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News Analysis

In Confronting the Foreclosure Crisis, a Bill Strikes a Balance

By [MANNY FERNANDEZ](#)

The bill that Gov. David A. Paterson and leaders of the State Legislature announced last week to address the subprime lending and foreclosure crisis was, for Albany, that rarest of things — an effective compromise.

The legislation will change how subprime loans are made and regulated and will alter the way many foreclosures are handled by the courts, establishing protections for homeowners that had not been in place.

For housing advocates and some Assembly Democrats, the bill could have been stronger. Their push for a statewide one-year moratorium on foreclosures ultimately failed. For the state's banking and mortgage broker industries, it could have been weaker. They argued that New York has seen fewer foreclosure filings than other states largely because of regulations already in place.

But the end product — a bill expected to pass on Monday, the last day of the legislative session — appears to have struck a balance that satisfies nearly all sides, though housing advocates question the extent to which it will help thousands of homeowners most in need: Those going through foreclosures right now.

“This will certainly make a difference, and this will help save homes,” said Josh Zinner, co-director of the Neighborhood Economic Development Advocacy Project, a fair-lending organization that is part of a coalition of groups pressing for passage of the bill. “It’s not as broad as we would have hoped, but it certainly is a positive for New York homeowners.”

Mr. Zinner, other housing advocates and city and state lawmakers have grown increasingly alarmed about the rising number of foreclosure filings and the spread of subprime lending in New York City’s largely minority neighborhoods and in parts of upstate.

Foreclosure filings in New York City doubled from 2004 to 2007, increasing to 14,912 last year from 7,069, according to an analysis by the Furman Center for Real Estate and Urban Policy at New York University. Queens alone had 6,157 foreclosure filings last year, nearly matching the total for the entire city in 1993: 6,171.

Perhaps the quickest, boldest and, some believed, riskiest way to stem the flood of filings was a one-year moratorium on subprime foreclosures, which the Assembly passed in May. It would have been the first foreclosure moratorium in the state since 1933, and was strongly opposed by the New York Bankers Association. But the failed effort produced at least one benefit: It made every other proposal look moderate in comparison.

“I actually believe that the pressure for this moratorium led the Senate and the banking industry to compromise,” said Assemblyman James F. Brennan, a Brooklyn Democrat, who along with State Senator Frank Padavan, a Queens Republican, introduced the moratorium in both houses in December. “We used the moratorium as a wedge.”

The bill announced on Thursday was based on a proposal put forward by Gov. Eliot Spitzer before he resigned in March. Two of the main provisions are firsts for New York State: One requires lenders to warn borrowers in writing at least 90 days before starting foreclosure proceedings, and the other requires the courts to hold a settlement conference between the lender and a subprime borrower facing foreclosure.

Both provisions are aimed at bringing lenders and borrowers together before foreclosure becomes inevitable. Supporters say the measures increase the chances of settlements that modify the terms of the loans, prevent foreclosures and allow homeowners to stay in their homes.

The 90-day notice, which also requires lenders to list the names and phone numbers of housing counselors in the borrower’s area, serves as an early-warning system. Currently, the first notice a lender is required to send to a homeowner who has defaulted comes attached to the summons and complaint that initiates a foreclosure proceeding. That notice simply states that mortgage foreclosure is a complex process, and it encourages homeowners to contact government agencies or nonprofit groups.

“We believe it comes too late in the process, once the action has already commenced,” said Gaurav Vasisht, an assistant counsel to the governor who was involved in developing the bill, which Governor Paterson is expected to sign into law this summer.

The settlement conferences are required to take place within 60 days of when the lender files proof that the borrower has been served with legal papers. No settlement conferences are currently required at such an early stage.

Mr. Zinner said the significance of the conferences is that homeowners often fail to even answer a foreclosure action because they cannot afford a lawyer and do not know how to navigate the legal system, thus forfeiting their chance to defend themselves before a judge. “This new process will enable many more borrowers to get before the courts and therefore greatly increase the likelihood of these borrowers resolving their cases and not losing their homes in foreclosure,” he said.

Those two provisions apply to subprime loans taken out between Jan. 1, 2003, and Sept. 1, 2008, but do not apply to future loans, a decision that concerns housing advocates but that Mr. Vasisht described, given the bill’s other protections, as unnecessary.

The bill, among other things, requires mortgage brokers to act in the borrower's interest by presenting loans that are most appropriate for the borrower. It also mandates that lenders make a "reasonable and good faith determination" of a subprime borrower's ability to repay the loan, based on income, job status and other factors. Under the bill's underwriting standards, subprime loans will be barred from carrying prepayment penalties.

"By and large, the people we see have loans that they never should have obtained in the first place," said Ismene Speliotis, executive director of New York Acorn Housing. "Had this legislation been on the books even a few years ago, we wouldn't be seeing many of the problems we're seeing today."

The bill's consumer-protection provisions take effect within 60 days of being signed into law, and any lender or broker who is found to have violated them could face charges, fines or other penalties from the attorney general's office or the State Banking Department.

"I'm unaware of any other state that has taken as comprehensive an approach to address the subprime crisis, to assist current borrowers at risk and to assure that the crisis never happens again," said Richard H. Neiman, New York's superintendent of banks.

Meanwhile, the idea for the moratorium, as is often the case in Albany, is subject to resuscitation. Assemblyman Brennan said he plans to give it another try next year.

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