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Reforming the Foreclosure Process

By: Richard P. Howe Jr.

The number of foreclosure deeds for properties in Lowell peaked during the three years following the onset of the financial crisis. The modest 47 foreclosures in 2005 spiked to 421 in 2008 with 252 in 2009 and 325 in 2010. It was not until 2013 that the volume dropped back beneath 100 for the year (there were 73 in 2013). After all of that experience recording foreclosure documents and scrutinizing their effect on the land records system, it became apparent that some reforms are needed. Before discussing those reforms, a quick review of the Massachusetts foreclosure process would be helpful.

Most residential foreclosures begin with the lender filing a complaint in the Land Court in compliance with the Service Members' Civil Relief Act of 2003. The only issue in this litigation is whether the defaulting homeowner is serving in the military. As part of that process, the court issues an Order of Notice that must be recorded at the registry of deeds. While the Order of Notice is not integral to the actual foreclosure, it is the first public indication that a foreclosure is contemplated and so has value in tracking trends in future foreclosures.

As soon as the Land Court issues a judgment in favor of the lender, the lender is free to schedule and conduct the foreclosure auction with no judicial oversight. The lender prepares a Notice of Sale that includes the date and time of the auction, the deposit amount, the legal description of the property and identifying information about the mortgage being foreclosed. The Notice of Sale must be served on all parties in interest and must be published in a local newspaper for three successive weeks with the first publication at least 21 days before the sale.

On the scheduled date, an auctioneer holds the sale on the property.

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Deeds, Mortgages, Foreclosures and Orders of Notice Recorded

March 2013 and March 2014 compared

	Haverhill		Lawrence		Lowell		Methuen	
	April-13	April-14	April-13	April-14	April-13	April-14	April-13	April-14
Deeds	100	97	80	81	144	139	86	90
Mortgages	217	130	116	83	262	146	215	105
Foreclosure Deeds	2	2	2	3	6	5	1	0
Orders of Notice	0	0	10	7	11	15	3	5

Reforming The Foreclosure Process Continued

The high bidder signs a Memorandum of Sale and eventually a closing is held at which the high bidder delivers the purchase price to the foreclosing lender who in turn delivers a foreclosure deed to the high bidder. This foreclosure deed is then recorded at the registry of deeds.

From the time the Order of Notice is recorded at the start of the process until the Foreclosure Deeds is recorded at the end of the process, there is an informational black hole about the ownership status of the property. That period of time is not insignificant. A study of 200 foreclosure deeds recorded for Lowell in 2008 found that the average time from the recording of the Order of Notice to the recording of the Foreclosure Deeds was 208 days, while the time from the actual foreclosure auction to the recording of the Foreclosure deeds was 102 days.
Two legislative changes might help clarify the state of the title to these troubled properties during the foreclosure process. The first proposal would require the Notice of Mortgagee's Sale that is already prepared for publication in the newspaper to also be recorded at the registry of deeds. This would provide universal notice of the date and time of the auction and allow the public, local government and other affected parties to learn of the pendency of the auction. The second proposal would be to require any Foreclosure Deed to be recorded at the Registry of Deeds within 60 days of the foreclosure auction.

Changing legislation related to real property records is a lengthy process. These two proposals would provide better and more timely ownership information about troubled properties than is available under the current system. During the recent foreclosure crisis, determining who was responsible for troubled properties was elusive information. These two proposals would clarify that in the future.

Mortgage Modification Trends in Lowell

By : Vanessa Cote.

There has been a noticeable decline in foreclosure and order of notice filings over the last 1-2 years. Many observers believe that one reason is the increased willingness of lenders to modify mortgages. With this in mind, the Merrimack Valley Housing Report team decided to take a closer look at mortgage modifications in the city of Lowell. Rather than simply looking at the number, it insightful to look at how modifications have changed between the first quarter of 2013 and the first quarter of 2014.

An analysis of each individual modification in the first quarter of 2013, determined that many terms of modifications incorporated incremental interest rate increases over several years. The average initial interest rate is about 2%, while the average final interest rate is about 3.8%, an average increase of 1.8%. The majority (56%) of these modifications also increased the principle balances between the original and modified mortgage. These modifications likely resulted in higher monthly payments with the homeowner paying more money over time. Increased interest rates and principle balances could make it difficult for homeowners to afford their monthly payments in the future.

The first quarter of 2014 shows a different trend. Only 13% of the modifications have incrementally increasing interest rates, as opposed to 52% in 2013. The trend involving a higher principle balance also reversed, as the principle balance was usually lower in the modification than in the original mortgage. In these cases, the interest rate averages about 4.3%.

Although this analysis only involved a small sample of modifications and may not represent the experience in all areas, it appears to indicate that lenders have changed their approach to modifications. Rather than increasing the principle balance and incorporating incremental interest increases, fixed interest rates at a lower principle balance appear more common. While in some cases this may result in higher monthly payments for the borrower, this may also mean that people are more qualified for the modification. Increasing interest rates means that the monthly payment will increase over time. If the borrower is unable to keep up with these increases, it’s likely they could once again be facing default. Depending on the principle balance, terms and the level of interest rate increase, some homeowners could have difficulties making future mortgage payments.

This change to loan modifications with lower principle balances and fixed rate interests should be good for the future. This approach should lead to less defaults and help make the housing market more stable.

	First Quarter 2013	First Quarter 2013	First Quarter 2014	First Quarter 2014
	Number	Percent	Number	Percent
Principle Balance Increased	14	56%	7	30%
Principle Balance Decreased	11	44%	17	70%
Increasing Interest Rate	13	52%	3	13%
Fixed Interest Rate	12	48%	21	87%
Average Change in Principle Balance	$3,228.63	Not Applicable	-$14,955.90	Not Applicable

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