

TESTIMONY OF
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On
BILL NO. 20-268, THE “Saving D.C. Homes from Foreclosure Clarification and Title Insurance
Clarification Amendment Act of 2013”

BEFORE
THE COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS



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WASHINGTON, D.C. 20004

Good morning Councilmember Orange, Committee members and staff. I am Chester McPherson, Deputy Commissioner for the Department of Insurance, Securities and Banking. I appear before you today to testify regarding the Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013.

This legislation covers two subjects: one, technical changes and clarifying amendments to the Title Insurance Producer and Insurer Acts of 2010 and the Health Maintenance Organization Act of 1996; and two, enhancements to the city's foreclosure mediation program.

To begin, let me briefly go over the changes regarding title insurance. The changes we are recommending today are important consumer protection measures with regard to title insurance.

As this Committee knows, the original Title Insurance Producer and Insurer Acts were enacted as a part of the Fiscal Year 2011 Budget Support Act of 2010. As such, the enacted laws did not have the benefit of a hearing. The clarifying and conforming amendments included in this bill are the product of reviews conducted by both the department and the industry.

The first change clarifies the financial responsibility prerequisites by imposing separate obligations for individual title insurance producers and their business entities. It also adds a surety bond condition to supplement the existing errors and omission and fidelity bond coverage requirements.

Second, the bill amends the law to ensure that a seller may not require, directly or indirectly, that a buyer purchase title insurance from any particular title producer or insurer.

Third, the legislation imposes an eight hour biennial continuing educational requirement for attorneys serving as title producers who are admitted to the bar of District of Columbia; a sixteen hour biennial requirement for resident title insurance producers; and a four hour biennial requirement for non-resident title insurance producers. The section also authorizes the commissioner to terminate the license of a non-D.C. resident producer any time their home state license is terminated, suspended or revoked.

And lastly, the bill removes a section of the Health Maintenance Organization Act that is no longer necessary in light of the Council's adoption of the Health Organizations Risk Based Capital requirements. While this amendment is unrelated to title insurance, we wanted to use this opportunity to work with the Committee to have this conforming amendment enacted and eliminate the confusion of the seemingly inconsistent provisions.

I will now discuss the other part of today's legislation—the city's foreclosure mediation program. The Saving D.C. Homes from Foreclosure Amendment Act of 2010 was approved by the City Council in November 2010. It created the meditation program, which our department runs. The program provides homeowners and lenders the opportunity to meet face-to-face to discuss alternatives to foreclosure.

Before I talk about the proposed enhancements, I would like to provide background on foreclosures in the District and the positive impact of the mediation program.

Before the law, the District of Columbia had one of the fastest and most lenient foreclosure processes in the country. Banks could foreclose by mailing a single notice stating that a property would be sold in 30 days. There were very few checks and balances on the

lender's decision to foreclose. Foreclosures in the District hit a 10-year high of 1,349 in fiscal year 2010.

In fiscal year 2011, foreclosures dropped to 566 and to only 89 last fiscal year. Some of the drop can be attributed to several national settlements forcing lenders to work with homeowners and other industry factors but, the mediation program also helped. From the inception of the program to June 1 of this year, 33 homes were saved through agreements to modify the loans (out of 51 completed mediation cases.) And there were four other agreements for alternatives such as short sale, deed-in-lieu of foreclosure and cash for keys.

Although the drop in foreclosures is good news, it may not last. In the fall of 2010 when the Council was first considering the legislation that created the mediation program, a number of high profile cases were filed against a number of national banks and servicers; and, as a result, there was some waning in the number of foreclosures filed by these banks. After various settlements and the payment of fines, banks have steadily increased their foreclosure activities. Here in the District, they have started to issue more notices of default, the first step toward foreclosure. This means that even as the real estate market improves, things could get tougher for some D.C. residents struggling to keep themselves and their houses afloat. That's why it's important we enhance the program through this legislation.

The department recommends changes in six areas: definition of a residential mortgage; the inclusion of an objective good faith standard; providing for judicial review and finality; extending the mediation period; setting mediation fees; and funding for housing counseling and legal assistance.

1. Definition Residential Mortgage

Based on feedback from lenders and stakeholders, the department believes the definition of “residential mortgage” should be amended to exclude any mortgage or debts incurred while acting as a business entity. The mediation program is intended to protect homeowners. The department supports this change.

2. Good Faith

The legislation requires everyone mediate in good faith. However, the definition of good faith was left to the rule-making process. The department supports defining a good faith standard in this legislation. Defining the standard would ensure the lender considers all alternatives to foreclosure. This standard also makes it clear to homeowners what they are eligible for in terms of modification programs and settlement agreements. In addition, homeowners would get written notice why they were denied for a program.

3. Finality and Judicial Review

The department also believes that the law should include provisions allowing the parties to seek judicial review of the mediation process. This change would let homeowners and lenders go before D.C. Superior Court to appeal a mediation determination. For instance, if it is decided through mediation that the lender can foreclose, the homeowner could appeal that determination in D.C. Superior Court.

In the bill under consideration, if neither party appeals within 30 days, the mediation becomes final and a final mediation certificate is issued. The final mediation certificate would

then be conclusive proof that the parties complied with the mediation process and it could be relied on by title insurers and bona fide purchasers.

4. Mediation Period

The department supports expanding mediation from 90 days to 180 days. Our experience with administering the program has shown that homeowners need additional time to prepare for mediation and consult with housing counselors. And lenders need time to complete the paperwork and analyze options for the homeowner. In Nevada, which has a non-judicial foreclosure process similar to the District, mediation can take up to 165 days. However, in Maryland, a judicial foreclosure state, the process can be as long as 255 days. The department consulted with housing advocates and the industry and they support extending the mediation period to 180 days.

5. Mediation Fees

The department also supports the amendment that would allow the Department of Insurance, Securities and Banking to set mediation fees by rulemaking. This lets the department change fees as necessary based on volume and feedback from stakeholders. The current mediation fee for homeowners is \$50; lenders pay \$300.

6. Counseling and Legal Assistance

Housing counseling and legal assistance can help homeowners throughout the mediation process. While the mediation administrator provides homeowners with information on housing counseling and legal assistance, there are limited funds to help pay for this resource. The department intends to use part of the funds from the National Mortgage Settlement to pay for

housing counseling and legal assistance for homeowners. Last year, five large mortgage servicers agreed to settle with the federal government and the attorneys general of 49 states and the District over foreclosure abuses. The District received an allocation of that settlement for housing relief; funds that will be used for this purpose and other programs. We are in the final stages of the procurement process for these programs and hope to announce more information shortly.

Conclusion

In conclusion, the department believes that the amendments we have discussed today will improve the foreclosure mediation program and title insurance protections. Thank you for the opportunity to testify and I would be happy to answer any questions.