



NEW YORK MORTGAGE BANKERS ASSOCIATION (NYMBA)

FORUM ON REVITALIZING COMMUNITIES & FORGING NEW PARTNERSHIPS

Eric Miller, Executive Director, and Keith O'Donnell, Treasurer, represented NAMFS at this event which was held in Albany, New York on Monday, March 18th, 2019. This event was held in advance of the NYMBA's Advocacy Day and the primary focus was on the Zombie and Expedited Foreclosure Law which was passed in late 2016. NAMFS would like to thank Christina Wiley, NYMBA Executive Director and Jodi Gaines, Chair of NYMBA's Loan Serving Committee for including us in this event.

The event was broken into two (2) distinct sections: Identifying the Cause & Best Practices. Identifying Causes had Legal Matters and Servicing Challenges presentations. Each of these presentations were followed by Q&A opportunities. Best Practices had NYDFS, Property Preservation, and Municipality presentations with Q&A opportunities. Below is a brief synopsis of the event.

NYS Legal Matters – Current State of Affairs

Presenters: Dana Carrera, Greg Sanda and Stephen Hladic

NY State passed legislation (S.8159) to address Zombie properties by “fast-tracking” properties that are verified as vacant and abandoned. Application of the law is handled on a county by county level and not in a uniform manner. Downstate NY (5 boroughs, Suffolk and Nassau Counties) are more pro-borrower and are trying to keep borrowers in homes. For example, it is not uncommon to see owner occupied status applied to rentals. This has started to mollify during 2018 as redefaults on previously granted adjudicated properties and their same owners are reentering the process.

Vacant expediated foreclosure is NOT really an option if anyone, including squatters are in the home as it does not meet the condition of vacant and abandoned. Single largest issue in NY is the court backlog. References were made to New Jersey, which has created a single court in Trenton to address foreclosures (creates uniformity and streamlines process) and recent Pennsylvania law, which although is dealt in a county by county nature, has clear deadlines. Actions taken by attorneys attempting to move the process along can be met with admonishment or what could be construed as punitive in nature. The same challenging areas were identified.

Most recently the process for commercial loans does not experience any of the challenges and follows a different process entirely. Suffolk County created a centralized review and then it goes to judge for review/approval. The 5 boroughs have dedicated judges which helps and hurts due to the quantity.

When given the opportunity to correct the current system with a magic wand, the responses were:

1. Increase funding for court system to relieve bottleneck of foreclosure cases
2. Assign specific judges to handle foreclosures only
3. Create a single foreclosure court like NJ

Servicing Challenges

Presenters: Jodi Gaines and Candice Archibald

NY has the 13th longest time to conveyance at 21 months. The servicer will be held responsible for the cost to service the loan once the 30 days from FC Sale is exceeded unless granted an extension (typically 30-45 days not months). Using 21 months with no extension as the baseline would cost the servicer more than \$5500. There are also costs associated with the P&L to HUD which is calculated using the UPB and the interest rate (i.e. \$8990 for a loan with UPB of \$150K @ 3%) NY properties on average are vacant for 960 days (2.63 years) before they convey to HUD. The average loss on inspection and property preservation services is \$6616 (cannot pass to consumer) plus \$1700 in attorney fees and costs. When totaling the expenses associated with delays and the inability to receive reimbursement, the potential loss could exceed \$20K per property.

ML2013-18 (HOA & Utilities Fee Payment) has impacted the ability to convey timely. Prior to it taking effect, on-time conveyance was 50% and post implementation it is below 10%. Rather than rescinding the ML, the CWCOT Program was announced to allow properties to be sold to investors, who take responsibility/liability. Since this program has been introduced traditional conveyance has dropped dramatically with current stats for Q4 2018 registering at 80% CWCOT and 20% Traditional Conveyance. While this is favorable, the properties that are left to convey traditionally are the ones not even an investor will purchase and are more likely to be re-conveyed back to the servicer from HUD which makes them even more likely to be identified as a “Zombie property”. HUD has also recently introduced the Distressed Asset Stabilization Program (DASP) and Note Sales for non-performing properties so they do not have to take problem properties into their inventory and/or reduce financial strain on their fund.

As for reduction of costs to the servicer, it is important to “Check the Checkers” as they may also be at fault for unnecessary delays. Here were some suggestions to reduce timelines:

1. Service Transfers on properties in flight (Inability to prove everything done to prevent)
 - a. Better due diligence
 - b. Dedicate more staff
2. Prior year had an agenda for a dedicated court like a traffic court (both reps were not reelected)
3. Prior year discussion of moving this to a civil court similar to TX
4. Success by looking at surrounding states (PA & NJ). Florida had “Rocket Docket” in 2011 – bring back judges and focus on the aged cases.

Proposed Legislation for 2019: AB1800 – HOA fees must be paid during FC process by servicers. This could be something that would allow HOA to take a priority lien if the servicer does not pay, which could increase the speed of the FC but leave the servicer without the property.

NY Department of Financial Services (NYDFS) Update

Presenter: Peter Dean

At the height of registration there were 30K properties in the vacant and abandoned database, self-reported by servicers/registrants. As of the time of this meeting, there are 14K properties. That said, there are properties in the system multiple times due to different entries (spelling vs abbreviation of street/road/avenue etc.). There are also concerns that properties in the database may not have had their status updated since entry. NYDFS is asking that statuses be maintained/updated. They are disappointed in lack of expedited FC success for obvious reasons.

NYDFS has a provision to perform inspections on registered properties. That process started in 2018 and consists of 5 part-time inspectors that are looking at properties randomly, although there is not yet full state coverage. These inspectors are retired law enforcement personnel and they use iPads to complete their inspections which populates the NYDFS system and will allow for a violation report to be generated. It was also stated that a property that is ultimately issued a citation for corrective action will have been at one where multiple inspections have been completed without evidence of it being properly maintained or of any maintenance at all. Some penalties have been assessed and believes they have been fair in their enforcement and amount, although recipient may feel otherwise. There was no mention to expand the number of inspectors/inspections although NAMFS will follow-up to better understand if this is an opportunity.

As far as contacting NYDFS regarding properties, they advised that they prefer to deal with the entity that is listed as the concerned party on the registration. They have dealt with Property Preservation companies in the past but have received direction from some servicers/registrants

that they do not want the NYDFS to provide any information without their approval. As a workaround it was proposed that said companies register the property, however; this would be detrimental as the servicer is the responsible party. The NYDFS will issue letters/notices with a request for response within 14 days, NOT TO CURE within 14 days. The response back to DFS must include an update on any action taken, along with a timeline to address the items listed.

Liz Butler is primary contact at NYDFS for property registrations.

Property Preservation

Presenters: Eric Moore, Steve Meyer, Alfred Minisee and Chip Nolan

This was a challenging discussion as the presenters tried to explain their process and the limitations placed on the industry versus the expectations of the law. They articulated the difference between what is allowed to be done versus what NYDFS/Code wants to be performed. It was identified that many of the issues were Occupancy related and that the investor/insurer guidelines typically perform these only after the FC Sale has occurred and that due to the aforementioned delays in the FC process this leads to a stalemate. This is a real opportunity for improvement, but the solution must take the borrower into account to prevent unnecessary expense should they wish to return. That said, the law is intended to move vacant and abandoned properties through more quickly but as discussed earlier this is not the reality. Property registration database was briefly mentioned and concerns over duplication, search etc. were once again discussed.

Municipality

Presenters: Wade Beltramo, Sam Wells and Adam Zaranko

INTRODUCED LEGISLATION – Proposal to shorten redemption period on tax foreclosures from 2 years to 1 year and would use the definitions from AB 1308/1309. This legislation has already passed the NY Senate and is on the committee calendar of the Assembly for discussion this week. That would most likely address a portion of the problem properties. A review of the reason for delinquency has found that only 1/3 of delinquent properties in the municipalities are mortgage impaired which is quite the opposite of what is being portrayed in the media.

A review of vacant properties (residential and commercial) in the upstate area found that Buffalo has approximately 10K, Rochester – 2200, Syracuse – 1800, and Albany – 1100. As it related specifically to Albany, they advised that in order to make these properties viable and/or return them to tax revenue generating they had to take the following actions: update their zoning code, find/provide gap financing, work with servicers to get properties registered or relinquish them. Albany has ~30K total properties within the city limits and they have recently started using

drones to identify issues, especially on roofs of vacant properties in hopes of minimizing damage.

Upstate NY still has not recovered from 2008 recession. The factors for this are not just the sub-prime lending during the 2000s. The issues are systemic and from 1950 through 2010 include the general exodus from the region (50% population loss in Buffalo) and the hollowing of the city core to surrounding areas (Albany lost 27% of population but Albany County grew by 20%). These issues can result in a loss of Quality of Life (increased crime & fires plus decreased revenue for essential services).

NY has recently approved the creation of 10 additional Land Banks for 2019 (25 to 35). These 501c3 entities which are not government nor private businesses are needed. Land Banks cannot circumvent zoning or modify government. It would be wonderful if there could be bank financing that is more favorable or pooling resources so that Land Banks become more of an option.