MORTGAGE BANKERS ASSOCIATION

Mandatory Foreclosure Moratorium Has Severe Implications for Borrowers and Industry

MBA RECOMMENDS

Legislatures should not enact a foreclosure moratorium or mandatory payment forbearance, as moratoriums and forbearances will increase the number of delinquencies, harm the borrower's ability to recover and are likely to fail to save homes from foreclosure sale.

BACKGROUND

During 2003 through 2006, home prices increased at a pace that far exceeded inflation. During that time, many mortgages were written with adjustable interest rates and/or negative amortization features to allow borrowers to purchase homes. In 2007, this rapid appreciation slowed and even began to reverse in some locations, resulting in record borrower defaults and foreclosures. While foreclosure is an undesirable outcome for borrowers and lenders, the concept of a broad foreclosure moratorium or mandatory forbearance policy is not good public policy. Because few moratorium proposals are accompanied with solutions to be implemented during the moratorium, it is unclear how such proposals will materially save homes from foreclosure. MBA is very concerned that such a proposal would only add cost to the process for borrowers and loan servicers by preventing or delaying servicers from taking important statutorily required steps, such as sending breach letters, accelerating the debt, or initiating foreclosure.

AVOID ENACTING MANDATORY MORATORIUM

In designing a comprehensive economic stimulus plan, a foreclosure moratorium should not be enacted. MBA urges legislatures to consider the following evidence of why this would be bad public policy:

- It is unclear that a moratorium will increase the number of homes saved from foreclosure sale. Historically there is very little success with saving homes where the property has been abandoned, converted to rental property but is no longer profitable, damaged or subject to code violations, or where the borrower does not have the means to support the loan at any level, has sufficient income to pay the loan but decides to stop paying because the property has declined in value, or simply does not wish to stay in the home. Delaying the inevitable foreclosure only adds costs for borrowers and lenders in these cases and increases the chance of property deterioration.

- Imposing a moratorium on foreclosure will increase the number of delinquencies as borrowers who would otherwise stretch to continue to make payments will decide to stop at least for the duration of the moratorium. The cost to the servicing industry to continue to advance principal, interest, tax and insurance payments during this period of forbearance could cause severe financial hardships for individual companies, which most likely do not own the loans, but merely administer them. The hardship imposed on servicers would be widespread, but would not have any correlation to any wrong-doing. MBA would view such a government action as an unfunded and unfair mandate.

- A foreclosure moratorium will unintentionally harm the borrower's ability to recover. Statistically, the longer the borrower remains delinquent, the less likely he or she will be able to become current again. A mandatory foreclosure moratorium gives no discretion to lenders to determine when forbearance is appropriate. Creating incentives for borrowers to remain or become delinquent can decrease their chances of recovery.

- Any mandated moratorium, by its very nature, will increase the number of severe delinquencies (90 or more days delinquent). Under risk-based capital rules, loans that are 90 days or more past due are subject to a 100 percent risk weighting (as compared to loans that are current or below 90 days delinquent, which carry a 50 percent risk weighting). A broad application of a forbearance period could affect financial institutions' capital requirements and rankings.

- There is significant time already built into the delinquency and foreclosure process for borrowers to work out a solution with servicers. Cases are generally not referred to a foreclosure attorney until the loan is 90-120 days past due. The foreclosure attorney must prepare the petition for foreclosure and file it with the appropriate court or begin the statutorily prescribed notices that pre-condition non-judicial foreclosure. Service of process and hearings follow. This is not a quick process. In New York, for example, it takes approximately 13 months from the petition filing date to reach foreclosure sale (ie., an average of 19 months from due date of last paid installment to foreclosure sale). In Pennsylvania, it takes approximately 10 months. Foreclosure timelines are shorter in non-judicial states and those processes have been developed and vetted by the state legislatures over many decades. It is important to stress that servicers continue to work with borrowers even when the loan is "in foreclosure." Diligent borrowers can avoid the initiation of foreclosure and foreclosure sale by seeking help from the servicer.

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