

### **Foreclosure Related Bills as of December, 2009**

Recently released data by the Mortgage Bankers Association coupled with analysis of a report released by First American CoreLogic spell more trouble ahead for Ohio's housing crisis, and offer fresh evidence for the need for statewide foreclosure reform.

MBA numbers show delinquency rates for mortgage loans on residential properties has hit an all time high as of the end of September of 2009. Of the 1.478 million mortgages serviced in Ohio, 15.3% were either in foreclosure or 30 days past due in their payments during the third quarter. The mortgage delinquency rate in Ohio has risen steadily this year from 13% in the first quarter and 14.3% in the second quarter. The numbers show that almost 1 in 6 Ohio homeowners with mortgages were delinquent or already in foreclosure.

CoreLogic data focuses on outstanding mortgages that are in a negative equity position, an often overlooked, but important gauge. Also known as "underwater," mortgage holders with negative equity owe more on their mortgages than their homes are worth. Of the 2.2 million outstanding mortgages in Ohio, 45.6 percent - more than one million mortgages - are already underwater or close to it. In October 2008, CoreLogic pegged that figure at 29.1 percent for Ohio, which translates to a 56.7 percent leap in just nine months.

### **HB 3 Foley/Driehaus - Foreclosure Prevention**

#### **Summary**

1. Provides for regulation of mortgage servicers, procedures and requirements related to foreclosure actions. Regulating mortgage servicers will provide more protections for consumers and create incentives for servicers to help prevent unnecessary foreclosures. For example, servicers would be required to provide 60-day notices to the borrower of the availability of resources to avoid foreclosure. Notices must include an itemization of all past due amounts causing the loan to be in default and any other charges the borrower must pay in order to be current on loan payments, contact person for the lender, servicer or agent and contact information for HUD-approved counseling agencies.
2. Provides for a \$750 foreclosure filing fee. This fee would be passed on to servicer or lender, not the homeowner. The foreclosure filing helps provide a disincentive to filing foreclosure actions while also helping communities respond to the foreclosure crisis. Over 75 percent of the proceeds from this fee will be distributed to counties and to a state fund to support activities such as foreclosure prevention counseling and redevelopment of vacant properties. Other funds will be used to beef up enforcement on predatory lending, court mediation programs, and consumer education programs.
3. Provides for an emergency 6-month moratorium on home foreclosures. The moratorium would not apply to vacant property or to loans held by a credit union or banks with assets below \$2 billion, which service their own mortgages. The moratorium would allow time for eligible borrowers to pursue assistance under the Obama administration initiatives and allow time for the new state protections to be implemented.

**Status** – Passed the Ohio House in May 2009 – awaiting first hearing in Senate Finance Committee.

### **HB 306 Dolan / SB 197 Jones - Foreclosure Mediation**

## **Summary**

1 Directs courts to establish programs of mandatory mediation for nontax foreclosure actions on occupied residential properties and requires parties to those foreclosure actions to participate in that mediation.

2 Provides procedures and guidelines for courts to follow in establishing and operating the mediation programs, with the general stipulation that the mediations are to comply with the Ohio Uniform Mediation Law.

3 Stays foreclosure proceedings while a mediation is ongoing and lifts the stay upon the mediator filing a report with the court.

4 Requires mediation only if the homeowner answers or otherwise responds to the court's summons and complaint and provides that if there is no answer or response, the filing party may continue with the foreclosure action and may seek a default judgment; if the filing party fails to attend, the court generally is required to dismiss the foreclosure action.

5 Pays the costs of mediation by imposing additional foreclosure filing fees that courts establish in amounts up to \$500 and directs the clerk to pay the foreclosure filing fees to the county treasurer for deposit in a county Residential Foreclosure Mediation Fund.

**Status** - HB 306 had a first hearing in the House Housing and Urban Revitalization Committee on November 4th and SB 197 is waiting to be assigned to a committee in the Senate.

## **HB 9 Foley/Celeste & SB 13 D. Miller - Renter Protections in foreclosed properties Summary**

1. Requires landlords to inform new tenants that the home is in foreclosure. Currently, tenant notice of foreclosure is not required. It is estimated that between 30 and 40 percent of all Ohio foreclosures involve rental properties.
2. Requires landlords or clerks of court to provide current tenants with a notice within 60-days when their homes enter foreclosure. Current law allows for tenants to be evicted after a sheriff sale with only a 3-day notice. In growing numbers, tenants find themselves without a home through no fault of their own.
3. Converts existing rental agreements to month-to-month tenancy and transfers renters' security deposits from the previous owner to the purchaser. The estimated cost of displacement per renter family is \$2,500 (through loss of security deposit and last months rent, plus relocation expenses). Social service safety nets are being strained under the weight of increased demand from displaced tenants.

**Status** – HB 9 passed the House in May of 2009 and is awaiting hearings in the Senate Finance and Financial Institutions Committee. SB 13 passed out of the Senate Judiciary Committee on Civil Justice and is awaiting action on the Senate floor.

## **SB 188 Wagoner/HB 313 Ujvagi - Landbank legislation**

### **Summary**

The current land bank statute only applies to Cuyahoga County but this legislation focuses on providing counties of populations greater than 100,000 and those between 78,000 and 81,000 the option of organizing a County Land Reutilization Corporation (CLRC), or county land bank. The bill would also increase the number of members that can sit on the CLRC from the current statutory requirement of five to nine, allowing for more local control and flexibility in designing a board that meets each county's needs.

**Status** – Both bills were introduced in late October. HB 313 passed the House on December 16th and SB 188 is pending in the Senate Ways & Means & Economic Development Committee.

## **HB 323 Murray - Foreclosure Process/Toxic Titles**

### **Summary**

The bill attempts to address the problem of “bank walk aways” by requiring banks to move foreclosures to auction within a certain timeline or forfeit its mortgage liens and any proceeds from the sale of the property.

The bill requires that a written document accompany foreclosure filings. The document would include the name of the note holder, whether the note has been securitized, the identity of the mortgage-backed-security (MBS) that holds the loan and the name of the MBS trustee.

If the borrower answers the foreclosure complaint made by the bank, the bank must file a series of reports with the court within 45 days. The report must include the most recent value of the property, an estimate from the bank on the property's current condition or an appraisal conducted by a licensed appraiser.

If the borrower does not answer the complaint within 60 days, the bank must file a motion for default judgment during the next 60 days. The filing must include an affidavit showing that the bank inspected the property, attempted to reach the borrower via telephone and sent letters to the borrower.

If no motion is filed within 60 days, the foreclosure complaint will be dismissed, and the bank will forfeit rights to the property and any proceeds from the sale.

**Status** - HB 323 was introduced in late October and had its first hearing in the House Housing and Urban Revitalization Committee on November 4<sup>th</sup>. A sub-bill is expected soon to address issues raised by various interested parties, according to the sponsor.

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