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FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 03/01/17
LAST UPDATED _____ HB _____
SHORT TITLE Mortgage Foreclosure Deficiency Judgments SB 330
ANALYST Amacher

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total				NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Mortgage Finance Authority (MFA)
Office of the Attorney General (OAG)
Public Regulation Commission (PRC)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 330 prohibits deficiency judgments in certain mortgage foreclosures. The proposed effective date is July 1, 2017 and the legislation would be prospective, applying only to foreclosures made after the effective date.

FISCAL IMPLICATIONS

There are no known fiscal impacts. The Financial Institution Division of the Regulation & Licensing Department does not foresee a fiscal impact on the division or on the department as a result of SB 330.

SIGNIFICANT ISSUES

Senate Bill 330 prohibits deficiency judgments in certain mortgage foreclosures. A deficiency judgment, as ordered by court, is a judgment against a debtor whose mortgage foreclosure sale of real property did not cover the full amount remaining on the original loan or promissory note.

As outlined in this act, a deficiency judgment is prohibited on a real property that is the debtor's primary residence for no less than 120 days prior to the initiation of the foreclosure. However, a deficiency judgment for a reduced value may be issued in the event the debtor has damaged the property. Beyond the normal wear and tear to the property, damage includes removal of structures or of fixtures to the property.

SB 330 provides definitions for "home loan" and "mortgage". A "home loan" means a loan where the principal amount does not exceed the conforming loan size limit for a single-family dwelling and is secured by a mortgage or deed of trust, or a security interest. A "home loan" does not include a reverse mortgage or a bridge loan.

The proposed effective date is July 1, 2017 and the legislation would be prospective, applying only to foreclosures made after the effective date.

OTHER SUBSTANTIVE ISSUES

The Office of the Attorney General (OAG) states that in most instances, New Mexico law does not require or prohibit a creditor in a foreclosure action from seeking a deficiency judgment where the proceeds of a court-ordered sale are less than the amounts due. SB 330 adds a new section to Chapter 39, Sales under Execution and Foreclosure, which would prohibit entry of deficiency judgments against a debtor where a foreclosure results in a court-ordered sale of the real property secured by the unpaid debt. Deficiency judgments may be awarded by a court where the court-ordered sale does not generate sufficient funds to cover the amounts found due. Thus the debtor loses their home, the secured real property, and may also be subject to other collection activity such as wage garnishment or execution against bank accounts.

The OAG notes the provisions of SB 330 are consistent with one sections of the Deeds of Trust, (Chapter 48-10-17(E) NMSA 1978), which prohibits deficiency judgments under a deed of trust securing a residential loan made to a low-income household. However, SB 330 is inconsistent with those sections of the Deeds of Trust law which allow deficiency judgments in most foreclosures on a deed of trust (Chapter 48-10-17 NMSA 1978).

The OAG indicates that Article 2, Section 19 of the New Mexico Constitution provides that no law impairing the obligation of contracts shall be enacted by the legislature. This statute does not impair the obligation in the contract; rather, it operates to restrict the remedies available after entry of judgment and sale of the property in the foreclosure proceeding.

The Mortgage Finance Authority (MFA) comments that the provisions of SB 330 are beneficial to New Mexico homeowners because the deficiency debt will not continue to burden the borrower after the loss of a primary residence through foreclosure. However, the MFA indicates the deficiency judgment for a diminution in value to the property is subjective and leaves the legislation open to interpretation by the servicer/lender. The servicer/lender may still hold the borrower responsible for damages while the property is vacant up until the Special Master's deed is filed and the property is legally transferred back to the lender, servicer, investor or guarantor. The MFA also notes this bill does not address IRS laws and requirements for reporting loan charge offs (1099C for deficiency amounts), which could also significantly impact the borrower.

The Regulation & Licensing Department (RLD) highlights that the wording of SB 330 seem to impose a prohibition on the recovery of deficiency judgments on home loans already in existence

as well as new loans made after the bill would take effect. The RLD states this creates an *ex post facto* situation where the lender made its lending decision based on an established set of rights of recovery the lender would have if the debtor defaulted on the loan. And now those rights of recovery would be diminished under SB 330. A blanket prohibition on lending institutions obtaining deficiency judgments on foreclosed residential property creates a situation where the lending institution may be unable to recover a significant portion of the funds extended in good faith to the borrower.

The RLD indicates that in the event SB 330 is enacted, it may be expected that the active financial institutions in the home loan market could alter their lending policies to require higher down payments to qualify for a loan in order to mitigate potential losses. The RLD notes that other financial institutions in New Mexico may simply stop providing home loan products altogether. Furthermore, investors in the secondary mortgage market may opt not to purchase home loans collateralized by real estate in New Mexico, also to minimize their risk. The RLD states that while it appears not to be the intention of this legislation, a consequence of passing SB 330 might actually be in making it significantly harder for people to obtain home loans at affordable rates.

JMA/jle