

FORECLOSURE MORATORIUM

A foreclosure moratorium is an authorized postponement or suspension of the legal proceeding to terminate a mortgagor’s interest in property in order to satisfy the unpaid debt secured by the property. During this suspension period, borrowers and lenders¹ may renegotiate the terms of the loan. Increased numbers of foreclosures in the wake of the financial crisis led many states to debate the merits or otherwise of foreclosure moratoria and it was initially the most popular, controversial, and widely debated proposal to deal with foreclosure. Local officials got involved in the foreclosure debate because defaults led to lower tax revenues for municipal coffers and an increased demand for police and related services to deal with vacant and abandoned properties.

While several debated it, very few states or localities imposed a long-term moratorium. Opponents argued that a mandatory foreclosure moratorium or “pause” extended to every loan would not be helpful to borrowers or communities, as it would simply extend the time that properties remain unoccupied and underserved, lowering local housing prices and exacerbating problems associated with blight. It was also felt that a blanket foreclosure moratorium would serve as a disincentive for borrowers to contact their lenders.

States and localities advanced proposals that increased the number of foreclosure notices a lender must provide a borrower, specifying where a notice should be posted and its content. Lawmakers also passed proposals requiring lenders to work with homeowners to modify loan payment schedules to avoid foreclosure. These lawmakers codified what lenders nationwide were already doing: reaching out and working with homeowners at the first sign of financial trouble. Lenders typically work to mitigate foreclosure in cases where the borrower has contacted the lender for assistance, continues to occupy the property, and retains the desire and reasonable ability to stay in the home.

Industry also took action itself, with six of the nation’s largest mortgage lenders – Countrywide, Washington Mutual, Bank of America, Citigroup, Wells Fargo, and JPMorgan Chase – temporarily stopping some foreclosures to allow homeowners 30 days to renegotiate their loans. Municipal leaders complained that the legislative debate aimed at preventing foreclosure was moving slower than the rate of foreclosure. Frustrated, a number of city councils’ urged local

¹ This document refers to both “lenders” and “servicers” of loans. Throughout the document, when we use the term “lender,” we mean the company in charge of servicing the loan—though that is often not the financial institution that was the “lender” when the loan originated. Loan servicers collect mortgage payments from borrowers and carry out related customer service responsibilities on a loan. On the secondary market, loans are routinely sold to an investor who then contracts with a loan servicer to “service” the loan in the manner described above. We more frequently use the term “lender” in this document to keep the language as simple as possible.

judges and sheriffs to establish their own local foreclosure moratoria, all of which were short-lived.

AFSA'S POSITION

The American Financial Services Association supports initiatives that are designed to prevent foreclosure for borrowers who have the desire and ability to stay in their homes. Foreclosing on a property is an expensive, time-consuming process for all involved and is a remedy of last resort. Servicers that manage and collect the principal and interest payments on a mortgage on behalf of the owner recognize that foreclosures generally result in a net loss, and therefore put considerable effort into working with borrowers to avoid them.

Blanket foreclosure moratoria rarely serve the public interest. They serve as a disincentive for borrowers to contact their lenders and increase costs for lenders, leaving them with many abandoned properties on the books; contributing to urban blight; and resulting in higher prices for mortgage loans in affected areas as lenders pass the increased cost to borrowers.

AFSA believes that lenders should continue to do what they have always done: evolve their policies and practices in an effort to reach more borrowers and provide better, more targeted work out options for those in default. The key to helping borrowers is providing more resources and incentives for them to reach out and communicate with their servicers.