Michigan
Legal
Services

Anti-poverty Advocates

November 30, 2011

State Representative Marty Knollenberg, Chair
House Banking & Financial Services Committee
Anderson House Office Bldg.
124 N. Capital
N-890 House Office Building
Lansing, MI 48933

re: Hearing scheduled for Wednesday, November 30, 2011 at 9:00 AM concerning substitute bill HB 5176, introduced by Representative Olson on November 10, 2011 which would shorten the redemption period from 6 months to 3 months for "portfolio loans".

Dear Chairman Knollenberg:

We write in strenuous opposition to the proposal to reduce the residential redemption period in Michigan from 6 months to 3 months for so-called "Portfolio loans", where the "original mortgagee has never assigned the mortgage or the indebtedness secured by the mortgage and has not transferred the power to service the mortgage." There is no reason to attach a shorter redemption period to these mortgages, which are not necessarily more likely to be held by small community banks and credit unions. Chase bank is an example of a major mult-national bank which tends to retain and service its own mortgages. Yet Chase, as recently as April of 2011, was identified by the Board of Governors of the Federal Reserve System as a target for review by the Office of the Comptroller of the Currency (the OCC), the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation (the FDIC), for unsafe and unsound banking practices with respect to the manner in which Chase handled various foreclosure and related activities. It was therefore compelled to enter into a Consent Order with the OCC to address weaknesses identified by the OCC in residential mortgage servicing, loss mitigation, foreclosure activities and related functions.

Clearly a shortened redemption period to speed the foreclosure process for this type of lender which is already under scrutiny for its inadequate foreclosure and loss mitigation processes makes no sense.

If, as the community banks and credit unions claim, they are able to work out 750 modifications for 1,000 delinquent mortgages, of which 75% have been performing, redemption periods are largely irrelevant, since the vast majority of mortgages held in these

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inventories are successfully modified and continuing with no basis for foreclosure. For the remaining small percentage that default on modifications or that did not qualify for recasting the loans, the redemption period (designed primarily for the benefit of the homeowner), is just as necessary for pursuing short sales, redemptions or cash-for-keys options in these cases, as it is in any others. It makes no sense to carve out a statutory exception for these mortgages, opening the door for other demands for exceptions to the redemption period, for other types of mortgages.

Moreover, longer redemption periods which provide for continued occupancy, are likewise just as important for neighborhoods and housing markets struggling with vacant blighted properties depressing home values. Shortening the redemption period to empty the so-called portfolio properties sooner, will only accelerate neighborhood blight. This is not the direction we should be taking in the current crisis. Many lenders, including those holding these so-called "portfolio loans" have already recognized this problem and are looking at other forms of occupancy to keep homeowners in their properties post redemption in order to protect the properties from vandalism. Lenders and their attorneys in Detroit developed a novel program, ROOF (Retaining Occupancy On Foreclosures) to EXTEND periods of occupancy beyond the six month redemption period.

In addition, if properties are already vacant at the point of foreclosure sale, there is a shorter redemption period (1 month) under current Michigan law which already applies, providing an opportunity for lenders and servicers to certify properties as abandoned, in order to secure them sooner, irrespective of the type of loan held by the foreclosing entity.

The Michigan Association of Realtors has expressed its support for preserving the current redemption period without regard to the nature of the loan and its transaction and servicing history, making clear the negative impact that shortening the redemption periods have on the ability of realtors to work with homeowners to accomplish short sales which often take six months to complete. Realtors in various markets across the state are on the front lines of the mortgage foreclosure crisis. They know how long it takes to negotiate a successful short sale to settle with the bank and allow the family with an underwater mortgage to successfully relocate and to minimize the impact of federal and private mortgage insurance claims; or in better times, to refinance. In the current tight credit market, we should not be tightening the stranglehold on homeowners by shortening refinance periods. We certainly should not be discriminating against homeowners based on how their mortgage originated, whether it was ever transferred and whether it was serviced "in house", all circumstances over which the borrower has no control.

If as the lenders have indicated, they recognize a need for a redemption period for borrowers to refinance, sell or relocate, the current use-rate of redemption periods for these purposes should be considered. A recent survey of HUD and/or MSHDA foreclosure counsellors in

Michigan, conducted by the Michigan Foreclosure Task Force, indicates that most borrowers make use of the entire 6 month redemption period to refinance, sell or relocate in the current market.

There is no evidence that homes are deteriorating, being destroyed and losing value during the redemption period. If that is the case it is because the homeowner was driven out and the property is vacant. The data available informs us that the opposite is true; that homeowners are staying in their homes to try to find ways to save them, especially as new loan modification programs are developed by banking institutions or the government to help families stay in their homes, and return loans to performing status. It is vacant properties that are being destroyed and losing value. And, as previously indicated, those properties have 1 month redemption periods under the current statute, which is not changed by the proposed legislation. If the properties become vacant during a longer redemption period because they were occupied during the foreclosure process and the homeowner moved prior to the expiration of the redemption period, the lender has complete control of the property and can secure and sell it.

In summary, there is no rational basis for shortening the redemption period for the so-called portfolio loans which were never transferred from their origin and which are serviced in-house. The homeowner in foreclosure with this type of loan is just as much in need of the full redemption period to take advantage of post foreclosure options as his or her neighbor with a non-portfolio loan. Moreover, establishing a different redemption period for these loans could prove an administrative nightmare for foreclosing entities charged with determining which redemption period applies. Opening the door to carving out an exception for one type of lender, will inevitably invite others to demand similar special treatment, all to the detriment of Michigan homeowners and neighborhoods. We therefore urge you to REJECT HB 5176, the proposed substitute to reduce the redemption period by half (from 6 months to 90 days) for certain portfolio loans.

Finally, we urge you to accept the package of substitute bills HB 4542-4544 which refine the 90-day pre-foreclosure negotiation process without shortening the redemption period and which extend the law for next 3.5 years to address the current crisis which shows no signs of abating.

Sincerely,

Marilyn Mullane
Executive Director