



**Senate Bill 197  
House Bill 3  
House Bill 9**

**Opposition Testimony**

**Senate Finance & Financial Institutions Committee**

**Michael J. Adelman  
Vice President of State Government Relations  
Ohio Bankers League**

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Good afternoon, Chairman Carey, Ranking Member Miller and members of the Senate Finance & Financial Institutions Committee. My name is Mike Adelman and I am the Vice President of State Government Relations for the Ohio Bankers League (OBL). The OBL is the trade association representing FDIC insured financial institutions in the State of Ohio. The OBL's membership includes state and federally chartered banks, savings banks, and savings and loan associations.

Banks and thrifts employ 135,000 Ohioans and there are countless thousands employed in professions such as attorneys, accountants, auditors and examiners that benefit from a thriving banking environment. These banks and thrifts provide good wages and healthcare for their employees in arguably every community across the state and they contribute substantially to the well being of their communities annually.

I am here before you today to provide the financial institution industry's perspective on foreclosures in Ohio as well as share objections to the various foreclosure bills in this committee. The most offensive is HB 3. It is a broad-sweeping bill with a six-month moratorium as its keystone. The bill's primary premise is faulty: time will rehabilitate troubled homeowners. That is to say afforded time homeowners will be able to get their finances in order. Yet, unfortunately, reality does not support such a hypothesis. Not all homeowners can be saved. It is common for re-worked loans to again fall delinquent. As Ohioans continue to lose their jobs and businesses exit this state or choose not to bring operations here, more Ohioans will fall behind in their bills; with the mortgage typically being the largest. The foreclosure bills do not address the root causes of the problem.

To best assist troubled borrowers the OBL implores this committee to be thoughtfully deliberative because the mortgage industry is very complex; Ohio's foreclosure process is likewise complicated; and there is great risk that legislation seriously missing the mark will have dire unintended consequences. Accordingly, meaningful solutions for homeowners that deserve them most are not likely simple solutions. Arguably, the most meaningful solution, which members of this panel have mentioned at previous hearings, is that Ohioans need good-paying jobs so they can pay their monthly bills.

Let me also begin by stating the obvious. The foreclosure of a home is a tragedy for everyone involved. A family loses their home. A community loses residents and faces the continued loss of tax revenues, upon which it and its schools rely. There is also too frequently neighborhood deterioration associated with a vacant property. The institution holding the loan or the servicer who collects the payments on behalf of investors loses money. The lender on a loan may be a financial institution like a bank, thrift, or credit union. But, also it can just as easily be a pension fund, an insurance company or other investor who has provided the money to make the loan by buying it in the secondary mortgage market. Yet, we need to remember that these institutions are made up of individual depositors and shareholders, policy holders, retirees, and other people who are counting on receiving the proceeds of their investment in these mortgage loans to support their families and futures as well.

It is also important for me to set the record straight with regard to testimony and responses to questions from witnesses at prior hearings of this committee. The highly-regulated banking industry takes offense to generic references to "bank" and "banker." More frequently, the term should be "lender" because though an entity touches money or makes a mortgage it does not mean they are a bank. Payday lenders, mortgage brokers, mortgage lenders, finance companies, loan servicers, and insurance companies are not banks. It may seem trivial, but to the bankers back home in your districts the distinction is a big deal.

### **Foreclosure Process Primer**

By way of background, Ohio's judicial foreclosure process is complicated and drawn out. I routinely hear from bankers across the state that it routinely takes a year and a half for a foreclosed property to go to sale. Such a delay is bad for all involved parties. Additionally, it is a misnomer that homeowners are evicted when the foreclosure is filed. In fact it is not uncommon for homeowners to be delinquent for up to six months before a bank or thrift files foreclosure. As long as a borrower is willing and financially able to reasonably remain a homeowner, banks and thrifts work through remedies with their customers. Even after the foreclosure is filed, the owner remains in the home and may not be making payments through time of sale. Plus, it is important to note bankers have shared examples where foreclosures have been stopped late in the process, even on the sale date, by a borrower stepping forward with the means to satisfy the loan. Even once the gavel comes down at sheriff sale that borrower may remain in the home until the new owner files for eviction. Ohio's process as a judicial sale state is considerably longer as compared to other states.

### **Lender Loss Mitigation Efforts**

It is also important to note loss mitigation is nothing new for OBL member institutions. Banks and thrifts have worked with their customers for a long time in an effort to work through financial challenges to continue home ownership. Bankers advise me the main reasons for their foreclosures are divorce, death or health issues, but increasingly the reason is job loss. In such catastrophic instances, if a customer does not have a financial safety net, to overcome a dramatic loss of income, remaining a homeowner is not likely. Forcing solutions, such as moratoriums and mandatory mediation would seem to delay the inevitable foreclosure; rather than seeing most troubled homeowners recover.

Arranging for a missed mortgage payment, switching to interest only payment, extending the term of a loan to lower the monthly payment amount, or refinancing a loan to take advantage of a lower interest rate are different ways lenders assist financially-challenged customers. The bankers' motivation is simple: they are in the business of lending money. They have an investment in their communities and benefit from financially viable customers. Bankers are not in the business of being landlords or realtors. They do not want to foreclose on a property if they do not have to. However, when a financially-troubled customer either refuses to return the calls or open the notices from the servicer or their circumstances are so catastrophic, the likelihood of remaining in the home are slim.

It is also worth noting that so much of what I hear in the foreclosure debate simply focuses on the first lien and modification of that instrument to help the borrower. In many instances even if the first lien is modified the second lien holder will be the one that pushes the foreclosure through. Many of the borrowers being affected by the decline in value of their property and/or unemployment have second mortgages or home equity lines that were used for various purposes such as restructuring other debts and home improvements.

### **Recent Ohio Foreclosure Legislation**

As has been articulated by members of this committee in prior hearings, there appears to be a lack of awareness regarding the significant bipartisan legislation signed into law by the current and previous Governor over the past two General Assemblies. Additionally, the Ohio Supreme Court instituted a mediation program that has been held out as a national model.

Am. Sub. SB 185 (126<sup>th</sup> GA) was heralded by advocates and members of both parties as the most comprehensive and stringent anti-predatory lending laws in the country when it was enacted. In general, this legislation placed a layer of regulation on portions of the mortgage industry that had operated with a limited amount of oversight: the mortgage brokers and the nonbank lenders. It subjected their activities to the Consumer Sales Protection Act giving the State Attorney General a powerful tool to fight fraud and protect Ohio mortgage consumers. Am. Sub. SB 185 also imposed continuing education requirements, required a national criminal background check be conducted on all applicants for a real estate appraiser certificate or license, a mortgage broker certificate of registration, or a loan officer license. It also modified the Mortgage Brokers/Loan Officers Law, requiring pre-licensure education and examination, disclosure of certain information, keeping of records, prohibiting certain acts, imposing duties and standard of care, allowing for pre-hearing suspensions, and enforcement. Additionally, as Sen. Widener has

attested, the Act created the Consumer Finance Education Board (RC 1349.71 and 1349.72). This 12-member body among other responsibilities was to:

*“(3) Coordinate and provide resources and assistance to state agencies, nonprofit entities, and businesses in the furtherance of their efforts to improve financial literacy, access by state residents to financial information, education, and resources, prevention of foreclosures and bankruptcies, and prepurchase and postpurchase counseling and education for homebuyers; (4) Provide financial assistance to Ohioans through grants funded through the ongoing Consumer Finance Fund (RC 1321.21) and utilize these same funds to provide grants to design, develop, and implement any of the programs required by the Act.”*

Sub. HB 138 (127<sup>th</sup> GA) had numerous provisions that expanded local authority relating to foreclosures, ensured local governments have accurate contact information for the purchaser at sale so that they can be held accountable, and set strict timelines for payment to be made and for deeds to be filed. Additionally, thanks to the persistence of Senator Faber, mediation provisions were amended into Sub. HB 138. Specifically, it allowed the court to require the mortgagor and mortgagee to participate in mediation. This effectively codified the Ohio Supreme Court’s mediation pilot program, which was established in 2008. This program enables local courts today to require foreclosure mediation between the borrower and mortgage servicer. Thus, the need for SB 197 is questionable.

Sub. SB 277 (127<sup>th</sup> GA) granted the environmental division of the municipal court exclusive original jurisdiction to hear foreclosure actions regarding blighted parcels. In doing so it provided that a municipal corporation has a cause of action to foreclose existing liens upon a blighted parcel in the municipal corporation if no other foreclosure action affecting the blighted parcel is being actively prosecuted.

Sub. SB 353 (127<sup>th</sup> GA) was a response to the “what now?” question faced by counties hardest hit by vacant properties. This two-year pilot program gave Cuyahoga County a legal mechanism (referred to as a “land bank”) with supporting revenue streams to reutilize blighted properties. This will enable properties to be put back on the tax rolls, which restores revenue to support local government services and schools. It also acts as a stabilizer on property values.

### **Foreclosure Bill Objections**

Legislation creating barriers and disincentives intended to prevent lenders from foreclosing is a grave concern. Keeping responsible homeowners in their homes is a priority for lenders when faced with a financially stressed borrower. Foreclosure is a last resort that occurs when other options fail.

One concern of OBL member institutions is what impact these bills would have on them in terms of safety and soundness if they are prohibited from collecting on troubled loans. Further, they are very concerned as to the expectations of their state and federal regulators if these provisions create stress on their loan portfolios. For example, on the one hand a bank would be told there are certain loans it cannot reasonably collect on or foreclose; while the regulator would require

the bank to increase its loan loss reserves to account for an increased number of uncollected loans. Such inconsistent messages have major unintended consequences.

As questions from this panel have probed, the OBL does not understand how HB 3 directly benefits a borrower who has already missed mortgage payments or is in the process of losing their job and worried about potentially losing their home. It solely appears to obstruct a lender's effort to enforce its rights to collect on a delinquent loan. The data collection, servicer regulation, and fee do not seem to be to the benefit of a homeowner in trouble right now.

Moratorium – Moratoria have been imposed by federal agencies over the past year. Some large servicers have voluntarily imposed their own. HB 3 includes a six-month moratorium, which is longer than these other programs. When I testified against this bill in the House, I mentioned a case in which a banker had unsuccessfully attempted to workout a loan with a recently divorced customer for six months. In the end, the borrower wanted to be free of the house. Yet, HB 3's moratorium would depress a "pause" button anyways holding up the disposition of that property. Doing so, such properties continue to deteriorate, as home maintenance is not typically kept up; as a result the neighborhood would be faced with blight and unpaid taxes. The borrower just wanted to move on with her life.

A primary question with a proposed moratorium is whether it would prevent homes currently in the foreclosure pipeline from going to sheriff sale or would it also shut off the filing of new foreclosures as well? We have all heard that the courts are already overwhelmed with the volume of foreclosures in their backlog. It seems that a moratorium would stop those foreclosures already in the process thereby creating a tremendous bubble of filings that would deluge the process once the moratorium is lifted. Also, would a moratorium apply to VA and FHA loans? Does a state have control over federal entities? Furthermore, why shouldn't the moratorium apply to tax foreclosures pursued by governmental entities? I recall late last year, Cuyahoga County imposed its own six-month moratorium. Why wouldn't all counties follow suit if it's good for the lender to be waylaid six months?

A positive aspect of the moratorium is that homeowners would need to "have skin in the game." Though awkwardly structured, HB 3 would require half payments to be made each month to be eligible for the moratorium. Placing a financial burden on the homeowner is critical so that the bill doesn't simply promote living in a house payment free while unnecessarily dragging out the process. All credit unions and banks and thrifts headquartered in Ohio with \$2.5 billion in assets would be exempt from the moratorium.

Mediation – As you are aware, SB 197 would make mediation mandatory for residential foreclosures. In previous hearings, witnesses have expressed frustration as to whether mediation efforts are successful. So why is mediation not more successful? Anecdotally, upwards to 95-percent of the foreclosure filings go unanswered. You may you're your own conclusions; however, I believe people facing foreclosure usually realize what they are up against. They've lost their job. They've had to settle for a job paying not as good of a wage. They're in a divorce and neither party can realistically continue to own the home. The primary breadwinner has died or been dealt a catastrophic health issue. What is there to mediate in such cases?

The bill would require the mediation hearing to be held within 60 days after receiving the homeowner's answer. Since the homeowner has 28 days to file an answer, SB 197 effectively would impose a 3-month, moratorium on residential foreclosures in Ohio.

The OBL suggests if this committee is interested in pursuing changes to the Ohio mediation statute, that lenders be given "credit" for their workout efforts. It makes no sense for such delinquencies to be paused again for another three months. Encouraging such a delay will decrease the value of that property and harm neighboring properties.

Fees – HB 3 would impose a \$750 foreclosure filing fee. This new tax for accessing the courts would be in addition to fees already imposed at the local level. Lorain County, as one example, currently has a \$500 foreclosure filing fee. The proposed fee in HB 3 is a tax on lenders to fund the Ohio Housing Trust Fund; local government redevelopment, financial education, and counseling; the Ohio Supreme Court's database management; and the Department of Commerce's Division of Financial Institutions' servicer regulation. (The bill allows for a \$1,000 servicer registration fee.) Assuming a flat year of 86,000 foreclosure filings, matching 2008, this \$750 tax would generate an astounding \$64.5 million!

This tax would be a penalty forced on lenders for enforcing their contractual rights. It would unjustly punish a bank or a thrift for circumstances out of their control such as businesses laying off employees, divorce, catastrophic health situations, and death. Lenders would be prohibited from recovering this fee from the proceeds of a sale. All credit unions and banks and thrifts headquartered in Ohio with \$2.5 billion in assets would be exempt from the \$750 fee.

SB 197 would impose yet another new fee. Lenders would be required to pay \$500 with each mediation. This would be above and beyond what lenders are already paying for mediation provided through such efforts as the Franklin County Mediation Program, as MORPC testified in this committee. Any excess from the \$500 fee would be retained by the court. The fee could be recovered from the sale of the property. Yet, what is the basis for the \$500 mediation fee? MORPC testified mediation can "total 6 hours per client..." I believe the witnesses that have testified before this committee have confused the issue. They have largely represented the counseling industry and have advocated for dedicated resources to support counseling since they expect federal funding to evaporate. The mediators have indicated much of the current mediation is occurring on a voluntary basis. Volunteers are a critical component of Chief Justice Moyer's foreclosure mediation program.

As currently drafted, SB 197 exempts foreclosure filings based on a lien for delinquent taxes. Is there a presumption that foreclosures initiated by government are justified whereas mortgage delinquency related foreclosures are not? If you believe financially-strapped homeowners need help, why shouldn't government bear these new costs as well?

### **What can be done?**

A strong, consistent message must continue to be broadcast to encourage borrowers to seek help before they miss a mortgage payment or become seriously delinquent. I contend that banks and thrifts work really hard to reach out to their delinquent customers. Larger institutions in

particular have increased staff in this area to respond to the increased volume of requests for assistance.

Additionally, over the past couple of years, the State of Ohio has taken strides to get out this message along with individual lenders and national entities such as HUD. The message must be credible to overcome the suspicion of borrowers besieged by less than honest offers of "help." We hear consistently from both lenders and counseling agencies alike that when consumers seek help early, there is a greater chance of success in avoiding foreclosure. However, if the homeowner lacks the financial resources to make a reasonable mortgage payment, counseling and mediation merely serve as delay tactics that harm the condition of the home and increases the damage to surrounding properties. It is a lose-lose-lose for the homeowner, community and lender.

Encouraging financial literacy programs should be a goal. The OBL advocated for many years the need for consumer finance to be a part of the K-12 curriculum. The "Core" curriculum legislation from the 126<sup>th</sup> GA was a beachhead by authorizing a portion of the civics requirement to be swapped out for consumer finance. It would be even more meaningful if Ohio went down the same path as states such as West Virginia by putting consumer finance questions on the state proficiency tests. Without this important change, I question how many schools will view consumer finance curriculum as a priority.

The state should seriously consider ways to accelerate the foreclosure process. If a borrower disregards servicer efforts to make contact; the property is vacant; or the property is investor owned there should be motivation to move these properties more quickly so that a willing, able borrower can take possession, pay the taxes and upkeep the property.

The OBL would also like the Senate to consider imposing penalties on borrowers that destroy the property. In too many instances bankers have shared horror stories as to the physical destruction caused by "victims" of foreclosure. If the borrower is not making mortgage payments, they are not likely concerned about a leaking roof or seeping walls in the basement and after an extended period the damage to the property can be devastating. The process in Ohio drags on so long that by the end there is such hostility toward the lender that conditions in the property are too often deplorable. Once the lender gains entry more frequently they find the toilets overflowed; basements flooded; trash and debris strewn throughout the home; doors torn from their hinges; cabinets removed from the walls; furnaces stolen; and even windows cut out of the walls. Why not require homeowners that want to participate in a government-sanctioned mediation, moratorium, or other foreclosure-related program to pay for an inspection assessing the condition of the interior and exterior of a home. The inspection could then serve as a baseline so that the borrower could be held liable for potential destruction they cause to the property.

Lastly, it comes down to jobs. Ohio needs to diversify its economy and better embrace its strengths while creating an environment that businesses will want to retain jobs here and outside companies will choose to move operations here.

**Conclusion**

Chairman Carey and members of the Committee, thank you for your time today. Banks and thrifts are committed to continue addressing the Ohio foreclosure situation. Providing workouts to borrowers that communicate their financial challenges is not a new concept with OBL's member institutions. These institutions are not in the business of being realtors or landlords. Rather, they are in the lending business and working with willing and able borrowers is in their interest. However, unfortunately, foreclosures are a reality. Despite the image "victim" some portray, foreclosure can be a reality in which all parties benefit if it is consummated swiftly.

Landlord notice to tenants makes sense. Though mediation sounds noble, it is not the "silver bullet" and may unnecessarily hold up proper disposition of a delinquent property. As we understand the essence of HB 3, the OBL believes it would have a dramatic negative impact on Ohio homeowners, our housing market, and responsible lenders. The costs and impediments heaped on lenders would result in higher fees, higher down payments and higher interest rates destroying fluidity in the market, which would harm your other efforts to restore a health economy in this state. Not only would creating barriers and disincentives to filing foreclosures not address the root causes, but they will create additional uncertainty and risk in the Ohio housing market. Homeownership will become impossible for some Ohioans and more expensive for the rest.

Thank you for your time. I welcome any related questions you may have.