

FORECLOSURE CRISIS RESPONSE:

FORECLOSURE DATA GROUP

FINAL REPORT

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Executive Summary

Minnesota, like the rest of the country, is facing a mortgage foreclosure crisis of proportions not seen since the Depression. Although last session the Minnesota Legislature passed what is widely regarded as the strongest anti-predatory lending law in the nation, there is universal recognition that more needs to be done to provide relief to homeowners and tenants.

In the summer of 2007, Representative Joe Mullery convened a wide-ranging group of affected stakeholders. Out of that meeting, five working groups were created, led by a bipartisan group of legislators from both the Minnesota Senate and the Minnesota House of Representatives, to develop legislative proposals for the 2008 session. One of those groups was the **Foreclosure Data Committee**, which was convened to study the need for improved access to foreclosure data and the collection of foreclosure information to facilitate the tracking and prevention of foreclosure in the state of Minnesota.

Led by Representatives Jim Davnie and Paul Kohls and Senators Warren Limmer and Ann Rest, the **Foreclosure Data Committee** was comprised of the real estate industry, the mortgage lending community, community bankers, State and local government, housing researchers and research organizations, and nonprofit housing organizations.

The group offers two policy proposals, in the form of draft 2008 legislation that:

- Adds a set of basic data elements, including locational information, as required components of the notice of pendency and on the notice of Sheriff's sale; and
- Establishes an interim study, under the auspices of the Secretary of State, to determine how to develop a statewide electronic data collection system for foreclosure information.

Introduction

The 2007 Minnesota Legislature enacted what is considered to be the strongest anti-predatory lending law in the country.¹ Though justifiably proud of their achievement, legislators understood that the enactment of that law was the first step in a series of actions necessary to address to exploding mortgage foreclosure crisis.

During the past six months, a bipartisan and cross-sector collaborative effort to develop responses to the crisis was undertaken. Five Working Groups, each addressing a different aspect of the problem, were formed. Actively participating in one or more of the groups were State Representatives and State Senators, the Minnesota Attorney General's office, state agency personnel, county and local government staff, nonprofit sector representatives, members of the financial community, landlord representatives, members of the academic community, and consumer advocates.

The groups were charged with developing a package of proposals designed collectively to provide comprehensive relief to the victims of the crisis and to prevent further devastation to families, further deterioration of neighborhoods, and further erosion of property values and community and economic stability. The five working groups were:

- **Foreclosure Data Committee** – charged with examining ways to make foreclosure data more complete and accessible, and to develop a statewide data information system to provide a central repository for mortgage and foreclosure information;
- **Foreclosure Prevention Working Group** – charged with developing proposals to increase resources for foreclosure prevention counseling efforts;
- **Renter Working Group** – charged with increasing rights of tenants who are forced to vacate as a result of a foreclosure of an owner or investor's property;

¹ See 2007 Minn. Laws, ch. 18 (codified at Minn. Stat. §§ 58.02; 58.13; 58.137; 58.15; 58.16; and 58.161); and 2007 Minn. Laws, ch. 74 (codified at Minn. Stat. §§ 58.02; 58.13; 58.137; 58.18; 82B.24; and 609.822).

- Remedies Working Group – charged with enhancing tools for borrowers to save their homes from foreclosure and to enhance protections against predatory lending; and
- Vacancy Working Group – charged with helping municipalities address the myriad problems associated with the raft of vacancies and abandonments brought on by the avalanche of foreclosures.

This report presents the activities and recommendations of the **Foreclosure Data Committee**.²

Background

In 2007, there were an estimated 20,573 foreclosures in the state of Minnesota.³ In the Twin Cities Metropolitan Area, there were over 11,000 sheriff’s sales in 2006.⁴ More than 20,000 sheriff’s sales are projected for 2007, representing an 83% increase over the previous year.⁵ In Greater Minnesota, foreclosures increased 48% between 2005 and 2006.⁶ They are projected to increase 84% between 2006 and 2007.⁷ In all, between 2005 and 2007, an estimated 15,000 Greater Minnesota families will have lost their homes.⁸

The crisis shows no signs of abating any time soon. While foreclosure rates are difficult to predict, one indicator of future foreclosure activity is the number of interest rate resets. A Federal Reserve Board of Minneapolis estimate indicates that 40% of adjustable rate subprime loans and 10% of near-prime loans (also known at “Alt A loans”) in Minnesota will reset to a

² See Appendix A for a list of the members of the working group and their affiliations.

³ HousingLink, "Foreclosures in Greater Minnesota: A Report Based on County Sheriff's Sale Data, Supplement 1: October 31, 2007," (Minneapolis, MN: HousingLink, 2007).

⁴ Housing Link, "Minnesota Sheriff's Sales Projections," November 28, 2007.

⁵ Id.

⁶ Housing Link and the Greater Minnesota Housing Fund, "Foreclosures in Greater Minnesota: A Report Based on County Sheriff's Sale Data," July 2, 2007.

⁷ Housing Link and the Greater Minnesota Housing Fund, "Foreclosures in Greater Minnesota: A Report Based on County Sheriff's Sale Data, Supplement 1," October 31, 2007.

⁸ Id.

higher interest rate by October 2008, with an additional 22% of subprime and 60% of near-prime resetting sometime thereafter.⁹

As the number and geographical scope of foreclosure expands, a wide variety of neighborhood problems are becoming evident. Increased crime, the loss of home equity among the surviving homeowners, abandonment, and theft of copper and other building materials from vacant buildings are the most obvious evidence of the foreclosure crisis.¹⁰ These troubling consequences are reversing decades of community development efforts.

Although the initial impact of foreclosure is falls on the individual household, the significant costs of the foreclosure crises for neighborhoods as well as local and state governments are becoming increasingly evident. Because these costs are rapidly escalating, local and state officials, policy makers, and legislators must have foreclosure information readily available so that timely and accurate assessments of the foreclosure crisis can be made.

Yet, because foreclosure data is difficult to access, obtaining timely and accurate information on foreclosure is both time consuming and expensive. For example, in 2003 a University of Minnesota research team led by Jeff Crump of the Housing Studies Program collected foreclosure data for Hennepin County. This effort took approximately six months to compile the data and produce maps illustrating the spatial distribution of foreclosure in Hennepin County.¹¹ In addition, the labor costs involved were over \$20,000.

⁹ Federal Reserve Board estimates based on data from First American LoanPerformance, October 2007. First American LoanPerformance is a subsidiary of First American Real Estate Solutions and part of First American Corporation. According to First American's Web site, it maintains a database that tracks "the delinquency and prepayment performance of 46 million active individual mortgage payments per month and provides loan-level information on more than \$1 trillion in non-agency mortgage and asset-backed securities." See First American Web site, accessible at: <http://www.firstam.com/product.cfm?id=2386>

¹⁰ Jeff Crump, "Subprime Lending and Foreclosure in Hennepin and Ramsey Counties," *CURA Reporter* 37, no. 2 (2007).

¹¹ Jeff Crump, "Subprime Lending and Foreclosure in Hennepin and Ramsey Counties: An Empirical Analysis," *CURA Reporter* 35, no. 2 (2005).

A study conducted by the Federal Reserve Bank (FRB) of Minneapolis also notes the expense and time involved in collecting foreclosure information.¹² As the FRB report states, "...the availability and usefulness of foreclosure data are often inadequate..."¹³ In addition, the FRB study makes several recommendations for improving the collection and dissemination of foreclosure data: (1) make data available in electronic form; (2) add needed information to foreclosure documents; and (3) establish a central data base of current and past foreclosures.

The FRB's recommendations are in line with current efforts to modernize property records systems in the state of Minnesota. Presently, the state of Minnesota, in conjunction with county officials, is developing a data collection and distribution system that will facilitate the electronic submission of publicly recorded documents. As part of the Electronic Real Estate Task Force (ERERT), a system for the electronic submission of the Certificate of Real Estate Value (eCRV) has been developed and is now in the pilot phase.¹⁴ The eCRV system facilitates the electronic submission of currently required forms and allows the collection of information in a central location. Once online, the eCRV will save money and allow county officials to better serve the data needs of the public.

The eCRV system serves as a model for a needed and absolutely necessary development and implementation of a statewide system for the electronic submission of foreclosure notices and forms. Such a system would allow improved tracking of foreclosures and facilitate important efforts to prevent foreclosure.

¹² Michael Grover, "Fed-Led Research Reveals Need for Better Twin Cities Foreclosure Data," *CommunityDividend* 2006.

¹³ *Id.* at 1.

¹⁴ For more information, visit <http://www.commissions.leg.state.mn.us/lcc/erertfresources.htm>.

Foreclosure Data Committee Activity

The committee looked at the current status of foreclosure data in Minnesota and identified specific data elements that should be included in legal filings and examined the need for a statewide data collection system.

Summary of the Current Status of Minnesota Foreclosure Data

Foreclosure data in paper format is currently held in each Minnesota county. Only Anoka and Hennepin Counties currently provide information on foreclosure via the internet, but this information is limited to the notice of Sheriff's sale. The accessibility of foreclosure information varies across counties as does the information that is available on the legally required, publicly available documents.

Under the current system, there are two occasions when Minnesota statute requires that foreclosure information be filed and recorded: (1) the notice of pendency which is filed a minimum of 30 to 60 days after the borrower (In practice, this period is often longer.) is in default on his/her mortgage; and (2) the certificate of Sheriff's sale.

2008 Consensus Legislative Recommendations

Comprehensiveness and Accessibility of Data

The Issue: The information required on the notice of pendency and the certificate of Sheriff's sale is incomplete. A number of critical data elements that would enhance and facilitate foreclosure prevention and timely analysis of foreclosures generally are missing

The Proposal: **Amend Minnesota Statutes, section 580.04 (Requisites of Notice) to require a set of five additional data elements, including locational information, on notices of pendency and certificates of Sheriff's sale.**¹⁵

¹⁵ See Appendix B for the proposed legislation requiring additional data elements.

The five new data elements proposed for inclusion, and the rationale for each, are presented below:

1. **Complete street address with zip code (for informational purposes only)**

Preferred formatting (MetroGIS protocol for Regional Parcel Dataset)

Building Number

Street Address

Street Type (standard abbreviation, no periods)

Direction (abbreviated, no period)

Public policy needs: The street address is needed to facilitate the mapping of foreclosures. It is critical for foreclosure prevention efforts that we understand where foreclosures are occurring. The street address will not replace the currently used legal property description.

Data acquisition: Address information is readily available.

2. **Name of the actual mortgage servicer and “Lender” or mortgagee (if known), not the transaction agent (agent often Mortgage Electronic Registry System – “MERS”)**

Public policy needs: In order to facilitate foreclosure prevention efforts, it is important to know who the actual lender is. Servicers often have very limited ability to negotiate with borrowers. In addition, lenders are responsible for the maintenance of foreclosed properties, therefore it is critical to be able to determine the actual lender.

Data acquisition: This is a “high value” piece of information. At present it is not clear how the data would be acquired. The difficulty in determining ownership reflects the

securitization process. As mortgages are divided and sold to investors, the chain of ownership becomes difficult to trace.

3. Whether property is (a) owner-occupied residential, (b) renter-occupied or investor-owned residential, or (c) commercial.

Public policy needs: Currently it is difficult to discover whether a property in the foreclosure process is owner-occupied or whether the property is owned by an investor. Foreclosures on investor owned properties are leading to many evictions and to abandonment. It is important to be able to readily identify whether a property is owner-occupied or is owned by an investor.

Data acquisition: This is a “high value” piece of information. At present, additional study will be needed to ascertain how this information can be efficiently gathered.

4. Property Identification Number (PID #) / tax id

Public policy needs: The property identification number/tax id is needed to quickly and accurately identify the location and status of the foreclosed property. This is not a duplication of address information, rather it is needed and readily available information.

Data acquisition: The property identification number/tax id is readily available.

5. Mortgage Identification Number (MIN #), if property registered with MERS

Public policy needs: A substantial proportion of foreclosed properties are represented by Mortgage Electronic Registration Systems (MERS). With MERS properties it is difficult to track ownership and other relevant information pertaining to the property.

Having the MERS Mortgage Identification Number will allow interested parties to find to track property information via the MERS system and to facilitate communication between MERS and foreclosure prevention providers.

Data acquisition: The MERS Mortgage Identification Number is readily available from MERS.

Lack of Statewide System to Collect Foreclosure Data

The Issue: The current system of collecting and managing foreclosure data is antiquated and is in desperate need of updating. There is no statewide, electronic data base that collects comprehensive mortgage foreclosure information. Consequently, timely and detailed analysis and tracking of foreclosures throughout the State is severely impaired.

The Proposal: ***Establish a legislatively required study to determine the best way to develop and implement an electronic system of submission of foreclosure documents that will enable a timely and accurate assessment of foreclosures across the State.***¹⁶

Currently, there are ongoing efforts to implement electronic submission of property related information. For example, the submission of the Certificate of Real Estate Value which currently requires a three-part paper typewritten form will soon migrate online and allow the electronic submission of the Certificate of Real Estate Value. The eCRV program has already developed standards for many of the data elements that are required (e.g., property address) for foreclosure. Another state effort involves the electronic submission of well certificates. The development and implementation of a foreclosure data would build on the eCRV and well certification programs, minimizing the time and expense involved in developing an electronic foreclosure data system.

¹⁶ See Appendix C for the proposed legislation to establish a study group to develop a statewide foreclosure data collection system.

Conclusion

The **Foreclosure Data Committee** was one of five established legislators to do intensive work and study during the interim with the goal of developing consensus legislative proposals for the 2008 legislative session. The group coalesced around two proposals to improve the comprehensiveness of data required in public filings and develop a statewide system to collect information on foreclosures. The group urges the 2008 Legislature to adopt these proposals.

List of References

- Crump, Jeff. "Subprime Lending and Foreclosure in Hennepin and Ramsey Counties." *CURA Reporter* 37, no. 2 (2007): 14-18.
- . "Subprime Lending and Foreclosure in Hennepin and Ramsey Counties: An Empirical Analysis." *CURA Reporter* 35, no. 2 (2005): 14-18.
- HousingLink. "Foreclosures in Greater Minnesota: A Report Based on County Sheriff's Sale Data, Supplement 1: October 31, 2007." 17. Minneapolis, MN: HousingLink, 2007.
- Michael Grover. "Fed-Led Research Reveals Need for Better Twin Cities Foreclosure Data." *CommunityDividend* 2006.

APPENDIX A

Members of the Foreclosure Data Committee

Legislative Leads

The Honorable Jim Davnie	State Representative
The Honorable Paul Kohls	State Representative
The Honorable Warren Limmer	State Senator
The Honorable Ann Rest	State Senator

Group Coordinator

Jeff Crump	Housing Studies Program, University of Minnesota
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Lead Attorney

Kevin Dunlevy	Beisel & Dunlevy
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Members

Bill Amberg	Minnesota Association of County Officers
Patrick Baldwin	Committee Administrator
	Public Safety and Civil Justice Committee
	Minnesota House of Representatives
Christine Berger	Minnesota Association of Realtors
Bert Black	Secretary of State
Jacob Brown	Southern Twin Cities Association of Realtors
Mike Cunniff	Hennepin County
Larry Dalien	Anoka County
Susan Dioury	Minnesota Association of Realtors
Tracey Douglas	North Metro Realtors
Eric Ewald	Mortgage Bankers Association
Jim Franklin	Minnesota Sheriffs' Association
Bill Gerst	Minneapolis/St. Paul Association of Realtors
Mara Humphrey	Minnesota Credit Union Network
Therese Kuvaas	Minnesota Bankers Association
Ben Marczak	Hennepin County
Gary Marttila	Office of the Secretary of State
Marcia Moermond	City of St. Paul
Brandon Nessen	Minnesota ACORN
Colleen O'Brien	HousingLink
B. Patrick Ruble	St. Paul Association of Realtors
Elissa Schloesser	HousingLink
David Skilbred	Independent Community Bankers of Minnesota
Jeffrey Skrenes	Hawthorne Area Community Council
Libby Starling	Minnesota Housing Finance Agency
John Villerius	Hennepin County
Pamela Zagaria	Family Housing Fund

APPENDIX B

Proposal to Add Specified Data Elements to Required Notice Filing

Section 1. Minnesota Statutes, 2007, section 580.04, is amended to read:

580.04 REQUISITES OF NOTICE.

(a) Each notice shall specify:

- (1) the name of the mortgagor, the mortgagee, each assignee of the mortgage, if any, and the original or maximum principal amount secured by the mortgage;
- (2) the date of the mortgage, and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered;
- (3) the amount claimed to be due on the mortgage on the date of the notice;
- (4) a description of the mortgaged premises, conforming substantially to that contained in the mortgage;
- (5) the time and place of sale;
- (6) the time allowed by law for redemption by the mortgagor, the mortgagor's personal representatives or assigns; ~~and~~
- (7) if the party foreclosing the mortgage desires to preserve the right to reduce the redemption period under section 582.032 after the first publication of the notice, the notice must also state in capital letters: "THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING, AMONG OTHER THINGS,

THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."; and

(b) for informational purposes only, the following shall be listed in each notice:

(1) the physical street address, in the format required by the Metropolitan Council under section 473.241;

(2) the name of the residential mortgage servicer, the residential mortgage originator, and the lender, as those terms are defined in section 58.02, unless the mortgagee of record is a transaction agent, as defined in section 58.02, subdivision 30, in which case the name of the residential mortgage servicer, the residential mortgage originator, and the lender, as defined in section 58.02, on whose behalf the transaction agent is acting shall be listed in the notice;

(3) whether the mortgaged premises is occupied by:

(i) the owner of the mortgaged premises;

(ii) a residential tenant of the owner of the mortgaged premises; or

(iii) a commercial tenant of the owner of the mortgaged premises.

(4) the unique property identification number assigned to each property by the county;

and

(5) the unique mortgage identification number used by the transaction agent while the transaction agent serves as the mortgagee of record.

Sec. 2. Minnesota Statutes 2007, section 58.02, is amended by adding a new subdivision to read:

Subd. 30. **Transaction agent.** “Transaction agent” means the person who acts as nominee for the residential mortgage servicer, the residential mortgage originator, or the lender in the county land records.

Sec. 3. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

APPENDIX C

Proposal to Establish a Study Group to Develop a Statewide Foreclosure Data Collection System

Section 1. STUDY TO DEVELOP STATEWIDE FORECLOSURE DATA COLLECTION AND REPORTING SYSTEM.

Subdivision 1. **Study.** The secretary of state shall convene and facilitate a group to study the most efficient and cost-effective way to develop and implement an electronic system for the submission, collection, entry, retrieval, management, and assessment of statewide foreclosure data. The study shall consider the applicability to the collection of foreclosure data of the electronic certificate of real estate value and well certification programs.

Subd. 2. **Working group.** The study under subdivision 1 must be conducted in consultation with a statewide working group including, but not limited to, representatives from the legislative coordinating commission's geographic information services office, the University of Minnesota's housing studies program, the Association of Minnesota Counties, the League of Minnesota Cities, the Metropolitan Council, the Governor's Council on GIS, the Department of Revenue, the electronic real estate recording task force, the Minnesota Association of County Officers, courts, and a nonprofit housing advocacy organization.

Subd. 3. **Report.** The secretary of state shall submit a report to the legislature by February 15, 2009, containing the results of the study and any recommendations regarding the development and implementation of a statewide foreclosure data collection and reporting system.