

Forestalling Foreclosures

Is There a Solution to This Regional and National Problem?

By *JUSTIN DION, Esq.*

Current mortgage foreclosure statistics are harsh. Nationally, delinquency rates for first mortgages rose to 3.98% in June from 3.56% in April and a low of 3.08% in July 2005. Closer to home, last year the Mass. Land Bank recorded a record 22,000 foreclosure notices. Statewide, foreclosures were up 47% in March, compared to the same month last year.

As foreclosures have increased in Massachusetts, the state's attorney general has seen an increase in unfair and deceptive foreclosure rescue transactions. These typically involve professionals who offer to assist homeowners facing foreclosure by convincing them to sell their homes to straw purchasers. These purchasers then obtain mortgages on the properties and allow the former homeowners to continue living in their homes for a while under the promise that they will be able to repurchase their homes at a later date. It is a documented fact that these types of deceptive tactics have frequently caused homeowners to lose their homes.

Pitfalls of Housing Booms

Many factors contribute to an individual experiencing a real estate foreclosure. Although personal issues tend to be typical factors that cause mortgage default, recent overly optimistic mortgage borrowing seems to have compounded these factors and has culminated in a disastrous situation for many homeowners. Of the personal factors that tend to promulgate foreclosure, divorce, job loss, and illness tend to be often outside the homeowner's control, while the mortgage

amount and type tend to be within the borrower's control, at least initially.

For most people, their home is their most valuable asset. As the real estate market boomed over the past decade, so did the equity in most homes, and thus people's ability to borrow money from their home dramatically increased. The Center for Statistical Research recently reported that in 1990 the median U.S. home was valued at \$77,000,

\$955. A rate jump today to 7.6% would result in a \$1,375 monthly payment, or a 44% increase. When these factors are realized in conjunction with the fact that, according to the Center for Responsible Lending (www.responsiblelending.org), the national subprime mortgage market grew from \$35 billion to \$665 billion between 1998 and 2005, a volatile concoction was created.

AIG, the world's largest insur-

fraud, and other developments in the mortgage market. The event brought together a wide range of stakeholders including representatives from government agencies and mortgage trade associations, as well as community and consumer advocates.

The convention eventually resulted in participants compiling several action plans to assist the residents of Massachusetts, including:

- Making mortgage fraud a crime and encouraging prosecution since it is one of the fastest growing crimes, greatly impacting the stability of families and neighborhoods. Current laws impose only civil penalties, whereas the new proposals contemplate criminal penalties as well.

- Increasing mortgage licensing requirements. Current laws allow mortgage brokers to simply relocate from one state to another with little recourse. The summit proposed that Massachusetts participate in a national mortgage-licensing system.

- Adopting federal guidance on certain mortgage loan products. In October 2006, federal regulators issued guidance on non-traditional mortgage products, which include loans that do not fully amortize, like interest-only loans and payment option adjustable-rate mortgages.

- Changing foreclosure laws. It was recommended that lenders be required to submit a pre-foreclosure notice to the homeowner and Division of Banks at least 90 days prior to filing a petition to foreclose.

- Limiting foreclosure-rescue schemes. Currently, 'foreclosure consultants' (people who attempt to negotiate with the lender on

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Unfortunately, as home values increased, so did people's optimism that the boom would continue, and the amount owed on the average mortgage increased proportionally. In addition, the number of adjustable-rate mortgages vastly increased as they permitted people to buy a house with an affordable monthly payment who otherwise might not have been able to obtain a mortgage. Unfortunately, as the adjustability period came due, many people with adjustable-rate mortgages also discovered that interest rates had increased. For some people the rate increase was dramatic.

For example, a person obtaining a \$200,000 adjustable rate mortgage in 2004 at 4% might have had a monthly payment of

er and one of the biggest mortgage lenders, recently indicated that residential mortgage delinquencies and defaults are becoming more common among borrowers in the category just above subprime. AIG further indicated that 10.8% of subprime mortgages were 60 days overdue, compared with 4.6% in the category with credit scores just above subprime. Add this to those statistics on March foreclosures in the Bay State, and it's obvious that something is seriously wrong.

Resolving a Crisis — Are Brokers and Banks at Fault?

The Mass. Commissioner of Banks convened a mortgage summit in November 2006 in response to rising foreclosures across the state and the nation, increasing evidence of mortgage

behalf of the borrower) and mortgage 'rescuers' (people who purchase the house and then rent it back to the homeowner) have been found to cost the homeowner financially, often with few consequences.

- Creating foreclosure-intervention products. These government-backed emergency short-term loans would be designed to allow the homeowner to get back on their feet.

In fact, Attorney General Martha Coakley recently proposed new regulations under Mass. General Law Chapter 93A. Public hearings will be held soon to discuss the proposed regulation. These would provide enforcement tools for both the attorney general and private litigants.

Specifically, the regulations

would prohibit mortgage brokers and lenders from making a loan if they do not have a reasonable belief that the borrower is able to repay it; restrict the abuse of no-documentation or 'stated-income' loans by requiring that the mortgage broker or lender disclose how the interest rates or other charges will increase under a 'no-doc' loan, and also obtain the borrower's signed statement of income in order to process those types of loans; prohibit mortgage brokers from arranging or processing loans that are not in the borrower's interest and prohibit brokers from brokering loans if their financial interests conflict with those of the borrower; and prohibit mortgage lenders from steering borrowers to loan products that are more costly than those that the borrower

qualifies for and prohibit lenders from discriminating between similarly qualified borrowers.

Additional information regarding the public hearings and the proposed regulations are posted at www.ago.state.ma.us.

Where Do We Go From Here?

Understanding that most lenders and brokers act responsibly and in the best interests of their clients, Massachusetts is focusing on reining in unscrupulous lenders and brokers. It is important to also recognize personal responsibility in analyzing the escalating problem.

Most people consider their house to be their most valuable asset, yet many have signed mortgage documents containing dan-

gerous terms that have now put their asset at risk of foreclosure.

The Commonwealth is attempting to weigh the rights and responsibilities of individuals to freely enter into mortgage contracts with the need to protect unsophisticated and sometimes unqualified borrowers from being taken advantage of simply so the bank and broker can earn fees.

Only when a balance between personal responsibility and unscrupulous lender control is reached will the crisis likely subside.❖

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