

Quality Cities



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A Statewide Mortgage Foreclosure Registry Could Help Stop the Loss in Property Values

by Richard J. Kaplan, Esq.



For several years we have all enjoyed significant increases in property values. These increases have been fueled by easy credit, low interest rates and limited available housing (particularly affordable housing), and was spurred on by lenders, who were earning high profits through subprime and adjustable rate mortgages.

Many of these mortgages were given to people who never should have received them. In some cases, borrowers should have received lower-cost (but less profitable to the lender) prime mortgages. Some borrowers should have been placed in less expensive products, and some mortgages were extended to those who truly did not qualify. Therefore, in many cases, profit and greed came before doing what was right for the customer – particularly those who were not able to protect themselves.

The result has been a significant devaluation of property values due to massive foreclosures nationwide that could have been avoided. Florida presently has the second highest percentage of properties in foreclosure in the country, and the state is projected to lose about \$100 billion in property

value. The Cape Coral-Fort Myers area alone has one in every 59 housing units in foreclosure. Add to that the national recession and the fact that many businesses are laying off employees and failing, and it's clear that our communities are hurting.

Most every revenue stream available to state and local governments is affected. Property taxes, sales taxes, State Housing Initiatives Partnership (SHIP) funds, franchise fees, impact fees and many others are in a significant decline. All of this is happening while local governments are expected to provide increased assistance and stability.

One the most significant problems of properties in foreclosure is the failure of the property to be maintained. Once the owner abandons the property, unless and until the lender takes responsibility to maintain it, the property quickly deteriorates and becomes an eyesore. When this happens, surrounding properties, up to almost a mile away, can lose value.

In addition, abandoned properties can be a source of crime and vagrancy, demanding increased police, fire and code enforcement services.

How have local governments responded? Cleveland and Baltimore have filed lawsuits against lenders to force their properties to be properly maintained. Many others have turned to creating foreclosure registries, but those registries are limited to what state laws allow. One Northern city is charging \$3,000 for each property registered. In Florida, local governments have limited ability to mandate a lender to register. Also, they have limited ability to place liens on property, and when cities spend taxpayer dollars to maintain those properties, the monies expended during foreclosure proceedings are rarely recouped.

At the same time, lenders, who may want to comply with local laws, are being pressed into having to cope with local registries across the country. Many are ignoring them altogether, for which enforcement will become a significant and expensive issue. The fear by lenders is that there could be thousands of these registries nationally, and therefore it would not only be very difficult for lenders to comply but also very expensive.

However, having a single, efficient statewide registry would not only make it manageable for lenders, it could gain the eyes of local government to monitor properties more effectively.

The State of Florida is limited in that it does not have real-time information about the effects that foreclosures are having throughout the state. If the state had better data, perhaps it could address the situation more effectively and provide the support and relief needed to change the direction of our economy.

In a step toward a solution, state Rep. Ari Porth has filed a bill to establish a Statewide Mortgage Foreclosure Registry for Vacant and Abandoned Property. Within the bill are provisions providing real benefits to all parties.

First, lenders would no longer be required to file with local governments, but instead would file with a single source created by the state on the Internet. The cost would be borne by the lenders at the state's cost to create and manage the registry. This single point of contact has the benefit of improved reporting, as well as reducing errors and costs. The

state would then notify the local government of the filing by e-mail. The lender would file notice in the registry upon default of the mortgage, which is defined as when the lender notifies the borrower that he or she is in default. Updates, at specified times and events, would also be required by the same electronic method.

The local government would then become aware of a potential problem in its community long before serious deterioration of the property occurs. The law would allow local governments extraordinary powers to inspect the premises, which could be limited by the lender by providing its own regular inspections. This authority to inspect is the same authority already granted in standard language found in most mortgages from the borrower to the lender, including the standard Uniform Fannie Mae/Freddie Mac Mortgage.

If a problem does occur with the property, the local government is provided with contacts to the lender to give quick and correct notice. If the lender fails to address the problem, the local government would have a special authority, if it so elected to use it, to maintain the property and recover all costs. This process would serve to prevent further loss of value and improved safety to the entire neighborhood.

The advantage to the State of Florida would be to receive real-time information on the status of properties that are vacated and abandoned. This data could give the state an improved ability to address distressed properties that require immediate attention. Also, the data would serve to prevent a further reduction in property value, as well as additional losses of jobs and businesses.

The proposed bill does not apply to legally occupied property, nor would the name of the borrower and address of the property be available under the public records law. This exemption is to keep criminals from finding out what properties are vacant so they can vandalize them.

The result of this bill would be better information and communication between all parties. Local governments would be given better tools and resources to deal with the foreclosure problem, though it would be their option whether they utilized them or not. Lenders would have both legal and financial consequences for not registering, and incentives to register property.

Government benefits if properties are better maintained, which preserves property values. Elected officials benefit by having more satisfied taxpayers. Therefore, significant consideration must be given to supporting this bill for the betterment of all.

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