States step into foreclosure mess

Mortgage servicers still have plenty of incentive to foreclose, and cities and states are looking to protect consumers -- with some results they didn't anticipate.

By Marilyn Lewis – September 24, 2013

Good old American "can-do" hasn't been much good at righting the wrongs of the housing market in the five years since the crash. Take the problems with mortgage servicers, the bank entities that send your monthly mortgage statement, collect your payments and foreclose if you fall behind.

The foreclosure crisis gave us a backstage look at servicing, and the glimpse wasn't pretty.

You've probably heard of, and maybe even experienced, fraud and abuses by servicers who allegedly foreclosed by rubber-stamping eviction papers, seizing homes from people who thought they'd successfully negotiated mortgage modifications and even from some who'd never missed a payment. Not all mortgage servicers were implicated.

No reason to improve

The frustration for consumers is that now, despite multibillion-dollar settlements between banks and state and federal governments, experts say that servicers still have little reason to change their tactics.

"Servicers have an incentive to push borrowers into default, loading them up with fees, and keep them there," The Washington Post wrote not long ago.

Even Congress can't seem to get to the bottom of the problem. "The full scope of what has happened isn't being publicly disclosed," the Post says, which adds that the Office of the Comptroller of the Currency and the Federal Reserve aren't sharing, even with Congress, the results of their investigations.

"Unfortunately, the five years since have been a wasted window of opportunity to address the structural flaws in our financial system," Mark A. Calabria, Cato Institute analyst, writes in The Orange County

Register. He was talking about the causes of the crash, which he blames on a property bubble brought on by too-tight zoning restrictions.

But the same can be said of the effort to make bank companies stop abusing consumers.

State effort backfires

Is it any wonder states are taking things into their own hands? Unfortunately, those efforts haven't created much change either, except perhaps to illustrate how hard it is to make change.

The Wall Street Journal has written about how Nevada's attempt to help consumers has backfired. Even as a housing recovery starts to take hold, Nevada still has one of the highest rates of default in the nation.

A state law passed in 2011, Assembly Bill 284, "threatened criminal penalties for bank officials who didn't follow new rules to certify that foreclosures were being processed properly," The Journal says. It forces mortgage servicers to move slowly and carefully in foreclosing. The hope was to protect property owners against title problems resulting from sloppy legal work by servicers.

It sounded like a good thing. But critics says it created new problems:

Among other changes, the Nevada law made it a felony for anyone making false representations concerning real-estate title. Large lenders grew reluctant to foreclose on properties due to ambiguous language in the law, says Bill Uffelman, president of the Nevada Bankers Association.

The Journal points to a backlog of empty, neglected homes that can't be offered for sale.

Some owners who are behind on payments aren't maintaining their homes as banks refrain from eviction proceedings. The perverse outcome: Inventory shortages have spurred new developments despite a glut of properties stuck in foreclosure limbo.

The shortage of homes for sale has driven prices beyond the reach of ordinary buyers.

Catherine Cortez Masto, Nevada's attorney general, defends the law. It's having a positive effect, slowing foreclosures, she says.

The jury's out on California

The toughest foreclosure protection law in the country is California's Homeowner Bill of Rights, made law on Jan. 1 this year. It's described here by the state's attorney general. It forbids services from foreclosing while a mortgage is being modified, requires servicers to give borrowers a single point of contact, prohibits robo-signing and gives homeowners the right to sue for violations.

Critics say slowing down foreclosures punishes everyone else by dragging the economy down and filling neighborhoods with vacant, derelict homes. It's too soon to know if that will be true in California.