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FISCAL IMPACT REPORT

ORIGINAL DATE 03-04-09
 LAST UPDATED 03-16-09 **HB** _____

SPONSOR Sanchez, M.

SHORT TITLE Mortgage Fair Foreclosure Act **SB** 651/SCORCS

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Department of Finance and Administration (DFA)
 New Mexico Finance Authority (NMFA)
 Mortgage Finance Authority (MFA)

SUMMARY

Synopsis of Bill

Senate Bill 651 proposes to enact the Mortgage Fair Foreclosure Act. The bill provides homeowners subject to acceleration of their mortgage obligation and/or foreclosure thereon greater notice and procedural safeguards during that process. It provides homeowners with an opportunity to return their defaulted loans to performing status and avoid foreclosure and/or other legal action designed to take possession of subject residential properties.

The Act provides:

- 1) that lenders and/or servicers who intend to accelerate the maturity of a mortgage obligation or foreclosure thereon furnish the mortgage debtor with a written notice at least thirty-days in advance of such action, served in person or by register/certified mail. The lender and/or servicer shall not be required to provide any notice if the debtor has voluntarily surrendered the subject property in writing. The notice is quite detailed and must be printed in specific sized font in English and Spanish and include, among other things:
 - o a description of the debt;
 - o the nature of the default;

- the amount necessary to cure the default;
 - the date before which default must be cured (which must be not less than 30 days from the notice);
 - a statement saying that if default is not cured the lender may exercise remedies;
 - any right the debtor may have to transfer the real property to another person;
 - the right to seek legal counsel;
 - a list of loss mitigation counselors that may be able to provide options to the debtor;
 - contact information for the lender and the person with authority to modify the debtor's obligation;
- 2) requiring that homeowners be given an accounting of the loan obligation covering the 18-month period prior to any alleged default. The debtor may cure a default only once in a 180 day period if the action to cure is after the initial 30 days allowed to cure a mortgage;
 - 3) ensuring that debtors have the opportunity to cure a bona fide default up to the entry of a final judgment of foreclosure;
 - 4) conferring upon homeowners the right to participate in any one of a number of alternative dispute resolution procedures, by a counselor certified by the federal Department of Housing and Urban Development, that are geared to assess the feasibility of a variety of alternatives to foreclosure;
 - 5) the loss mitigation or alternative dispute procedures shall afford the debtor a variety of alternatives to foreclosure including but not limited to:
 - reinstatement of the loan;
 - a repayment plan;
 - an extension agreement whereby the debtor pays a portion of the arrearage and adds the remainder of the arrearage to the end of the loan;
 - a loan modification plan;
 - A mortgage loan assumption agreement by a third party
 - forbearance including:
 - suspension or reduction of payments;
 - resume monthly payments before beginning to repay the arrearage;
 - a repayment period of at least six months;
 - allowing foreclosure costs to be included as part of a repayment schedule;
 - 6) requiring the parties to participate in good faith in the alternative dispute resolution procedures set forth in the Act, or risk penalties up to and including dismissal of the foreclosure proceeding;
 - 7) mandating that any agreement to shorten the period in which the homeowner has a right to redeem a foreclosed mortgage obligation to less than the presumptive 9-month period established by New Mexico law be in writing and executed after the homeowner receives notice of the intent to accelerate and/or foreclose required by the Act; and
 - 8) prohibiting deficiency judgments against homeowners who have occupied the residential property for more than 120 days prior to the initiation of the foreclosure or other legal proceeding unless:
 - the debtor was locked into a predatory mortgage product or other nontraditional mortgage loan; or
 - that the debtor's financial circumstances are such that the debtor is not reasonably

capable of satisfying a deficiency judgment.

- 9) The Act excludes investment properties from the provisions contained in the Act.

The bill repeals Section 39-5-19 NMSA 1978, permitting the shortening of a redemption period.

The bill contains a severability clause and provides if any part or application of the Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

The Act is applicable to an action to foreclose on a mortgage, including required notice, taken on or after July 1, 2009.

The effective date of the Act is July 1, 2009.

FISCAL IMPLICATIONS

According to the Administrative Office of the Courts (AOC) the fiscal impact is indeterminate:

Procedures and processes within the Act designed to avoid foreclosure actions or terminate them may lessen the burden upon court resources related to foreclosure actions, possibly generating an indeterminate savings. Additionally, the bill provides that the alternative dispute resolution process available under the Act may include a court-supervised settlement conference, which may offset any savings associated with a lower caseload.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and the avoidance or termination of foreclosure actions. While new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase, the converse is also true, and this law may lessen the burden upon judicial resources.

SIGNIFICANT ISSUES

The bill provides for notice to homeowners of alleged default on a mortgage and an opportunity to pay delinquent mortgage amounts to assist homeowners retain their homes and decrease the number of mortgages that go into foreclosure. In addition, the Act provides an extensive list of alternatives to foreclosure which shall be afforded to debtor in default.

Additionally, the Act allows for voluntary surrender of mortgages in default. Voluntary surrender may save lenders and courts from having to bring forward lawsuits to settle defaults.

RELATIONSHIP

Relates to HB862

OTHER SUBSTANTIVE ISSUES

This bill is modeled after New Jersey's Fair Foreclosure Act which allows home owners to stop foreclosure and the loss of their home by getting caught up on missed mortgage payments. In

New Jersey, when a mortgage payment is more than 30 days late, the mortgage lender has the right to declare the mortgage in default. The Act allows the homeowner to get caught up on the mortgage or face a foreclosure.

In most cases, after a lawsuit is started some lenders will refuse to accept payments unless it is sufficient to pay off the mortgage in full. Rarely can a homeowner pay off the full principal, interest, legal and other fees charged by the lender; instead many are forced into Chapter 13 bankruptcy. The Act allows homeowners to catch up on payments and pay any administrative/foreclosure costs, if a foreclosure has been started, instead of paying the loan in full.

The Act benefits the homeowner and lender in that it may avoid both bankruptcy and foreclosure by providing a method to catch up or provide for arbitration or voluntary surrender of the property.

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