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

SPONSOR	Duhigg/Pope/ McKenna/Hickey	**ORIGINAL DATE** **LAST UPDATED**	02/12/21	**HB**	
SHORT TITLE	Mortgage Relief Act			**SB**	349/ec
				ANALYST	Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC		Indeterminate			Nonrecurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Senate Bill 349 (SB349) enacts the Coronavirus Disease 2019 Mortgage Relief Act to pause home mortgage foreclosure proceedings for the duration of the public health emergency.

More specifically,

Section 2 provides definitions including for “borrower,” “federally backed mortgage loan,” “mortgage loan,” “servicer,” and “loss mitigation guideline,” which is any process in place that a loan servicer must follow when reviewing a borrower for alternative options to foreclosure.

Section 3 stays all mortgage foreclosure proceedings until the later of 180 days from the end of the public health emergency or 120 days from the end of a homeowner’s forbearance period. While the stay is in effect, a loan servicer may file but not advance a new foreclosure action. The stay would apply to foreclosure actions pending when the act took effect, as well as post-foreclosure sale eviction cases. This section also tolls any time periods related to foreclosure cases, including the post-sale redemption period. The bill does not stay proceedings where the plaintiff can prove that a home is vacant and does not interfere with enforcement of a real estate contract.

Sections 4 and 5 require servicers to provide to borrowers disclosures about loss mitigation guidelines within 30 days of the effective date of the act. Section 4 applies to federally backed mortgage loans and Section 5 applies to nonfederally backed residential mortgage loans. The disclosures must include loss mitigation options and how to request one of those options. The bill provides timelines for when the disclosures must be provided, including any time a borrower requests assistance to avoid foreclosure. This section also contains additional loss mitigation disclosure requirements for nonfederally backed loans. A servicer of a nonfederally backed loan may not recover from the borrower the costs associated with complying with the act.

Section 6 requires a servicer to attach to a foreclosure complaint sufficient evidence that the required disclosures were provided. This section makes it unlawful for a servicer to file a foreclosure complaint, enter judgment of foreclosure, or conduct a foreclosure sale unless the servicer has provided the timely disclosures, considered the borrower for loss mitigation programs, and if rejected, provided the reasons why and explained any appeal rights available to that borrower.

Section 7 provides that failure to comply with this act may be used as a defense by a borrower in a foreclosure action and shall constitute an unfair or deceptive trade practice subject to the penalties and remedies set forth in the Unfair Practices Act. This section also provides that a borrower prevailing in any proceeding to enforce this act is entitled to damages and attorney fees.

Section 8 contains an emergency clause and is effective immediately on signature by the governor.

FISCAL IMPLICATIONS

This bill will require courts to halt proceedings for foreclosure cases. AOC reports there are currently 1,713 foreclosure cases pending in New Mexico district courts. It is unknown what the number of filings will be in New Mexico once current federal protections are lifted, but there is an increase nationally in seriously delinquent mortgages, which is defined as 90 days or more late.

According to AOC, courts will have to identify pending foreclosure cases, issue stays, and determine when the stays can be lifted. This could lead to a backlog of foreclosure cases once the stays expire because courts will have to process these pending cases as well as any new filings. There is a predicted coming increase in foreclosure cases due to the economic hardship caused by the pandemic. Because foreclosure cases cannot be filed until a borrower has missed three payments, and there are federal mortgage protections in place currently, many properties where borrowers are behind in their payments due to Covid-19-related hardships are not yet due for foreclosure.

Nevertheless, AOC believes the loss mitigation disclosure requirements in the bill may allow borrowers to take advantage of options that let them remain in their homes and may alleviate the need for foreclosure filings. Staying cases will also allow borrowers more time to access financial assistance, which would alleviate the need for a foreclosure case to be filed. This would have a positive impact on the judiciary because courts would not need to process as many foreclosure cases.

RLD reported no fiscal or administrative impact for its Financial Institutions Division (FID).

SIGNIFICANT ISSUES

The bill addresses Covid-19-related mortgage delinquency concerns by creating foreclosure protections for mortgages that are not federally backed as well as for those that are. The bill includes an exception for vacant homes, allowing for the foreclosure to proceed, and allows borrowers to raise servicer noncompliance under the act as a defense in a foreclosure proceeding.

AOC notes the bill could have a negative impact on the Foreclosure Settlement Programs (FSP) in the 13th and 2nd judicial districts if stayed cases cannot be referred to these programs that help borrowers and servicers reach agreements regarding foreclosure cases. FSP's could provide assistance in resolving those cases that are able to be resolved while the stays are in place.

The FSP in the 2nd Judicial District Court finds the bill to be beneficial, however, with respect to the disclosure of loss mitigation guidelines in Sections 4 and 5. Many homeowners are unaware of the loss mitigation guidelines that apply to their mortgage loans. Mandating disclosure of these guidelines allow the borrower and servicer equal access to vital information concerning the owner or insurer of the loan, loss mitigation options available, and how to pursue one of those options.

OTHER SUBSTANTIVE ISSUES

Homeowners of federally backed mortgages, which cover two-thirds of residential mortgage loans, are protected during the public health emergency. The Federal Housing Administration (FHA) has extended foreclosure moratoriums for properties backed by FHA-insured single family mortgages until March 31, 2021. The Federal Housing Finance Authority (FHFA) has extended a moratorium on foreclosures of single-family mortgages backed by Freddie Mac and Fannie Mae until February 28, 2021. Qualifying owners of multi-family properties backed by Freddie Mac or Fannie Mae can extend their loan forbearance if they do not evict a tenant from the property.

Forbearance plans allow homeowners to not make their mortgage payments or make reduced payments for a period of time. When those plans are over, repayment options can include a lump sum equal to the amount of missed payment, a higher monthly payment from adding a portion of the balance due for a period of time, a loan modification that often requires a review of one's finances, or a deferment that adds missed payments to the balance of the loan.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Federally backed mortgage loans are under a foreclosure moratorium set to expire by March. If not extended, residents could lose homes to foreclosure before the end of the public health crisis.

QUESTIONS

Does the state know the number of seriously delinquent mortgages in New Mexico?

AHO/sb