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FISCAL IMPACT REPORT

ORIGINAL DATE 03/07/11

SPONSOR HJC LAST UPDATED _____ HB 171/HJCS

SHORT TITLE No Mortgage Foreclosure Deficiency Judgments SB _____

ANALYST Leger

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	NFI			

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total				NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to:

- SB 406 – Enact “Mortgage Fair Foreclosure Act”
- SB 411/SCORC – NM Mortgage Licensees Requirements
- HB 174 – Foreclosure Fairness Act
- HB 573 – Mortgage Loan Licensee Regulations

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Mortgage Finance Authority (MFA)
Regulation and Licensing Department (RLD)

Response Not Received From

Attorney General’s Office (AGO)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 171 creates a new section of Chapter 39, Article 5 NMSA 1978 relating to prohibiting deficiency judgments.

Section 1, paragraph A states no deficiency judgment entered in a foreclosure action on a home loan against a debtor who occupies the real property that is the subject of the foreclosure on the debtor's primary residence; provided that the debtor has occupied the real property as the debtor's primary residence for no fewer than one hundred twenty days prior to the initiation of the foreclosure action.

Section 1, paragraph B states a deficiency judgment for the diminution in value of the property may be entered against a debtor who damages the property, including damage beyond normal wear and tear, removal of structures on the property or removal of fixtures to the premises.

Section 1, paragraph C defines "home loan" and "mortgage".

Section 2 indicates the provisions of this act shall apply to foreclosure proceedings instituted on or after July 1, 2011.

Section 3 cites the effective date of the act to be July 1, 2011.

FISCAL IMPLICATIONS

HB 171/HJC has no direct or indirect effect on appropriations or revenues of the state.

SIGNIFICANT ISSUES

RLD notes, the definition for "home loan" does not exceed the conforming loan size limit as established by the federal national mortgage association (currently \$417,000 for single family) and expands the definition of "home loan" beyond real estate to include a manufactured home.

RLD further states the following:

Relieving borrowers of the responsibility for a repaying a deficiency balance upon the foreclosure and sale of their home following default, will result in the following:

Lenders: (federal and state: banks, credit unions, savings banks and mortgage bankers), the investors/purchasers in the secondary market and Mortgage Insurers: (Federal Housing Administration, Veterans Administration, private sector insurers); will be stripped of potential recovery through deficiency judgment from a defaulted borrower beyond the sale of the foreclosed property. This new "safe harbor" eliminates any liability of the defaulted borrower to the lending institution beyond net sales proceeds following foreclosure.

In response, lenders will subject borrowers to stricter underwriting and loan qualification standards designed to mitigate future defaults and foreclosures, e.g., higher down payments, higher mortgage insurance premiums.

Availability of mortgage credit to borrowers on the marginal end of the spectrum of currently acceptable financial profiles will be reduced substantially as a consequence of increased lender qualification standards.

Borrowers approaching a critical stress point in their financial position, may reach the decision to discontinue maintenance and preservation of the property and default on their

mortgage sooner, in an environment that disallows the borrower(s) from being charged a deficiency balance upon the foreclosure and sale of the home, than they would absent such a safe harbor.

According to MFA, if this bill is passed, the state housing agency (MFA), will only recover on its loans if there are proceeds from foreclosure sales according to the loan priorities. This bill prohibits deficiency judgments on all mortgages, of whatever priority, on primary residences. MFA's first mortgages are, for the most part, for first-time homebuyers who must live in their homes as principal residences. If one of those mortgages went to a foreclosure sale and the bid at the sale was less than the debt, that deficiency would not be recoverable. This could adversely affect MFA's bond ratings and disrupt the flow of funding for mortgages.

If MFA has a second mortgage for down payment and closing costs, anything that is not paid from those foreclosure sale proceeds would not be recoverable. This could jeopardize our ability to follow the regulations in the HUD HOME program where we would be required to repay HUD the amount of the HOME funds if we cannot enter a deficiency judgment.

PERFORMANCE IMPLICATIONS

MFA, the state housing agency, reports it will only recover on its loans if there are proceeds from foreclosure sales according to the loan priorities. There is concern that if debt owed to MFA is not recoverable it could adversely affect MFA's bond ratings and disrupt the flow of funding for future mortgages. Any second mortgages under foreclosure would not be recoverable. MFA is concerned unrecoverable debt could also jeopardize the ability to follow regulation in the U.S. Housing of Urban Development (HUD) HOME program -- MFA would be required to repay HUD the amount of HOME funds outstanding if unable to enter a deficiency judgment.

In an analysis on HB 171 as introduced, the AGO provides the following information relating to foreclosures:

The number of foreclosures has increased significantly in New Mexico as a result of the national mortgage crisis. Many homeowners offered loans with teaser rates, negative amortization or subprime interest rates and terms - known as "toxic" loans - have defaulted on these loans because they found themselves unable to maintain their mortgage payments, given the terms of the loan. Additionally, with the depression in the housing market, home prices dropped and homeowners found that they owed more on their mortgage than their home was now worth. The downturn in the economy, causing an increase in unemployment, has further put homeowners at risk of foreclosure and loss of the family home.

Because of the factors mentioned above, the potential for deficiency judgments against the debtor has increased. A deficiency judgment can have a long-term negative impact on the debtor and family members in that it compounds the impact of the foreclosure – not only has the family lost their home, but an additional debt obligation is created which will continue to burden the family for years to come, thus making it even harder for the family to get back on their feet economically.

Deficiency judgments are now more frequently sold on the secondary market to debt collectors who are purchasing these debts from the foreclosure creditor and initiating debt collection efforts against the former homeowner.

Other states have enacted deficiency judgment prohibitions to limit the economic consequences to homeowners in foreclosure to the loss of the home only. Allowing a homeowner to satisfy the mortgage obligation through the foreclosure process, without a deficiency judgment in addition to the loss of the home may, in the long run, have a beneficial impact on their ability to recover from this loss and move towards economic stability without facing a long-term personal liability for the deficiency debt obligation.

OTHER SUBSTANTIVE ISSUES

According to RLD, the elimination of the contingency of deficiency judgment recovery from borrowers following foreclosure and sale by regulated banks, credit union and secondary market investors/purchasers will add new risks to lenders with the result of potential regulatory “safety and soundness” impact for depository institutions.

RELATIONSHIP

HB 174, the Foreclosure Fairness Act, provides for the recovery of attorney fees and costs to defendants who prevail in foreclosure actions.

HB 573 amends the Mortgage Loan Company Act calling for a mortgage loan company qualified manager to be a resident of the state, maintain a registered office in the state, ensure records are maintained in the office and in digital format, and adds a new section to the law of registered office required exemptions.

SB 406, enacts the “Mortgage Fair Foreclosure Act”; the legislature finds that homeowners should be given reasonable notice prior to the loss of their home and afforded a meaningful opportunity to participate in loss mitigation to prevent the loss of homeownership and to benefit the consumers and businesses operating in New Mexico to facilitate whenever possible the cure of any default on residential mortgage loans and thereby preserve homeownership.

SB 411/SCORC amends the Mortgage Loan Company Act calling for a mortgage loan company qualified manager to be a resident of the state, maintain a registered office in the state, ensure records are maintained in the office and in digital format, and adds a new section to the law of registered office required exemptions.

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