
Bill calls for court OK to foreclose

By Jenifer B. McKim

Globe Staff / December 6, 2010

Secretary of State William F. Galvin plans to submit a bill next month that would force Massachusetts mortgage lenders to get court approval before seizing homes, in an effort to protect homeowners and address concerns about how foreclosures are conducted.

Galvin said he will revive a proposal that state lawmakers rejected two years ago because of new questions about the validity of titles for foreclosed properties — an issue housing specialists say is hampering the state's real estate market.

"Unless we do something to clean up the titles in these properties we are going to have a big continued problem," Galvin said. "You aren't going to straighten out the economy of the state until this housing thing gets figured out."

Massachusetts is one of 27 states that do not require foreclosures to be reviewed by a judge.

Lenders and some real estate lawyers say mandating judicial approvals would create another level of bureaucracy that would delay the foreclosures and, in turn, slow the housing market's recovery.

Indeed, foreclosures often take more time in states that require courts to sign off on them. The mortgage giant Fannie Mae, for example, estimates that it can take more than 180 days to complete a foreclosure in states with judicial oversight of foreclosures, compared with 90 days in Massachusetts.

Galvin, however, said that court oversight would help resolve the uncertainties about titles that have put the future of many properties in limbo. "You can create a very fast process and provide some finality," he said.

Geoff Walsh, a staff attorney with the nonprofit National Consumer Law Center, based in Boston, said a longer timetable for foreclosures would give owners and lenders an opportunity to find other solutions.

"Allowing that time for the homeowner and the lender to communicate, particularly when there is some judicial supervision, is much more beneficial," Walsh said. "The lenders lose a tremendous amount of money in completing a foreclosure."

Currently, lenders in Massachusetts must go through a series of steps before taking a home, including — in many cases — allowing for a 150-day waiting period before seeking foreclosure.

They must also publish a notice in a newspaper, submit a petition to the state Land Court, and warn an owner 14 days prior to auctioning a property.

Kathleen C. Engel, a Suffolk University Law School professor who specializes in mortgage law, said recent evidence of widespread problems with foreclosure procedures shows the need to have courts determine whether a lender has the legal right to seize a home.

"It looks like there are hundreds, potentially thousands, of situations where the lenders didn't have standing to bring foreclosure claims," she said.

The proposed legislation comes as concerns about foreclosure practices escalate nationwide.
