

HB 3 Sponsor Testimony
State Representative Mike Foley
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This comprehensive piece of legislation is aimed at providing much needed assistance to homeowners attempting to save their homes during this economic crisis; to help preserve wealth and property values for neighboring homeowners and communities and to also to correct some of the institutional flaws of our foreclosure process in Ohio. In drafting this legislation we worked closely with many interested parties. We also heard public testimony from 30 witnesses across 4 months of weekly committee hearings. In doing so we have taken aspects of some of the best foreclosure legislation throughout the country and placed them together in what we feel is the most aggressive piece of state legislation in the U.S. to address the foreclosure crisis. While a six-month moratorium may grab headlines, there are many more provisions in this legislation that we think are necessary changes to our foreclosure process.

This bill has four primary components:

- A conditional, six-month moratorium on certain foreclosure judgments;
- A licensing and regulation package for mortgage servicers;
- An information package, which includes a mortgage servicing database, foreclosure notification requirements, and transparency requirements during foreclosure proceedings;
- A foreclosure filing fee that would provide funding for database administration, community redevelopment, financial education, and credit and foreclosure counseling.

Limited Moratorium

House Bill 3's six-month moratorium would allow all foreclosures cases to be filed, but would prohibit final judgments in cases where the homeowner has requested to participate in the moratorium and continues to pay at least half of their monthly mortgage in addition to their tax and insurance escrow. Vacant homes, non-residential properties, and residential properties intended for three or more families are not eligible. The moratorium is tailored for households that have some source of income, and are perceived as having a good chance at finding a successful mortgage modification or payment plan or may be eligible for the Federal Home Affordable Modification Program (HAMP) plan.

A primary concern among opponents of HB3 is that the moratorium would draw out foreclosure proceedings, or force lenders to hold-on to investments that are not performing. However, because it only applies to occupied, engaged and responsive households who are able to pay at least half of their monthly mortgage for the six-month period, proponents feel that the moratorium would have a minimal impact on caseloads or portfolio performance. A majority of residential foreclosures will still come to bear swiftly through default judgments, in which homeowners are not present, or not

responsive, and many others will move forward because of the total loss of household income.

Additionally, mortgages held by Credit Unions and those depositories and community banks that are headquartered in Ohio, have total assets less than or equal to \$2.5 billion, and originate and service their loans are exempt from this moratorium. HB3 recognizes that these entities regularly engage in successful voluntary mortgage modifications, due to their unique connection to their borrowers and communities.

Servicer Licensing and Regulation

Mortgage servicers take many shapes. Some are actually divisions of a bank or lending institution, or act as subsidiaries or affiliates to lenders, while still more are completely independent businesses. Despite these differences, all mortgage servicers play a similar role in the mortgage industry: they collect, process, and relay mortgage payments from borrowers (homeowners) to lenders, investors, local governments, and insurance companies, who have an interest in the real estate value, principle, or interest represented by a mortgaged property.

Structurally, servicers are at the crux of the mortgage industry, being the only channel of communication between lenders and homeowners. Irregularities, deficiencies and a lack of oversight compound the difficulty that many servicers have in fulfilling their obligations in a state that processed over 85,000 foreclosures last year. Because of the critical role that servicers play, we ensure certain standards of conduct through licensing servicers at the state level.

House Bill 3 seeks to introduce best practices and necessary standards to servicers that are not already substantially regulated through their connection to a state or federally chartered lending institution. By the authority of language similar to that which the legislature applied to mortgage brokers in Senate Bill 185 of the 126th General Assembly, the Department of Commerce and Attorney General would ensure that servicers meet professional standards of operation and engage in appropriately robust efforts to modify mortgages and maintain homeownership when it is reasonably possible and equitable. Moreover, licensed servicers would be subject to Ohio's Consumer Sales Protection Act.

Information and Transparency

House Bill 3 seeks to give homeowners earlier notice of impending foreclosures, allowing for more time to craft payment workouts or mortgage modifications. Specifically, all lenders would be required to give notice with specified information to a homeowner 60 days prior to an initial foreclosure filing on any residential foreclosure.

In order to ensure accurate enforcement of servicers, to collect valuable information about foreclosures in Ohio, and to offer greater transparency during foreclosure proceedings, HB 3 creates a statewide foreclosure database and would require *all* lenders and servicers to enter information on each mortgage into the database prior to

filing any residential foreclosure. Foreclosing lenders and servicers would be required to report details such as loss mitigation efforts and must provide proof that this information has been entered at the time of filing.

Providing more information to our courts is not enough, however. Each party must be fully able to pursue all possible alternatives to foreclosure. Presently, it is rare for attorneys representing servicers or lenders in foreclosure proceedings to have the authority to compromise with homeowners. In fact, it is often difficult to identify exactly who owns a mortgage in order to open such a discussion. House Bill 3 requires that ownership of the note and mortgage are clear and unambiguous before action is filed. HB 3 then requires an affidavit of plaintiff's counsel that they directly represent and are authorized to negotiate on behalf of the responsible investor representative. No intermediary representation would be permitted.

Foreclosure filing fee

House Bill 3 would charge a \$750 foreclosure filing fee to lenders or servicers at the time of foreclosure filing. This fee could not be passed on to the homeowner. It would be collected and placed in the newly created Foreclosure Prevention Revolving Trust Fund and would be further allocated as follows:

- 37.5% to local government to be used toward community redevelopment, financial education and credit and foreclosure counseling.
- 37.5% to the Ohio Housing Trust Fund to fund statewide foreclosure programs, rescue grants and loans, and homeowner transition money.
- 10% to Division of Financial Institutions-Consumer Finance (DFI-CF) for education, enforcement and outreach in dealings with foreclosure, mortgage fraud, and foreclosure prevention fraud.
- 5% for the Attorney General's office to investigate illegal activities associated with mortgage fraud and foreclosure prevention fraud.
- 10% to the Ohio Supreme Court for database administration and mediation services.

The Foreclosure Prevention Revolving Trust Fund would be a new fund for the purpose of providing grants to foreclosure prevention counseling entities, individuals or counseling entities for providing emergency foreclosure prevention assistance, as well as similar state and local foreclosure prevention entities.

Similar to House Bill 3's moratorium provisions, those Credit Unions and community banks that were exempt would not be required to pay this fee, nor would it be applied to vacant properties.

In the end, this effort is about preserving housing values and trying to provide some stability to the housing market. There is no doubt that borrowers, lenders, investors, regulators and bond rating agencies made a lot of dumb decisions over the past several years. At a minimum, a lot of wishful thinking at a lot of different levels occurred.

We believe it's time we stop debating the cause of the foreclosure crisis and act quickly to diminish the further deterioration of our communities. This bill is a positive step

forward and will ensure that every effort is made to ensure borrowers and lenders alike make the best effort to prevent a worsening of this crisis.

Thank you for listening to our testimony, we would be happy to take any questions at this time.