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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** _____
LAST UPDATED 1/23/15 **HB** _____

SHORT TITLE Foreclosure Deficiency Judgments Time Period **SB** 29

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 27, SB 28, SB 30, SB 141, SB 142

SOURCES OF INFORMATION

LFC Files

Responses Received From

NM Mortgage Finance Authority (MFA)
 Administrative Office of the Courts (AOC)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 29 reduces the period in which to enforce a deficiency judgment arising from a foreclosure of a principal residence from fourteen to four years. It also bars renewal by administrative, judicial or other process.

FISCAL IMPLICATIONS

Responding agencies report no fiscal impact on the State of New Mexico.

SIGNIFICANT ISSUES

A deficiency judgment results when a creditor or servicer does not receive the full amount of its claim against the borrower, generally occurring after foreclosure if the home sells for less than the amount of the judgment. AOC reports that the interim Foreclosure Process Task Force established by memorials passed in the 2014 session noted that the 14-year period during which

a lender can seek a personal judgment significantly interferes with the ability of a borrower who has been foreclosed upon to fully recover and possibly buy a home again, and recommended this piece of legislation. If enacted, SB 29 may encourage individuals to purchase a home sooner without the threat of a lien or other collection action. Similarly, MFA suggests that HB 29 may increase the number of qualified homebuyers and improve community stability that could be threatened by concentrations of foreclosed homes.

On the other hand, the Financial Institutions Division of RLD (FID) raises a concern that restricting a mortgag holder to a four year collection period will substantially reduce the probability of recovery pursuant to a deficiency judgment. Existing law allows real property sold at an execution sale to be sold for two thirds of its appraised cash value, exclusive of liens and encumbrances. See Section 39-5-5, NMSA 1978. Given that threshold, FID asserts that a mortgage holder may end up taking a much larger loss, which ultimately decreases its profit, if it is given less time to collect from a residential mortgage holder who is already financially distressed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 29 relates to SB 27 (Foreclosure Process Task Force), SB 28 (Pre-Purchase Homebuyer Education Program), SB 30 (Home Loan Loss Mitigation Servicing Standards), SB 141 (Settlement Facilitation Before Foreclosure), and SB 142 (Foreclosure As Judicial Process), all of which resulted from the Foreclosure Process Task Force in 2014.

OTHER SUBSTANTIVE ISSUES

MFA and AOC report that SB 29 is a recommendation of the Foreclosure Process Task Force, created in SM 11/HM 15 in 2014, which requested the United South Broadway Corporation convene a task force to study the foreclosure process in New Mexico and make recommendations to protect neighborhood and community stability, prevent unnecessary and improper foreclosures and preserve the due process rights of financially strapped families. The Foreclosure Process Task Force met during 2014 and its work resulted in several pieces of legislation currently before the 2015 New Mexico Legislature. Task Force membership represented diverse interests including homeowners, community banks, housing counselors, local mortgage lenders and trade associations, mortgage loan servicers, NM Land Title Association, MFA and attorneys who represent both homeowners and large national banks.

MD/je