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FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/15

SPONSOR Neville LAST UPDATED _____ HB _____

SHORT TITLE Home Loan Protection & Certain Foreclosures SB 439

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 142

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

New Mexico Mortgage Finance Authority (NMMFA)

SUMMARY

Synopsis of Bill

Senate Bill 439 amends the Home Loan Protection Act and also refers to the Deed of Trust Act. SB 439 would change New Mexico from a judicial foreclosure state, where a home loan can only be foreclosed via a lawsuit by the lender, to a non-judicial foreclosure state, where a home can be sold by a private party known as a trustee.

FISCAL IMPLICATIONS

SB 439 has no fiscal implications for the State of New Mexico.

SIGNIFICANT ISSUES

SB 439 would expedite the process for foreclosures on deeds of trust. New Mexico is a judicial foreclosure state. From date of filing, foreclosures take an average of 800 days to close in New Mexico.

According to NMMFA, in the case of deeds of trust, SB 439 would allow creditors to foreclose on a property without judicial process. The owner would have to file a lawsuit to have his or her day in court. This would reduce rights and protections for some New Mexico homeowners.

The AGO writes:

The AGO has concerns about removing due process and judicial oversight of the foreclosure process given the gravity of the loss of a home to a family. There is a risk that consumers could be subjected to improper or deceptive practices without judicial oversight.

Further, unlike a judicial foreclosure, in a trustee sale, a homeowner would have to find an attorney and file a lawsuit to contest the eviction and raise any defenses. This substantially shifts the burden to consumers to take legal action to save the home.

CONFLICT

SB 439 conflicts with SB 142 which adds a new section to explicitly state that property encumbered by a home loan can only be foreclosed through a judicial process.

TECHNICAL ISSUES

NMMFA writes:

Currently, ambiguity exists about whether New Mexico law mandates court oversight of all residential foreclosures and therefore provides all homeowners “a day in court” before potentially losing their homes. The ambiguity arises from a conflict between the Home Loan Protection Act (Section 58-21A-1 NMSA 1978) and the Deed of Trust Act (Section 48-10-1 NMSA 1978). The Home Loan Protection Act provides due process rights for a borrower with either a traditional mortgage or deed of trust, including the right to have a day in court. However, the Deed of Trust Act allows foreclosures on deeds of trust to proceed without judicial process by conferring power of sale upon the trustee after a breach of or default in contract. SB 439 will explicitly allow creditors foreclosing on a deed of trust the option to use non-judicial procedures.

OTHER SUBSTANTIVE ISSUES

The number of foreclosures filed in New Mexico district courts has grown significantly in recent years. As noted by the Foreclosure Process Task Force in its final report and recommendations:

The right to a “day in court” before losing one’s home to foreclosure is a longstanding right of New Mexicans. A “day in court” increases the likelihood that homeowners can save their homes, gives them a chance to find assistance from a housing counselor and obtain a loan modification, and reduces occurrences of the type of unfair practices that resulted in multi-billion settlements between the states’ Attorneys General and large national banks.

Recommendation: A substantial majority of the Task Force recommends that the New Mexico Legislature impose a mandate for judicial oversight of foreclosure with due process protections for individual homeowners, whether their home loan is a traditional mortgage or a deed of trust.

The Foreclosure Process Task Force was created by Senate Memorial 11 and House Memorial 15 passed during the 2014 legislative session.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will remain a judicial foreclosure state and a lender will continue to be able to foreclose on a home loan by bringing a foreclosure action in court.

CJ/bb