HB 1021

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1021 (Prince George's County Delegation)
Environmental Matters Rules

Prince George's County - Foreclosure - Report by Department of Housing and Community Development and Commissioner of Financial Regulation
PG 411-14

This bill requires the Department of Housing and Community Development (DHCD) and the Commissioner of Financial Regulation of the Department of Labor, Licensing, and Regulation (DLLR) to conduct analyses on (1) foreclosure trends for residential property since 2007 to identify the communities hardest hit by the foreclosure crisis in Prince George's County; (2) short-term and long-term delinquency trends for residential real property since 2007 to identify at-risk communities in Prince George's County; (3) specified housing trends to evaluate the impact of high foreclosure rates on the housing market recovery in Prince George's County; and (4) trends in the average period that residential real property in Prince George's County is in default prior to the issuance of a notice of intent to foreclose, based on zip code and loan servicer. By December 31, 2014, DHCD and the commissioner must report their findings to the Senate Judicial Proceedings Committee, the House Environmental Matters Committee, and the Prince George's County House and Senate Delegations.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: It is assumed that DHCD and DLLR can handle the required study with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background:

Foreclosure Crisis: Due to good real estate market conditions prior to 2006, the traditional mortgage market evolved from mortgages primarily originated and provided by local banks and financial institutions to mortgages originated through mortgage brokers for nonbank lenders. Through new products, such as "exotic" and other nontraditional mortgages, lenders began to ease borrowing restrictions to allow lower credit borrowers to qualify for mortgages, greatly expanding the subprime market. Subprime loans, which are higher-cost loans, provide opportunities for a wide range of higher-risk borrowers. Consumers with lower credit scores and higher loan-to-value and debt-to-income ratios found that they qualified for mortgages. Further, lenders made loans to customers based on less stringent or no income and asset verification requirements. With the influx of new loans, lenders began to package the loans and sell them to Wall Street as securities to investors. By packaging risky loans with traditional loans in order to spread the risk, investors found the low-risk securities to be attractive, allowing lenders to make even more loans.

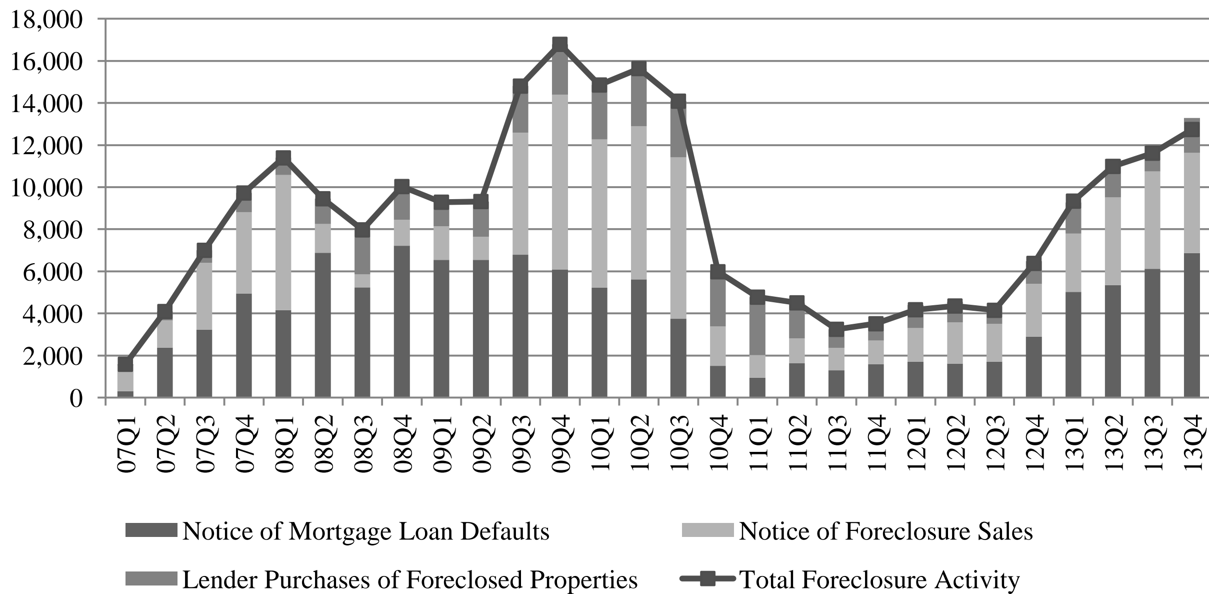
During calendar 2006, the real estate market began a downturn as interest rates increased, housing sales slowed, and home prices declined. Terms of many of the "exotic" and other nontraditional loans included adjustable rates whereby the consumer pays a low interest rate for 2 or 3 years, followed by 27 or 28 years of higher interest rates that are generally tied to the market. As the low interest rate period ended, many borrowers then found that they were unable to make the higher monthly payments due after their interest rates reset. Furthermore, many borrowers also then realized that they were unable to refinance due to prepayment penalties or sell their property due to, in some cases, lower property values or decreased demand. In addition, many investor-owners of rental property found that they were unable to obtain the rent needed to pay their mortgages and were unable to sell due to the depressed resale market.

As a result, many lenders filed for foreclosure. As foreclosure filings mounted, lenders did not receive all expected payments from borrowers, forcing them to curtail the number of new loans, decrease the products available to borrowers with low credit scores, and tighten overall lending practices and standards. Wall Street investors responded by pulling out of the risky mortgage market, and the combination of these and other factors led to a decrease in overall nationwide housing sales and home equity growth.

Foreclosure Trends: The number of foreclosure events in Maryland has spiked markedly in three separate periods: the latter half of 2007, in 2009, and the latter half of 2012 through 2013. Foreclosure events encompass real estate-owned purchases (property acquired by a lender as a result of an unsuccessful foreclosure sale on the property),

notice of foreclosure sales, and notices of mortgage loan default. After the period of high rates of foreclosures in 2009, the number of property foreclosures decreased significantly from 42,446 in 2010 to 14,321 in 2011. However, property foreclosures rose in 2012, totaling 17,126, up 18.8% from 2011 levels. Foreclosure activity began a more rapid increase in the fourth quarter of 2012, with the number of foreclosure events totaling 6,381. This rapid increase in foreclosure activity continued in 2013 with foreclosure activity reaching the highest level in three years during the fourth quarter. These trends are exhibited in **Exhibit 1**.

Exhibit 1
State Foreclosure Events
2007-2013



Source: Department of Housing and Community Development

The dramatic decrease in 2011 was due, in part, to two factors: (1) Maryland's legislative response to the foreclosure crisis, which provided additional protections to homeowners at risk of losing their homes; and (2) the delay by mortgage servicers to begin foreclosure procedures until the results of a foreclosure settlement between five of the largest lenders and the U.S. government were known. The results of the National Mortgage Settlement were announced in February 2012. The uncertainty surrounding the settlement and Maryland's new increased consumer protections created a backlog of foreclosures which lenders have now begun to address. In the fourth quarter of 2013, Maryland had the second highest foreclosure rate in the nation. For the year, the number

of foreclosure events in Maryland, 37,186, were the fourth highest in the nation. DHCD attributes the surge in foreclosure activity that began in 2012 to a "rebound in the housing market which encouraged lenders to return inventory of seriously delinquent loans to the market at an increasing pace" allowing servicers to clear the backlog.

According to *RealtyTrac*, Prince George's County reported 6,302 foreclosures in 2013, the highest in Maryland. This number represents approximately 16.9% of the 37,186 foreclosures that occurred in the entire State during that time period. In comparison, U.S. Census Bureau information indicates that Prince George's County contains approximately 15% of the State's total population.

State's Response to the Foreclosure Crisis: The State's multifaceted approach has involved legislative reforms of mortgage lending laws, extensive consumer outreach efforts, and enhanced mortgage industry regulation and enforcement. This approach began with the Maryland Home Preservation Task Force, which was convened by the Governor in 2007 in response to the dramatic increase in foreclosure events. The task force's charge was to develop a plan which addressed escalating foreclosure rates through revisions in statute, increased opportunity for housing counseling and education programs, and enhanced regulatory authority by the Commissioner of Financial Regulation. The task force's final report in November of 2007 made multiple recommendations which became the backbone for Maryland's response to the foreclosure crisis.

Legislation passed during the 2008, 2009, 2010, and 2011 sessions:

- created the Mortgage Fraud Protection Act, Maryland's first comprehensive mortgage fraud statute (Chapters 3 and 4 of 2008);
- tightened mortgage lending standards and required a lender to give due regard to a borrower's ability to repay a loan (Chapters 7 and 8 of 2008);
- prohibited foreclosure rescue transactions and granted the Commissioner of Financial Regulation additional enforcement powers (Chapters 5 and 6 of 2008);
- reformed the foreclosure process to provide homeowners with greater time and additional notices before their properties are sold (Chapters 1 and 2 of 2008);
- required additional notices to be given to residential tenants renting properties pending foreclosure (Chapters 614 and 615 of 2009);
- required a lender, under specified circumstances, to provide to a borrower notice regarding homebuyer education or housing counseling (Chapter 736 of 2010);
- established procedures for loan modification or mitigation and postfile mediation (Chapter 485 of 2010); and
- lengthened the time period within which a homeowner may elect to participate in foreclosure mediation (Chapter 355 of 2011).

Consumer outreach efforts include statewide public workshops to assist distressed homeowners, in coordination with the Maryland Foreclosure Prevention Pro Bono Project. These efforts, coupled with the new requirements imposed on the foreclosure process, are at least partially a cause of the decrease in foreclosures in the State.

By the time the Governor convened the next task force, the Maryland Foreclosure Task Force, in fall 2011, foreclosure events had sharply declined from their 2007-2010 amounts. The task force was charged with developing new ideas to combat the continuing foreclosure crisis. It included representatives from the Department of Labor, Licensing, and Regulation; DHCD; the General Assembly; the Judiciary; and private industry. In January 2012, the task force issued its report, including 12 recommendations aimed at addressing the continuing foreclosure crisis in Maryland. Several pieces of 2012 legislation resulted from these recommendations, including laws allowing banks to offer prefile mediation in addition to postfile mediation and the creation of a foreclosure registry.

Foreclosure Settlement: On February 9, 2012, the U.S. Department of Justice, U.S. Department of Housing, and 49 state Attorneys General announced an agreement with five major banks providing for compensation for damages arising from improper foreclosure procedures, including robo-signing, and to provide relief to states and homeowners from underwater mortgages. The value of the settlement is approximately $25 billion.

The settlement agreement has four primary components:

- *Principal Reduction:* $17 billion will be allocated to mortgage debt forgiveness/loan modifications, forbearance, short sales, and other assistance to homeowners, primarily by reducing the principal on mortgages that have negative equity and are delinquent. It is estimated that the funding could benefit up to 1 million homeowners nationally.
- *Refinancing:* Homeowners who have negative equity but are current on their mortgages will receive about $3.0 billion in refinancing; up to 750,000 homeowners could be eligible for this refinancing.
- *Payments to Foreclosed Homeowners:* About $1.5 billion is allocated to homeowners who had their homes foreclosed upon between January 1, 2009, and December 31, 2011, and who meet specified criteria. These borrowers will receive approximately $2,000 each, depending on the level of response from the field of qualified borrowers.
- *Government Payments:* The federal government will receive $750 million under the settlement. States will receive approximately $2.5 billion to help fund consumer protection and state foreclosure protection efforts.

In addition to the above components, the settlement also requires mortgage servicers to reform several of their practices. According to the Office of Mortgage Settlement Oversight, these reforms are intended to prevent servicers from the practice of robo-signing and other improper foreclosure procedures.

Additional Information

Prior Introductions: HB 1035 of 2008, a similar bill, was assigned to the House Environmental Matters Committee, but it received no further action. Its cross file, SB 532, was heard by the Senate Judicial Proceedings Committee, but it received no further action.

Cross File: None.

Information Source(s): Department of Housing and Community Development, www.nationalmortgagesettlement.com, *RealtyTrac*, U.S. Census Bureau, Department of Legislative Services

Fiscal Note History: First Reader - March 28, 2014
mm/kdm Revised - House Third Reader - April 8, 2014

Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510