

Merrimack Valley

housingreport

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University of
Massachusetts
Lowell

MIDDLESEX NORTH
REGISTRY OF DEEDS

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Housing Trends in 2010: What Will 2011 Bring?.....	1
Ibanez Throws Many Foreclosures into Doubt.....	2

Housing Trends in 2010: What Will 2011 bring?

By David Turcotte

As the Merrimack Valley Housing Report enters its fourth year in 2011, we see mixed trends resulting from an analysis of 2010 regional housing data. On the sales side, deeds filed were down in three of four major cities during 2010 when compared to 2009, as deeds recorded declined in Lawrence -10% (1,168 to 1,056), Methuen -9% (955 to 872), Lowell -7% (1,684 to 1,559). On the positive side, Middlesex North Registry of Deeds area towns saw deeds increase 2% (3,750 to 3,831) and Haverhill go up by 1% (1,134 to 1,144). However, a comparative analysis of sales or deeds filed during the last quarters of 2010 and 2009 saw decreases in all of these areas with Methuen down -22% (274 to 214), Lowell -17% (438 to 363), Haverhill -5% (317 to 301), Lawrence -4% (291 to 277) and , Middlesex North Registry of Deeds area towns -4% (1,064 to 1,026).

Throughout the region, the number of foreclosure deeds

jumped in 2010 when compared to 2009 with Middlesex North Registry of Deeds area towns increasing 68% (155 to 260), Methuen 36% (75 to 102), Lowell 33% (245 to 325), Haverhill 22% (148 to 181) and Lawrence 7% (227 to 242). Conversely, we saw foreclosure deeds recorded decrease in the Merrimack Valley during the last three months of 2010 when compared to the same period in 2009. Methuen witnessed the largest quarterly decline with -78% (32 to 7) followed by Lawrence -63% (57 to 21), Haverhill -51% (37 to 18), Middlesex North Registry of Deeds area towns - 46% (52 to 28), and Lowell -42% (67 to 39).

The number of orders of notice, also known as “petitions to foreclose” (which begins the formal foreclosure process) followed the same pattern as foreclosures in 2010 with increases of 53% (388 to 594) in Middlesex North Registry of Deeds area towns, 36% (193 to 262)

Con't on pg 3

Deeds, Mortgages, Foreclosures and Orders of Notice Recorded

December 2009 and December 2010 compared

	Haverhill		Lawrence		Lowell		Methuen	
	Dec-09	Dec-10	Dec-09	Dec-10	Dec-09	Dec-10	Dec-09	Dec-10
Deeds	105	109	101	108	129	126	75	78
Mortgages	167	227	127	133	211	252	160	204
Foreclosure Deeds	18	4	16	6	20	8	20	3
Orders of Notice	28	4	50	14	52	22	20	2

***Ibanez* throws many foreclosures into doubt**

By Richard P. Howe Jr.

On January 7, 2011, the Massachusetts Supreme Judicial Court issued a decision in *US Bank v Ibanez* (SJC-10694), upholding a lower court ruling that invalidated a mortgage foreclosure due to missing documentation. The holding in *Ibanez* is retroactive and throws into doubt the validity of many titles that are derived from previous foreclosures. While only time will reveal the scope of the problem, the case makes clear that the true cost of the shoddiness of the lending industry cannot yet be fully calculated.

Ibanez and a companion case, *Wells Fargo v LaRace*, both involved the foreclosure of mortgages on single-family residences in Springfield, Massachusetts. The facts of *Ibanez* are as follows: In December 2005, Antonio Ibanez borrowed \$103,500 from Rose Mortgage Company to purchase a property in Springfield. As security for the loan, Ibanez executed a mortgage in favor of Rose Mortgage. As was the prevailing practice in the lending industry in 2005, Rose immediately injected the Ibanez loan into the securitization stream, transferring it to Option One which transferred it to Lehman Brothers which transferred it to Structured Asset Securities Corporation which transferred it and 1200 other mortgages to US Bank as trustee for a pool of mortgage-backed securities that were then sold to investors. As was also the prevailing practice in the lending industry at the time, the legal documents needed to properly effectuate the various transfers were either incomplete, inaccurate or non-existent. (The facts of *LaRace* are substantially similar to *Ibanez* and are omitted due to space considerations).

Mr. Ibanez soon defaulted on his loan and in the spring of 2007, US Bank commenced foreclosure proceedings, purchasing the property as high bidder at the July 5, 2007 foreclosure auction. However, when US Bank tried to sell the property to a third party, questions arose about the validity of the foreclosure since the documents on record at the local registry of deeds did not trace the ownership path of the mortgage to US Bank from Rose Mortgage.

To rectify this, US Bank filed a Petition to Quiet Title with the Land Court, seeking a ruling that it did possess clear title to the property because everything that had occurred comported with prevailing practice in the lending industry. The Land Court judge ruled otherwise, holding that because US Bank failed to produce contemporaneous written proof that it was the assignee of the Ibanez mortgage, US Bank did not have the legal authority to conduct the foreclosure and its title was therefore invalid. US Bank appealed the Land Court decision and the Massachusetts Supreme Judicial Court heard the case on October 7, 2010 on direct appellate review.

In upholding the ruling of the Land Court judge, the SJC decision makes clear that a recorded (at the registry of deeds) or even a recordable assignment is not required to effectively pass title when a mortgage is assigned from one entity to another. What is required is evidence of some writing or writings that establish a chain of ownership of the mortgage from the loan originator to the entity conducting the foreclosure. The opinion suggests that documents like the trust agreement between investors (which was present in *Ibanez*) or the mortgage loan schedule (which was present in *LaRace*) offered by the banks as evidence of the assignments, may have been sufficient had they identified these particular mortgages with "adequate specificity." Such was not the case, however.

What are the implications of *Ibanez*? Any foreclosure – past, present or future – that lacked specific, tangible, contemporaneous proof of pre-foreclosure transfer of the mortgage to the entity conducting the foreclosure, is invalid since the foreclosing entity would not have the legal authority to conduct the foreclosure. This ruling not only effects foreclosing lenders, it effects those who have purchased previously foreclosed properties from those lenders.

Here is what I think will happen: For every foreclosure that has occurred, the first step will be to search for the necessary pre-foreclosure assignments. If

the assignments are on record and in the proper chronological sequence, then that should end the inquiry. If assignments are missing or out of order, then I think that will qualify as a defect in the title. Whether that defect is curable is a question of fact in each case. Can the entity that conducted the foreclosure produce sufficient evidence to persuade a judge (or at least the next attorney rendering an opinion on the title) that

the assignment was effectuated before the foreclosure auction. If such evidence is not forthcoming, then the defective title remains.

I can't quantify how many foreclosures fall into this category, but given the shoddiness of the overall documents I saw being recorded throughout the recent housing boom, I suspect there are quite a few. █

Housing Trends in 2010: What will 2011 bring?
Con't from pg 1

Methuen, 23% (446 to 549) in Lowell, 21% (259 to 313) in Haverhill and 7% (416 to 447) in Lawrence. Nonetheless, like foreclosures, the number of "petitions to foreclose" recorded during the last quarter of 2010 dropped significantly from the last quarter of 2009. Lawrence saw the biggest reduction with -65% (143 to 50), then Lowell -49% (164 to 83), Methuen -48% (79 to 41), Middlesex North Registry of Deeds area towns -40% (146 to 87), and Haverhill -29% (143 to 101).

The number of mortgages (new and refinanced mortgages) filed in 2010 was down from 2009 totals with Methuen leading the percent decline with -14% (2,181 to 1,866), followed by Lawrence -9% (1,368 to 1,250), Middlesex North Registry of Deeds area towns -6% (11,927 to 11,200), Haverhill -5% (2,077 to 1,974) and Lowell -5% (2,592 to 2,474). Nevertheless, due to record low interest rates, mortgages recorded in the last three months of 2010 were generally higher within the region when compared to 2009 with Middlesex North Registry of Deeds area towns increasing 53% (2,594 to 3,966), Haverhill 21% (520 to 627), Methuen 21% (497 to 602) and Lowell 10% (668 to 736). On the other hand, mortgages in Lawrence decreased slightly at -1% (347 to 344).

What should we expect to see in 2011? Many observers expect deed filings (sales) to remain low in most Merrimack Valley cities and towns for at least the first

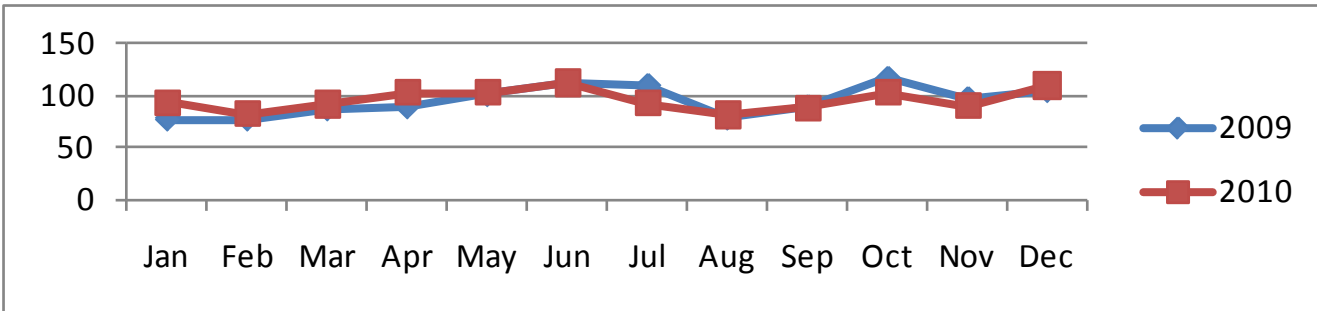
half of 2011. The key to improving sales numbers will be the regional economy and the rate of growth. Most economists expect some economic growth, but at levels below what would be needed to significantly increase housing sales activity. Accordingly, housing prices are anticipated to remain flat in most communities, but we could see modest decreases in value within some areas.

The biggest question mark is whether foreclosures will continue to decline as we saw during the last three months or will foreclosure deed numbers rise again? Many observers attribute the recent drop to the foreclosure moratoriums initiated by many national lenders in response to reports of improper actions and filing procedures during the foreclosure process, as well as concerns that the Massachusetts Supreme Court would uphold the Springfield Land Court decision (see Dick Howe's article). RealtyTrac Inc., a firm that tracks foreclosures predicts that foreclosures will soar to higher levels in 2011 than 2010, as about 5 million borrowers in the U.S. are at least 60 days behind on their mortgages. However, the foreclosure problem is less severe in Massachusetts than many states. While we cannot be certain, we assume foreclosure deed filings will increase beyond levels in the last quarter of 2010 throughout the region, but we anticipate that 2011 foreclosure numbers will be lower than last year's totals. █

Deeds, Mortgages, Foreclosures and Orders of Notice Recorded for the City of Haverhill
2009 and 2010 month by month comparison

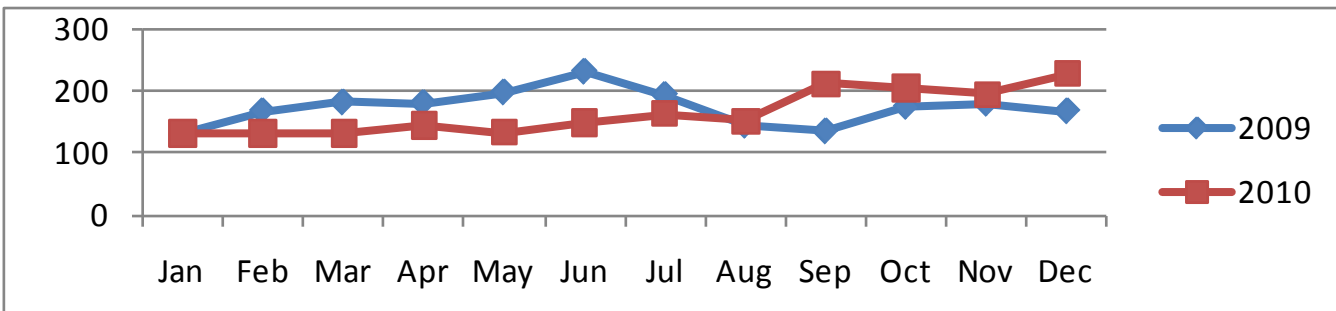
Deeds

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Deeds '09	77	77	87	89	101	111	109	78	88	116	96	105	1134
Deeds '10	93	82	91	102	102	112	92	81	88	102	90	109	1144



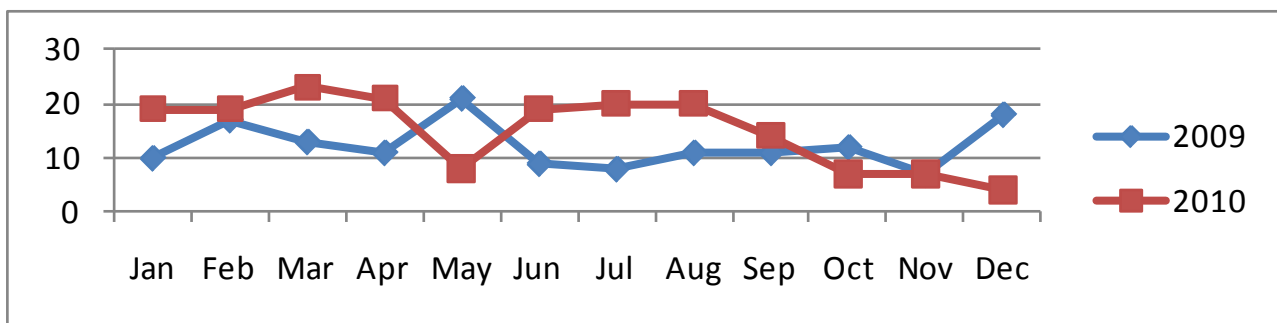
Mortgages

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Mortgages '09	130	167	181	180	197	230	193	144	135	174	179	167	2077
Mortgages '10	131	131	132	145	133	149	163	151	212	205	195	227	1974



Foreclosures

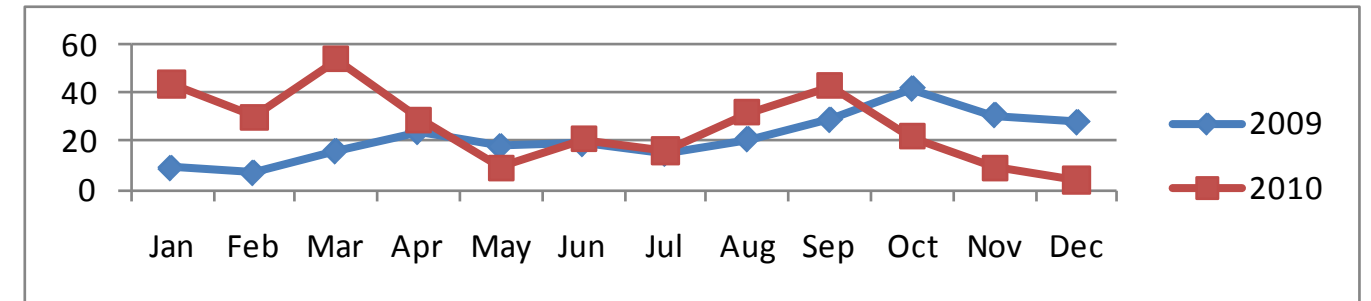
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Foreclosures '09	10	17	13	11	21	9	8	11	11	12	7	18	148
Foreclosures '10	19	19	23	21	8	19	20	20	14	7	7	4	181



City of Haverhill, Con't

Orders of Notice

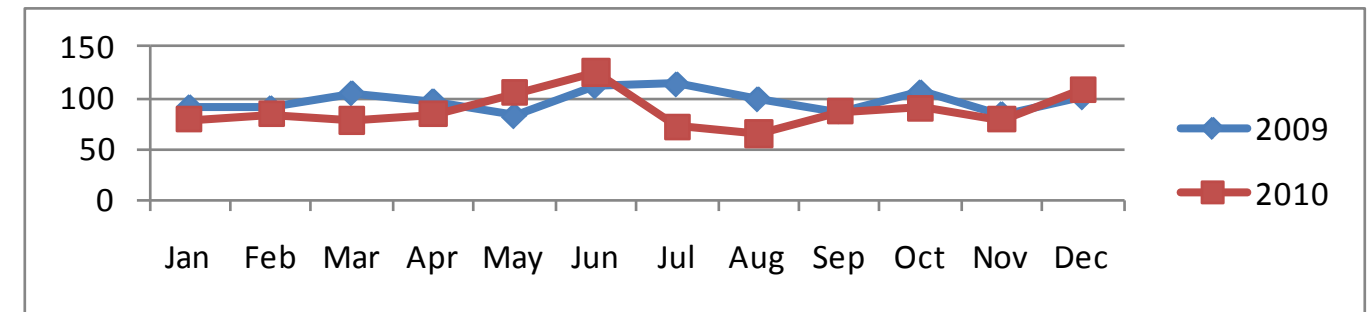
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Orders '09	9	7	16	24	18	19	15	21	29	42	31	28	259
Orders '10	44	30	54	29	9	21	16	32	43	22	9	4	313



Deeds, Mortgages, Foreclosures and Orders of Notice Recorded for the City of Lawrence
2009 and 2010 month by month comparison

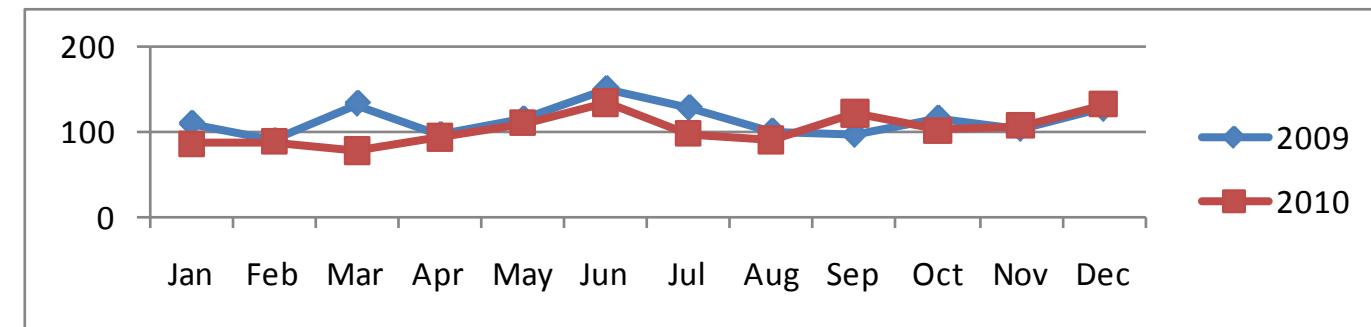
Deeds

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Deeds '09	91	90	105	97	82	112	114	99	87	106	84	101	1168
Deeds '10	79	84	78	84	105	125	72	65	87	90	79	108	1056



Mortgages

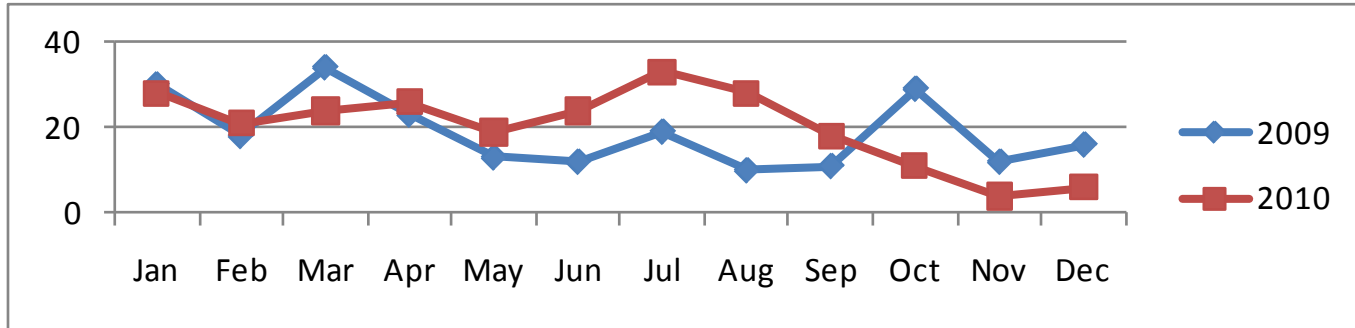
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Mortgages '09	110	90	133	97	115	150	128	101	97	116	104	127	1368
Mortgages '10	87	89	79	94	111	135	98	91	122	103	108	133	1250



City of Lawrence, Con't

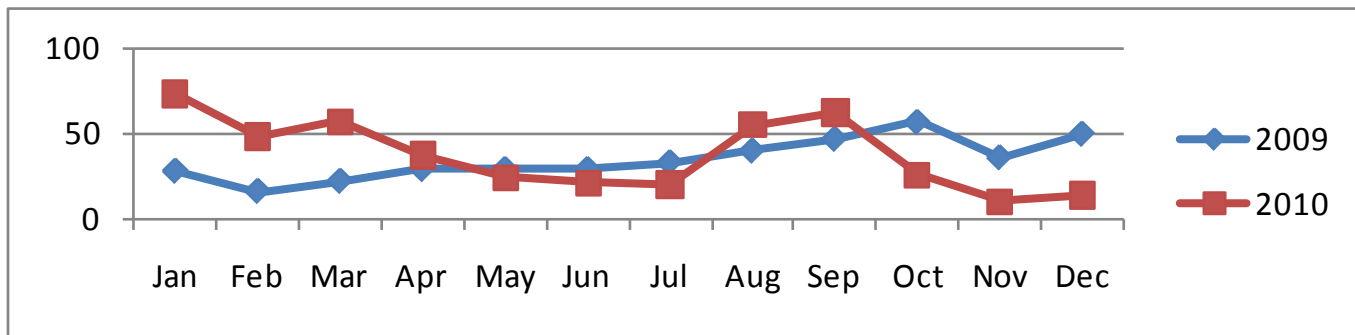
Foreclosures

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Foreclosures '09	30	18	34	23	13	12	19	10	11	29	12	16	227
Foreclosures '10	28	21	24	26	19	24	33	28	18	11	4	6	242



Orders of Notice

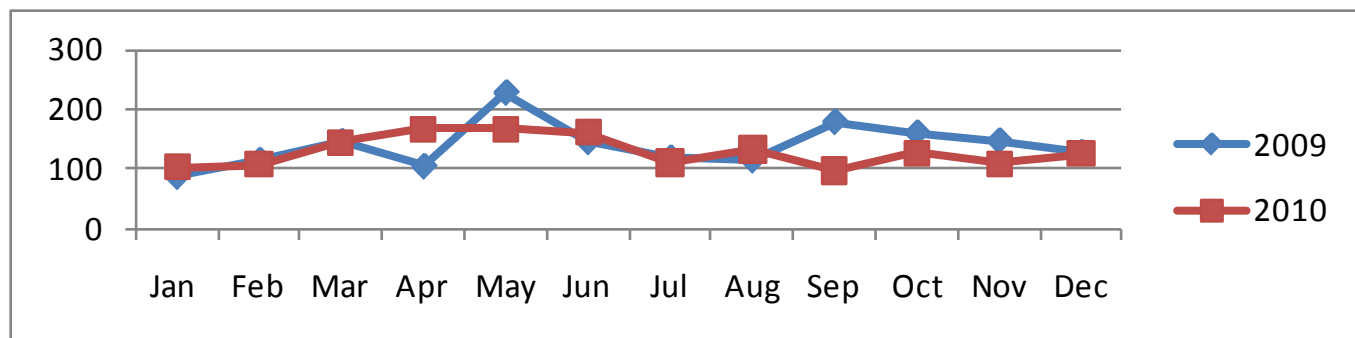
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Orders '09	28	16	22	29	29	29	33	40	47	57	36	50	416
Orders '10	73	48	57	37	24	21	20	55	62	26	10	14	447



Deeds, Mortgages, Foreclosures and Orders of Notice Recorded for the City of Lowell
2009 and 2010 month by month comparison

Deeds

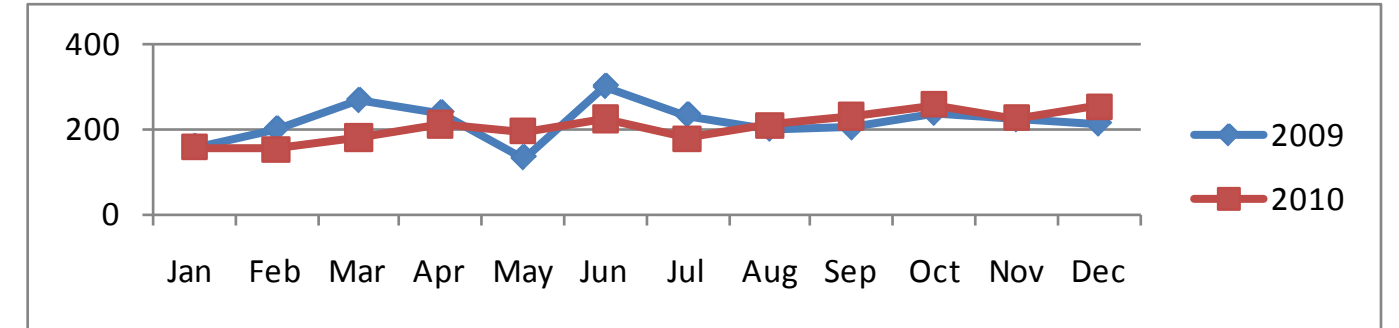
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Deeds '09	89	116	147	106	227	146	120	116	179	161	148	129	1684
Deeds '10	104	108	145	167	167	162	111	134	98	127	110	126	1559



City of Lowell, Con't

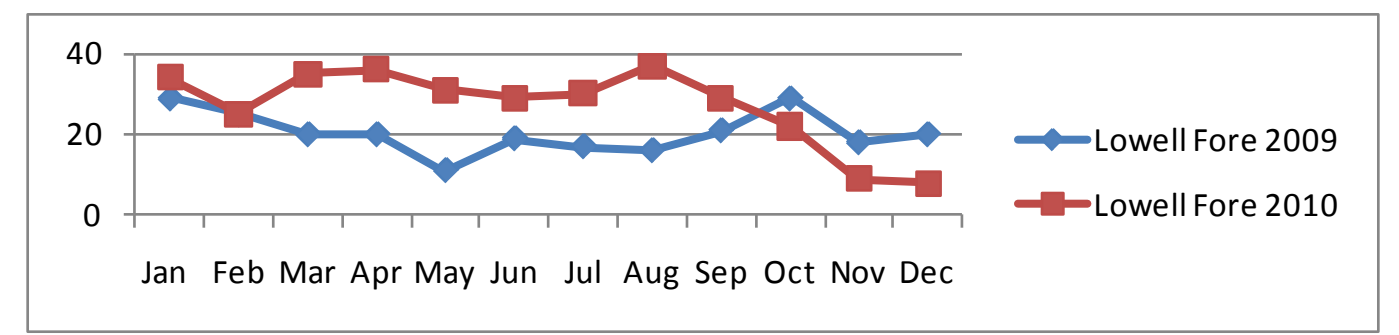
Mortgages

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Mortgages '09	158	199	266	237	132	299	232	199	202	236	221	211	2592
Mortgages '10	157	153	180	212	194	224	178	210	230	258	226	252	2474



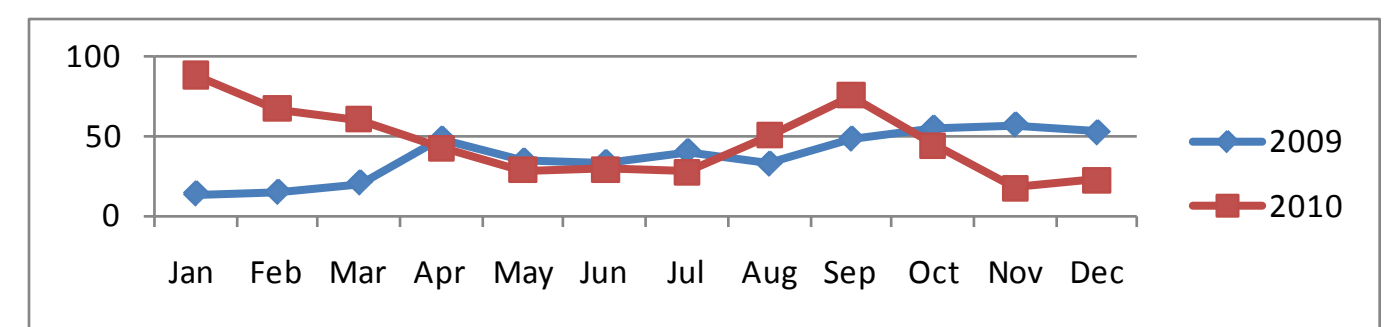
Foreclosures

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Foreclosures '09	29	25	20	20	11	19	17	16	21	29	18	20	245
Foreclosures '10	34	25	35	36	31	29	30	37	29	22	9	8	325



Orders of Notice

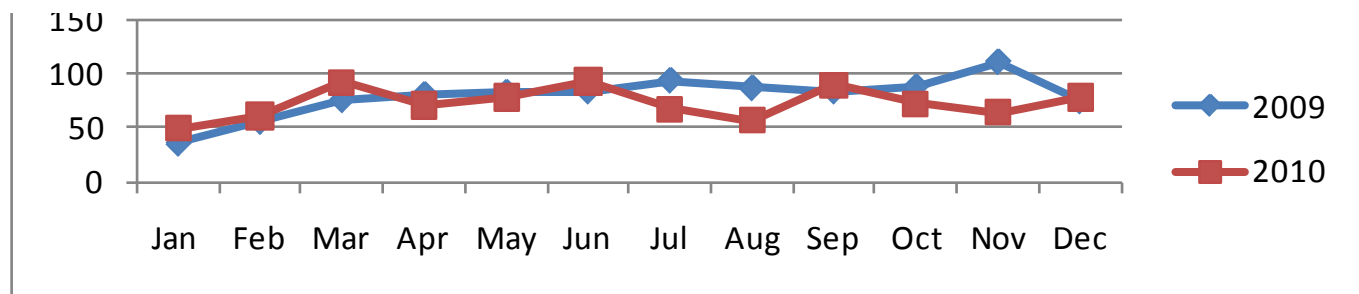
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Orders '09	13	14	20	48	34	33	40	32	48	55	57	52	446
Orders '10	88	67	60	42	28	29	27	50	75	44	17	22	549



Deeds, Mortgages, Foreclosures and Orders of Notice Recorded for the City of Methuen
2009 and 2010 month by month comparison

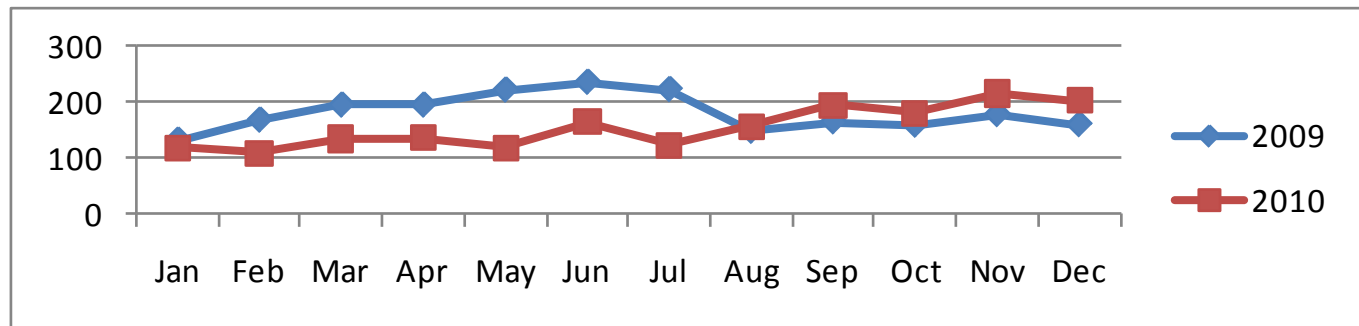
Deeds

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Deeds '09	36	56	76	81	83	84	94	87	84	88	111	75	955
Deeds '10	49	61	92	71	78	93	67	57	90	72	64	78	872



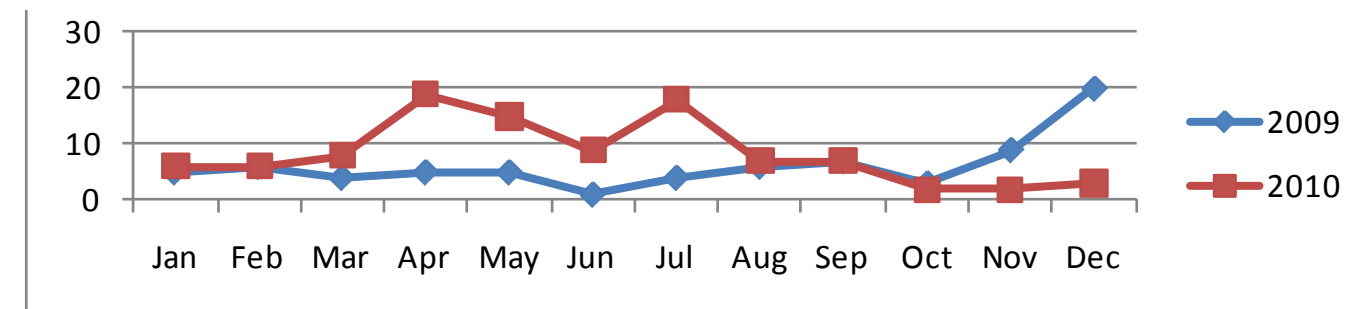
Mortgages

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Mortgages '09	132	168	195	195	222	236	223	148	165	159	178	160	2181
Mortgages '10	119	110	136	137	120	165	124	157	196	182	216	204	1866



Foreclosures

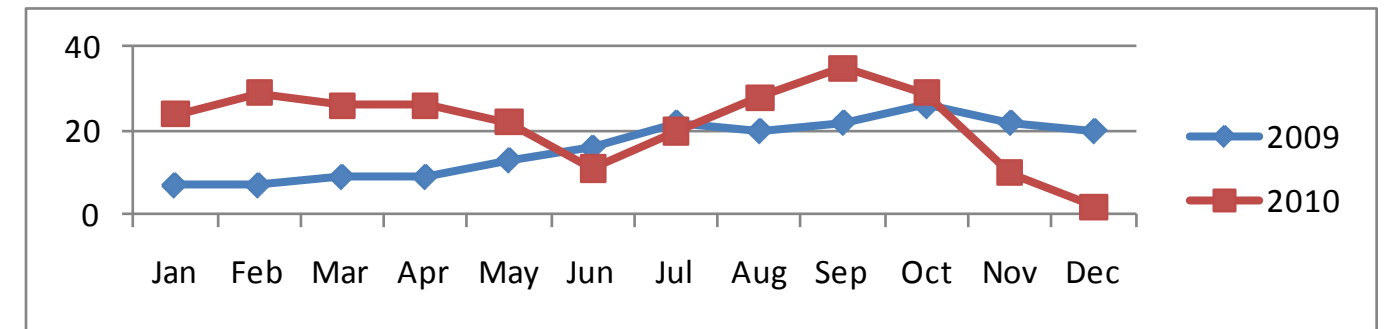
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Foreclosures '09	5	6	4	5	5	1	4	6	7	3	9	20	75
Foreclosures '10	6	6	8	19	15	9	18	7	7	2	2	3	102



City of Methuen, Con't

Orders of Notice

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Orders '09	7	7	9	9	13	16	22	20	22	26	22	20	193
Orders '10	24	29	26	26	22	11	20	28	35	29	10	2	262



Percent Change from 2009 - 2010

	Haverhill			Lawrence			Lowell			Methuen		
	2009	2010	% chg	2009	2010	% chg	2009	2010	% chg	2009	2010	% chg
Deeds	1134	1144	1%	1168	1056	-10%	1684	1559	7%	955	872	-9%
Mortgages	2077	1974	-5%	1368	1250	-9%	2592	2474	-5%	2181	1866	-14%
Foreclosure Deeds	148	181	22%	227	242	7%	245	325	33%	75	102	36%
Orders of Notice	259	313	21%	416	447	7%	446	549	23%	193	262	36%
Total Docs	3618	3612	0%	3179	2995	-6%	4967	4907	-1%	3404	3102	-9%

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