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F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 01/27/12
SPONSOR SJC **LAST UPDATED** 02/10/12 **HB**

SHORT TITLE Mortgage Fair Foreclosures Act **SB** 1/SJCS

ANALYST Hoffmann/Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 38, SB 70, SB 75 and SB 84

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 1 would create a new section of statute to be referred to as the Mortgage Fair Foreclosure Act requiring the creditor to give the debtor (the holder of a mortgage loan for a primary residence) a reasonable written notice prior to foreclosure of the debtor's primary residence. The notice shall inform the debtor full disclosure of the basis and all loss mitigation possibilities prior to the loss of their home. A creditor must also consider the full accounting of a debtor's financial status to offer a good faith effort for loss mitigation.

The definition of mortgage loan in the bill would exclude real estate contracts and reverse mortgages that are otherwise binding under New Mexico law.

The definition of a loan servicer would exclude a person or entity whose business is strictly limited to collecting and distributing payments without contractual obligations to perform any other requirements of the mortgage loan.

If a court finds a creditor has violated any provision of the Mortgage Fair Foreclosure Act, it may dismiss the action, impose sanctions, assess attorney costs and order any other relief as provided by law.

The bill contains specific timelines, none longer than seven days, for the performance of communication and certification actions.

The bill has an emergency clause, making the bill effective on signature by the Governor.

FISCAL IMPLICATIONS

The Regulation and Licensing Department (RLD) and Mortgage Finance Authority (MFA) responses to a similar bill indicated that no fiscal impact will occur to state agencies; however, MFA adds changes to procedures to all New Mexico loans may require additional processing time and staff increasing the cost of lending.

SIGNIFICANT ISSUES

In the January 12, 2012 Richard Metcalf of the Albuquerque Journal Online reports the following "RealtyTrac reported Thursday that 8,797 homes in New Mexico were somewhere in the foreclosure process during 2011, a 21 percent drop from 11,133 homes in 2010, but a 22 percent increase from 7,212 homes in 2009, and almost double the 4,543 homes in 2008. One out of every 100 households in New Mexico received a foreclosure-related notice during 2011. Evidence of the stalled process can be seen in the number of homes in New Mexico at the front end of the foreclosure process. During the fourth quarter, there were 2,184 households facing the initial default action filed in court, an increase of 26 percent from a year earlier. Many of these properties are sitting in limbo."

The Attorney General's Office expresses (in a previous bill analysis) it is in the public interest to stabilize local housing markets and states have exclusive jurisdiction over the foreclosure process. New Mexico can enact legislation to ensure all homeowners with the financial capacity to avoid foreclosure, through a loss mitigation alternative, be provided a good faith review to evaluate the viability of foreclosure alternatives rather than proceed directly to foreclosure. Currently, a homeowner may be proceeding through loss mitigation, while, at the same time, the creditor can initiate foreclosure proceedings increasing the cost to the homeowner and placing the homeowner at greater risk for foreclosure. If this bill is not enacted, homeowners who are trying to pursue alternatives to foreclosure to preserve their primary residence will continue to face obstacles to a fair and reasonable opportunity for loss mitigation.

Whereas RLD staff states:

- The passage of this act would greatly lengthen the time line of the foreclosure process. This would be detrimental to our banks as they would not be allowed to purge these non-performing assets from their books, weakening the safety and soundness of our financial institutions.

- The homeowner is granted the right to request loss mitigation at any time during the foreclosure process up to the time ownership is transferred prolonging the foreclosure process.

- The Act defines a dwelling as "a residential structure that contains one to four units, whether or not that structure is attached to real property, and includes an individual condominium unit, as defined in the Condominium Act, and an individual cooperative unit, a mobile home or trailer if used as a residence."

- The New Mexico Home Loan Protection Act Chapter 58 Article 21A already contains statutory remedies for homeowners granting them judicial process and rights to cure defaults.

GAC:CH/svb