

# Banks want to alter 2011 Nevada foreclosure law

By David McGrath Schwartz, Las Vegas Sun

Foreclosures in Nevada could spike next year if lawmakers and banks roll back a bill passed in 2011 that played a large role in stymieing banks' attempts to retake homes from Nevadans, according to the state's banking association president and housing analysts.

But more foreclosures aren't necessarily a bad thing for Nevada's housing market, at least in the long term, according to housing analysts.

Banks are in talks with Attorney General Catherine Cortez Masto and lawmakers about how to amend the state law that slowed foreclosures to a trickle in fall 2011.

Although foreclosures since have risen, they're still about a quarter of where they were before the law went into effect.

At issue is Assembly Bill 284, a measure passed by the Nevada Legislature in 2011 and signed by Gov. Brian Sandoval that forces banks to prove they have the legal right to foreclose on a particular home before they take action. Most important, the law requires bank workers to sign an affidavit that they have personal knowledge of a property's document history, or they will face criminal or civil penalties.

Democratic lawmakers and Cortez Masto, a Democrat, who helped pass the bill, said the law was intended to uphold the integrity of the legal process and protect homeowners from banks wrongfully foreclosing on homeowners without having necessary paperwork.

Cortez Masto has said it was never intended to prevent

legitimate foreclosures.

But after the law took effect in late 2011, foreclosures in Nevada – which previously led the nation in foreclosures – ground to a halt.

In August 2011, banks issued 5,350 foreclosure notices in the state, according to the Nevada Foreclosure Mediation Program. In September, there were 4,684 “notices of default.”

In October 2011, when the law went into effect, the number dropped to 80.

Since then, the foreclosure filings per month have crept upward, reaching 1,417 in November.

That is proof, according to some consumer advocates, that banks are figuring out the paperwork behind home loans that had been sliced and diced into various investment instruments at the height of the housing boom. That slicing and dicing is what made it so difficult to determine which entity could legally foreclose on a home.

Many housing analysts believe the law is stalling legitimate foreclosures and creating an artificial, short-term boost in housing prices.

Cortez Masto has created a working group involving the state’s largest banks to discuss possible changes to the law in the next legislative session.

That group includes bankers, servicers, title and other real estate interests, as well as consumer representatives and lawmakers.

“We do not anticipate recommending repeal of any of the current provisions of the law,” she said in the statement. “The working group is attempting to clarify some of the terms in the law.”

She said it's still unclear what recommendations the group will make to lawmakers.

Bill Uffelman, president and CEO of the Nevada Bankers Association, which lobbies the Legislature, said banks were not looking to repeal the entire law.

"The Attorney General's Office and affected parties are working to change the affidavits so it's workable, without fear of criminal or civil liability," Uffelman said.

"Just amend it," he said. "The notion behind AB284 wasn't bad. The policy's fine. Let's fix the application."

Some housing analysts say the law has allowed some Nevadans to live in their homes without paying a mortgage. Banks, confounded by their own shoddy paperwork and the state law, aren't able to foreclose for months or years. Economics analyst Jeremy Aguero this fall labeled them "strategic squatters."

This shadow inventory – of homes headed for almost certain foreclosure – has loomed over the seemingly positive news of slightly increasing home values and the rise of new housing construction.

John Restrepo, principal of RCG Economics in Las Vegas, called it "a bit of an artificial spike not likely to be sustained as it is today, depending on how the law is changed."

The politics of easing restrictions for banks are dicey and likely to face opposition.

Sen. Tick Segerblom, D-Las Vegas, chairman of the Senate Judiciary Committee, said he'd listen to Cortez Masto, a fellow Democrat.

But, he said, "I'm extremely reluctant to change anything that everyone agrees has raised property values in the state of Nevada."

He said if banks can't foreclose, it's their own fault for losing track of the paperwork.

"If it comes down to a homeowner who had a mortgage, or a bank – who has the right to be there? I'll go with the homeowner," he said. "I'm not worried about the banks. They made their beds. They can sleep in it."

Uffelman, the banking association president, said banks have been focused on meeting the terms of the National Mortgage Settlement – the \$26 billion settlement that requires banks to take such actions as principal reductions, short sales and forgiveness of second loans. But soon, their focus is going to turn back to foreclosures.

"The reality is foreclosures are going to start again, probably sooner rather than later," he said.