Keeping the Homeow

With foreclosures at an all-time high, lawmakers are working to help people keep their homes.

BY HEATHER MORTON

Long touted as the American dream, homeownership is at its highest ever. But with rising interest rates and the growing number of houses in foreclosure, owning a home may be some people's worst nightmare.

Buying a home can be a confusing, complicated transaction—and cost a lot of money. If consumers don't understand the process, make poor financial choices, or are misled by unscrupulous actors, they can end up with a home and a loan that are difficult to afford.

Nearly 5 percent of all outstanding residential mortgage payments were late in the first quarter of 2007, which isn't a lot more than the first quarter of 2006, according to the Mortgage Bankers Association's National Delinquency Survey. But what has increased is the percentage of homeowners who have received a foreclosure notice. That number is the highest it's ever been since the banker's group started doing the survey in 1953.

The Center for Responsible Lending predicts that one out of five subprime mortgages originated in the past two years will end in foreclosure. But even though foreclosures are increasing in some segments of the mortgage market, they have not yet reached the crisis stage, according to the Center for Statistical Research.

EMERGENCY FUNDS AND LOANS

State lawmakers want to make sure that solutions to the issues with nontraditional mortgages, subprime loans and the rising numbers of foreclosures, don't dry up credit for consumers or harm communities and the housing market.

Some states provide special, low-cost loans to help consumers make their mortgage payments when they are in danger of losing their homes. Pennsylvania created the Homeowners' Emergency Mortgage Assistance Program (HEMAP) in the 1980s, when foreclosures were spiking. Lawmakers wanted a program that would help prevent future foreclosure emergencies. It helps homeowners who are at least 60 days delinquent on their mortgage and are suffering financial hardship due to circumstances beyond their control. As part of the program, a mortgage lender must send a notice to the consumer that the mortgage is in default and a foreclosure is imminent. The lender must tell the homeowners about HEMAP and a 30-day temporary stay is placed on the proceedings to give them an opportunity to apply for the emergency mortgage assistance.

This spring, Ohio created the Opportunity Loan Refinance Program to help homeowners in trouble with their current mortgages. The program offers 30-year, fixed-rate loans along with a 20-year, fixed-rate second mortgage to help with closing costs. According to the Ohio Housing Finance Authority, as of June, it already plans to make more than 80 loans for approximately $11 million.

At least seven states introduced bills in 2007 relating to emergency mortgage assistance programs. California legislation would allow its statewide housing finance authority to accept donations to help consumers refinance their variable interest rate home loans under certain circumstances. Connecticut's bill requires mortgage lenders to participate in the Connecticut Housing Finance Authority's emergency mortgage assistance program.

Indiana passed a new law, co-sponsored by Representative Woody Burton, that authorizes the Indiana Housing and Community Development Authority to provide free mortgage foreclosure counseling and education to homeowners who have defaulted on or are in danger of defaulting on their mortgages.

"Most people don't understand that their mortgage can be extended, giving them more time to pay it off," says Burton. "This program will help homeowners better understand their mortgage payments. Too often,

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NERSHIP DREAM ALIVE

folks get behind on payments and fear that they could lose their home. This counseling will help them understand the situation and not give up on finding a solution."

FORECLOSURE CONSULTANTS

States are also regulating foreclosure consultants who help homeowners postpone or avoid foreclosure by acting as a go-between for them and the lender. This industry has attracted some dishonest people who have taken advantage of desperate homeowners. In some cases, the so-called foreclosure consultant has tricked the homeowner into signing over title to the home or charged excessive fees for services that were never provided, leaving the homeowner with no time or money to get out of foreclosure.

Indiana's new law, sponsored by Senator John Broden, allows homeowners to rescind contracts with foreclosure consultants and foreclosure reconveyance agreements. "This gives protection to people facing a foreclosure who seek out third parties in an effort to protect their homes," says Broden. "By regulating foreclosure consultants, we limit the chance for predatory practices." In all, 11 states—California, Colorado, Georgia, Illinois, Indiana, Maryland, Minnesota, Missouri, Nevada, New York and Rhode Island—regulate these foreclosure transactions.

Under Nevada's new law, sponsored by Assemblyman Marcus Conklin, violators can be fined $10,000 and homeowners can recover damages against bad consultants. In addition, the new law cracks down on anyone who commits fraud when purchasing foreclosures. The punishment includes jail time and fines.

"When you have an unregulated market and the opportunity to make a lot of money, you're just looking for disaster," says Conklin. "Nevada has been a hotbed for foreclosures, and the Legislature needs to protect homeowners from improper practices."

UNDERSTANDING THE TERMS

Subprime loans—higher risk loans that typically have higher interest rates for consumers with blemished credit records.

Nontraditional mortgages—these include "interest-only" mortgage loans and "payment option" adjustable-rate mortgages (ARMs) that give the borrower flexible payment options. Also known as exotic mortgages, these nontraditional mortgages can give borrowers who do not qualify for the traditional 30-year fixed mortgage an opportunity to qualify for a mortgage loan.

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LENDERS RESPOND TO RISING FORECLOSURE RATES

Community groups, government agencies and lenders all agree that one of the first steps consumers should take when having difficulty making mortgage payments is to contact the lender—the earlier the better. When a house goes into foreclosure, no one really wins; the homeowner, the lender and the community all lose. In an effort to reduce foreclosures, lenders are taking a proactive approach to reach out to consumers.

Wells Fargo Steps To Success: Wells Fargo launched this free program in 2006 to help its nonprime mortgage borrowers manage and strengthen their credit. Borrowers are automatically enrolled in financial education and get easy-to-read credit reports, advice from credit education specialists and access to automatic mortgage payment options.

NeighborWorks Center for Foreclosure Solutions: Groups such as Citi, Fannie Mae, Freddie Mac and State Farm Insurance worked with NeighborWorks America, a national nonprofit developed by Congress, to create the Center for Foreclosure Solutions to preserve homeownership, conduct public outreach campaigns and create sustainable intervention programs through partnerships with national nonprofit, mortgage and insurance groups.

HSBC Foreclosure Avoidance Program: HSBC offers a hardship program for its customers with mortgage loans designed to provide rate and payment relief and increase the customer's monthly disposable income. The bank also runs a rescue loan program for consumers facing foreclosure at other lending institutions. It has put up $25 million to fund mortgage loans for people about to lose their homes. The National Community Reinvestment Coalition administers the program and makes it available to its affiliate agencies. To date, several thousand people have been counseled and more than 100 families in 17 states have avoided foreclosure.

LENDING PRACTICES

In September 2006, the Federal Reserve and the other federal banking agencies issued the "Interagency Guidance on Nontraditional Mortgage Product Risks." It lays out sound underwriting procedures and consumer protection practices that should be followed when making nontraditional or exotic mortgages, such as interest-only loans and payment option adjustable-rate mortgages (ARMs). Lenders should evaluate the borrower's repayment ability and the lender should ensure that the borrower has sufficient information to clearly understand the loan terms and risks before issuing the loan. The guidance applies only to financial institutions regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration. But Colorado passed legislation directing the state Banking Board and the director of the Division of Real Estate to adopt rules incorporating the "Interagency Guidance on Nontraditional Mortgage Product Risks" into state regulations. Through this law, Colorado is extending the federal guidance to state-regulated financial institutions and mortgage brokers.

Recognizing that some mortgages are ill-suited for certain people, legislators have been working to address lending practices. Maine and Minnesota passed laws this year that require a lender to verify a borrower's reasonable ability to make payments on the mortgage. Florida now requires that borrowers be given a consumer handbook on adjustable rate mortgages, which explains variable rate loans and cautions consumers about the risks associated with these loans.

MORTGAGE FRAUD

Since 2000, at least 10 states have enacted laws addressing mortgage fraud. In addition to the disclosure requirements mentioned earlier, Florida created the crime of mortgage fraud and made it a third-degree felony.

"In a state where mortgage fraud is rampant, people will have the force of law to assist them in ensuring that their rights as borrowers will be protected," says Senator Mike Fasano, the bill's sponsor. In Texas, the Legislature created a residential mortgage fraud task force, overseen by the state attorney general. The task force is required to submit an annual report on its efforts to improve tracking and prosecuting mortgage fraud statewide. The law also requires people to report that they suspect fraud has been or is about to be committed.

SENATOR
MIKE FASANO
FLORIDA

Unfortunately, the market has created opportunities for organized groups to commit mortgage fraud. The FBI has been actively investigating mortgage fraud in various U.S. cities since 1999 and has been working to expand reporting requirements for mortgage lenders to get a better understanding of how often mortgage fraud occurs. According to the FBI, the top 16 states for mortgage fraud in 2006 were Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Louisiana, Michigan, Missouri, New York, North Carolina, Ohio, South Carolina, Texas and Utah.

ONE SIZE DOESN'T FIT ALL

It's not just ill-suited loans or troublesome terms that contribute to financial difficulty in paying a mortgage. "There can be numerous trigger events—such as the loss of a job, a medical crisis, or divorce—that can undermine homeowners' capacity to fulfill their mortgage obligation," says Sandra Braunstein, director of the Division of Consumer and Community Affairs at the Federal Reserve Board. In testimony before a U.S. House subcommittee, Braunstein said that when homeowners are confronted with difficult financial circumstances they may be unable to refinance their debt or sell their home to pay off the mortgage.

And just as there's no one reason for a mortgage to be at risk of default, there's no one solution that works best for all communities. The challenge lies in helping consumers through the complicated process of purchasing a home, but not cutting off access to credit for those who do not qualify for the traditional mortgage loan. The recent increase in foreclosures has caused legislators, regulators, lenders and community groups to come together to seek long-term solutions that incorporate the needs of consumers, communities and the financial marketplace.