

Property Group | December 2008

## Legislative Response to the Residential Mortgage Crisis

The current mortgage crisis has sparked legislative action in several states to modify foreclosure remedies and to provide additional protections to homeowners. It remains to be seen whether the Federal Government will also enact any nationwide measures. To date, the Federal Government has enacted modified foreclosure remedies applicable only to military veterans. The Housing and Economic Recovery Act of 2008 increased the mandatory stay of foreclosure proceedings from ninety (90) days to nine months after the end of military service. Additionally, the Act created the “Hope for Homeowners” program, a voluntary mortgage refinancing pro. Under the program, lenders provide new thirty (30) year fixed rate mortgages at no more than ninety percent (90%) of the current appraised value.<sup>1</sup> In return, the Federal Housing Administration assumes the mortgage in the event of borrower default. The program is restricted to qualified mortgages, which require, *inter alia* that the mortgage relate to the borrower’s primary residence and the refinanced value be no more than \$540,000.

It is also possible that individual servicers or mortgage lenders will offer modified terms to borrowers in loan portfolios managed or owned by those institutions. But, however many agencies or institutions become involved, these measures will have a significant impact on the private markets’ interest in, and pricing of, residential loan portfolios. Below is a brief state-by-state review of state legislative responses, in summary and chart form. We have also reprinted below a November 24, 2008 article by John L. Opar and Karen D. Holdridge of our Property Group appearing in the New York Law Journal addressing state action, with particular focus on New York State legislation.

<sup>1</sup> Responding to low participation levels, the Hope for Homeowners Board of Directors modified the new loan requirements by increasing the loan to value ratio to ninety-six and a half percent (96.5%) for certain loans and extending mortgage terms from thirty (30) to forty (40) years. See U.S. Department of Housing and Urban Development, News Release, Bush Administration Announces Flexibility for “Hope for Homeowners” Program, Nov. 19, 2008.

State response has tended to focus primarily on implementing longer periods of pre-foreclosure notice, mandating mediation and counseling sessions and providing or extending cure periods. Additionally, a few states have enacted legislation which provides that tenants may hold over in the premises after a foreclosure of the mortgaged property. The attached chart provides a state-by-state analysis of legislative responses to date to the current mortgage crisis. Enacted legislative responses include:

## I. Pre-Foreclosure Notice

The most popular state legislative response has been to require mortgagees to provide extended pre-foreclosure notice periods to mortgagors before filing a notice of default with the court. California, Colorado, Connecticut, Maryland, Massachusetts, Minnesota, New Jersey, New York and Virginia now mandate pre-foreclosure notice periods between thirty (30) and ninety (90) days. In addition to extended notice periods, the legislation typically requires mortgagees to provide additional information such as telephone numbers to special crisis hotlines which support and advise mortgagors facing foreclosure and other counseling services where available.

## II. Mandatory Mediation

Three states, Connecticut, Minnesota and New York, have implemented mandatory mediation and counseling between mortgagors and mortgagees. However, no state mandates that mortgagees agree to settle the default with mortgagors. Rather, the mediation typically must take the form of a face-to-face meeting between the mortgagor and a representative of the mortgagee whereby the mortgagor is provided with specific information relating to the status of the mortgage.

## III. Cure Rights

Two states, Massachusetts and Virginia, have implemented legislation which provides for mortgagors'

automatic right to cure a mortgage default. The length of the cure period is ninety (90) days in Massachusetts and thirty (30) days in Virginia. Mortgagees may not accelerate the mortgage debt during the cure period.

## IV. Provisions Relating to Tenants

Illinois and Minnesota have implemented legislation that allows tenants to remain in possession of foreclosed premises for extended periods. In addition, mortgagees must provide notice to tenants prior to initiating eviction proceedings.

## V. Introductory Rate Freeze

One state, New Jersey, has implemented legislation that requires mortgagees to provide notice prior to any reset of an introductory mortgage rate. Furthermore, mortgagees must grant a mortgagor's request of a three year extension of the introductory rate.

## STATE LEGISLATIVE ACTION IN RESPONSE TO MORTGAGE CRISIS

STATE	BILL/LAW NUMBER	EFFECTIVE DATE	PROVISIONS
California	Senate Bill No. 1137 / Session Laws 2008 Ch. 69	July 8, 2008 and remains effective through January 1, 2013.  Applies to loans made from January 1, 2003 to December 31, 2007 secured by residential real property and which are owner-occupied residences.	<u>Pre-Foreclosure Notice (30 days)</u> Mortgagee shall contact borrower in person or by telephone to assess borrower's financial situation and to explore options to avoid foreclosure. Mortgagee shall advise borrower that he/she has the right to request a subsequent meeting with mortgagee, which shall occur within 14 days. Mortgagee shall also provide borrower with telephone number of United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Mortgagee, trustee, beneficiary or authorized agent may not file a notice of default until 30 days after notice is provided to borrower or after satisfying "due diligence" requirements. Mortgagee shall include a declaration stating the notice requirement has been satisfied with the filing of notice of default.  Law applies to foreclosure actions initiated prior to effective date by requiring that mortgagee either file a notice of rescission of the default notice or declare that (i) borrower was contacted to assess financial situation and to explore options to avoid foreclosure or (ii) list the efforts made to contact borrower in the event contact was not made.
Colorado	House Bill No. 08-1042 / Session Laws 2008 Ch. 440	August 1, 2008	<u>Pre-Foreclosure Notice (60 days)</u> Mortgagee shall at least 30 days before filing a notice of election and demand, and at least 30 days after default, mail a notice addressed to the debtor containing the telephone number of the Colorado Foreclosure Hotline and the direct telephone number of the mortgagee's loss mitigation representative.
Connecticut	House Bill No. 5577 / Public Act 176 of 2008	July 1, 2008	<u>Pre-Foreclosure Notice (up to 60 days)</u> No judgment of strict foreclosure nor any judgment ordering foreclosure shall be entered into in any action instituted by mortgagee unless (1) notice has been given in accordance with the act, and time (60 days) has expired and (2) a determination has been made on the mortgagor's application for emergency mortgage assistance payments or the time periods set forth have expired, whichever is earlier. Mortgagee shall provide notice by registered or certified mail, postage prepaid.  <u>Foreclosure Mediation Program</u> Mortgagor has 60 days from the date of notice in which to (1) have a face-to-face meeting, telephone or other conference, acceptable to the Connecticut Housing Finance Authority, with mortgagee or a face-to-face meeting with a consumer credit counseling agency to attempt to resolve the delinquency or default by restructuring the loan payment schedule or otherwise and (2) contact the Authority, at an address and phone number contained in the notice, to obtain information and apply for emergency mortgage assistance payments.  Effective from July 1, 2008 through July 1, 2010, the mediation process shall be court administered. The court administered mediation program shall last 60 days, with the possibility of a 10 day extension at court's discretion.
Georgia	Senate Bill No. 531 / Act 576 of 2008	May 13, 2008	Requires foreclosure be conducted by the current owner or holder of the mortgage, as reflected by public records.

STATE	BILL/LAW NUMBER	EFFECTIVE DATE	PROVISIONS
Hawaii	Senate Bill No. 2454 / 2008 Act 138	June 3, 2008	Upon request by mortgagor, mortgagee shall identify the amount to cure the default, together with the amount of the foreclosing mortgagee's attorneys' fees and costs, and all other fees and costs estimated to be incurred by the foreclosing mortgagee related to the default prior to the auction.
Illinois	House Bill 4195 / Public Act 95-0826	August 14, 2008	<u>Notice of Right to Remain in Possession</u> With respect to residential real estate, mortgagee shall provide notice to mortgagor, even if mortgagor has previously been held in default, that mortgagor has right to remain in possession for 30 days after entry of an order of possession.
	Senate Bill 2721 / Public Act 95-0933	August 26, 2008	<u>Notice to Tenant in Possession</u> In a case of foreclosure where tenant is current on his or her rent, or where timely written notice to whom and where the rent is to be paid has not been provided to tenant, or where tenant has made good-faith efforts to make rental payments in order to keep current, any order of possession must allow tenant to retain possession of the property covered in his or her rental agreement (i) for 120 days following the notice of the hearing on the supplemental petition (available only if tenants are known) that has been properly served upon tenant, or (ii) through the duration of his or her lease, whichever is shorter. Notice may be mailed up to 90 days after the order of possession has been entered. Alternatively, no mortgagee in possession, receiver or holder of a certificate of sale or deed, or purchaser who fails to file a supplemental petition under this subsection during the pendency of a mortgage foreclosure shall file a forcible entry and detainer action (available even if parties are unknown) against a tenant of the mortgaged real estate until 90 days after a notice of intent to file such action has been properly served upon tenant. [Practical effect is to delay possession by a minimum of 90 days.]
Maryland	House Bill 365 / Session Laws 2008 Ch. 2	April 3, 2008	<u>Pre-Foreclosure Notice (90 days)</u> Action to foreclose may not be filed until the later of 90 days after a default or 45 days after notice of intent to foreclose is sent. Secured party shall send notice to mortgagor and the record owner and send a copy to the Commissioner of Financial Regulation.
Massachusetts	House Bill 4387 / Acts of 2007 Ch. 2	May 1, 2008	<u>Pre-Foreclosure Notice (90 days)</u> Mortgagee shall not accelerate maturity of the unpaid mortgage balance obligation or otherwise enforce the mortgage until at least 90 days after the date of a written notice is given by mortgagee to mortgagor.  <u>Automatic Right to Cure</u> Mortgagor shall have a 90 day right to cure a default of a required payment by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of such mortgage. Right to cure shall be granted once during any 5 year period. Mortgagor is not liable for any attorneys' fees relating to mortgagor's default or any other fees attributable to the exercise of the right to cure a default.

STATE	BILL/LAW NUMBER	EFFECTIVE DATE	PROVISIONS
Minnesota	H.F. 3420 / Laws of Minnesota 2008 Ch. 341, Art. 5	August 1, 2008	<p><u>Pre-Foreclosure Notice of Counseling Services</u> Before filing notice of pendency, foreclosing party must provide to mortgagor information that foreclosure counseling services are available and transmit the homeowner's name, address, and telephone information to an approved foreclosure prevention agency.</p> <p><u>Mediation Counseling Upon Mortgagor's Request</u> Upon mortgagor contacting an authorized foreclosure prevention agency, mortgagee shall provide the name and telephone of mortgagee's agent, who must be authorized to discuss with the authorized foreclosure prevention agency or mortgagor the terms of the mortgage and negotiate any resolution to mortgagor's default. Mortgagee need not reach a resolution relating to mortgagor's default.</p>
	H.F. 3476 / Laws of Minnesota 2008 Ch. 177	August 1, 2008	<p><u>Tenant Right to Holdover</u> Upon foreclosure of a mortgage, the person entitled to the premises may recover possession by eviction after tenant has received at least 2 months' written notice to vacate no sooner than 1 month after the expiration of the time for redemption or termination. The time period for redemption or termination may be either 6 months or 12 months, depending on whether the mortgage falls under a certain category.</p>
New Jersey	A.B. 2780 / Public Law 2008, Ch. 86	September 15, 2008 and remains effective through January 1, 2011	<p><u>Pre-Foreclosure Notice (10 days)</u> Mortgagee shall provide a series of written notices of his/her intention to foreclose. Mortgagee shall send notice within 10 days of issuing the notification of intention and again within 10 days from the time mortgagee applies for entry of judgment.</p> <p><u>Notice of Introductory Rate Reset</u> The lender shall provide written notices, separate from other correspondence, to borrower at 60-day and 30-day intervals prior to the date on which the introductory rate resets.</p> <p><u>3 Year Extension of Introductory Rate</u> Lender shall provide borrower with a 3 year extension period upon borrower's request provided request is made within 90 days of the date which lender sent notice.</p>
New York	S.B. 8143 / 2008 Session Laws Ch. 472	September 1, 2008	<p><u>Pre-Foreclosure Notice (90 days)</u> Mortgagee shall provide at least 90 days notice before the commencement of legal action against mortgagor.</p>
		August 5, 2008	<p><u>Mandatory Settlement Conference</u> Within 60 days after the date when proof of service is filed with the county clerk, the court shall hold a mandatory settlement conference.</p>
		November 1, 2008	<p><u>Mortgagor Defense to Foreclosure Proceeding</u> Mortgagor may assert as a defense to a foreclosure proceeding any violation of new banking law § 6-m, which prohibits various practices such as negative amortization and increased interest rates upon default.</p>

STATE	BILL/LAW NUMBER	EFFECTIVE DATE	PROVISIONS
Virginia	Senate Bill 797 / 2008 Session Ch. 878	July 1, 2008 and remains effective through July 1, 2010	<p><u>Pre-Foreclosure Notice (10 business days)</u> At least 10 business days before a lender of a "high-risk mortgage loan" sends notice of acceleration, the lender must provide written notice to borrower.</p> <p><u>30 day Grace Period/Right to Cure</u> Upon mortgagor's request, mortgagee shall not accelerate the loan for 30 calendar days from the date of mortgagor's request.</p>

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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## TRENDS IN REAL ESTATE AND TITLE INSURANCE

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# Insight For Investors: The New Residential Loan And Foreclosure Laws

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THE LAST SIGNIFICANT downturn in the residential real estate market now dates back more than 15 years. The collapse of numerous savings and loan associations and related events sparked a significant public outcry but little in the way of state legislative action. The current downturn differs from its immediate predecessor in that several states, including New York, have reacted swiftly and aggressively to implement legislation adjusting underwriting standards for residential loans and modifying foreclosure remedies.

This legislation may have laudable social goals. However, it may also have substantial, perhaps unintended, consequences on the liquidity of residential loans and thus the availability and pricing of capital for the residential debt market. That in turn might limit the access to mortgage loans for the very classes of people that the legislation is intended to benefit.

Today the markets remain largely dormant, with the effect of the federal recovery programs still somewhat uncertain. Most likely, however,

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there will come a time when private capital reenters the fray and attempts to acquire and recover against residential mortgages. It remains unclear whether these loans will trade among private parties—banks to private acquirers—or whether the federal government will be directly involved as buyer and then seller of these loans or at least as an intermediary in facilitating transactions.

Whatever the process, these loans will eventually be traded, and buyers will be forced to take into consideration the new state legislation in assessing the trading and recovery value of loan pools in which they are interested. Future capital investment for new loan originations will also have to take into consideration the requirements of this legislation.





### New Underwriting Standards

Historically (that is, pre-September 2008), the underwriting standards applied to closed loans were not subject to re-evaluation. The foreclosure process was available as a back-stop against later events adversely affecting the borrower's ability to make payments (such as job loss or market downturn) and also against any initial underwriting gaffes.

In New York, and we can assume other states will follow suit, lenders can no longer seek foreclosure if there were "errors" in the initial underwriting of the loan that run up against the new legislative standards. Effective Sept. 1, 2008, new residential home loans will have to meet more rigorous underwriting standards.<sup>1</sup>

Although the statute does not expressly apply the standards retroactively or to pre-existing loans, it does require that all foreclosure petitions filed after Sept. 1, 2008, be accompanied by a lender certification of compliance with the new underwriting requirements contained in the new Section 6-m of the New York Banking Law, thus perhaps making the statute effectively retroactive.<sup>2</sup>

Given the recency of the statute, there is, of course, no applicable case law; nor does the legislative history offer much clarity on the topic, other than to confirm that the purpose of the law is to "provid[e] additional protections and foreclosure prevention opportunities for homeowners at risk of losing their homes[.]"<sup>3</sup> Thus, any loan purchaser would be well advised to assume that the statute will apply to future foreclosures of loans originated before Sept. 1, 2008.

The new New York underwriting standards mandate that:

(i) upon evaluation of the borrower financials, the lender can make a good faith conclusion that the borrower can repay the subject loan on the proposed terms and conditions, including the payment of all required real estate taxes and insurance premiums, and

(ii) if the lender is aware of additional debt being issued and secured by the same home, the lender must document the borrower's ability to repay all of the combined debt.

The underwriting conclusions must generally be based on the borrower's credit history, existing and expected income, employment, existing obligations and "other financial resources."<sup>4</sup>

The requirement of a lender certification of compliance with the new underwriting standards could therefore deprive a lender of its foreclosure remedies. Originating lenders can of course implement procedures to assure compliance. But what of a buyer of the loan in the secondary debt market?

The buyer likely will not have access to all of the initial underwriting materials or any real assurance that any initial underwriting

materials provided to it are complete and correct. Recall also that the new New York underwriting standards require a "good faith conclusion." How can a loan purchaser in a later foreclosure certify with respect to initial underwriting that it was not party to?

Given that the legislation is primarily for the protection of homeowners, will courts permit knowledge qualifiers in the certificates? The loan purchaser is left with the query, "How do I certify that which I do not know?" It is a question that is made even more difficult by the existence of catch-all categories such as a requirement to review "other

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financial resources."

If a certification of the "unknowable" is required to foreclose, then purchasers of loans from originating lenders must secure necessary comfort during the loan acquisition process. In that case, proper "steps" might include broader representations and warranties from the seller regarding its initial underwriting, confirming the originating lender's underwriting standards as against the new requirements. Of course no representation is worthwhile without a sufficient survival period (that is, through completion of the foreclosure process) and recourse to a credit-worthy entity that will be available at the time. But will sellers be willing to accept such liability?

The foregoing discussion assumes a sale by an originator of the mortgage loan. What can a purchaser from a secondary holder of a mortgage loan expect to receive from its seller (other than what the originator seller provided)? And how can the original purchaser anticipate what a secondary purchaser will require or what the courts may decide as to certifications requirements between purchase and resale? Furthermore, all of this understates the complexity of a liquid secondary market in mortgages which is not as linear as one seller and one purchaser.

### Forbidden Loan Terms

The recent New York legislation also forbids the use of certain loan terms in subprime loans originated after Sept. 1, 2008.<sup>5</sup> It voids ab initio

provisions in loan documents containing such terms and provides borrowers with a defense to foreclosure if the defaulted loan included the proscribed terms.

As mentioned above, the law specifically requires any foreclosure petition to contain a certification of compliance with the underwriting standards in Section 6-m of the Banking Law. Can a foreclosing lender skirt the issue because the applicable loan was originated before Sept. 1, 2008? That conclusion seems inconsistent with the legislature's apparent intent to apply the new underwriting standards to loans subject to foreclosure, whenever originated.

For the secondary purchaser, many of the terms at issue are easily recognized and can be confirmed in the initial due diligence review. Inclusion of a payment option that permits borrowers to choose negative amortization is an example.<sup>6</sup> Similarly recognizable is the presence of default interest rates and limitations on advance payments.<sup>7</sup>

Banking Law §6-m(2)(c) prohibits any increase in interest rates and more specifically states that, "[n]o subprime home loan may contain a provision which increases the interest rate after default."<sup>8</sup> While this provision explicitly applies only to those mortgages originated after Sept. 1, 2008, the law's new foreclosure provisions also implicate loans originated prior to such date.

Mortgagors are provided with a defense to foreclosure if the mortgage does not comply with §6-m.<sup>9</sup> Thus, secondary purchasers will be practically unable to realize any benefit of default interest. Even if not utilized, will the mere presence of a default rate provision make a mortgage unenforceable in New York?

Other prohibited terms are either not easily discoverable in the documents or have not been clearly outlined in the legislation or interpreted by the courts. Examples of the former include:

(i) the required payment by borrower of prohibited fees such as modification or deferral fees that do not otherwise decrease the borrower's debt liability,

(ii) "loan flipping" (loans to refinancing borrowers that do not contain terms sufficient to provide a new benefit to the borrower),

(iii) loans refinancing special mortgages that were otherwise subsidized or guaranteed by a municipality, state or non-profit organization, or

(iv) missing required loan counseling disclosures.<sup>10</sup>

A few of these may be susceptible of diligence. Others may argue for seller representations and recourse. Yet, even the selling lender would have a difficult time proving that prohibited fees were not paid and that required disclosures were made, absent a separate certification or



estoppel from the borrower. And again, what of the purchaser from a party other than the originating lender?

As mentioned above, new legislation also provides foreclosure defenses if loan documents contain provisions that are otherwise against public policy, such as oppressive mandatory arbitration clauses. Loan purchasers should view mandatory arbitration clauses in subject loans not as a lender protection (as they were likely meant to be) but as red flags because a court could later interpret a mandatory arbitration provision as being "unfair" or "oppressive," thereby providing the borrower with a foreclosure defense.

Unfortunately the remedies and protections suggested for purchasers elsewhere in this article—additional diligence, indemnities and estoppels—will not protect against legislative language that is broad and open to future interpretation. The purchaser will have to rely on the judgment of its business and legal advisors given the borrower-friendly market in which the loan may be foreclosed.

## Proof of Ownership

Even before the most recent flurry of mortgage foreclosures, courts began to pay stricter attention to issues of loan ownership.

In many cases this meant requiring the production of the mortgages together with any and all assignments leading to the foreclosing lender's ownership. Attempts to re-create secondary loan ownership through presentation of the original note and/or an allonge to the original note together with the original mortgage may not be sufficient where proof of assignment of the actual mortgage to the foreclosing lender cannot be similarly presented.

An oft-cited case involves Judge Christopher A. Boyko's decision in the U.S. district court in Cleveland, Ohio.<sup>11</sup> Judge Boyko dismissed a foreclosure complaint against 14 properties brought by Deutsche Bank because Deutsche Bank could not produce the mortgage documents evidencing its ownership. Instead legal counsel for Deutsche Bank proffered a document that they argued evidenced the intent to convey the mortgages to Deutsche Bank. The court deemed the evidence to be insufficient to establish ownership.

Additionally, the recent New York legislation requires an affirmative certification by the foreclosing lender that it is the holder of the note and the mortgage at the time of filing. Although there is no specific requirement regarding the presentation of an original note, mortgage and any applicable assignment documents, it goes without saying that in a borrower-friendly environment the cautious buyer will not acquire a loan unless original counterparts of all of the mortgages and assignments and notes and allonges are available for delivery.

## Extended Foreclosure Process

The shortest default cure period in most loan documents relates to the borrower's obligation to make its monthly debt service payment. Many states are now imposing foreclosure notice requirements and additional cure periods and mandatory settlement proceedings that effectively extend these cure periods.

The impact of the new requirements on originating lenders and buyers of existing debt is obvious: An otherwise already lengthy foreclosure process is further extended by a de facto extended cure period. Such extended pre-foreclosure requirements will also directly affect the loan pool advance requirements which are an integral part of the underwriting of securities linked to the pool.

The new notice periods in New York require that the lender give the defaulting borrower upwards of 90 days' prior written notice before filing the foreclosure petition. A failure to provide the notice gives the borrower a defense to foreclosure. As with any new legislation the details of the notice requirements have yet to be thoroughly explored.

For example, although the New York statute specifies that the notice need only be given once in a 12 month period, it does not address the application of the requirement where notice is given and followed by a borrower payment 10 days later. If this same borrower defaults in the following month, is a new notice required for 80 days? Further, if a notice has been provided and the loan subsequently transferred to a new lender, does the prior notice period apply to the assignee or is a new notice requirement triggered by the assignment?

The severity of the impact on the lender's foreclosure rights requires immediate attention from both originating and investing lenders alike, and the only safe answer is, for the moment, to provide 90 days' prior written notice in every event.

Massachusetts takes the notice requirement a step further by requiring not only a 90-day notice period prior to filing the petition, but by also giving homeowners a one-time (in any five year period) 90-day cure period for payment defaults.<sup>12</sup> Unlike the New York statute, the Massachusetts statute specifies that the five-year limitation applies notwithstanding transfers of the loan during such period.

Similarly, several states, including New York, Connecticut<sup>13</sup> and Pennsylvania<sup>14</sup> have instituted mandatory settlement conferences that must take place within either 30, 45 or 60 days after the filing of the foreclosure petition. These conferences may extend the foreclosure time frame. To the extent that the conferences yield a settlement, the time frame is obviously shortened, but the courts are not restricted in the number of follow-up conferences that they may schedule.<sup>15</sup>

The lack of time-frame regulation leaves the foreclosure process open-ended. For the investor in sub-prime portfolios, the inability to predict collateral realization makes underwriting the investment a difficult prospect.

## Conclusion

None of the foregoing is intended as critical of recent state legislation. However, the practical consequences should be explored, especially as they may substantively impact the very homeowners the legislation is intended to protect.

The new legislation requirements may impair realization upon the related loan collateral, which will certainly limit capital available to hold or acquire such mortgage loans. If acquired by the federal government, will the government be required to create overriding federal rules in order to avoid defaults without remedies?

If these mortgage loans (and future mortgage loans) are ultimately intended to have value in the private sector, then approaches that permit effective realization from available remedies will need to be developed. Otherwise, capital sources will simply move to other, more attractive, opportunities.

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1. See 2008 Sess. Law News of N.Y. Ch. 472 (S. 8143-A) (McKINNEY'S).

2. *Id.* at §6-m(13).

3. Memorandum in Support from Introducer (Sen. Farley) of Senate Bill S8143A (2008) (on file with authors).

4. 2008 Sess. Law News of N.Y. Ch. 472 (S. 8143-A).

5. See *id.* at §6-m(2)(a)-(q).

6. *Id.* at §6-m(2)(b).

7. *Id.* at §6-m(2)(c)-(d).

8. *Id.* at §6-m(2)(e).

9. *Id.* at §6-m(13).

10. 2008 Sess. Law News of N.Y. Ch. 472 (S. 8143-A) §6-m(2)(e), (f), (i), (j).

11. *In re Foreclosure Cases*, 2007 WL 3232420 (N.D. Ohio Oct. 31, 2007).

12. Chapter 206 of the Acts of 2007.

13. 2008 Conn. Act 176 7.

14. Residential Mortgage Foreclosure Diversion Pilot Program; Joint General Court Regulation No. 2008-01, 38 Pa.B. 2049 (May 3, 2008).

15. Note that the Connecticut statute does mandate that the mediation period may not last more than 60 days without special court approval. 2008 Conn. Act 176 §7.