

A MONTHLY COLUMN FOCUSING ON
MORTGAGE DEFAULT AND THE REAL ESTATE CONSUMER

A Sweet Solution for a Stale Practice

Late on a Tuesday night in early November 2006, a young U.S. Senator stepped to the podium with his tearful daughter beside him. Rick Santorum, the third-ranking Republican in a Senate then controlled by Republicans, conceded defeat to Democratic challenger Bob Casey. Once touted as a possible candidate for the White House and a shoe-in to be the next Republican Whip (the party's second-ranking post in the Senate), Santorum lost by a sizeable margin—59 percent Casey to Santorum's 41 percent. Santorum wished Casey the best and then revealed his plan to spend more time with his family.

Minding the Desk

In the weeks that followed on Capitol Hill, a lame-duck Congress approved the nomination of Robert Gates to replace Donald Rumsfeld (another election casualty) as Secretary of Defense and saw the surprising return of Trent Lott to fill the leadership post Santorum had expected to secure for himself. During these weeks, there was much talk about the impact of Santorum's loss both in hushed corridors and in the publications that cater to members of Congress and their staffs. One of the most common topics to arise, which even made its way into the national media, was how a duty Santorum had fulfilled for years might be continued. More specifically: Who would manage the candy desk?

On the Senate floor, always in the back row of the Republican side near the most-used entrance (it is closest to the elevators) is a desk that looks like all the others. But since 1965, this particular desk has been filled with candy for the enjoyment of senators during debates and votes. The desk is claimed each session by a senator who then stocks it

the end of the day is cloaked in tradition—a tie to past and future legislative bodies.

Keeping with Custom

Yet for a body that so deeply values tradition, Congress is in great danger of viewing the current foreclosure process as “the way we’ve always done it.” Since the days of the Great

Depression, state governments have typically sent foreclosed property to sheriff's sales, where they are then purchased by the lender and farmed out as REO.

And it's this entity—one that operates in such a traditional way—that plans to alleviate our foreclosure woes in 2008? The politically expedient thing to say is that Congress is

hardly positioned for dynamic change. Yet that is precisely what is needed. Minimizing a downturn through temporary rate freezes or other Band-Aid approaches will only slow things down and will do nothing to prevent the same thing from happening again. Such short-term answers are not necessarily bad, they just shouldn't be viewed as the other end of the rainbow.

Resolution Solution

This being the New Year, however, let's consider what a fresh approach might look like. Instead of losing a few pounds or spending more time at the gym, we'll call this our New Year's Resolution to fix the

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with treats from his or her home state. As a senator from Pennsylvania, Santorum had been in a position to stock the desk with Hershey's candy—a big hit.

Steeped in Tradition

The sweet-filled furnishing is one of several traditions that Congress observes: The Senate floor is adorned with spittoons for tobacco. Senators still vote by calling out their decision, while the House has moved to an automated system. Senate desks are passed down through the years, each new recipient dutifully carving his or her name under the tabletop lid. Everything from the morning prayer to the lowering of the flag at

By **Breaking With Tradition** to Fix the Foreclosure Crisis, Congress Could Trim Bloated Vacancy Rates and **Treat** Its Constituents to More Effective, Streamlined Solutions



entire foreclosure process ... or at least a start. One thing all parties seem to agree on is the damage inflicted by foreclosures on borrowers and lenders alike. No one wants them, and it has been argued in these pages previously that they could be almost completely prevented through wider acceptance (on both sides) of efficient preforeclosure sales strategies. But let's presume they won't go away. What can Congress do to bring the foreclosure process into the 21st century?

One way to modernize the foreclosure process and reduce the harm and waste inherent in it would be to eliminate the sheriff's auction and replace it with an auction conducted by a trained auctioneer. This step in the process is a relic of the Great Depression, when there were arguably not enough private auctioneers to handle the massive influx of foreclosed property. Yet government officials knew the transparency and efficiency that real estate auctions afford, and thus decided to use their own resources—government employees—as the auctioneers. This was a critical error, which—contrary to what might seem immediately apparent—has had disastrous effects on the real estate auction industry (and arguably the U.S. real estate value proposition) ever since. Since the days of the Depression, people have purchased stocks, art, antiques, and everything under the sun (thanks to eBay) via auctions. But real estate auctions are still associated with hard times and desperation, conducted with little public visibility or marketing by government employees who do not rely on their talents as auctioneers to make a living. The sheriff's auction is an unnecessary step in the process. It benefits no one beyond the attorneys who represent interested parties and the aspiring late-night TV real estate moguls in search of a property that might actually have some equity in it.

With the current sheriff's sale winners in mind, we should also consider the winners if privatization passed into law. But before doing so, an important distinction must be made: Privatizing the sheriff's auction is about more than streamlining the foreclosure process. It is a first step in confronting the real estate liquidity crisis in the United States.

Looking at Liquidity

In a November 2007 issue of *The New Yorker* magazine, legendary businessman Sam Zell was profiled. Though he has bought and sold many a business in his time, Zell has been in the press throughout the last year due

to his sale of his massive real estate company, Equity Office Properties, and his subsequent purchase of the Tribune Company—a media conglomerate made up of such name brands as the *Chicago Tribune*, the *LA Times*, and the Chicago Cubs baseball team. Clearly, Zell knows a thing or two about real estate and business in general. The article included several of Zell's business maxims, one of which has particular value to our current point of focus: "Liquidity equals value."

The profound nature of this statement is masked by its simplicity. To be sure, the market value of an item is directly tied to its liquidity. This is the reason we saw the dramatic escalation in housing finance in the wake of new innovations that brought more liquidity to the marketplace. And the lack of liquidity is the reason we have seen the stock of vacant homes escalating in communities nationwide. Similarly, where the junk in your garage had pretty much no liquidity 20 years ago, thanks to Internet commerce (and again, specifically eBay), even that junk may have liquidity—and thus, value.

This is an important maxim to keep in mind as it relates to American real estate—the largest asset class in the world. The glut of vacant properties nationwide is evidence of the liquidity crisis facing the country. Keeping Zell's maxim in mind, liquidity equals value, we can see that this is not just an issue of buying and selling real estate, but of real estate's very value. Indeed, the real estate ownership value proposition is endangered as more and more Americans get burned by their inability to sell what is usually their greatest asset. This makes renting a more appealing option. And while the option to rent is a valuable one, anyone reading this publication knows the issues of quality stewardship surrounding rental properties—those properties not occupied by owners with "skin in the game."

So what does all this have to do with sheriff's auctions? Simply put, the greatest pain being caused by illiquidity in the real estate marketplace today is in vacant, foreclosed property. How do we alleviate this problem? By putting people in these homes who will be stewards of the property. We do that by privatizing the sheriff's sale and going straight from foreclosure to occupancy, rather than the middle-man life-support system we now know as the foreclosure process.

The Perks of Privatization

Who are the winners in a privatized foreclosure auction? To begin, the servicing industry. Privatized foreclosure auctions would

slash the mass of vacant, non-earning assets on the market, and that is good for investors. Sam Wyly, a billionaire with successes as varied as those of Sam Zell (computer software, arts and crafts stores, restaurants, oil, and bookstores just to name a few), recently said in an interview in *Aspen Magazine* that the key to his success in such a diverse array of business ventures was drawing in customers via innovation and marketing. An innovation in the foreclosure process that reduces risk for investors will only lead to more business for servicers. What is good for investors is good for servicers.

Similarly, real estate agents win. Every auction is an opportunity to bring a client to a time-definite sale. No prolonged listings in a glutted, declining market or the time and energy that absorbs.

Certainly, consumers win. As was written earlier in this column, most foreclosures should never happen in the first place. But if they must, carrying them out in a manner that doesn't drag the rest of the market down with it is imperative.

Overall, communities win. In November, the U.S. Conference of Mayors convened a joint summit with representatives of the Mortgage Bankers Association to discuss the foreclosure epidemic and its impact on American cities. Of particular interest was the blight caused by vacant properties. The two entities announced a new online database that will list the owners and/or servicers of all foreclosed properties. This will allow cities to more easily hold accountable those responsible for maintaining vacant properties. Of course, if these properties had occupants, or active stewards, there would be no need for such a database. That both the U.S. Conference of Mayors and the Mortgage Bankers Association (whose slogan is "Investing in Communities") see the need for such a database signals the extent of the real estate liquidity crisis. Bringing an immediate sale to the foreclosure process would substantially ease the pain being felt in America's communities.

With so many in a position to benefit, what stands in the way? The candy desk. Or, more specifically, a Congressional mind-set focused on minor shifts to existing traditions rather than real solutions that require rising up out of the trenches and surveying the best means of attack. The enemy we face grows greater every day, and only the resolve for an innovative approach will make a true, substantial impact on the current problem and on our future. In this New Year, that is one resolution we should expect our Congress to keep. **DS**