandi is to bring meritless declaratory judgment and quiet title actions in hopes that the lender will miss the answer deadline and default."

Fidelity voluntarily dismissed that suit last month.

Palm Beach Post staff writer Kimberly Miller first uncovered the controversial land trust practice in June. That story reported on Fidelity Land Trust, which had acquired 80 home deeds in Palm Beach County since it was incorporated in December.

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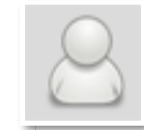
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Posted by [JbourneOK](#) at 9:49 a.m. Sep. 18, 2012

Doesn't sound any more convoluted than what the banks did to us.

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Posted by [flboy](#) at 11:47 a.m. Sep. 18, 2012

in the words of PT Barnum, "there is a sucker born every minute"

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Posted by [Samster](#) at 12:06 p.m. Sep. 18, 2012

I feel bad for home owners that are in this mortgage mess, but this just sounds like more money and debt with no real opportunity for resolution.

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