

**REPORT ON STATE FORECLOSURE STATUTES AND STATISTICS:**

DOES THE STATE STATUTORY METHOD OF RESOLVING A FORECLOSURE AFFECT THE  
ACTUAL NUMBER OF FORECLOSURES?

**GBA**

**GEORGIA BANKERS ASSOCIATION**

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DECEMBER 2009

## Executive Summary

Foreclosure occurs after a borrower ceases to make mortgage payments. Borrowers default on mortgage loans for a variety of reasons. The most common are lost income or increased debt, including unemployment or under-employment, marital difficulties, or unreimbursed medical expenses. How foreclosures are resolved has little to do with the loan defaulting.

1. Georgia's statutory minimum foreclosure timeline is 37 days from foreclosure notice. However, in practice, the actual time period is longer. Freddie Mac notes an average of 241 days in Georgia from the date of last borrower payment until foreclosure completion. For example, in 2007 the average Georgia borrower in default with Freddie Mac-invested loans had stayed on the property for 8 months without making a mortgage payment. Many lenders don't consider a loan in default or begin the foreclosure process until it is 90 days past due.

2. Short foreclosure periods do not necessarily lead to high foreclosure rates. While Georgia maintains a high foreclosure rate, many states with similar foreclosure periods have lower foreclosure rates. Many states with lengthy foreclosure periods have higher foreclosure rates than Georgia's.

- Seven of the states that have time periods similar to Georgia's had an average 2008 foreclosure rate that was 1% less than Georgia's estimated 2.2%. (AL, AR, NH, TN, TX, VA, WV)
- Five states with an average foreclosure period 79 days longer than Georgia's timeline had an average 2008 foreclosure rate of 4.1%. (AZ, CA, CO, NV, OH)
- No credible conclusion can be made that the percentage of loans in foreclosure in a state can be directly tied to the time for resolution.

3. One of the most relevant factors in determining whether a foreclosure law is efficient is the number of delinquent mortgage loans that get settled – or cured – before actual foreclosure, i.e., whether the process allows reasonable time for borrowers to cure. Borrower cure rates are currently very low nationally.

- According to Fitch Ratings, the cure rate of delinquent prime loans has gone from an average of 45% from 2000 – 2006 down to 6.6% in 2009 (a rate that includes mortgage modifications, which may or may not re-default). The cure rate has declined because the causes of default (including un- and under-employment) are less temporary than they were in previous years.
- A low cure rate suggests that a lengthened foreclosure period would not be helpful to most borrowers.

4. Georgia's foreclosure process is among the most efficient in the nation.

- Lenders are incented to work longer with borrowers before even beginning foreclosure in states like Georgia with efficient resolution processes. This provides a better chance at curing the default before even entering the foreclosure process, which can be costly for all involved.
- Georgia's foreclosure costs are estimated to be 69% of the national average.
- A Freddie Mac study shows seven states with longer foreclosure periods than Georgia's (an average of 170 days) had estimated costs that were 156% of the national average.

5. Some states have statutorily lengthened their foreclosure periods, with mixed results. For example, Maryland increased the minimum period from 34 days to 135 days. While foreclosures slowed in the short term, the foreclosure rate from Quarter 2 of 2008 through Quarter 3 of 2009 increased 58.8% (compared to an increase in Georgia of 6.7% over the same period).

6. Judicial versus Statutory (Non-Judicial) Foreclosure:

- 28 states, including Georgia, have a statutory foreclosure process: AL, AK, AZ, AR, CA, CO, GA, HI, ID, MD, MA, MI, MN, MS, MO, MT, NV, NH, NC, OR, RI, TN, TX, UT, VA, WA, WV and WY.
- Using the court system to process foreclosures increases costs for governments and taxpayers, as well as for borrowers and lenders.
- Judicial foreclosure simply does not allow the flexibility that non-judicial foreclosure offers lenders when working with borrowers.

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**TABLE OF CONTENTS**

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<b>OVERVIEW</b>	<b>2</b>
<b>1. FORECLOSURE LAWS AND STATISTICS</b>	<b>3</b>
INTRODUCTION: THE STRUCTURE OF FORECLOSURE LAW IN GEORGIA.....	3
1. THE MOST COMMON REASONS BORROWERS DEFAULT ON MORTGAGE LOANS.....	4
2. FREQUENCY OF MORTGAGE LOAN DEFAULT.....	6
3. COSTS OF FORECLOSURE.....	7
4. CHANGES IN FORECLOSURE LAWS AND EFFECTS ON FORECLOSURE RATES: CASE STUDY OF MARYLAND’S 2008 FORECLOSURE LAW AMENDMENT.....	11
5. LENGTH OF THE FORECLOSURE PROCESS AND FORECLOSURE RATES: WHAT MAKES A FORECLOSURE LAW EFFICIENT?.....	11
6. THE FORECLOSURE PROCESS AMONG THE STATES: DATA AND ANALYSIS.....	13
7. RELATION OF THE TYPE OF LENDER TO LENGTH OF THE FORECLOSURE PROCESS.....	15
8. EFFECT OF FORECLOSURE LAWS ON THE AVAILABILITY OF RESIDENTIAL MORTGAGE CREDIT.....	16
9. BANKRUPTCY AND FORECLOSURES.....	16
10. DEFICIENCY JUDGMENTS.....	16
11. PRIVATE MORTGAGE INSURANCE (PMI).....	17
<b>2. MORTGAGE MODIFICATIONS AND FORECLOSURE PREVENTION</b>	<b>18</b>
INTRODUCTION TO MORTGAGE MODIFICATIONS.....	18
1. COSTS AND RISKS OF MORTGAGE MODIFICATION.....	18
2. MODIFIED LOAN PERFORMANCE AND DATA.....	20
<b>APPENDIX A: FORECLOSURE LAWS AND DATA</b>	<b>23</b>
<b>APPENDIX B: NATIONAL FORECLOSURE AND LOAN DEFAULT DATA</b>	<b>25</b>
ENDNOTES.....	28

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## OVERVIEW

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### FORECLOSURES

- Foreclosure is costly to lenders; longer foreclosure periods increase costs. These costs are passed to borrowers in the form of higher rates and lower mortgage credit availability. *See page 7.*
- Georgia's foreclosure time period is statutorily 37 days from foreclosure notice to sale (title work may require around 10 days, though this amount of time is not mandatory); in practice, Freddie Mac has noted an actual average time of 241 days from the due date of last paid installment to foreclosure sale. *See page 12 and Appendix A.*
- Georgia maintains a high foreclosure rate, even when compared to states with lower or similar foreclosure timelines. *See page 14.*
- Georgia's foreclosure costs are lower than the national average: Freddie Mac noted that foreclosure costs in Georgia are 69% of the national average. *See Appendix A.*
- Costs of foreclosure to lenders from 2000-2006, including lost value, were reported as averages of between \$50,000 and \$58,759 per foreclosure. That number has increased, as losses caused by negative equity have greatly increased. *See page 3.*
- There is no correlation between current foreclosure rates and short foreclosure time periods. The proper measure of foreclosure statutes should be self-cure rates: whether the law gives borrowers adequate time to cure the cause of default. *See page 14 (correlation) and page 12 (cure).*
- Cure rates have significantly decreased over the past three years, and are now lower than 10% in all loan categories. Such a drop in cure rates suggests that borrowers are suffering from less temporary default circumstances. Borrowers likely would not be able to cure even if time periods were increased. *See page 12.*
- Low cure rates suggest that borrowers would not benefit from an increase in foreclosure time period. Prime cure rates have decreased from 45% for the period of 2000-2006, to 6.6% in 2009. There are very few "preventable" foreclosures. *See page 12.*
- As an example of lengthening a state's foreclosure timeline: Maryland's legislature increased the time of the state's foreclosure period in April 2008; while there was a temporary drop in foreclosures, the rate increased significantly when the backlog of foreclosures caught up with the new law. *See page 11.*

### MODIFICATIONS

- The risk of re-default may be preventing many lenders from initiating widespread modifications. *See page 18 (risk of re-default) and page 20 (re-default data).*
- Re-default rates are high: the re-default rate for mortgages modified in Quarter 2 2008 twelve months following modification was 49%. *See page 20.*
- Re-default is more costly to lenders than original foreclosure, as it may include the costs of foreclosure, the modification concessions made, and the further decrease in home price caused by the time delay. *See page 18.*

*Question:* Does the state statutory method of resolving a foreclosure affect the actual number of foreclosures?

While foreclosure time periods are not the underlying cause of mortgage loan default, the statutory method of foreclosure can affect the actual number of foreclosures if incentives and costs to lenders and borrowers are not balanced.

If a time period is too long, foreclosure will be costly to lenders, and borrowers will be encouraged to default to enjoy a period of “free rent.” If a foreclosure time period is too short, borrowers that may have been able to cure given reasonable additional time may lose their homes.

Current economic conditions are altering the historical direction of these incentives and costs. Because cure rates have decreased significantly, and very few borrowers are able to reinstate loans while in the foreclosure process, longer foreclosure periods may not help a sufficient number of borrowers to cure. Any benefit of longer foreclosure time periods is further hindered by rising foreclosure costs.

Any legislative action to lengthen foreclosure timelines may be moot: because home values have also decreased significantly, lenders may wish to avoid foreclosure until collateral values begin to increase.

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#### INTRODUCTION: THE STRUCTURE OF FORECLOSURE LAW IN GEORGIA

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Georgia maintains both a non-judicial foreclosure procedure and a judicial foreclosure procedure. Because judicial foreclosure is optional, and because non-judicial foreclosure is less costly, most lenders in Georgia forego judicial foreclosure and choose the non-judicial foreclosure procedure. Authority for the non-judicial procedure is found in § 44-14-162 of the OCGA.

The foreclosure process in Georgia includes 3 days for foreclosure referral and 34 days for publication of sale (once a week for four consecutive weeks). There is a notice of sale requirement that must be made 30 days prior to sale, but this is concurrent with the publication of sale requirement period. The total minimum period from foreclosure referral to sale is 37 days in Georgia. This is extended by the time necessary for title work; some lenders estimate this to require 10 days in Georgia, making a 37-day foreclosure unlikely (Freddie Mac states that the time period is 47 days, including the time for title work).

Georgia allows deficiency judgments, which are court judgments ordering a borrower to pay the difference between the home’s sale price and the value of the loan when there is negative equity. These are rarely used in practice in Georgia, and are discussed on page 11.

## 1. THE MOST COMMON REASONS INDIVIDUALS DEFAULT ON MORTGAGE LOANS

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Home mortgage borrowers default for a number of reasons, including reduction of income (caused by loss of job or by underemployment), reduction in value of home/collateral, increased or excessive debt, or a combination of such events.<sup>i</sup> Additionally, increased costs to homeowners, including the costs associated with the rise in oil prices, are a factor of the ability to meet mortgage payments. Further, the recent increased leverage caused by refinancing exacerbated the increased loan-to-value ratios caused by the declines in home values.<sup>ii</sup>

The foreclosure process will only begin when a lender determines that the borrower has defaulted on loan payments. The type of foreclosure law does not determine whether a borrower will default or not.

While it is true that a homeowner must default before foreclosure proceedings may commence, the mere initiation of foreclosure proceedings does not mean that a foreclosure sale will occur.<sup>iii</sup> Consumer advocates claim that the more time available for the borrower to negotiate a workout plan, the less likely the process is to lead to a foreclosure sale. Thus, they advocate that states should increase the time of the foreclosure process.

However, the increase in time makes the foreclosure process very costly for both lenders and borrowers. Thus, foreclosure laws may affect borrowers, as increased costs to lenders are passed down to borrowers, through higher costs, higher rates, and lower mortgage credit availability.

Finally, a secondary factor in mortgage loan default is the incentive to default. Incentive to default is greatest in states with “borrower-friendly” foreclosure laws.<sup>iv</sup> If the benefit of default outweighs the benefit of continuing payment, then a borrower is more likely to default. Commentators note that a longer time period between default and completed foreclosure provides the borrower with the incentive of “free rent” (occupying the home without paying on the mortgage).<sup>v</sup> Another incentive to default is a low probability of a deficiency judgment.<sup>vi</sup>

The incentives of the borrower may shift to reinstatement once the foreclosure process begins and the possibility of losing the home arises.<sup>vii</sup> However, this shift is less pronounced when a state or lender maintains a lengthy foreclosure timeline.<sup>viii</sup>

Because lenders in states with borrower-friendly foreclosure laws know that borrowers are more likely to default, they may increase borrower costs to offset their own costs (such as through higher rates). See the discussion of foreclosure law impact on mortgage supply on page 16.

Reason for Default	Percent of Foreclosures (2 <sup>nd</sup> Half of 2008)
Negative Equity	35.3%
Unemployment	22.7%
Subprime FICO Score	18.4%
Down Payment of Less than 3%	16.1%
Mortgage Rate Reset	7.6%

## SPECIAL CAUSES OF DEFAULT, 2006 – 2009:

### 1. Decrease in House Prices and Negative Equity:

Even where the home is worth less than the debt remaining on the home (negative equity), borrowers have incentives to not default; thus, other causes are most likely present in the case of default. Because the borrowers would have to pay rent for another residence, would have their credit rating suffer, and because of the potential for home values to return to the value of the outstanding loan, it is not likely that decreased home prices were the only reason for the recent high levels of default.

However, a decrease in income alone is not necessarily enough to lead to default, either, because with positive equity the homeowner can simply sell the home. It is the mix of negative equity with either decrease of income or illiquidity of the home that will lead to default. The role of negative equity in the default crisis should not be understated: it is reported that 12% of homes had negative equity in the second half of 2008, but negative equity was present in around 47% of foreclosures.<sup>x</sup>

### 2. Illiquidity:

Borrowers became unable to sell their homes amidst the decreases in home prices, and became less able to avoid foreclosure as home prices slid even further. The increase in foreclosures introduced even more supply to the market, adding to the difficulties of selling. Inability to sell or rent was cited by 24% of borrowers as the cause of re-default in Freddie Mac modification programs.<sup>xi</sup>

### 3. Complexity of Mortgage Products:

Complex mortgage products may have been more of a secondary factor to the mortgage crisis than is reported in the media. Because borrowers could refinance, the complex mortgage features may not have become a factor until home prices began to fall. As borrower refinance became more difficult with lower home prices, default became much more likely.

The cause of default among borrowers with complex mortgage products may be related more to the type of borrower using such products: those with the lowest credits scores and with the higher loan-to-value ratios.<sup>xii</sup>

### 4. High Combined Loan-to-Value Ratios:

In 2003, the median combined loan-to-value ratio was 90%.<sup>xiii</sup> From 2005 to 2007, that number was 100%.<sup>xiv</sup> High combined loan-to-value ratios, combined with negative equity, led many borrowers to be unable to refinance, and gave them less incentive to avoid default.<sup>xv</sup>

### 5. Increased Use of Second Liens:

Default rates of borrowers with “piggyback” second liens have been noted as higher than for those with only a high combined loan-to-value ratio. The risk of default on second liens is

higher because borrowers on second liens have very little equity in the property, and because the consequences of default are not as great as those of first lien mortgages (foreclosure is less likely, as it provides little to second lien lenders: *see page 7*). A recent study noted that a borrower with an 85% first lien and a 10% second lien is a greater risk of default than a borrower with a 95% combined loan-to-value ratio lien.<sup>xvi</sup>

#### 6. Rise in Commodity Prices:

The rise in oil prices during the period of 2006 to 2009 has been discussed as a precipitating factor to the subprime mortgage crisis. As travel and consumer goods became more expensive, borrowers had less money to allocate to meeting mortgage payments.

#### 7. Interest Rates:

Rates on most adjustable-rate subprime mortgages were fixed for the first two to three year period.<sup>xvii</sup> Following this period, most rates adjusted according to changes in LIBOR.<sup>xviii</sup> Between 2004 and 2006, the LIBOR increased from 8% to 11.5%.<sup>xix</sup> Changes in rates for many Alt-A adjustable rate mortgages were similar. Many Alt-A adjustable mortgages follow changes in the one-year Treasury bill rate, and this increased in a manner similar to LIBOR over the period of 2004 to 2006.<sup>xx</sup>

#### 8. Securitization:

The sale of securities backed by mortgage loans may be a factor in whether a mortgage goes into foreclosure or is modified. However, this becomes a factor only after default. It is not a cause of default. (*See page 19 for further discussion of securitization and modification*).

## 2. FREQUENCY OF MORTGAGE LOAN DEFAULT<sup>xxi</sup>

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“Default” refers to a breach of mortgage contract terms; it is most often associated with the loan status following a borrower missing payments. A technical mortgage loan default according to many lenders occurs for when a loan is ninety days delinquent (three monthly payments have been missed).<sup>xxii</sup> The term “seriously delinquent” is also used to describe a loan that is ninety days or more delinquent.

“Seriously delinquent” loans also carry a very low cure rate. That rate in the second quarter of 2009 was 0.8%.<sup>1</sup>

As historical perspective: the national average of mortgage loans listed as “seriously delinquent” for the period of 1979 through 2006 was 1.7%.<sup>xxiii</sup> In the second quarter of 2009, that number was 5.3%.<sup>xxiv</sup> This was an increase of 80% over the second quarter of 2008.

While foreclosure numbers have increased, delinquency data may be more appropriate concerning potential foreclosures. Foreclosure numbers may be somewhat subdued, as

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<sup>1</sup> See page 12 for more discussion of cure rates and data.

government intervention and a backlog of foreclosure actions have prevented many defaults from leading to foreclosure. Additionally, lenders and investors have initiated moratoria or delays.<sup>xxv</sup> These programs will likely merely delay foreclosures, rather than cure defaults, as re-default rates continue to be high.

“Seriously Delinquent”<sup>xxvi</sup> Loans

“Seriously Delinquent” Loan Rate, by Loan Type 2008 <sup>xxvii</sup>				
	Q1 2008	Q2 2008	Q3 2008	Q4 2008
Prime	1.11%	1.3%	1.7%	2.4%
Alt-A	5.17%	5.8%	7.1%	9.1%
Subprime	10.75%	11.6%	13.5%	15.8%
Other	2.88%	3.1%	3.6%	4.5%
Total	2.66%	3.0%	3.6%	4.8%

“Seriously Delinquent” Loan Rate, by Loan Type 2009 <sup>xxviii</sup>				
	Q1 2009	Q2 2009	Q3 2009	Q4 2009
Prime	2.8%	3.0%	-	-
Alt-A	9.2%	10.3%	-	-
Subprime	15.8%	17.8%	-	-
Other	4.5%	5.2%	-	-
Total	4.8%	5.3%	-	-

While delinquency rates are high, these rates include loans that are in trial modification. If many of these modifications are successfully completed, then foreclosure rates may fall. However, the current high re-default rates suggest that this may not be the case.

*Frequency of Foreclosure:<sup>2</sup>*

Many loans that are in default are not being brought into foreclosure. This results from lenders attempting to avoid the losses, consequences, and costs of foreclosure, but at the same time avoiding the risks and costs of modification. This has both statistical and practical consequences: many loans that are in this “informal forbearance” may result in foreclosure.

The defaulted loans most likely to not be in foreclosure are second lien mortgage loans (a recent study showed around 30% of defaulted loans not in foreclosure were second lien loans).<sup>xxix</sup> This follows the fact that foreclosure provides little to lenders of junior liens.

### 3. COSTS OF FORECLOSURE

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FORECLOSURE COSTS TO LENDERS

Foreclosure costs to lenders include pre-foreclosure costs (the lost payments of interest and principal, maintenance of the property, and lost servicing fees), transaction costs of the

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<sup>2</sup> See Appendix A for foreclosure rates by state.

foreclosure (legal and administrative fees), and post-foreclosure costs (REO sale costs, loss on the REO sale from the depreciated value, and the costs of restoring the property to a proper saleable condition).<sup>xxx</sup>

Making foreclosure costly to lenders had the effect of increasing costs to non-defaulting borrowers. As lending becomes increasingly expensive, these costs are passed along by lenders to current borrowers.

In 2002, lenders reported losing an average of \$58,759 per foreclosure.<sup>xxx1</sup> In 2006, it was noted that GMAC Residential Funding Corporation reported losing \$50,000 per foreclosure.<sup>xxx2</sup> Further, estimates of losses range from 30 to 60 percent of outstanding loan balances.<sup>xxx3</sup> The National Home Equity Mortgage Association estimates foreclosure losses to be 50 percent of loan balances.<sup>xxx4</sup> These numbers are expected to be even greater from 2006 forward, as housing prices have decreased so greatly.

In total, traditional losses to lenders or servicers in a foreclosure sale may be in the range of 30 to 60% of the loan amount.<sup>xxx5</sup> A recent study shows that for every 50 days added to the foreclosure timeline, the costs of the foreclosure increase by 12%.<sup>xxx6</sup>

A longer foreclosure process also leads to decreased home values. Another recent study found that homes in judicial foreclosure states (those with longer foreclosure time periods) sold for 4% less than those in non-judicial foreclosure states.<sup>xxx7</sup>

Recent declines in home prices have added costs to lenders in foreclosure. However, longer foreclosure periods have a history of increased costs. In 1995, a study found that a five-month delay in foreclosure in judicial procedure states increased time-sensitive costs by 5% of the loan balance.

While mortgage insurance may exist in some cases, it does not cover all of the costs of foreclosure.<sup>xxx8</sup> Mortgage insurance may be provided on the loan through private mortgage insurance, or by the government through the Federal Housing Administration. However, this insurance does not cover all of the costs of the foreclosure process.<sup>xxx9</sup>

Pre-Foreclosure Costs:

<i>Breakdown of Pre-Foreclosure Costs<sup>xi</sup></i>	
Pre-Foreclosure costs = 37% total gross losses to mortgage investors/servicers; of that amount:	
Accumulated interest	66%
Property taxes, insurance, homeowners' association or condominium fees	21%
Legal fees	10%

1. *Lost principal and interest payments*
2. *Insurance and tax payments*

3. *Maintenance fees*: Where the borrower has ceased maintaining the property, the lender/servicer will be required to continue to do so in order to preserve the state of the property for resale. Additionally, lenders may be required to pay the cost of homeowner's hazard insurance. Borrower-occupants tend to stop meeting insurance payments when the mortgage loan goes into delinquency. To avoid being stuck with the costs of damage, lenders must often make these payments in lieu of the borrower.

4. *Loss of servicing fees*: For servicers of securitized mortgages, the delinquency of mortgage payments will cause a loss of service fees, which are paid to servicers out of the borrowers monthly payments.

5. *Servicing/Collecting Costs*: In attempting to retrieve payments, as well as in servicing a delinquent loan, lenders and servicers will incur costs (note that these costs can be as much as three times the costs of servicing a non-delinquent loan).<sup>xli</sup>

#### Costs During the Foreclosure Process, and Following Foreclosure (Post-Foreclosure Costs):

1. *Loss of interest payments*: Not only does the lender lose interest payments during the foreclosure process, but the borrower is in effect receiving "free rent," which can be another incentive for borrowers to default.<sup>xlii</sup> The longer the process continues, the longer the borrower is able to live rent-free, and the greater the costs are to the lender.

2. *Legal fees*: Court and legal fees are high in judicial foreclosure, and are one cost that lenders attempt to avoid by opting for non-judicial foreclosure where available. However, because of the necessity of meeting statutory requirements, especially the detailed statutory requirements in a non-judicial foreclosure, the foreclosure process requires attorneys to pay strict attention to detail. This leads to specialization of foreclosure attorneys, and increased costs.

3. *Administrative fees*: This includes publication notice fees, auction fees, and court fees where judicial intervention is required.

4. *Restoration costs*: Because borrowers are not evicted from their homes when the foreclosure process begins, many borrowers avoid upkeep of their homes, or chose to remove fixtures from the property. These activities increase the costs to the lender, who must restore the property prior to sale.

5. *Commissions to real estate agents in REO*: the largest portion of post-foreclosure costs is commission paid to real estate agents.

#### Loss Recognized Upon REO Sale (loss on unpaid principal balance):

Lenders realize a loss on foreclosure sales when the sale value of the property is lower than the loan value. The value of a house in foreclosure decreases as time progresses, making a longer foreclosure process more costly to lenders in terms of losses. Losses have been even greater recently as house prices have significantly decreased.

The loss on unpaid principal balance has traditionally been around 20% of total lender foreclosure costs.<sup>xliii</sup> This number was expected to rise in 2008 and 2009 to 30%.<sup>xliiv</sup> The average loan loss for first lien loans with losses in November of 2008 was 55%. Second lien mortgages with losses saw an average near 100%. Federal Reserve research reports estimate losses in the past year and a half on loan balances at almost 50% for prime mortgages, 60% for near-prime mortgages, and over 70% for subprime mortgages.<sup>xliv</sup> These losses do not include the costs of foreclosure.

FORECLOSURE COSTS TO THE STATE OF GEORGIA:

High foreclosure rates also have costs to state governments and communities. The inability to sell foreclosed properties may leave REO properties abandoned, decreasing local property values.

A special report by the Joint Economic Committee of Congress from 2007 estimates that each foreclosure costs around \$77,935, including costs to the lender, the borrower, the local government, and in devaluation to neighbors' property. In the time following that report, foreclosures have increased and home prices have fallen even further, leading these numbers to be even higher.

Joint Economic Committee of Congress <sup>xlvi</sup> Estimate of Costs per Foreclosure	
<i>Party</i>	<i>Estimated Cost per Foreclosure</i>
Lender	\$50,000
Local Government	\$19,227
Borrower	\$7,200
Neighbor's Home Value	\$1,508
Total	\$77,935

Estimated Potential Foreclosure Costs in Georgia (at \$77,935 per foreclosure)		
	Houses with Filings <sup>xlvii</sup>	Estimated Cost
2007	59,057	\$4,602,607,295
2008	85,254	\$6,644,270,490
First Half of 2009 (2009 Estimate)	56,391 (112,782)	\$4,394,832,585 (\$8,789,665,170)

Estimated Potential Costs to Lenders in Georgia (at \$50,000 per foreclosure)		
	Houses with Filings	Estimated Cost
2007	59,057	\$2,952,850,000
2008	85,254	\$4,262,700,000
2009	56,391 (112,782)	\$2,819,550,000 (\$5,639,100,000)

#### 4. CHANGES IN FORECLOSURE LAWS, AND EFFECTS UPON FORECLOSURE RATES: CASE STUDY OF MARYLAND’S 2008 FORECLOSURE LAW AMENDMENT

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In April 2008, the Maryland legislature passed the Foreclosure Process Reform Bill<sup>xlviii</sup>, which increases the time required for the state’s statutory foreclosure process. The previous minimum statutory minimum period was 34 days<sup>xlix</sup>; the minimum period is now 135 days.<sup>1</sup>

Foreclosures in Maryland fell in the second quarter of 2008, immediately following passage of the legislation. However, the foreclosure rate continued to climb from this low in all quarters following the second quarter of 2008, including the second quarter of 2009. The data show that the change to Maryland’s foreclosure laws temporarily lowered the foreclosure rate.

However, foreclosures made a comeback, as the law merely delayed the inevitable conclusion of the foreclosure process for many mortgages. Foreclosures were down 18.47% for the year beginning the quarter before Maryland’s legislation passed. However, foreclosures in Maryland during the third quarter of 2009 were up 85.64% over the third quarter of 2008, and foreclosures in September 2009 were up 200.45% over September 2008.

Foreclosure Rate Increases, Maryland versus Georgia, by Quarter <sup>ii</sup>			
		MD	GA
Q1 2009	Increase over Q4 2008	-7.39%	10.66%
	Increase over Q1 2008	-18.47%	0.37%
Q2 2009	Increase over Q1 2009	0.33%	9.38%
	Increase over Q2 2008	-1.40%	12.75%
Q3 2009	Increase over Q2 2009	58.83%	6.69%
	Increase over Q3 2008	85.64%	25.06%
	Sept. 2009 Increase over Sept. 2008	200.45%	61.01%

#### 5. LENGTH OF THE FORECLOSURE PROCESS AND FORECLOSURE RATES: WHAT MAKES A FORECLOSURE LAW EFFICIENT?

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Because foreclosure time periods tip the balance of borrower and lender incentives, borrowers are less likely to cure a delinquent loan out of foreclosure as a state’s foreclosure process lengthens.<sup>lii</sup>

A recent Freddie Mac study notes that states that have “excessively long” statutory foreclosure timelines could increase the return to timely payment by currently delinquent borrowers by 3% to 9% by decreasing the foreclosure time period to meet the national average length.<sup>liii</sup> This same reduction in time could lead to an estimated 6% to 12% decrease in costs to lenders (relative to the national average) for each 50-day time period reduction.<sup>liiv</sup>

While longer time periods create more costs for lenders, they also make delinquency cure more difficult. Proponents of lengthier foreclosure processes suggest that longer periods allow more time for borrowers to correct the factors that caused default, which would lead to lower

foreclosure rates. The proper measurement to determine whether longer foreclosure time periods could alleviate foreclosures is the rate of cured defaults.

“Cure” refers to the payment by the borrower of all amounts that are past due. This can be accomplished by paying the amounts due in order to reinstate the loan, or by selling the property, or by refinancing the mortgage.

Cure Rates of Delinquent Mortgage Loans, Fitch Ratings <sup>lv</sup> (Note: up to 25% of the cure rate includes modifications)		
<i>Loan Type</i>	<i>2000-2006</i>	<i>2009</i>
Prime	45.0%	6.6%
Alt-A	30.3%	4.3%
Subprime	19.4%	5.3%

The data suggests that while past defaults may have been caused in many cases by temporary circumstances that could be quickly corrected, current defaults are the cause of much more permanent default circumstances.

The most likely cause of the fall in cure rates is the prevalence of negative equity. The increase in negative equity has taken away the cure methods of refinance or sale of the home from the borrower.<sup>lvi</sup> Sale of the home is made even more difficult by the large supplies of homes for sale. As home prices continue to fall and supply continues to increase, it will be increasingly difficult for delinquent borrowers to cure.

Self-Cure Rates of Delinquent Mortgage Loans, by Delinquency Status		
<i>Delinquency Status</i>	<i>2000-2006 (Freddie Mac)<sup>lvii</sup></i>	<i>Q2 2009<sup>lviii</sup></i>
30 Days	55.89%	26.5%
60 Days	39.53%	4.4%
90+ Days	28.97%	0.8%

From 2006 through 2007, close to 70% of the cures that occurred during the foreclosure process (which are rare) on Freddie Mac loans occurred within three months of foreclosure referral.<sup>lix</sup> Thus, the time period following 90 days after foreclosure referral is exceedingly unnecessary.

A 2008 study by Freddie Mac estimated that the most efficient foreclosure time period lies somewhere below the actual average period (without lender pre-referral periods: 198 days) and ranges to below the average expected (statutory minimum) time period (120 days).<sup>lx</sup>

Whether a state foreclosure law is efficient or not will depend upon factors unique to that state. It is, therefore, difficult to estimate a single efficient foreclosure timeline.

*Timing:*

Under Georgia’s non-judicial foreclosure process, publication of sale is required to be made once per week, for four consecutive weeks (a period of 34 days). With notice of sale and an attorney fee letter mailing, the entire process takes a minimum of 37 days to complete. ). In addition, title work generally takes about 10 days to complete in Georgia, leading to a practical minimum period of at least 47 days. According to a recent Freddie Mac study, the average number of days in the statutory or judicial process required by law in the United States is 116.

However, the Freddie Mac study shows that the GSE’s actual average time from the point of borrower’s due date of last paid installment<sup>4</sup> to the time of foreclosure sale in Georgia was 241 days (or 211 days delinquent). The average of actual days from borrower default to foreclosure sale for the United States is 355.

The national average of statutory minimum length for primarily statutory foreclosure states is 69.29 days (28 states have a non-judicial process as the primary foreclosure process). That average for primarily judicial foreclosure states is 179.91 days (22 states have a judicial process as their primary foreclosure process).

Actual foreclosure time periods are expected to be higher than the actual averages for 2007 listed. Causes of delay, such as backlog, moratoria, borrower bankruptcy filing, and contests to foreclosure, have likely increased significantly since 2007.

*Timing and Costs:*

In the Freddie Mac study, foreclosures in Georgia carried costs that were 69% of the national average. The relative cost figure takes into account interest expenses before the foreclosure sale. It does not include the loss on REO sale.

Sample of States with Higher Relative Foreclosure Costs than National Average				
	Process	Statutory Period	Actual Average	Cost Relative to Nat. Avg.
Georgia	Statutory	37	241	69%
California	Statutory	113	268	171%
Connecticut	Judicial	155	319	156%
Delaware	Judicial	134	402	125%
Maine	Judicial	204	578	135%
Massachusetts	Statutory	64	263	142%
New Jersey	Judicial	268	436	224%
Wisconsin	Judicial	255	458	140%

<sup>3</sup> The information presented in this section can be found in Appendix A, beginning on page 21.

<sup>4</sup> Freddie Mac uses the term “due date of last paid installment” (“DDLPI”) to describe delinquency. For example, if the last payment is made on the due date of May 1, and payment for June is not made on June 1, then the DDLPI will be 60 days on June 31. Under the traditional definition of delinquency, the loan would be 30 days delinquent.

States with lower costs were Alabama (49%), Arizona (63%), Arkansas (63%), Maryland (65%), Mississippi (58%), Missouri (51%), Tennessee (57%), Virginia (63%), West Virginia (44%), and Wyoming (69%). Out of these states, none have judicial foreclosure as their main foreclosure process. Further, only three of the states have statutory periods before foreclosure sale of over 35 days (Arizona - 93, Arkansas – 36, and Wyoming – 48). Only one of the states has an actual average DDLPI time period over 300 days (Wyoming – 342).

Only two judicial foreclosure states have required time periods below 100 days (Massachusetts – 64, Rhode Island – 54). Four have required time periods above 200 days (Maine – 204, New Jersey – 268, New York – 278, and Wisconsin – 255). Only three have actual time DDLPI periods below 300 days, while four have time periods over 400 (Delaware – 402, Maine – 598, New Jersey – 436, and Wisconsin – 458).

Timing and Foreclosure Rates:

The data do not suggest a correlation between foreclosure timelines and foreclosure rates. However, many states with timelines similar to or shorter than Georgia’s have much lower foreclosure rates.

States with Similar Foreclosure Timelines Compared with Georgia				
	Statutory Period	Actual Average	2007	2008
Georgia	37	241	1.57%	2.20%
Alabama	31	291	0.27%	0.37%
Arkansas	36	281	1.57%	1.12%
New Hampshire	33	229	0.21%	1.13%
Tennessee	27	248	0.98%	1.65%
Texas	28	254	0.94%	1.04%
Virginia	31	213	0.51%	1.52%
West Virginia	33	277	0.05%	0.08%

Many states with timelines much longer than Georgia’s have foreclosure rates higher than or similar to Georgia’s.

States with Longer Foreclosure Timelines and Greater or Similar Foreclosure Rates Compared with Georgia				
	Statutory Period	Actual Average	2007	2008
Georgia	37	241	1.57%	2.20%
Arizona	93	253	1.51%	4.49%
California	113	268	1.92%	3.97%
Colorado	73	339	1.91%	2.41%
Michigan	33	380	1.95%	2.34%
Nevada	115	380	1.95%	7.29%
Ohio	187	480	1.80%	2.25%

These findings at least suggest that shorter timelines do not necessarily prevent more foreclosures, and that longer timelines do not necessarily allow more foreclosures.

### Conclusions from Data:

Timing may have briefly correlated with foreclosure rates in the early waves of defaults. However, rates have most likely caught up in states with longer foreclosure periods.

Georgia maintains a high foreclosure rate, even when compared to states with shorter or similar foreclosure timelines. This provides further evidence that short foreclosure periods do not cause more foreclosures.

There are many factors involved in causes of foreclosures. A more meaningful measure of the effect of foreclosure time periods is the rate of defaults cured while in the foreclosure period. However, no such data exists in the public domain at the time of writing.

#### 7. RELATION OF THE TYPE OF LENDER TO LENGTH OF FORECLOSURE PROCESS

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Not enough data is available to make any statements regarding differences in length of the foreclosure process between lenders. However, several lenders have initiated (temporary) foreclosure moratoria, and GSEs have lengthened the process of foreclosure. Servicers and lenders have faced backlogs in foreclosures, delaying the process even further.

Servicers of mortgages usually have guidelines for the foreclosure process provided by investors. Freddie Mac provides its servicers with both mandatory periods as well as recommended optimal periods.

For example, Freddie Mac has added time to its foreclosure process by implementing a mandatory maximum 150-day period of time before foreclosure referral. The period includes a lender notification period of 60 days from the due date of last paid installment (DDLPI), 15 days for borrower notification, and 75 days of “loss mitigation efforts,” including a borrower call campaign.<sup>lxii</sup> The loan is then referred to an attorney. Within this 150-day period, four payments will be late and five will be due.

Maintaining the investors’ suggested time periods has previously been incentivized by bonuses to compliant servicers. However, Freddie Mac recently ceased providing incentives and bonuses to servicers who completed the process in the recommended time periods.

In August 2008, Freddie Mac increased its recommended maximum foreclosure period in 21 states, including Georgia. The increase brought the recommended period in these 21 states to 300 days from DDLPI (or 270 days delinquent). Thus, Freddie Mac’s maximum recommended time period for servicers in Georgia is 150 days from due date of last paid installment to foreclosure referral, and 150 days from foreclosure referral to completed foreclosure sale (thus increasing the foreclosure period in Georgia by 103 days), for a total of 300 days from DDLPI. Whether this was based on government intervention or economic data is unknown.

## 8. EFFECT OF FORECLOSURE LAWS ON THE AVAILABILITY OF RESIDENTIAL MORTGAGE CREDIT:

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A tradeoff appears in the connection between loan supply and the foreclosure laws of the state. In addition to increasing costs to borrowers, lenders in “defaulter-friendly” foreclosure law states tend to offer smaller loan sizes.<sup>lxii</sup> A recent study shows that the sizes of loans in these “defaulter-friendly” states are 3% to 7% smaller than loans in other states (after controlling for geographic differences in loan sizes).<sup>lxiii</sup> More specifically, research has shown that an increase in the foreclosure period of 100 days was followed by a 1.8% decrease in loan size, while an increase in the period of 200 days was followed by a 3.6% decrease in loan size.<sup>lxiv</sup>

This size difference suggests two effects of “defaulter-friendly” foreclosure laws: 1) the laws are costly to lenders, who respond by decreasing loan supply, and 2) house prices may potentially be lower in these states because buyers/borrowers are unable to access larger credit and thus are not able to demand higher priced homes.<sup>lxv</sup> Loan sizes may also be smaller either because larger down-payments are required in these states, or because rates are higher, and thus borrowers do not wish to take out a larger loan.

## 9. BANKRUPTCY AND FORECLOSURES

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Historically, of prime borrowers who default, 6% file for bankruptcy.<sup>lxvi</sup> That number rises to 9% for subprime borrowers. It is important to note that borrowers cannot discharge mortgage debt on a primary residence in bankruptcy.<sup>5</sup>

Bankruptcy protection of a borrower makes foreclosure and repossession difficult for lenders. Under Chapter 13 bankruptcy protection, the foreclosure process may be stopped and the mortgage reinstated until after the bankruptcy is settled. Thus, it may serve to lengthen the foreclosure process, and make it more costly for lenders and increase losses.<sup>6</sup>

## 10. DEFICIENCY JUDGMENTS

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As deficiency judgments allow lenders to recoup the difference between the value of the loan and the REO sale price, lower losses are generally expected in states that allow deficiency judgments.

In theory, this is a counter to borrower moral hazard and the incentive to default and allow foreclosure. In practice, deficiency judgments are rarely used, as borrowers rarely have sufficient funds, and the requirement of judicial intervention increases costs.

Georgia allows deficiency judgments under Ga. Code Ann. § 44-14-161. Following a foreclosure sale where the home is sold for less than the underlying mortgage loan amount, a lender will have thirty days to seek a deficiency judgment.

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<sup>5</sup> Georgia maintains a homestead exemption in Chapter 13 bankruptcy of \$5,000. This means that if there is no equity in the home, or up to \$5,000 in equity in the home, the borrower is not required to give up the home after filing for bankruptcy protection.

<sup>6</sup> Data comparing the number of personal bankruptcies to the number of outstanding first lien mortgages by state is available in Appendix A.

However, most lenders do not seek deficiency judgments in Georgia because Georgia law requires that a court first approve the foreclosure sale price. Lenders seek non-judicial foreclosure to avoid court costs and time. Seeking court approval for the sale defeats the purpose of non-judicial foreclosure. Additionally, lenders rarely seek deficiency judgments because borrowers who default on mortgage loans rarely have the resources to cover the judgment.

#### 11. PRIVATE MORTGAGE INSURANCE (PMI)

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To protect against a lenders' losses, lenders will require the borrower to take out enough insurance to protect the borrower's equity in the property. Private mortgage insurance allows borrowers to make a lower down payment without requiring a high loan-to-value ratio. Most lenders require private mortgage insurance when the loan-to-value ratio is higher than 80%.<sup>lxvii</sup> Because private mortgage insurance does not cover the entire value of the property (it usually covers 20-25%), high decreases in value will not be protected against.

As noted above, the availability of mortgage insurance allows lenders to recoup some of the costs of foreclosure. Mortgage insurers will pay the lower of 1) the actual net loss, or 2) the coverage percentage of the claim. This means that total losses are not always covered.

#### *Foreclosure Law Conclusions:*

1. Borrowers default on mortgage loans for a variety of reasons. Foreclosure law has little to do with the cause of loan default.

2. While states with shorter foreclosure periods may see higher foreclosure rates over the short term, this may balance out over the long term. Lengthy foreclosure processes seem to delay the inevitable, burdening lenders, borrowers, and taxpayers.

3. Foreclosure is costly to lenders: losses and costs to lenders in foreclosure likely exceed \$50,000 per foreclosure.

4. Georgia maintains a high foreclosure rate, even when compared to states with lower or similar foreclosure timelines. This suggests that factors other than time influence Georgia's foreclosure rate.

5. Georgia's foreclosure statute is among the most efficient foreclosure statutes in the nation:

a. Costs are 69% of the national average. While opponents of the current foreclosure process in Georgia wish to see a lengthier foreclosure time period, such a lengthened process would only increase the costs to lenders, with little relief to borrowers, leading lenders to pass along these costs to non-defaulting borrowers. These increased costs may lead to increased defaults. Thus, foreclosure laws may have a negative impact on borrowers if they are too costly to lenders.

b. Because cure rates are so low, borrowers in late delinquency stages and foreclosure are highly unlikely to reinstate their loans. This suggests that a lengthened foreclosure time period would not be helpful, and that Georgia's current foreclosure period allows sufficient time for cure.

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## PART 2: MORTGAGE MODIFICATIONS AND FORECLOSURE PREVENTION

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### INTRODUCTION TO MORTGAGE MODIFICATION

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As mortgage structures that deferred principal and interest served as a factor in the foreclosure crisis, it is doubtful that mortgage modifications with similar structures will be able to solve the crisis. While modifications may slow foreclosures, they may only delay the foreclosure of many to most modified loans.

#### 1. COSTS AND RISKS OF MORTGAGE MODIFICATIONS

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During this current cycle, most lenders have been as aggressive as possible in attempting to make mortgage modifications to help borrowers. According to the HOPE NOW Alliance of the 27 largest mortgage servicers nationally, the participants had either made repayment plans or mortgage modifications for 220,872 Georgia homeowners from July 2007 through September 2009<sup>7</sup>. This represents an estimated 13.3% of all Georgia mortgages based on the Mortgage Bankers Association's estimate of 1.66 million mortgages in Georgia.

However, the cost of failure of mortgage modification is higher than the costs of foreclosure, as it includes foreclosure costs in addition to additional time and lender concessions.

The prominent hurdles to lenders making more modifications of loans are 1) the risk of re-default, 2) the risk of "self-cure," 3) the risk of further decreases in home prices, 4) a higher discount rate, and 5) securitization.<sup>lxviii</sup>

#### Risks of Mortgage Modification to Lenders:

##### 1. Re-default Risk:

The causes of re-defaulting on a modified mortgage are similar to the reasons for defaulting before modification. Two other reasons for re-default include the status of the loan repayment before modification (by what amount of time it is delinquent), and the modification structure of the mortgage payment.<sup>lxix</sup>

Causes of Mortgage Default and Re-Default, Freddie Mac, 2008		
<i>Cause</i>	<i>Default</i>	<i>Re-Default</i>
Income Loss	41.8%	18.5%
Death/Illness in Family	23.2%	17.6%
Excessive Financial Obligations	14.4%	14.4%
Marital Difficulties	7.6%	21.8%
Property Problem or Casualty Loss	1.9%	4.7%
Inability to Sell or Rent Property	1.3%	23.7%
Employment Transfer	0.8%	21.1%
Other	9.0%	9.5%

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<sup>7</sup> [https://www.hopenow.com/media/state\\_data/GA%20Info%20July%2007%20-%20September%2009.pdf](https://www.hopenow.com/media/state_data/GA%20Info%20July%2007%20-%20September%2009.pdf)

Re-default is more costly to lenders than original default because of the additional time and services involved, but it is much more costly in terms of losses, as home values continue to fall.

## 2. Self-Cure Risk:

There is a risk that modifications will be made where a borrower would have been able to cure without the modification. This creates unnecessary costs to the lender, either in lower monthly payments or in lower interest received. The risk of the potential for self-cure is decreasing rapidly, as cure rates have collapsed across all loan types.

## 3. Decreases in Home Prices:

Falling home prices can lead to a modified borrower again paying more on a home than it is worth. However, because home prices may have reached their lowest points, this may not be as potent a risk factor as it once was.<sup>lxx</sup>

## 4. Securitization:

Some commentators believe that securitization creates a barrier to modification. Whether securitization is key to the high re-default rates or not, it does not make modification easier. The servicing of a loan by the original lender allows flexibility in structuring the modification that securitized loans do not have the benefit of.

There are two potential impediments to modification that securitization presents. First, the Pooling and Service Agreements (PSAs) signed by lenders and servicers before the mortgage crisis generally include provisions that allow modification *only* where default is likely and a net present value calculation can show the benefit over cost of a modification. The second and more complex aspect is that many servicers fear that modification will provoke lawsuits by investors of affected mortgage-backed security tranches.

However, there are doubts that securitization is a significant impediment to modification. A 2007 Credit Suisse study of a small number of PSAs found that less than 10% prohibited modification, around 40% allowed modification with restrictions to the number of loans backing the security that could be modified (requiring either permission for the remainder or setting a minimum rate decrease), and the remainder of the PSAs contained no restrictions.<sup>lxxi</sup>

These percentages can vary greatly, however, when evaluating individual servicers' or lenders' ability, success or willingness in modifying securitized loans. For example, one servicer may have PSAs of more than 80 percent that do not allow for modifications.

## 5. Borrower Moral Hazard:

Because borrowers see that lenders are willing to renegotiate, they may intentionally enter into delinquency in order to lower their monthly payments, decrease their rates, or reduce their principal.<sup>lxxii</sup> The practical solution to this problem is the requirement of full borrower disclosure.<sup>lxxiii</sup> However, this will slow the modification process, creating more costs for lenders.

## 6. Special Problem of Modifying Second Mortgages:

First, because a second mortgage lien is junior to a first mortgage, lenders recoup little, if any, through foreclosure. It is more desirable for the lender of a second mortgage to modify the loan rather than to foreclose.

Second, because a second mortgage is usually taken through a second lender, the borrower must renegotiate both the first mortgage and the second mortgage separately.

### Mortgage Modification Costs:

#### 1. Present Value of Modifying the Loan versus Value of Foreclosing:

Lenders must determine whether it would be more costly to modify the loan rather than foreclose on the mortgage. While there may be losses in modifying the loan (potentially less interest or principal, depending upon the modification structure), current home prices may make foreclosure the more costly of the two options. This may be the reason for the high numbers of delinquent loans that have not seen lender action.

#### 2. Accounting Costs:

A troubled debt restructuring loss must be recorded by investors as an accounting loss immediately upon loan modification.<sup>lxxiv</sup>

#### 3. Foreclosure Costs, If Borrower Re-Defaults:

If the borrower re-defaults, foreclosure costs will be even greater, as more time has elapsed and the value of the home may have decreased.

## 2. MODIFIED LOAN PERFORMANCE AND DATA

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As historical context to current modification rates, it should be noted that Freddie Mac maintained a 20% failure rate on 15,834 modifications from 1995 through 2000.<sup>lxxv</sup> The GSE's failure rate dropped as housing prices rose during the early 2000s.

Date of Modification	Three Months Following Modification	Six Months Following Modification	Nine Months Following Modification	12 Months Following Modification
Q1 2008	13.1%	26.3%	36.8%	45.9%
Q2 2008	16.8%	32.9%	43.7%	49.0%
Q3 2008	17.9%	36.1%	45.0%	-
Q4 2008	17.7%	30.8%	-	-
Q1 2009	18.5%	-	-	-

Portfolio loans (i.e. loans that are serviced by the lender rather than serviced by others) have performed better in modification than loans that are serviced by others. However, data and

common sense suggest that lenders have tended to hold less risky loans in their portfolio, and have securitized riskier loans.<sup>lxxvi</sup> Portfolio loan modifications involved rate reductions and principal reductions more often than modifications by other investors.<sup>lxxvii</sup> This highlights the flexibility in loan modification where loans are maintained in the investor's portfolio (see chart on next page).

Re-Default Rates: Portfolio Loans versus Loans Serviced by Other Entities, for Loans 60+ Days Delinquent (2008) <sup>lxxviii</sup>				
Investor Loan Type	Three Months Following Modification	Six Months Following Modification	Nine Months Following Modification	12 Months Following Modification
Fannie Mae	28.3%	44.1%	52.6%	57.0%
Freddie Mac	34.4%	40.2%	49.8%	52.4%
Government Guaranteed	27.7%	49.8%	58.3%	59.1%
Private Investor	33.8%	46.4%	53.4%	57.2%
Portfolio Loans	14.0%	28.7%	38.7%	42.7%

Re-Default Rates of Loans Modified in 2008-2009 by Changes in Payment, for Loans 60+ Days Delinquent <sup>lxxix</sup>				
Modification to Payment	Three Months Following Modification	Six Months Following Modification	Nine Months Following Modification	12 Months Following Modification
Decreased $\geq$ 20%	15.0%	24.6%	30.4%	34.1%
Decreased 10% to < 20%	16.7%	29.3%	36.9%	43.0%
Decreased < 10%	18.8%	36.1%	45.4%	50.8%
Unchanged	47.2%	57.0%	62.8%	63.4%
Increased	30.3%	50.9%	60.6%	64.7%

Portfolio loans also show the lowest rates of capitalization. Capitalization of unpaid interest is estimated to have added slightly less than \$1 billion to modified mortgage loans.<sup>lxxx</sup> This capitalization may make loan payments increasingly more difficult to meet.

Type of Modification by Investor, Quarter 2, 2009 <sup>lxxxi</sup>					
	Fannie Mae	Freddie Mac	Government Guaranteed	Private Investor	Portfolio Loans
Capitalization	65.9%	89.1%	95.1%	73.8%	32.1%
Rate Reduction	43.6%	51.3%	77.0%	63.6%	84.1%
Rate Freeze	16.6%	14.5%	5.9%	6.4%	5.5%
Term Extension	47.8%	77.6%	46.4%	13.1%	72.4%
Principal Reduction	0.0%	0.0%	0.0%	0.0%	30.5%
Principal Deferral	0.1%	0.0%	0.0%	4.7%	2.7%
Unknown	19.0%	10.1%	4.5%	9.6%	3.2%

Type of Modification by Loan Type, Quarter 2, 2009					
	Prime	Alt-A	Subprime	Other	Overall
Capitalization	57.8%	62.0%	65.9%	81.8%	64.3%
Rate Reduction	69.7%	71.0%	71.1%	65.5%	70.1%
Rate Freeze	6.4%	7.3%	7.1%	12.3%	7.5%
Term Extension	50.7%	47.7%	40.4%	49.5%	46.0%
Principal Reduction	12.8%	11.8%	8.8%	2.4%	10.0%
Principal Deferral	4.8%	2.0%	0.7%	3.5%	2.5%
Unknown	9.6%	7.1%	6.7%	5.0%	7.4%

Modification Conclusions:

1. The rate of re-default following modification is very high. However, because cure rates are so low on delinquent loans, self-cure is not as great of a risk as it was in the past.
2. High re-default rates have combined with low house values to make loss mitigation difficult for lenders.

APPENDIX A: STATE FORECLOSURE LAWS AND FORECLOSURE DATA

State <sup>(Theory)</sup>	Foreclosure Process (Primary)	Days from Foreclosure Complaint Filing to Sale <sup>lxxxii</sup>	Actual Days (Avg.) from DDLPI to Sale <sup>lxxxiii</sup>	Cost (Avg.) from DDLPI to Sale (Relative to U.S. Average) <sup>lxxxiv</sup>	Redemption Period (in Days, <i>if available</i> )	Deficiency Judgments Allowed <sup>lxxxv</sup>	Bankruptcy -to-Loan Rate <sup>lxxxvi</sup>	Estimated Foreclosure Rate = Houses with Filings/Houses per State		
								State Foreclosure Rate (2007) <sup>lxxxvii</sup>	State Foreclosure Rate (2008) <sup>lxxxviii</sup>	State Foreclosure Rate (Jan. - Jun. 2009) <sup>lxxxix</sup>
Alabama <sup>T</sup>	Statutory	31	291	49%	None	Yes	3.36%	0.27%	0.37%	0.45%
Alaska <sup>T</sup>	Statutory	38	387	106%	None	Yes	0.72%	0.49%	0.70%	0.38%
Arizona <sup>T</sup>	Statutory	93	253	63%	None	No	1.45%	1.51%	4.49%	3.37%
Arkansas <sup>T</sup>	Statutory	36	281	63%	None	Yes	2.83%	0.51%	1.12%	0.67%
California <sup>T</sup>	Statutory	113	268	171%	None	No	2.09%	1.92%	3.97%	2.94%
Colorado <sup>T</sup>	Statutory	73	339	101%	75 <sup>xc</sup>	Yes	1.82%	1.91%	2.41%	1.25%
Connecticut <sup>L</sup>	Judicial	155	319	156%	None	Yes	1.12%	0.83%	1.53%	0.61%
Delaware <sup>L</sup>	Judicial	134	402	125%	None	Yes	1.24%	0.27%	0.66%	0.40%
Florida <sup>L</sup>	Judicial	128	326	96%	None	Yes	1.64%	2.00%	4.52%	3.07%
Georgia <sup>T</sup>	Statutory	37	241	69%	None	Yes <sup>xcii</sup>	3.25%	1.57%	2.20%	1.42%
Hawaii <sup>T</sup>	Statutory	98	N/A	N/A	None	Yes	0.93%	0.20%	0.64%	0.71%
Idaho <sup>T</sup>	Statutory	123	395	80%	None	Yes	1.59%	0.61%	1.38%	1.26%
Illinois <sup>L</sup>	Judicial	263	398	112%	None	Yes	2.25%	1.25%	1.91%	1.31%
Indiana <sup>L</sup>	Judicial	175	402	87%	None	Yes	2.90%	1.03%	1.67%	0.89%
Iowa <sup>L</sup>	Judicial	307	458	113%	None	No	1.39%	0.31%	0.41%	0.23%
Kansas <sup>L</sup>	Judicial	105	410	76%	90	Yes	1.65%	0.20%	0.51%	0.38%
Kentucky <sup>L</sup>	Judicial	125	420	86%	None	Yes	2.69%	0.27%	0.38%	0.23%
Louisiana <sup>L</sup>	Judicial	94	476	89%	None	Yes	2.30%	0.20%	0.39%	0.28%
Maine <sup>L</sup>	Judicial	204	598	135%	90	Yes	0.96%	0.04%	.41%	0.22%
Maryland <sup>Lxcii</sup>	Statutory	135	294 <sup>xciii</sup>	65%	None	Yes	1.45%	0.83%	1.41%	0.78%
Massachusetts <sup>T</sup>	Statutory	64 <sup>xciv</sup>	263	142%	None	Yes	1.31%	0.66%	1.64%	0.68%
Michigan <sup>T</sup>	Statutory	33	380	70%	180	Yes	2.50%	1.95%	2.34%	1.34%
Minnesota <sup>T</sup>	Statutory	48	425	82%	180	No	1.34%	0.51%	0.89%	0.67%
Mississippi <sup>T</sup>	Statutory	33	367	58%	None	No	2.56%	0.11%	0.18%	0.17%
Missouri <sup>T</sup>	Statutory	33	217	51%	None	Yes	2.11%	0.91%	1.19%	0.52%
Montana <sup>T</sup>	Statutory	124	356	98%	None	No	1.06%	0.26%	.029%	0.07%

State <sup>(Theory)</sup>	Foreclosure Process (Primary)	Days from Foreclosure Complaint Filing to Sale <sup>lxxxii</sup>	Actual Days (Avg.) from DDLPI to Sale <sup>lxxxiii</sup>	Cost (Avg.) from DDLPI to Sale (Relative to U.S. Average) <sup>lxxxiv</sup>	Redemption Period (in Days, if available)	Deficiency Judgments Allowed <sup>lxxxv</sup>	Bankruptcy -to-Loan Rate <sup>lxxxvi</sup>	Estimated Foreclosure Rate = Houses with Filings/Houses per State		
								State Foreclosure Rate (2007) <sup>lxxxvii</sup>	State Foreclosure Rate (2008) <sup>lxxxviii</sup>	State Foreclosure Rate (Jan. - Jun. 2009) <sup>lxxxix</sup>
Nebraska <sup>T</sup>	Judicial	117	278	82%	None	Yes	1.99%	0.47%	0.41%	0.08%
Nevada <sup>T</sup>	Statutory	115	283	118%	None	Yes	3.31%	3.38%	7.29%	6.23%
New Hampshire <sup>T</sup>	Statutory	33	229	122%	None	Yes	1.26%	0.21%	1.13%	0.68%
New Jersey <sup>L</sup>	Judicial	268	436	224%	10	Yes	1.58%	0.90%	1.80%	0.68%
New Mexico <sup>L</sup>	Judicial	150	426	86%	30	Yes	1.21%	0.36%	0.44%	0.31%
New York <sup>L</sup>	Judicial	278	392	118%	None	Yes	1.70%	0.49%	0.63%	0.30%
North Carolina <sup>T</sup>	Statutory	84	281	72%	None	No	1.21%	0.74%	0.84%	0.31%
North Dakota <sup>L</sup>	Judicial	135	422	76%	60	Yes	1.25%	0.08%	0.12%	0.06%
Ohio <sup>L</sup>	Judicial	187	480	107%	None	No	2.44%	1.80%	2.25%	1.16%
Oklahoma <sup>T</sup>	Judicial	154	452	94%	None		3.21%	0.52%	0.78%	0.35%
Oregon <sup>T</sup>	Statutory	123	369	104%	None	No	1.63%	0.54%	1.13%	1.18%
Pennsylvania <sup>L</sup>	Judicial	169	453	110%	None	Yes	1.37%	0.30%	0.68%	0.44%
Rhode Island <sup>L</sup>	Statutory	54	261	146%	None	Yes	2.10%	0.41%	1.46%	0.70%
South Carolina <sup>L</sup>	Judicial	165	336	80%	None	Yes	0.94%	0.22%	0.76%	0.65%
South Dakota <sup>T</sup>	Judicial	105	503	85%	180	-	1.03%	0.01%	0.11%	0.07%
Tennessee <sup>T</sup>	Statutory	27	248	57%	None	Yes	4.05%	0.98%	1.65%	0.75%
Texas <sup>T</sup>	Statutory	28	254	93%	None	Yes	1.12%	0.94%	1.04%	0.52%
Utah <sup>T</sup>	Statutory	129	303	89%	None	Yes	1.85%	0.85%	1.65%	1.46%
Vermont <sup>L</sup>	Judicial	285	446	114%	None	Yes	0.86%	0.01%	0.04%	0.01%
Virginia <sup>T</sup>	Statutory	31	213	63%	None	Yes	1.71%	0.51%	1.52%	0.87%
Washington <sup>T</sup>	Statutory	123	299	98%	None	Yes	1.61%	0.57%	0.97%	0.72%
West Virginia <sup>T</sup>	Statutory	33	277	44%	None	No	1.75%	0.05%	0.08%	0.08%
Wisconsin <sup>L</sup>	Judicial	255	458	140%	None	Yes	1.78%	0.49%	.078%	0.70%
Wyoming <sup>T</sup>	Statutory	48	342	69%	120	Yes	0.81%	0.15%	0.28%	0.17%
National Average <sup>xcv</sup>	-	116	355	100%	-	-	1.91%	1.03%	1.84%	.74%

APPENDIX B: NATIONAL FORECLOSURE AND LOAN DEFAULT DATA

Reasons for Default

Primary Reasons for Borrower Mortgage Loan Default, FHFA <sup>xcvi</sup>	
Reason for Default	Percent of Defaulted Loans (February 2009)
Decrease in Income	35%
Excessive Debt	19%
Unemployment	8%
Illness of Borrower or Family Member	6%
Marriage Difficulties	3%

“Seriously Delinquent”<sup>xcvii</sup> Loans

“Seriously Delinquent” Loans, 2008 <sup>xcviii</sup>				
	Q1 2008	Q2 2008	Q3 2008	Q4 2008
Prime	251,091	301,069	384,781	553,736
Alt-A	185,050	208,770	252,319	325,462
Subprime	334,251	359,314	414,498	498,154
Other	150,547	153,479	176,069	220,331
Total	920,939	1,022,632	1,227,667	1,597,683

“Seriously Delinquent” Loans, 2009 <sup>xcix</sup>				
	Q1 2009	Q2 2009	Q3 2009	Q4 2009
Prime	628,902	696,699	838,083	-
Alt-A	324,907	361,839	422,277	-
Subprime	455,106	506,692	558,419	-
Other	216,172	233,302	292,809	-
Total	1,625,087	1,798,532	2,111,588	-

“Seriously Delinquent”<sup>c</sup> Loan Rates

“Seriously Delinquent” Loan Rate, by Loan Type 2008 <sup>ci</sup>				
	Q1 2008	Q2 2008	Q3 2008	Q4 2008
Prime	1.11%	1.3%	1.7%	2.4%
Alt-A	5.17%	5.8%	7.1%	9.1%
Subprime	10.75%	11.6%	13.5%	15.8%
Other	2.88%	3.1%	3.6%	4.5%
Total	2.66%	3.0%	3.6%	4.8%

“Seriously Delinquent” Loan Rate, by Loan Type 2009 <sup>cii</sup>				
	Q1 2009	Q2 2009	Q3 2009	Q4 2009
Prime	2.8%	3.0%	3.6%	-
Alt-A	9.2%	10.3%	12.0%	-
Subprime	15.8%	17.8%	20.1%	-
Other	4.5%	5.2%	6.3%	-
Total	4.8%	5.3%	6.2%	-

### Foreclosures in Process

Rate of Foreclosures in Process, by Loan Type 2008 <sup>ciii</sup>				
	Q1 2008	Q2 2008	Q3 2008	Q4 2008
Prime	0.8%	1.0%	1.1%	1.3%
Alt-A	3.0%	3.3%	3.6%	4.0%
Subprime	4.8%	5.0%	5.5%	5.7%
Other	1.2%	1.2%	1.4%	1.7%
Total	1.4%	1.6%	1.8%	2.0%

Rate of Foreclosures in Process, by Loan Type 2009 <sup>civ</sup>				
	Q1 2009	Q2 2009	Q3 2009	Q4 2009
Prime	1.8%	2.2%	2.3%	-
Alt-A	4.9%	5.4%	5.8%	-
Subprime	6.4%	7.0%	7.9%	-
Other	2.0%	2.3%	2.7%	-
Total	2.5%	2.9%	3.2%	-

### Completed Foreclosures, Relative to Loan Type<sup>cv</sup>

Completed Foreclosures, By Loan Type, 2008 <sup>cv</sup>				
	2008 Q1	2008 Q2	2008 Q3	2008 Q4
Prime	22,379	43,248	52,573	35,296
Alt-A	18,025	26,934	27,408	18,573
Subprime	22,595	30,750	30,271	21,869
Other	13,549	16,405	16,028	13,896
Total	76,548	117,337	126,280	89,634

Completed Foreclosures By Loan Type, 2009 <sup>cvii</sup>				
	2009 Q1	2009 Q2	2009 Q3	2009 Q4
Prime	39,910	50,108	57,737	-
Alt-A	17,872	19,777	21,175	-
Subprime	19,505	21,138	21,162	-
Other	13,409	14,984	18,529	-
Total	90,696	106,007	118,603	-

Completed Foreclosure Rates, Relative to Loan Type

Completed Foreclosure Rate, Relative to Loan Type, 2008 <sup>cviii</sup>				
	2008 Q1	2008 Q2	2008 Q3	2008 Q4
Prime	0.1%	0.2%	0.2%	0.2%
Alt-A	0.5%	0.8%	0.8%	0.5%
Subprime	0.7%	1.0%	1.0%	0.7%
Other	0.3%	0.3%	0.3%	0.3%
Total (all loans)	0.2%	0.3%	0.4%	0.3%

Completed Foreclosure Rate, Relative to Loan Type, 2009				
	2009 Q1	2009 Q2	2009 Q3	2009 Q4
Prime	0.2%	0.2%	0.3%	-
Alt-A	0.5%	0.6%	0.6%	-
Subprime	0.7%	1.0%	0.8%	-
Other	0.3%	0.3%	0.4%	-
Total (all loans)	0.3%	0.3%	0.3%	-

Total Completed Foreclosures

Total Completed Foreclosures and Foreclosures in Process, Nationally		
	2008	2009 (Q1 & 2 only)
Completed Foreclosures <sup>cx</sup>	409,799	196,703
Foreclosures in Process <sup>cx</sup>	Quarterly Average: 587,934	Quarterly Average: 926,792
Total Households with Foreclosure Filings for Year <sup>cx</sup>	2,330,483 Jan. – Jun.: 1,329,021	Jan. – Jun.: 1,528,364

- <sup>i</sup> See OCC and OTC Mortgage Metrics Report, Second Quarter 2009, at 33. Available at: <http://files.ots.treas.gov/482078.pdf>.
- <sup>ii</sup> See Nick Timiraos, *Study Finds Underwater Borrowers Drowned Themselves with Refinancings*, Wall Street Journal, available at: <http://blogs.wsj.com/developments/2009/07/28/study-finds-underwater-borrowers-drowned-themselves-with-refinancings/>.
- <sup>iii</sup> There is historical evidence suggesting that half of the foreclosures commenced are actually completed. See Christopher Mayer, Karen Pence, and Shane M. Sherlund, *The Rise in Mortgage Defaults*, Journal of Economic Perspectives, Vol. 23, Number 1, Winter 2009, 27-50, at 27.
- <sup>iv</sup> Karen M. Pence, *Foreclosing on Opportunity: State Laws and Mortgage Credit*, Board of Governors of the Federal Reserve System, May 13, 2003, at 1. Available at: <http://www.federalreserve.gov/Pubs/feds/2003/200316/200316pap.pdf>.
- <sup>v</sup> Brent W. Ambrose, Richard J. Buttimer, Jr., and Charles A. Capone, *Pricing Mortgage Default and Foreclosure Delay*, Journal of Money, Credit, and Banking, Vol. 29, No. 3 (August 1997).
- <sup>vi</sup> *Id.*
- <sup>vii</sup> Amy Crews Cutts and William A. Merrill, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs*, Freddie Mac Working Paper #08-01, March 2008, at 37.
- <sup>viii</sup> *Id.*
- <sup>ix</sup> Stan Liebowitz, *New Evidence on the Foreclosure Crisis*, Wall Street Journal, July 3, 2009, A19.
- <sup>x</sup> *Id.*
- <sup>xi</sup> Cutts and Merrill at Table 4.
- <sup>xii</sup> Christopher Mayer, Karen Pence, and Shane M. Sherlund, *The Rise in Mortgage Defaults*, Journal of Economic Perspectives, Vol. 23, Number 1, Winter 2009, 27-50, at 45.
- <sup>xiii</sup> *Id.*
- <sup>xiv</sup> *Id.*
- <sup>xv</sup> *Id.* at 42.
- <sup>xvi</sup> *Id.*
- <sup>xvii</sup> *Id.* at 45.
- <sup>xviii</sup> *Id.*
- <sup>xix</sup> *Id.*
- <sup>xx</sup> *Id.*
- <sup>xxi</sup> See Diana Olick, *What Banks are Really Doing with Foreclosures*, August 31, 2009, available at: <http://www.cnbc.com/id/32630317>, and Ruth Simon and James R. Hagerty, *Delayed Foreclosures Stalk Market*, WALL ST. J., September 23, 2009, A10.
- <sup>xxii</sup> Brent W. Ambrose, Richard J. Buttimer Jr., and Charles A. Capone, *Pricing Mortgage Default and Foreclosure Delay*, Journal of Money, Credit, and Banking, 314, 315.
- <sup>xxiii</sup> Mayer, Pence, and Sherlund at 27.
- <sup>xxiv</sup> OCC and OTS Mortgage Metrics Report, Second Quarter, 2009, at 18.
- <sup>xxv</sup> Jennifer Harmon, *Moratoriums Mean More Loans Not Going into Foreclosure*, Mortgage Servicing News, August 2009, at 8.
- <sup>xxvi</sup> “Seriously delinquent” here refers to loans that are 60 days or more past due, as well as to loans that are held by borrowers under bankruptcy protection with payments that are 30 days or more past due. See *Id.* at 11 for definition.

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- <sup>xxvii</sup> OCC and OTS Mortgage Metrics Report, Second Quarter, 2009 at 18.
- <sup>xxviii</sup> *Id.*
- <sup>xxix</sup> Alan M. White, *Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications*, 41 CONN. L. REV. 1107 (2008-2009).
- <sup>xxx</sup> See Mortgage Bankers Association, *Lenders' Cost of Foreclosure*, Congressional Education Series Briefing, May 28, 2008, at 4-5. Available at: <http://www.nga.org/Files/pdf/0805FORECLOSUREMORTGAGE.PDF>.
- <sup>xxxi</sup> Craig Focardi, *Servicing Default Management: An Overview of the Process and Underlying Technology*, TowerGroup Research Note No. 033-13C (November 15, 2002). Amy Crews Cutts and Richard K. Green, *Innovative Servicing Technology: Smart Enough to Keep People in Their Houses?*, Freddie Mac Working Paper #04-03 (July 2004).
- <sup>xxxii</sup> Desiree Hatcher, *Foreclosure Alternatives: A Case for Preserving Home Ownership*, Profitwise News and Views, published by the Federal Reserve Bank of Chicago (February 2006), at 2. Available at: [http://www.chicagofed.org/community\\_development/files/02\\_2006\\_foreclosure\\_alt.pdf](http://www.chicagofed.org/community_development/files/02_2006_foreclosure_alt.pdf).
- <sup>xxxiii</sup> Pence at 1.
- <sup>xxxiv</sup> *Id.* at Note 1.
- <sup>xxxv</sup> *Id.* at 1.
- <sup>xxxvi</sup> See Cutts, Amy C. and Merrill, William A, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs*, Freddie Mac Working Paper, March 2008, at 5. Available at: [http://www.freddiemac.com/news/pdf/interventions\\_in\\_mortgage\\_default.pdf](http://www.freddiemac.com/news/pdf/interventions_in_mortgage_default.pdf)
- <sup>xxxvii</sup> *Id.* at 4.
- <sup>xxxviii</sup> See Mortgage Bankers Association, *Lenders' Cost of Foreclosure*, Congressional Education Series Briefing, May 28, 2008, at 6. Available at: <http://www.nga.org/Files/pdf/0805FORECLOSUREMORTGAGE.PDF>.
- <sup>xxxix</sup> See Shenn, Jody, *FHA Shortfall Seen at \$54 Billion May Lead to Bailout*, Bloomberg.com, October 8, 2009, discussing the impact of the mortgage crisis on the availability of FHA mortgage insurance. Available at: <http://www.bloomberg.com/apps/news?pid=20601087&sid=aOmu318hOZr4>.
- <sup>xl</sup> Cutts and Merrill at 37.
- <sup>xli</sup> See Mortgage Bankers Association, at 4. See also, Pence, at 3.
- <sup>xlii</sup> Ambrose, et al., at 316.
- <sup>xliiii</sup> Cutts and Merrill at 33.
- <sup>xliv</sup> *Id.*
- <sup>xlv</sup> Lary Kordell, et al., *Designing Loan Modifications to Address the Mortgage Crisis and Making Home Affordable Program*, Finance and Economics Discussion Series, Divisions of Research & Statistics and Monetary Affairs, Federal Reserve Board of Governors, Working Paper 2009-43, at 7. Available at: <http://www.federalreserve.gov/pubs/feds/2009/200943/200943pap.pdf>
- <sup>xlvi</sup> Joint Economic Committee of Congress, *Sheltering Neighborhoods from the Subprime Foreclosure Storm*, April 11, 2007, at 16. Available at: [http://jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord\\_id=c780213f-7e9c-9af9-761d-fd7e597b5cfe&Region\\_id=&Issue\\_id=](http://jec.senate.gov/index.cfm?FuseAction=Reports.Reports&ContentRecord_id=c780213f-7e9c-9af9-761d-fd7e597b5cfe&Region_id=&Issue_id=)
- <sup>xlvii</sup> RealtyTrac data.
- <sup>xlviii</sup> See Md. Code Ann., Real Property §7-105.1.

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- <sup>xlix</sup> This includes 3 days for foreclosure referral, 5 for title work, 1 for filing of order to docket, 30 for publication of sale (3 times within 27 days before sale). See Cutts and Merrill Appendix Table A1.
- <sup>l</sup> See Paul Jackson, *Maryland Makes Foreclosure Timelines a Whole Lot Longer*, Housing Wire, April 11, 2008, available at: <http://www.housingwire.com/2008/04/11/maryland-makes-foreclosure-timelines-a-whole-lot-longer/>.
- <sup>li</sup> Cutts and Merrill.
- <sup>lii</sup> *Id.* at 5.
- <sup>liii</sup> *Id.* at 38.
- <sup>liv</sup> *Id.*
- <sup>lv</sup> Data from James R. Hagerty, *Fewer Catching Up on Lapsed Mortgages*, Wall Street Journal, August 25, 2009, at A2. The article is based on a Fitch Ratings study of 16% of U.S. mortgages.
- <sup>lvi</sup> Cutts and Merrill, at 25.
- <sup>lvii</sup> Data from Cutts and Merrill, Table 2.
- <sup>lviii</sup> Data from Amherst Securities Group LP, *Housing Overhang/Shadow Inventory = Enormous Problem*, Amherst Mortgage Insight, Sept. 23, 2009, at 2. Available at: <http://matrix.millersamuel.com/wp-content/3q09/Amherst%20Mortgage%20Insight%2009232009.pdf>. Cure rate data is taken from LoanPerformance data.
- <sup>lix</sup> Cutts and Merrill at 37.
- <sup>lx</sup> *Id.* at 39.
- <sup>lxi</sup> Cutts and Merrill at Table 5.
- <sup>lxii</sup> Pence, at 2.
- <sup>lxiii</sup> *Id.*
- <sup>lxiv</sup> *Id.* at 25.
- <sup>lxv</sup> *Id.*
- <sup>lxvi</sup> Wenli Li and Michelle J. White, *Mortgage Default, Foreclosure, and Bankruptcy*, National Bureau of Economic Research Working Paper 15472, November 2009, at 3.
- <sup>lxvii</sup> Lakhbir Hayre and Saraf at 6.
- <sup>lxviii</sup> Adelino, Manuel, Gerardi, Kristopher, and Willen, Paul S. Why Don't Lenders Renegotiate More Home Mortgages? Defaults, Self-Cures, and Securitization. Federal Reserve Bank of Boston Public Policy Discussion Paper No. 09-04, July 6, 2009.
- <sup>lix</sup> OCC and OTS Mortgage Metrics Report, Second Quarter 2009, at 33.
- <sup>lxx</sup> Historical data has shown that home prices typically do not reach the bottom of the trough until the foreclosure rate has reached its highest point.
- <sup>lxxi</sup> Christopher Foote, Kristopher Gerardi, Lorenz Goette, and Paul Willen, *Reducing Foreclosures: No Easy Answers*, Federal Reserve Working Paper 2009-15, May 2009, at 25.
- <sup>lxxii</sup> Quercia, Roberto G., and Ratcliffe, Janneke, *Loan Modifications and Redefault Risk: An Examination of Short-Term Impact*, Working Paper, March 2009, at 5
- <sup>lxxiii</sup> *Id.*
- <sup>lxxiv</sup> See FASB Statement of Financial Accounting Standards No. 15: Accounting by Debtors and Creditors for Troubled Debt Restructuring.
- <sup>lxxv</sup> Cutts and Merrill at 14.
- <sup>lxxvi</sup> John Krainer, *Mortgage Loan Securitization and Relative Loan Performance*, Federal Reserve Bank of San Francisco Working Paper 2009-22, September 2009, at 32. Available at: <http://www.frbsf.org/publications/economics/papers/2009/wp09-22bk.pdf>
- <sup>lxxvii</sup> OCC and OTS Mortgage Metrics Report, Second Quarter 2009, at 25.

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<sup>lxxviii</sup> *Id.* at 31.

<sup>lxxix</sup> *Id.*

<sup>lxxx</sup> Alan M. White, *Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications*.

<sup>lxxxii</sup> From the OCC and OTS Mortgage Metrics Report, Second Quarter 2009, at 25.

<sup>T</sup>: Title Theory: The mortgage instrument conveys title to the mortgagee.

<sup>L</sup>: Lien Theory: Prior to foreclosure, the mortgagee only has a lien on the property.

DDLPI: Due date of last paid installment.

<sup>I</sup>: Intermediate Theory (or “hybrid” theory): Mortgagor maintains title until default, and at default mortgagee gets title automatically.

<sup>lxxxii</sup> Cutts and Merrill.

<sup>lxxxiii</sup> *Id.*

<sup>lxxxiv</sup> *Id.* “Cost” includes interest expenses.

<sup>lxxxv</sup> As deficiency judgments are never completely disallowed, this column refers to whether deficiency judgments are allowed under the foreclosure process used most often by lenders. *See* Pence, *Foreclosing on Opportunity*, at 4, Footnote 7.

<sup>lxxxvi</sup> Homeowner Bankruptcy Rate = Number of Non-Business Bankruptcies ÷ Number of Outstanding First Mortgages (Residential). Bankruptcy statistics are for the year ending December 31, 2008. *See* Administrative Office of the United States Courts statistics for the Federal Judiciary, available at: <http://www.uscourts.gov/bnkrpctystats/bankruptcystats.htm>. “Non-Business” bankruptcies include all personal Chapter 7 and Chapter 13 filings, as well as non-business Chapter 11 filings (rare). Outstanding first mortgage statistics are as of the first quarter of 2009. *See* Mortgage Bankers Association, State Mortgage Industry Fact Sheets, *available at*:

<http://www.mortgagebankers.org/Advocacy/StateLegislativeandRegulatoryResources/StateMortgageIndustryFactSheets.htm>.

<sup>lxxxvii</sup> Based on date from RealtyTrac, *available at*:

<http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&itemid=3988>

<sup>lxxxviii</sup> Based on date from RealtyTrac, *available at*:

<http://www.realtytrac.com/ContentManagement/PressRelease.aspx?ItemID=5681>

<sup>lxxxix</sup> Based on date from RealtyTrac, *available at*:

<http://www.realtytrac.com/ContentManagement/PressRelease.aspx?ItemID=6802>

<sup>xc</sup> Colorado had the statutory right of redemption until January 2008.

<sup>xci</sup> *See* Ga. Code Ann. §44-14-191. While deficiency judgments are allowed, they are rarely used in Georgia under the non-judicial foreclosure process, as the deficiency judgment process requires the intervention of courts.

<sup>xcii</sup> Maryland: 2008 amendment, effective April 4, 2008. Previously, the number of days from foreclosure complaint filing to sale in Maryland was 39.

<sup>xciii</sup> 294 days is estimated, given the original average of 274 days, plus an additional twenty days that the new law is estimated to add to the actual time period. *See* Paul Jackson, *Maryland Makes Foreclosure Timelines a Whole Lot Longer*, Housing Wire, April 11, 2008, *available at*: <http://www.housingwire.com/2008/04/11/maryland-makes-foreclosure-timelines-a-whole-lot-longer/>.

<sup>xciv</sup> Massachusetts extended its foreclosure period by \_\_\_ days in requiring a 90-day notice of right to cure default.

<sup>xcv</sup> Including Washington, D.C.

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<sup>xcvi</sup> Federal Housing Finance Agency, Foreclosure Prevention Report, February 2009, at 3.

*Available at:* <http://www.fhfa.gov/webfiles/2312>

<sup>xcvii</sup> “Seriously delinquent” refers to loans that are 60 days or more past due, as well as to loans that are held by borrowers under bankruptcy protection with payments that are 30 days or more past due. *See Id.* at 11 for definition.

<sup>xcviii</sup> *See* OCC and OTS Mortgage Metrics Report, Fourth Quarter 2008, at 15. *Available at:* <http://www.occ.treas.gov/ftp/release/2009-37a.pdf>.

<sup>xcix</sup> OCC and OTC Mortgage Metrics Report, Second Quarter 2009, at 18.

<sup>c</sup> “Seriously delinquent” refers to loans that are 60 days or more past due, as well as to loans that are held by borrowers under bankruptcy protection with payments that are 30 days or more past due. *See Id.* at 11 for definition.

<sup>ci</sup> *Id.*

<sup>cii</sup> *Id.*

<sup>ciii</sup> *Id.* at 38.

<sup>civ</sup> *Id.*

<sup>cv</sup> The number of completed foreclosures is somewhat inaccurate in Quarter Four, 2008, as several lenders suspended foreclosure sales (of occupied homes),

<sup>cvi</sup> OCC and OTS Mortgage Metrics Report, Fourth Quarter 2008, at 39.

<sup>cvii</sup> *Id.*

<sup>cviii</sup> *Id.*

<sup>cix</sup> *Id.*

<sup>cx</sup> “Foreclosures in process” refers to the number of mortgages for which formal foreclosure proceedings have been initiated and are not complete. This includes judicial filings as well as public notices. These numbers must be averaged by reporting period, as the varied state foreclosure processes carry the proceedings across quarters (the process may take from two to fifteen months). *See* OCC and OTS Mortgage Metrics Report, Fourth Quarter 2009, at 10.

<sup>cx</sup> RealtyTrac, Foreclosure Market Data by State – 2008, *available at:*

<http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=5681&acct=64847#statetable>.