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How new residential foreclosure laws affect commercial lending

Foreclosure Laws

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On Dec. 15, 2009 Albany passed legislation that changes present residential foreclosure laws. These changes also have a substantial impact on commercial lender's rights and responsibilities. The well intended purpose of the amendments was to further protect distressed homeowners, prevent blighted neighborhoods, establish tenant protections, and prevent homeowner rescue scams. However, the result will be detrimental to commercial lenders as the new law will lengthen the foreclosure process, increase expenses, introduce new lender responsibilities and liabilities, and hamper the liquidity and balance sheets of the banks.

"Residential real property" is newly defined to include property improved by a building/structure that may be used, partly or wholly, as a residence, including co-op, apartment, and mixed-use buildings. The law imposes a duty on banks to maintain the premises and gives tenants the right to remain in a dwelling post-foreclosure. Banks must continue to pay real estate taxes and insurance, and may have to provide utilities and other services to properties that are not generating income.

Reports show 140 banks failed in 2009. The estimated average failed bank costs the FDIC $261 million. The pre-amended foreclosure laws attacked predatory loans. Healthy banks stayed healthy by continuing to lend, with the ability to recoup their investment, while banks with illegitimate loans suffered the consequences. By slowing the foreclosure process and imposing additional costs and liabilities on all lenders, the amendments will further restrict lending activity and undermine stable institutions.

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