

# THE EFFECTS OF DEFECTIVE MORTGAGE LAWS ON HOME FINANCING

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Costly, time-consuming, and often unnecessary procedures required under many state mortgage and foreclosure laws have hampered home financing and increased operating expenses of financing institutions. Likewise, these procedures have imposed an actual burden on borrowers by forcing such institutions to charge higher interest rates and lend a smaller amount on the security of properties than had they been operating under more inexpensive, expeditious and equitable laws. A final result of these uneconomic statutes and the existing diversity in mortgage and foreclosure laws among the several states has been to impede the flow of mortgage money across state lines, thereby indirectly allowing high interest rates to remain in effect in those states where the demand for such money was greater than the supply and, conversely, low interest rates in those states where supply exceeded demand.

Such costly, time-consuming, and unnecessary mortgage and foreclosure procedures are a bitter paradox, since they benefit neither mortgagor nor mortgagee, and can be justified as necessary from no standpoint.

The present deplorable state of mortgage and foreclosure law is probably due to the persistent desire of the courts and legislatures to better the position of the helpless borrower against the supposed greed of the money lender. Recent enactment of moratoria and anti-deficiency judgment laws is the most modern demonstration of this desire to protect the mortgage borrower. But to this judicial and legislative tendency to favor the mortgagor has attached the law of diminishing returns. The resulting waste of money and time has checkmated any benefit derived by the mortgagor. Instead of safeguarding the mortgagor, many of the existing procedures have saddled him with additional charges or made more unfavorable the terms of his mortgage loan.

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It is the purpose of this article to point out the existing diversity in the mortgage and foreclosure laws of the several states, to analyze the unnecessary procedures and useless expenses attendant upon any attempt to comply with the requirements of the laws of many states, to state some of the defects in the substantive law of mortgages, and to indicate how these defects affect home financing and are at least one of a number of factors which will probably prevent prospective home owners from realizing the maximum assistance available from recent federal private housing credit legislation.

### I. DIVERSITY IN MORTGAGE AND FORECLOSURE LAW

One of the most striking examples of the existing diversity in the mortgage and foreclosure laws of the several states is found in two cities, separated by a river, which form one metropolitan area but which are located in different states, *i.e.*, Kansas City, Missouri and Kansas City, Kansas. In the former, the type of security instrument generally used is a deed of trust. Foreclosure is usually effected by an exercise of the power of sale contained in the deed of trust after three weeks' notice by publication in a newspaper. A deed to the property is immediately given to the purchaser at the sale, as there is no redemption period unless the mortgagor gives notice that he wishes to exercise such right at the sale and guarantees the purchaser against loss by posting bond. In that event the mortgagor has one year in which to redeem during which he may remain in possession of the property. The total cost of foreclosure under this procedure averages about \$40.

On the other hand, in Kansas City, Kansas, an ordinary mortgage is the type of security instrument generally used. In it there is no provision for power of sale. To foreclose the mortgage, the action must take place in court and the mortgagor is allowed 18 months after the sale to redeem the property, or six months if a purchase money mortgage was given or the property has been abandoned. The total cost of this action is approximately \$100. A comparison of the mortgage and foreclosure laws under which these two cities operate is striking, however, only because they are so close together. Variations between other states are much greater than these.

A series of maps has been prepared<sup>1</sup> which illustrate better than any explanation the existing diversity in the more important aspects of the mortgage and foreclosure laws of the several states. Map I in this series indicates the type of security instrument generally used in each state, but since this matter is not of special significance in the discussion which follows, the map is not reproduced here.<sup>1a</sup> Map II, entitled "Real Estate Foreclosure Map," indicates the type of foreclosure action in general use in each state. From this map, it is to be noted that, in 29 states, foreclosure is gen-

<sup>1</sup> These maps were prepared by Heber H. Rice, Head Attorney, Foreclosure Section, Litigation Division, Legal Department, HOLC; Harold A. Lamberton, Division of Research and Statistics, FHLBB; and the author.

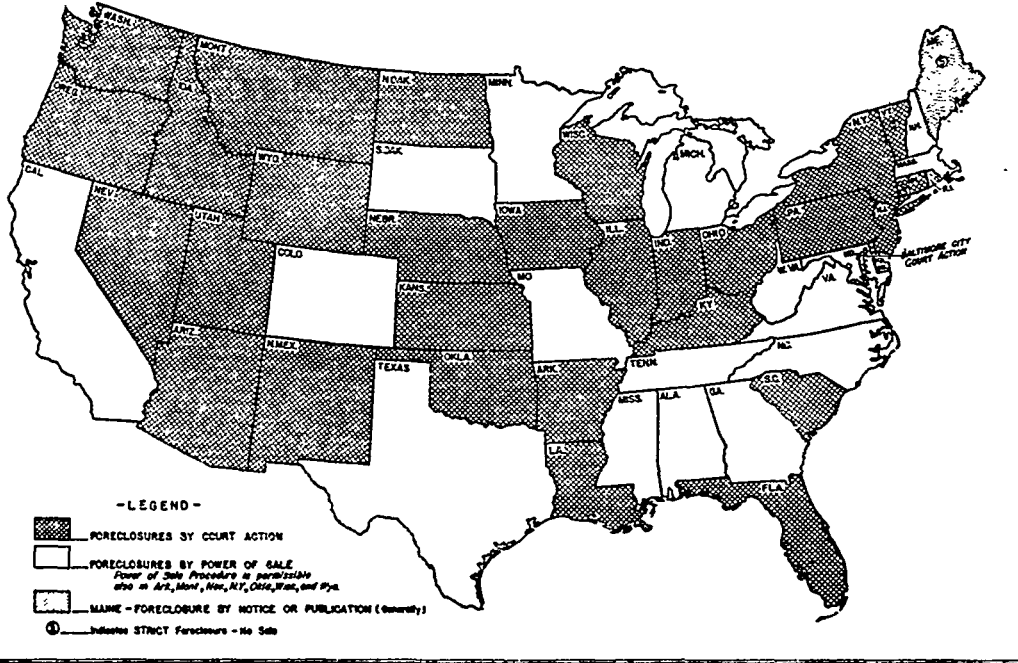
<sup>1a</sup> This map shows that, in 38 states, the type of security instrument in general use is an ordinary mortgage; in nine states, a deed of trust; and, in one, an outright deed.

erally accomplished by court action;<sup>2</sup> in 18, by power of sale,<sup>3</sup> and in one, by notice or publication.

MAP I:

**REAL ESTATE FORECLOSURE MAP**

INDICATING THE FORECLOSURE PROCEDURE GENERALLY USED IN EACH STATE



(Map I in this series is not reproduced in this article.)

Map III, entitled "Real Estate Foreclosure Redemption Map," indicates the length of the redemption period<sup>4</sup> allowed by the laws of the various states and whether the foreclosed mortgagor-owner or the purchaser at the foreclosure sale is entitled to the possession of the property during the running of the period of redemption. From this map, it is to be noted that, in one state, the redemption period is 24 months; in one, 24 months, unless waived; in one, 18 months, unless the property is abandoned or a purchase money mortgage is given and less than one-third of the purchase price has been paid; in 14, 12 months; in one, 12 months, if foreclosure is accomplished by power of sale, or six months, if by court action; in one, 12 months, if bond is given; in one, 12 months, unless waived; in one, 12 months, if the property is sold for less than two-thirds of its value; in one, 12 months, if foreclosure is accomplished by

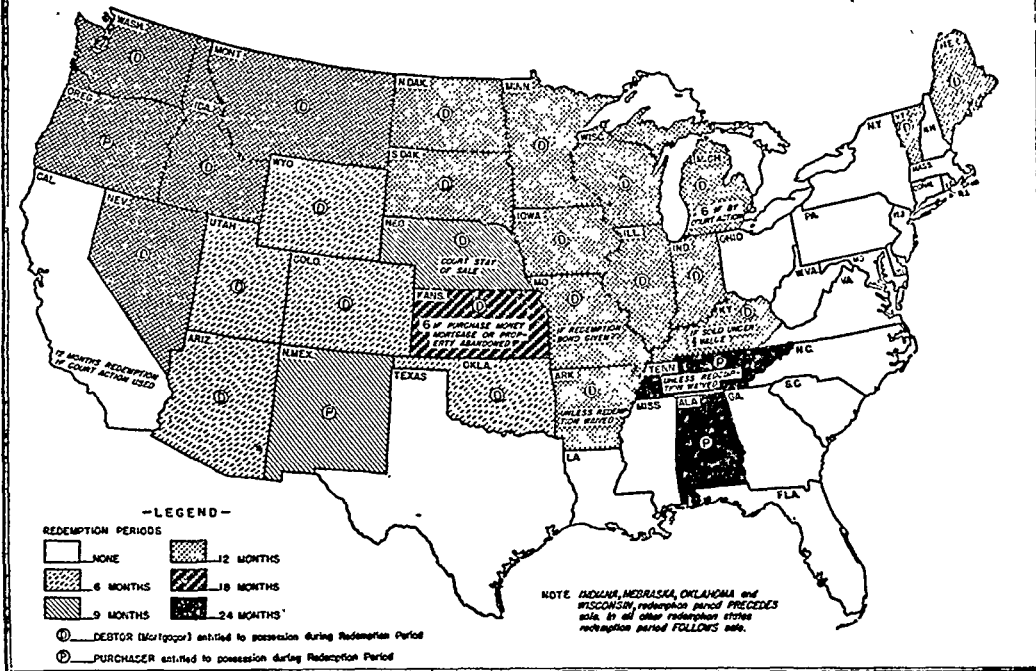
<sup>2</sup>In 12 of these states, foreclosure in court is required by statute; while in the remaining 17, though not required, this is the customary method usually followed.

<sup>3</sup>In 11 of these states, no period of redemption follows the sale; while in seven there is such period.

<sup>4</sup>The redemption period shown in this map is that allowed the mortgagor. Some of the states also allow junior lienors an additional period in which they may redeem, e.g., Illinois, three months; Wyoming, nine months.

### MAP III REAL ESTATE FORECLOSURE REDEMPTION MAP

INDICATING THE LENGTH OF THE PERIOD OF REDEMPTION IN EACH STATE



court action; in two, nine months; in five, six months, and, in the remaining 19 states, there is no redemption period.

The map also discloses that, in four of these 28 states which provide a redemption period the purchaser at the foreclosure sale is entitled to the possession of the property during the running of the period of redemption, while, in the remaining 24 of these states the foreclosed mortgagor-owner is entitled to the possession of the property during that period. Furthermore, it is to be noted from this map that, in four states, the period of redemption precedes, rather than follows, the sale of the property.

It was impossible to bring out in these maps the many other variations in the substantive law of mortgages and foreclosure which affect mortgage lending, *e.g.*, the interest created by a mortgage and the period of limitations. Nor was it possible to show the extent of, and diversity in, the emergency moratoria legislation passed during the depression, some of which is still in effect or has been reenacted.<sup>5</sup>

The law governing the note, the repayment of which a mortgage secures, is governed by a uniform Negotiable Instruments Act in all of the states. Yet the benefits of this uniformity in the law with regard to the note is negated to a large extent insofar as mortgage lending is concerned by the extreme diversity in the

<sup>5</sup> For a discussion of this legislation, see Pt. III, B and C, *infra*.

See also Poteat, *State Legislative Relief for the Mortgage Debtor during the Depression*, *supra*, p. 517. Ed.

mortgage and foreclosure law itself. It is apparent that this diversity in itself will retard somewhat interstate mortgage dealings and the liquidity of mortgage investments in general with the unfortunate effects noted above.

The liberalization of Title III of the National Housing Act of 1934, as amended,<sup>6</sup> so as to make the organization of national mortgage associations more attractive and their securities more salable, as provided for by the National Housing Act Amendments of 1938,<sup>7</sup> makes more imperative than ever before the revision of mortgage and foreclosure laws along more uniform lines. Obviously, the more uniform, simple, inexpensive and expeditious are the mortgage and foreclosure laws of the various states, the easier it will be for such associations to function smoothly and transact their business of making, buying and selling mortgage loans on a nationwide basis.<sup>8</sup>

## II. COSTLY, TIME-CONSUMING FORECLOSURE PROCEDURES AND THEIR EFFECT ON HOME FINANCING

*A. Costly, Time-Consuming Foreclosure Procedures.* Chart I, Map IV and Table I, based on statistics gathered in a recent survey of the foreclosure operations of the HOLC,<sup>9</sup> demonstrate the effect of existing laws on the cost of foreclosure and the time required therefor. In studying the data set forth in the chart and tables it should be borne in mind that the time and cost elements of foreclosure arrived at in this study were less than if they represented privately instituted foreclosures.<sup>10</sup> From these illustrations, it is to be noted that, with respect to the time required for foreclosure and the costs involved, the states may be roughly classified into three groups: (1) those in which cost of foreclosure is low (less than \$100) and the time required in most instances short (less than three months);<sup>11</sup> (2) those where cost of fore-

<sup>6</sup> 48 STAT. 1246 (1934), as amended by 49 STAT. 684 (1935), 12 U. S. C. c. 13.

<sup>7</sup> Act of Feb. 3, 1938, 52 STAT. 22.

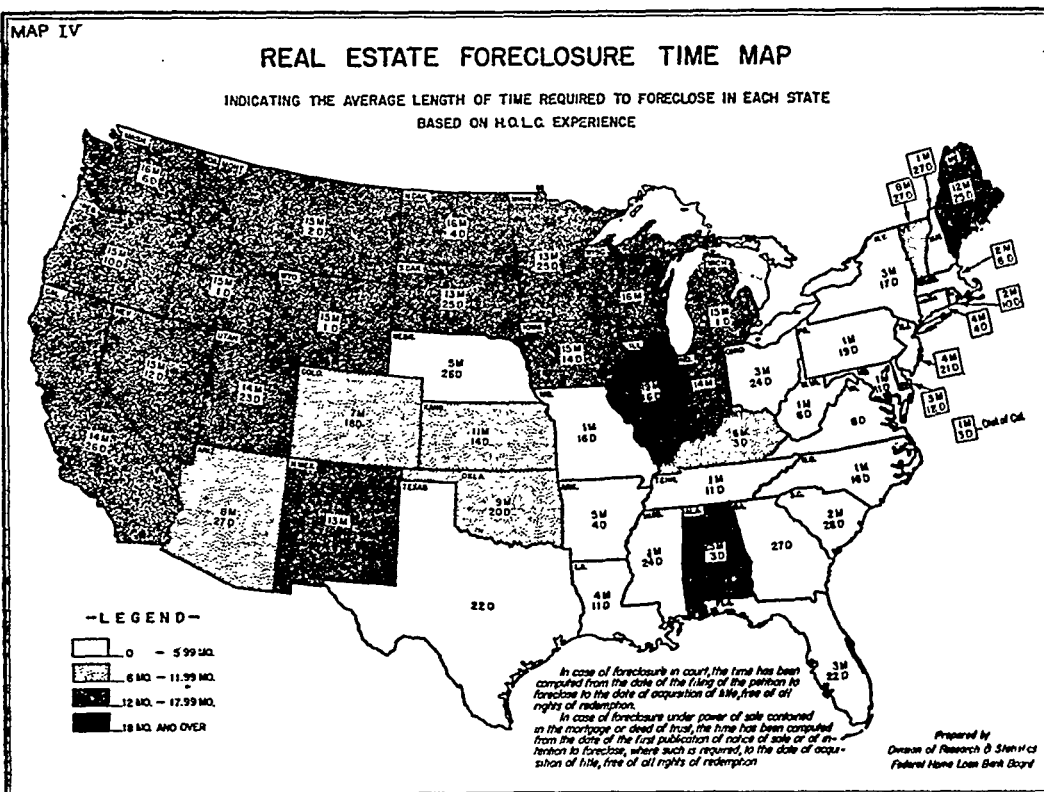
<sup>8</sup> Only one national mortgage association has so far been created under the authority of the above acts, *viz.*, The Federal National Mortgage Association, which was organized by the Reconstruction Finance Corporation in April, 1938.

<sup>9</sup> Chart I and Table I are reprinted with permission from the November, 1937 *Federal Home Loan Bank Review*. The Survey of Foreclosure Operations of the HOLC was made by Henry A. Beaman, Senior Attorney, Foreclosure Section, Litigation Division, Legal Department, HOLC, with the assistance of Ralph S. Weese and C. J. Lester of the staff of the Division of Research and Statistics, FHLBB. A copy may be obtained upon request from the office of the General Counsel, HOLC. Map IV was prepared by Harold A. Lamberton, Division of Research and Statistics, FHLBB, and the author from statistics set forth in the survey.

<sup>10</sup> This is true because the HOLC chose, whenever possible, the least expensive and shortest method of foreclosure; because costs did not include the cost to the Corporation of its salaried personnel, who supervised the foreclosure proceedings; and because the practicing attorneys who handled the foreclosures agreed to a smaller fee than they otherwise would have charged in return for the volume of business to be given them by the Corporation.

In support of this statement, see Tables II and III, which reveal the disparity between HOLC foreclosure cost and the cost of privately instituted foreclosures in four New York counties.

<sup>11</sup> Georgia, Massachusetts, Mississippi, New Hampshire, North Carolina, Rhode Island, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Maine and Missouri should probably also be included in this group as the average cost of foreclosure in both states is less than \$45. On the other hand, in both of these states there is a 12 months' redemption period during which the debtor is entitled to the possession of the property. Alabama should probably also be included in this group, even though



closure is high (above \$100) and the time to foreclose in many instances is unnecessarily long (more than three months);<sup>12</sup> and (3) where cost of foreclosure is not only high and the time to foreclose in many instances unnecessarily long, but where there is also a period of redemption of six months or more during which in most cases the mortgagor is entitled to possession of the property.<sup>13</sup>

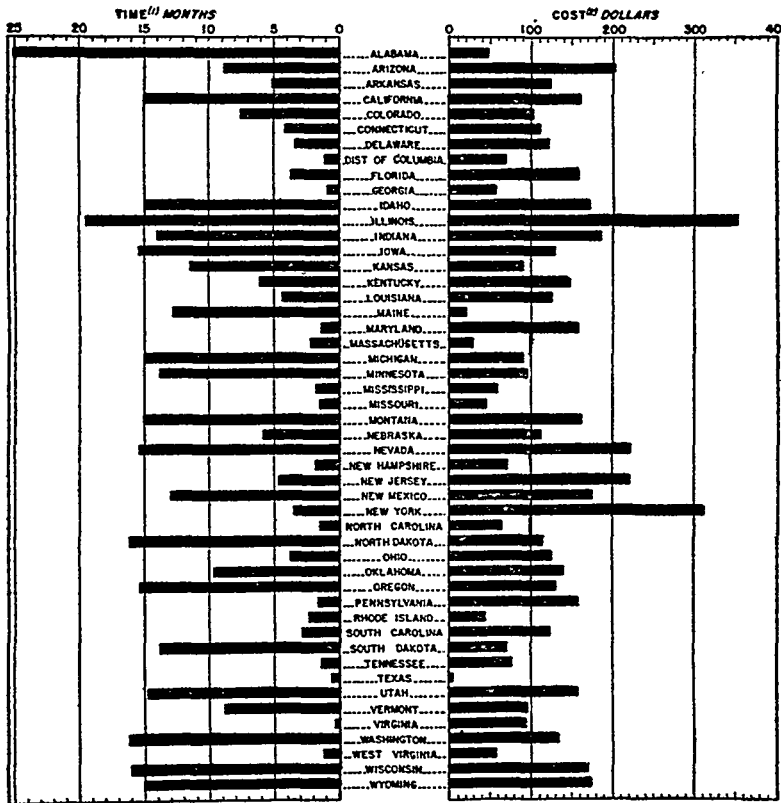
Study of the costs incurred by the HOLC in foreclosing mortgages in the various states reveals that the average cost in states in the first group was approximately \$55; whereas in states in the second and third groups it was approximately \$155. In other words, in the states in the second and third groups about \$100 more was paid for foreclosure of a mortgage than in states in the first group. This \$100 per foreclosure might well be considered a useless expense or waste, since it is to be assumed that in all states an equally indefeasible title is gained by foreclosure proceedings.

the period of redemption is 2 years, since the cost of foreclosure is less than \$50 and since the purchaser and not the debtor is entitled to the possession during the redemption period.

<sup>12</sup> Connecticut, Delaware, Florida, Louisiana, Maryland, New Jersey, New Mexico, New York, Ohio, Pennsylvania, South Carolina.

<sup>13</sup> Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming. Arkansas should probably also be included in this group because of the cost of foreclosure and the 12 months' redemption period during which the debtor is entitled to possession unless redemption is waived.

CHART I. AVERAGE TIME TO COMPLETE FORECLOSURE COMPARED WITH AVERAGE FORECLOSURE COST, BASED ON HOLC EXPERIENCE



If approximately 1,000,000 mortgages have been foreclosed during the past 10 years,<sup>14</sup> then at an average cost of \$124 each, as found by the HOLC; \$124,000,000 would have been expended for mortgage foreclosures. Assuming that \$55, the approximate average cost of foreclosure in states in the first group, is sufficient to cover the cost of foreclosure, it appears that during the past 10 years approximately

<sup>14</sup>Holden, *The Menace of Mortgage Debts* (1933) 166 HARPER'S 575, estimates that the number of foreclosures in the United States in 1931, 1932 and 1933 was probably well over 500,000.

According to a "Report of Investigation on Cost of Procedure in Mortgage Foreclosure," which is a part of a "Survey of All Real Estate Laws," conducted in 1936 by the Works Progress Administration of the City of New York, 32,992 notices of foreclosure were filed in the Borough of Queens, City of New York, from 1930 to 1935. According to figures released by the New York State Tax Department, there are approximately 175,000 one- and two-family homes in this borough. In other words, during the period of 1930 to 1935, more than one out of every ten homes in this borough was in the process of foreclosure. See Fairchild, *Foreclosure Methods and Costs: A Reevaluation* (1937) 7 BROOKLYN L. REV. 1.

In *HOLC Summary* (July 22, 1936) it was estimated that in a normal year, like 1926, approximately 68,000 homes were foreclosed; that in 1932 this figure had increased to 248,700 per annum; and that by June 1933 foreclosures were occurring at an estimated rate of 24,000 a month. These figures are estimates made by the FHLBB based upon reports of local officers in over 1,000 communities in which live over half of the population of the United States. In the House Hearings on the National Housing Act (H. R. 9620), 73d Cong. 2d Sess. (1934) p. 63, figures averaging about 8% higher than these may be found.

From these various estimates, it is safe to conclude that at least 1,000,000 foreclosures have taken place during the last 10 years. See also Note (1933) 42 YALE L. J. 1236.

\$70,000,000 has been spent unnecessarily because foreclosure procedures in all states were not as simple, inexpensive, and expeditious as in states in that group.<sup>15</sup>

Furthermore, it has been estimated that the cost of the delay to a lender in obtaining an infeasible title because of the time required to foreclose or to permit the running of the redemption period averages at least \$2 per day on a \$5,000 mortgage.<sup>16</sup> This estimated cost, of course, includes the loss of interest on the investment, accruing taxes, insurance, and depreciation. From this estimate, it is apparent that in states in the third group, which have a redemption period of a year or more, and in some states in the second which require over a year for foreclosure, including the period of redemption, an enormous waste occurs by reason of the delay necessitated by the local statutes.

*B. Effect of Existing Foreclosure Procedures on Home Financing.* The effect of these time and cost factors in foreclosures upon home financing is obvious. In states in the first group where cost of foreclosure averages approximately \$55 and the time required to complete foreclosure is less than three months, a home financing institution can afford to lend up to a very high percentage of the value of the property at a low rate of interest because it does not have to deduct such a large amount from the value of the property or increase its interest rate in order to balance off the risk of the costs which may arise if it has to foreclose.

On the other hand, in states in the second and third groups, where the average cost of foreclosure is almost three times as much, or the time required to complete foreclosure, including the period of redemption, is greater than one year, or where both such conditions are in effect, a home financing institution cannot afford to lend with safety as high a percentage of the value of the property; or, if it does, it must charge a high interest rate to compensate for the risk involved. Thus, a borrower would be prevented from obtaining a loan in many instances or be forced to resort to the dangerous practice of junior financing.

Or, to express the situation somewhat differently, a home financing institution in any one of those states in the first group, which has lent \$4,000 on a \$5,000 home, is able to "carry" a defaulting home-owner borrower for many months, during which time he may rehabilitate himself, before the accumulated interest, taxes, insurance, and other carrying charges bring the total debt up to a point where it has to foreclose upon the mortgage in order to protect itself against loss on the loan.

On the other hand, a lending institution in any one of the states in the second and third groups, which has lent \$4,000 on a \$5,000 home, would find it necessary to foreclose immediately to protect itself when the accumulated carrying charges had

<sup>15</sup> In this connection, see Russell, *Foreclosure Costs in New York* (1937) 13 J. OF LAND & PUB. UTIL. ECON. 221, in which it is stated that four million of the estimated five million dollars which the HOLC will spend in foreclosing mortgages in New York State will be a kind of "legalized waste." In an address on "Foreclosures in New York," delivered at the 50th Annual Convention of the New York State League of Savings and Loan Associations on June 16, 1937, Mr. Russell stated: "I estimate that mortgagees in New York wasted at least \$40,000,000 in useless foreclosure costs in the past four years."

<sup>16</sup> The estimate of \$2 a day was made by Horace Russell, General Counsel, United States Building and Loan League, in an address before the League at its annual convention in Los Angeles on October 7, 1937.



raised the borrower's debt to \$4,500. Therefore, in these latter states a lending institution is prevented from granting voluntary short moratoria to the borrower, during which he may rehabilitate himself, in periods of financial misfortune.

Clearly, therefore, simple, inexpensive and expeditious mortgage and foreclosure laws make possible more liberal practices on the part of lending institutions, thereby benefiting not only the mortgagee but also the mortgagor and facilitating mortgage lending in general.

*C. Effect of Existing Foreclosure Procedures on Federal Home Financing Program.* During the past six years the federal government through its housing finance agencies has been sponsoring long-term, amortized, single-mortgage lending at low interest rates on home properties,<sup>17</sup> hoping thereby to discourage short-term, lump-sum, multiple-mortgage lending,<sup>18</sup> which is regarded by many as one of the basic weaknesses in the home-financing structure. From what has been said above, however, it is apparent that existing mortgage and foreclosure laws are at least one in a series of factors which prevent complete realization of the federal program in many states. Since only through the medium of a long-term, amortized mortgage loan can many families of moderate means finance the purchase of a home, such families are prevented from receiving the full benefits of the federal program in states which have costly, time-consuming mortgage and foreclosure procedures.

Clearly, if many potential and prospective home-owners of moderate means are to receive full advantage of the generous benefits provided in the National Housing Act Amendments of 1938,<sup>19</sup> the mortgage and foreclosure laws of many states must be substantially revised. The raising of the FHA mortgage insurance limit on homes costing \$6,000 or less from 80 to 90% of the value of the property, as provided for in these amendments,<sup>20</sup> has reduced the possible minimum down-payment required of a prospective home-owner from 20 to 10% of the sale price or cost of the property; *e.g.*, the minimum down-payment which would be required on a \$3,000 home, which is financed through an FHA-insured mortgage, would be \$300.00. But, according to the cost of foreclosure brought out in the study of the HOLC experience, in many

<sup>17</sup>The HOLC, during its lending operations, refinanced 1,018,390 home mortgage loans, or approximately one out of every 10 home mortgage loans in the country, in the total amount of \$3,092,870,784, on a 12- to 15-year repayment basis, amortized by installment payments of approximately \$9 a month per \$1,000 of loan, with one mortgage securing all debts refinanced and at an interest rate of 5%. The average loan was \$3,027, which represented an average of 69.1% of the appraised value of the properties. Further impetus has been given to long-term, amortized, single-mortgage lending by making it a condition for membership in the Federal Home Loan Bank System, by requiring it to be the major activity of federal savings and loan associations, and by making it a condition for mortgage insurance with the FHA.

<sup>18</sup>Short-term mortgage loans on home properties are generally bad practice as they must be refinanced every few years, with the high commissions and financing charges which that operation entails. Lump-sum mortgage loans are generally bad practice as they necessitate repayment of the entire amount of the loan at one time or refinancing the loan with the high fees which that operation entails. Multiple mortgage financing of a single property is generally bad practice not only because of the high fees incident to procurement of each mortgage, but of the increased dangers of default.

It may be estimated that, prior to the depression, approximately 50% of the home mortgage financing of the country was on a short-term, lump-sum basis, with many properties securing more than one mortgage. The evils in this system of mortgage financing were laid open to scrutiny during the depression period.

<sup>19</sup>*Supra*, note 7.

<sup>20</sup>*Id.* §3, 12 U. S. C. §1709.

states this cost together with the cost of the delay to the lender would more than cancel out this initial down-payment in the event of default soon after the loan was made.

Consequently, in those states where the cost of foreclosure exceeds \$200.00 or where the mortgagor is entitled to a period of redemption of one year or longer, or in states where both these conditions exist, a 90% insured mortgage loan on a home property costing \$6,000 or less would involve considerable risk both to the lender and to the FHA.

From the standpoint of a lending institution, this is true regardless of the fact that the FHA is authorized to insure such loans up to that percentage of appraised value and, in the event of default, to issue its debentures in an amount to cover (1) the principal obligation unpaid at the institution of foreclosure proceedings, (2) all payments made by the mortgagee for taxes, special assessments, and insurance, and (3) the cost of foreclosure, in the case of mortgages upon which less than 10% of the principal has been repaid. Even with such liberal insurance coverage, an element of risk to lending institutions still remains because the foreclosure cost for which debentures may be issued is limited to an amount not in excess of 2% of the unpaid principal at the institution of foreclosure proceedings or \$75, whichever is less.<sup>21</sup>

The Federal Housing Administrator is authorized, it is true, to issue to a mortgagee who has foreclosed upon an insured mortgage, in addition to debentures, certificates of claim in an amount sufficient, when added to the face value of the debentures, to equal the amount which the mortgagee would have received if the mortgagor had redeemed and paid in full all obligations under the mortgage and the expenses incurred by the mortgagee in connection with foreclosure.<sup>22</sup> However, these certificates are paid off only if, after sale of the property and payment of the sale expenses, a surplus remains over and above the debentures previously issued to such mortgagee.<sup>23</sup>

Consequently, in the high-cost group of states, it would appear that, where less than 10% of the obligation has been repaid, a sufficient surplus will not remain to pay off such certificates of claim. It is to be expected, therefore, that home-financing institutions in these states will protect themselves by continuing to lend less than 90% of the appraised value of the property.<sup>24</sup> Consequently, prospective home-owners and home-financing institutions in states which have a simple, inexpensive and expeditious foreclosure procedure should be in a better position to take full advantage of the benefits provided by the National Housing Act Amendments of 1938.

<sup>21</sup> National Housing Act (as amended) §204(a), 12 U. S. C. §1710(a).

<sup>22</sup> *Id.* §204(c), 12 U. S. C. §1710(c).

<sup>23</sup> *Id.* §204(f), 12 U. S. C. §1710(f).

<sup>24</sup> For discussions of depreciation costs and other factors which might prevent home financing institutions from lending up to 90% of the value of a home property on a 20 to 25 year repayment basis, see Beach, *Are 20-Year Mortgage Loans Safe?* (1938) 14 J. OF LAND & PUB. UTIL. ECON. 19 (1938); and Guthmann, *Making Home Ownership Safe*, *id.* 26. For other discussions of how existing foreclosure laws will probably prevent mortgage loans up to 90% of the value of property from being made under the FHA insured mortgage program, see Bridewell, *Foreclosure Laws and Mortgage Loans*, FHA INSURED MTGE. PORTFOLIO, July, 1938, and Russell and Bridewell, *Mortgage Laws and Mortgage Lending* (1938) 14 J. OF LAND & PUB. UTIL. ECON. 301.

TABLE I. HOLC FORECLOSURE COSTS AND THE TYPE OF FORECLOSURE ACTION, BY STATES\*

State	Type of action <sup>b</sup>	Per- cent of total loan amount	Principal Items as a Percentage of Total Costs to HOLC										Average cost of fore- closure			
			Attor- ney's fees	Adver- tising cost	Commis- sioner's, trustee's, and/or sheriff's fees	Court costs	Title search	Auction- er's fees	Re- cording fees	Reve- nue stamps	Master in chan- cery's fees	Other				
Alabama.....	P	1.2	69.9	25.0						2.7	2.4					\$ 47.95
Arizona.....	C	5.4	58.6		18.1	13.4	5.3			1.5	2.3			0.8		202.38
Arkansas.....	C	5.6	40.6	0.8		37.0	18.6			1.1	1.9					123.18
California.....	C	4.0	49.9		26.1	8.5	9.4			1.7	3.0			1.4		161.34
Colorado.....	P	3.6	50.2	9.4	5.0		31.0			1.5	2.9					102.65
Connecticut.....	P	1.9	63.6			b36.4										111.00
Delaware.....	P	2.9		52.3		39.6				2.5	1.0			4.6		120.95 <sup>c</sup>
District of Columbia	P	1.0	a	64.7				22.0	3.1	9.1				1.1		68.75 <sup>c</sup>
Florida.....	C	5.2	60.8	7.9	3.6	6.8	9.8			1.1	0.5	9.5				158.16
Georgia.....	C	1.9	52.5	42.5						2.7	2.3					56.70
Idaho.....	C	6.0	50.1		29.7	13.1	3.8			0.9	2.1			0.3		170.98
Illinois.....	C	6.3	34.7	4.8		7.9	13.5			0.3	1.8	34.8		2.2		354.30
Indiana.....	C	4.6	48.1			b31.1	5.8			0.7	2.7			11.6		185.61
Iowa.....	C	4.0	59.7	0.5		b30.0	5.5			1.0	3.0			0.3		129.35
Kansas.....	C	3.7	55.1			34.8	5.4			3.3	1.4					90.83
Kentucky.....	C	4.2	50.3			36.4	10.0			1.1	1.9			0.3		149.23
Louisiana.....	C	2.7	d	31.1	28.0	18.8				11.8	0.9			9.4		125.23 <sup>d</sup>
Maine.....	C	0.6	46.0	47.8						4.9				0.4		21.32
Maryland.....	P	4.4	31.7	21.9	6.3	22.0				2.5	2.2	5.9		7.5		157.56
Massachusetts.....	C	0.5		56.9				27.8	15.3							29.08 <sup>e</sup>
Michigan.....	P	1.9	50.3	34.6	3.3	0.1				4.6	6.5			0.6		90.52
Minnesota.....	P	2.6	61.2	31.4	16.6					0.7				0.1		90.11
Mississippi.....	P	1.8	59.5	33.4						2.8	4.3					58.81
Missouri.....	P	0.7	d	78.5						11.3	10.2					48.40 <sup>f</sup>
Montana.....	C	5.8	75.6		7.6	8.9	4.6			0.9	2.3			0.1		161.74
Nebraska.....	C	5.4	45.0			47.1	7.1			0.2				0.6		112.10
Nevada.....	C	3.8	59.8		18.3	13.2	4.4			1.3	2.8			0.2		223.01 <sup>g</sup>
New Hampshire.....	C	2.0	60.6	21.2				7.8		5.8	4.6					70.82
New Jersey.....	C	4.7	38.0			b62.0										222.29
New Mexico.....	C	6.9	54.0		11.4	6.8										175.38
New York.....	P	5.9	40.0	17.5		2.3	12.1	2.0	0.9	1.5	7.8			5.5		312.54
North Carolina.....	C	1.4	55.5	22.5	2.4	b12.8	5.4			0.7	1.3	29.1		1.7		64.07
North Dakota.....	C	4.1	51.8	13.5	13.3	5.7	5.5			4.2	3.0			3.0		114.04
Ohio.....	C	2.9	39.5		0.2	b49.6	3.6			1.1	3.1			2.9		125.46
Oklahoma.....	C	4.2	30.7	12.9	10.7	11.3	26.0			1.5	2.1			4.8		130.95 <sup>h</sup>
Oregon.....	C	4.6	56.5		9.7	16.2	12.0			1.5	2.6			1.5		130.37
Pennsylvania.....	C	3.6	31.8	41.5	4.2	b21.7				0.4	0.4					158.27
Rhode Island.....	C	0.8	9	56.4						23.0	10.7	9.9				44.72 <sup>i</sup>
South Carolina.....	C	4.7	50.0	14.0	23.5	10.0				1.2	1.1			0.2		123.25
South Dakota.....	C	3.1	45.5		43.4		0.7			10.4						70.84
Tennessee.....	P	2.4	64.5	28.4						3.3	3.6			0.2		77.51
Texas.....	C	0.2								65.2	34.8					5.78 <sup>e</sup>
Utah.....	C	4.9	66.2		12.8	12.7	3.9			1.4	2.6			0.4		158.33
Vermont.....	C	2.2	64.4			35.6										97.14
Virginia.....	P	1.7	42.3	33.0	14.1	0.1				5.4	4.8			0.2		94.8
Washington.....	C	5.4	55.1		17.1	16.9	7.1			1.1	2.4			0.3		134.40
West Virginia.....	C	1.2		39.8	46.7	2.6				4.8	6.1					50.93
Wisconsin.....	C	3.1	52.7			b33.3	10.2				2.0			0.9		169.94
Wyoming.....	C	7.2	61.7		23.9	3.1	7.9			1.2	1.8			0.4		174.11

\* Based on as near 100 foreclosures as possible for each state.

<sup>b</sup> Consists of power of sale (P), court action (C), or (S) strict foreclosure by publication with no sale. When any one of these is allowed, that list has been used principally by the HOLC.

<sup>c</sup> Extra items included in court costs: Connecticut—all items; Indiana—sheriff's fees, advertising cost; Iowa—sheriff's fees and some ad- vertising costs; New Jersey—all items; North Carolina—recording fees; Ohio—advertising fees; Pennsylvania—most recording fees; and Wisconsin—publication for sale, sheriff's fees, recording fees.

<sup>d</sup> Average foreclosure costs do not include attorneys' fees in Texas, Massachusetts, Delaware, District of Columbia and Rhode Island, as foreclosure is handled by HOLC salaried personnel and the cost of these services is not included in total costs.

<sup>e</sup> Average foreclosure costs do not include a full charge for attorneys' fees in Louisiana, Missouri, Nevada and Oklahoma as foreclosure is partially handled by HOLC salaried personnel.

*D. Useless Expenses Involved in Foreclosure.* A study of any statistics on the separate factors in the total cost of foreclosure demonstrates that in most states many useless expenses are incurred by reason of the many unnecessary procedures required. Table I, which shows various items of foreclosure costs as percentages of the total foreclosure cost by states,<sup>25</sup> illustrates this statement. Confirmation is also found in

<sup>25</sup> In studying this table it should be kept in mind that the percentages shown are based upon the ratio which the total of each of the principal elements of cost in each state bore to the total cost of foreclosing

TABLE II. ELEMENTS OF COST IN TOTAL COST OF FORECLOSURE IN THE FOUR METROPOLITAN NEW YORK COUNTIES, BASED ON REPRESENTATIVE HOLC CASES

Fee and Cost Items	Queens County (25 cases)	New York County (8 cases)	Kings County (25 cases)	Bronx County (25 cases)
Referee to compute.....	\$ 24.00	\$ 25.00	\$ 25.00	\$ 25.00
Referee to sell .....	75.00	74.31	75.00	75.00
Advertising bill .....	45.47	105.73	74.52	124.30
Auctioneer's fee .....	1.80	30.00	28.20	28.80
Attorney's fees .....	120.00 <sup>a</sup>	109.38 <sup>a</sup>	125.00	125.00
Miscellaneous .....	50.50	52.39	49.91	51.30
Total.....	\$ 317.66	\$ 396.86	\$ 376.84	\$ 430.12
Average Loan Amount..	\$6,735.40	\$9,907.21	\$6,738.95	\$8,070.74
Time to Complete.....	5.8 months	5.4 months	5.2 months	4.9 months

<sup>a</sup> Average attorney's fee in this county reduced because HOLC salaried attorneys were used in one of the cases analyzed, no fee being shown.

TABLE III. ELEMENTS OF COST IN TOTAL COST OF FORECLOSURE IN THREE METROPOLITAN NEW YORK COUNTIES, BASED ON A STUDY OF PRIVATELY INSTITUTED FORECLOSURES.<sup>a</sup>

Fee and Cost Items	Queens County (1800 cases, 1930-35)	New York County (433 cases, 1930-35)	Kings County (255 cases, 1933-35)
Referee's Fees .....	\$ 89.70	\$ 97.31	\$ 83.15
Advertising Bill .....	70.46	191.22	99.87
Auctioneer's Fee .....	21.67	47.11	33.51
Statutory Costs .....	36.06	43.96	40.09
Total Disbursements .....	81.96	92.81	86.54
Interest on Costs .....	1.35	2.27	.45
Guardian Fees .....	1.21	.74	.43
Attorney's Allowance <sup>b</sup> .....	148.16	176.41	163.02
Extra Allowance <sup>c</sup> .....	125.46	190.25	156.32
Total .....	\$576.03	\$842.03	\$663.38

<sup>a</sup> The average elements of cost (based on actual fees and costs) in this table are taken from a more comprehensive chart in Fairchild, *supra* note 14, which summarizes the figures set forth in the "Report of Investigation on the Cost and Procedure in Mortgage Foreclosure." This report was a part of a "Survey of All Real Estate Laws" conducted in 1936 by the WPA of the City of New York.

<sup>b</sup> Determined by the amount of the judgment of foreclosure. N. Y. CIV. PRAC. ACT, §1512.

<sup>c</sup> Granted pursuant to N. Y. CIV. PRAC. ACT, §1513. Although the allowance is discretionary, it is granted by the court almost as a matter of routine.

on all mortgages in each particular state, rather than upon the ratio which the average of these principal elements bore to the average cost. It was impossible to show percentages of the average cost because all foreclosures within a state did not always include the same items. Thus, in New York, only 23% of the total sample included costs for auctioneers' fees or trustees' fees, because in the upstate districts no such fees are charged. Although these percentages were computed as set forth above, they give a rough picture of the *relative* extent to which each item of cost went to make up the average cost.

Since the various elements of cost which go to make up the total cost of foreclosure are expressed in terms of percentages, the percentage of total costs given in some cases may be disproportionately high because the total aggregate cost for foreclosure is quite nominal. For instance, since foreclosure is handled by the HOLC's salaried attorneys in Texas without extra cost, as a part of their business routine, and since the total cost of foreclosure in that state is therefore but \$5.18, the cost of revenue stamps and the recording of the deed make up together 99% of the total foreclosure costs.

Tables II and III which set forth a breakdown of the averages of the various cost elements which went to make up the total cost of foreclosure in the four New York counties embraced in the metropolitan area of New York City.<sup>26</sup>

Table I shows that the cost of publishing in a newspaper a notice of the pendency of a foreclosure action accounts for an average of approximately 29% of the average total cost in states requiring this method of notice. Table II shows that the average cost to the HOLC of this method of giving notice in the metropolitan counties comprising New York City ranges from \$124.30 in Bronx County to \$45.47 in Queens County, with an average of \$87.50 for the four counties. It is a matter of general agreement among practicing attorneys that publication of such notice does not bring buyers to the sale and, therefore, benefits no one except, of course, the newspaper obtaining the advertisement. Rarely does it happen that any other person than the plaintiff mortgagee, or his nominee, is the purchaser at the sale. Therefore, publication of notice more than once or twice, which is required to meet the requirements of due process of law, where no other notice is given,<sup>27</sup> is an unnecessary expense.

Table I also shows that fees of auctioneers and masters in chancery account for an average of approximately 14% and 17%, respectively, of the average total cost of foreclosure in those states which require sale by such officials. Table II shows that the modal cost to the HOLC of having a public auctioneer sell the property at the foreclosure sale in three of the four metropolitan counties comprising the City of New York was approximately \$28. The requirement is of little value since, as pointed out above, usually no one bids at the sale except the mortgagee or his nominee. Furthermore, the fees allowed for these services in New York and in most states are probably out of all proportion to the services rendered, for generally they consist only of reading the terms of sale and recording bids.

Likewise, appointment of referees to compute the amount due and supervise the sale, as required in a few states, merely adds fees for which there is little or no justification. A referee rarely does more than sign his name to the computations of the debt made by the mortgagee, engage an auctioneer to sell, attend the sale, and sign the report of sale and deed to the purchaser, which are usually prepared by the mortgagee's attorney. According to Table II, the average cost to the HOLC of having a referee compute the amount of the debt and supervise the sale in the metropolitan counties comprising the City of New York was approximately \$25 and \$75, respectively.

Furthermore, Table I shows that attorneys' fees account for an average of approximately 52% of the total foreclosure costs in those states where fee attorneys were employed. The corresponding figure in the four New York counties was approximately \$125.00 (Table II). There is a close correlation between the size of the attorneys' fees and the work and detail involved. For instance, by contrasting Table I with the maps, attorneys' fees are seen to run high in states where foreclosure

<sup>26</sup> For an excellent analysis of the excessive costs and the uncertainties involved in the present New York foreclosure procedure, see Fairchild, *supra* note 14.

<sup>27</sup> Notice by publication is sufficient to meet the requirements of due process of law. See *American Land Company v. Zeiss*, 219 U. S. 47 (1911). See also *U. S. v. Fox*, 94 U. S. 315 (1876).

statutes are cumbersome and require a great amount of detailed work over a long period of time. On the other hand, such fees are low where the statutes provide for a simple, expeditious procedure.

One of the most interesting over-all conclusions with regard to the useless expense involved in foreclosure that may be drawn from a study of the statistics gathered by the HOLC in its survey is that the cost of foreclosure in those states which proceed under power of sale is far less than in those which proceed under court action. Out of the 13 states classified under the first group (low-cost states), the foreclosure procedure followed in 12 was by power of sale. In the thirteenth, Maine, the foreclosure process, though not by power of sale, was exceedingly simple and required no court action. In the 35 states classified in the second and third groups (higher-cost states), foreclosure was effected by court action in all but six.

This would indicate that the practice of foreclosing by court action, whether required by statute or by necessity in order to secure good title after foreclosure, is extremely costly and that the states wherein this method is followed would do well to provide by statute for a well regulated power of sale foreclosure procedure.

### III. DEFECTS IN SUBSTANTIVE LAW OF MORTGAGES FROM THE STANDPOINT OF HOME FINANCING

*A. Redemption Periods.* It was pointed out above: (1) that 28 of the 48 states provide a redemption period, ranging from 24 months in Alabama to six months in Arizona, Colorado, Oklahoma, Utah and Wyoming; (2) that in these 28 states providing a redemption period the foreclosed mortgagor owner is entitled to possession in 24 and the mortgagee in only 4. The deleterious effect which these redemption periods have upon home financing and mortgage lending in general was also pointed out.

It is questionable whether these redemption periods can be justified. They prove of little benefit to the mortgagor home-owner because, to exercise this right, he must pay the entire debt in cash during the redemption period, which of course is usually impossible as there never would have been a foreclosure if he had been able to pay the debt or a substantial part of it in cash.<sup>28</sup> On the other hand, such redemption periods actually result in an approximate cost of \$2.00 a day to the home financing institution, against the possibility of which they in turn protect themselves, as pointed out above. Thus, these periods often deprive a potentially worthy, prospective home-owner of securing a mortgage loan or prevent him from receiving the most advantageous terms. Since outside purchasers will not bid freely for property at a foreclosure sale, the title to which is subject to redemption for a long period of time, mortgagees are enabled and encouraged to bid in properties at foreclosure sales at nominal amounts, thus laying the basis for large deficiency judgments against the foreclosed home-owners.

<sup>28</sup> A recent study of HOLC experience shows that out of 22,000 properties foreclosed, only 204 or less than 1% were redeemed despite the substantial periods of redemption permitted in most cases. In other words, from this study, the chances are less than 99 to 1 that the foreclosed mortgagor will not redeem.

The legal basis for home financing and mortgage lending in general would be greatly improved if these periods of redemption were entirely abolished in all states or made as short as possible.

*B. Deficiency Judgments.* The collapse of the real estate market during the depression period with the resulting lack of demand for real estate properties, together with the deleterious effects of redemption periods on the purchase of properties at foreclosure sales, pointed out above, forced mortgagees to bid in properties at foreclosure sales, usually without competition and at nominal amounts, thereby laying the basis for large deficiency judgments on the note secured by the mortgage. As a consequence, mortgagors, in many cases, in addition to losing their properties, would have large deficiency judgments entered against them; which they were unable to repay and which would ruin their credit rating in their community. Such judgments, in many instances, could be cleared only through bankruptcy proceedings.<sup>29</sup>

So great were the evils and injustices that developed as a result of this practice that one state<sup>30</sup> abolished deficiency judgments entirely; one state<sup>31</sup> abolished them in foreclosures and sales under power of sales in purchase money mortgages and deeds of trust; and seventeen<sup>32</sup> passed laws limiting the right to a deficiency judgment by requiring that the mortgaged property be sold at the foreclosure sale for a sum having some relation to the fair value of the property or for a sum sufficient to satisfy the debt even though depressed real estate values would make this impossible if the sale progressed normally. Although some commentators have suggested the complete abolition of deficiency judgments,<sup>33</sup> it would appear more equitable and better procedure to retain to the mortgagee his right to secure a deficiency judgment, provided, in so doing, he did not secure a judgment in an amount greater than he was equitably entitled.

It is believed, therefore, that the principle embodied in the above statutes regulating the right to secure a deficiency judgment is a desirable addition to the mortgage law of those states which have enacted them. The most desirable procedure for regulating this right would appear to be that which requires the mortgagee to credit upon the unpaid balance of the debt plus the cost of the foreclosure action and attorney's fees either the fair market value of the property at the time of foreclosure, as determined by the court, or the foreclosure sale price of the property, whichever is larger, and then seek his deficiency for the difference.

*C. Moratoria.* Moratoria statutes, like the deficiency judgment laws discussed above, are a product of the depression years. They were both enacted to meet emergency conditions. However, the moratoria statutes differ from the deficiency

<sup>29</sup> See Note (1933) 47 HARV. L. REV. 299.

<sup>30</sup> North Dakota.

<sup>31</sup> North Carolina.

<sup>32</sup> Arkansas, Arizona, California, Idaho, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New York, Pennsylvania, South Carolina, South Dakota, Texas and Wisconsin.

For a discussion of legislation in the depression period relating to deficiency judgments, see Poterat, *State Legislative Relief for the Mortgage Debtor During the Depression*, *supra*, at pp. 529-536. Ed.

<sup>33</sup> See MacChesney and Leesman, *The Mortgage Foreclosure Problem* (1937) 23 A. B. A. J. 41, 47; Legis. (1928) 86 U. OF PA. L. REV. 517, 525.

judgment laws in that they were intended to be effective for only short periods of time, whereas the deficiency judgment statutes in most cases were intended to make a permanent change in the mortgage law of the state. Nevertheless, some of the moratoria statutes are still in effect or have been reenacted. They may be classified as follows: (1) laws prohibiting foreclosures and sales thereunder until a certain date or for a reasonable time in the discretion of the courts; and (2) laws extending the period of redemption on mortgages in process of foreclosure.<sup>34</sup>

Since such statutes materially affect the mortgagee's right to enforce satisfaction of the debt by a resort to foreclosure, they considerably depress the value from an investment standpoint of mortgage loans which are affected thereby. Furthermore, such statutes have a tendency to discourage home financing institutions from making loans. Now that the conditions which justified the enactment of this legislation have to a great extent passed, it would appear desirable to repeal this moratoria legislation as quickly as possible, or not to reenact it in cases where it will expire within the near future.

*D. Future Advances.* It was pointed out above that the federal government during the past five years has been doing everything possible to sponsor long-term, amortized, single-mortgage home financing, in contrast to short-term, lump-sum, multiple-mortgage lending; and that the former method of home financing has now become the rule rather than the exception in home financing. In order adequately to provide for this development, there is a need for additions to, or a revision of many provisions of, the law of mortgages in many states. In no respect is this need for amendment more clearly seen than in that part of the mortgage law which provides for the security which will be given advances made by the lender to enable the borrower to pay taxes, make necessary repairs, etc., after the execution and recording of the mortgage and the disbursement of the original loan.

In many states, it is practically impossible without extensive study of the court decisions of the state to determine whether such advances, if made by the mortgagee, would be protected by the lien of his mortgage. As a result, the common procedure today in such cases is to execute a second mortgage to secure such additional advances, regardless of amount. This procedure, of course, subjects the entire loan transaction to all of the criticisms which may be leveled at junior financing.

The problem of future advances also arises in the case of construction money mortgages. To finance the construction of a home, a prospective home-owner executes a mortgage in an amount which will cover the cost of construction in favor of a home financing institution, covering the lot upon which the home is to be built. Collateral to the mortgage contract, the lending institution agrees to make installment payments to the contractor as he progresses with the construction. In some states, the question would arise whether the entire amount which the institution agreed to, and actually did, advance under the mortgage would have priority

<sup>34</sup> These laws are discussed in Poteat, *supra* note 32, at pp. 520-525. Ed.



over mechanics' and other types of liens which arise and are recorded subsequent to the recording of the mortgage but prior to some of the installment payments.

The majority rule with regard to future advances, as enunciated by the courts, is that a mortgagee under an obligation to do so may make such advances under the protection of the lien of his mortgage, even though he has notice of liens arising prior to his advance; but that a mortgagee who is not obligated to make such advances may do so under the protection of the lien of his mortgage only up to the time he has notice of subsequent liens. The courts are not in accord, however, whether the notice of such liens must be actual or whether it may be constructive.

To make clear the status of the lien securing future advances, provision should be made that when a mortgage expressly states a maximum amount which is being advanced or may be advanced in the future, all advances made thereunder up to that maximum amount will be secured by the lien of the mortgage, and that any advances over that maximum amount will be secured by the lien of the mortgage but are inferior to intervening liens.

It would also appear desirable to have a statutory provision which would permit the mortgagee to advance money for the maintenance and repair of the property mortgaged, or for the payment of taxes and insurance thereon under the security of the lien of his mortgage, regardless of the fact that in so doing he may exceed the total amount set forth in the mortgage. To prevent the possibility of fraud and collusion between the mortgagor and mortgagee and to give junior lienors some idea of the total amount which is or may be secured by the lien, the amount of the advances which might be made for such purposes could be limited to a fixed amount or a certain percentage of the face amount of the mortgage.

*E. Rents and Profits.* Under the common law theory of mortgages, when a mortgagor defaults in any of the terms of the mortgage, the mortgagee is entitled to collect the rents and profits arising from the mortgaged property without having to account therefor to the mortgagor unless the mortgagor redeems. On the other hand, under the equitable or lien theory, the mortgagee is not entitled to the rents and profits until the foreclosure sale is completed and the deed executed. Both theories are deficient and an unqualified application of either has proved inequitable. Consequently, in practically all states, whether they follow one or the other theory, statutory provisions have been enacted enlarging or qualifying the respective rights of the parties, or the parties themselves have modified those rights in the mortgage instrument. As a result, there is the greatest confusion in this field of the law.

It would appear that the most desirable provision in regard to rents and profits is one which would provide that the mortgagee has no right to the rents and profits until the mortgagor defaults in any of the terms of the mortgage or abandons the property, in which events the mortgagee would be entitled to collect and receive on behalf of the mortgagor all rents and profits, which he must in turn apply upon the mortgage debt. Such a provision would protect the interest of both parties and often eliminate the necessity of foreclosure.

## IV. CUMBERSOME, COSTLY MORTGAGE INSTRUMENTS

From what has been said above, it is clear that the type of loan or security instrument used in each state and its wording must vary according to the substantive mortgage and foreclosure law of that state and the procedure there in effect. For instance, to provide for the type of foreclosure action used in a particular state, the form of instrument ordinarily used might be a mortgage with a power of sale or without one. Or, again, it might be a deed of trust with a power of sale or without one.

To be absolutely certain that a loan instrument conforms to the law of the state in which the loan is made and that a good lien is acquired, it is almost essential that a lawyer draft or inspect the instrument so as to be certain that it fits the facts of each particular case. The fees paid attorneys each year for these tasks run into millions of dollars. Since it is the mortgagor who in the end bears the cost of such fees, he is unduly penalized by the archaic state of the mortgage law which requires such meticulous care in the drafting of loan instruments. Furthermore, to express the mortgage contract clearly and to protect fully both parties, long and detailed instruments are required, which it is almost impossible for anyone except a lawyer to understand. The forms now used in the various states by the HOLC and the FHA, as well as by most other government agencies and private lending institutions, contain from one to four thousand words.

Since these lengthy instruments must be recorded to be valid against subsequent purchasers, lienors, and judgment creditors, and since the fee for recording varies with the length of the instrument, the mortgagor, who must pay the fee, is still further penalized. The recording fee for mortgages or deeds of trust in most states now runs from four to ten dollars, depending upon the length of the instrument. Although at least 22 states have statutory short forms of either a mortgage or deed of trust or both, these are rarely used because of lack of provision for the various covenants and conditions usually incorporated in such instruments. It is apparent, therefore, that the mortgage law of the various states, which is so indefinite as to require the drafting of such lengthy instruments, causes a waste of millions of dollars a year in drafting and recording fees alone.

To effect a saving in this respect the several states should provide by statute for a short statutory form of mortgage. This short form of mortgage should, of course, contain covenants by the mortgagor to the effect that he will pay the obligation secured by the mortgage, as well as all taxes and assessments, keep the building insured, avoid waste, keep the premises in repair, defend the mortgage, pay off prior mortgages and other liens, and assign to the mortgagee, under certain circumstances, the rents and profits of the mortgaged premises; and provide that, upon the breach of any covenant, the mortgagee would have a right to foreclose. These covenants, however, should be mentioned in the mortgage form only by words or phrases. The detailed meanings of such covenants could then be defined at length in the statute itself so as to secure to the mortgagee full protection of his investment, while, at the

same time, adequately protecting the mortgagor. Under such a procedure, the length of the security instrument and the cost of recording same would be considerably reduced.<sup>35</sup>

#### V. CONCLUSION

From what has been said above, it is apparent that there is great need today for a revision of the law of mortgages and foreclosure along uniform lines so as to provide a more simple, inexpensive and expeditious procedure, so as to insure greater liquidity in mortgage loans, so as to facilitate long-term, amortized single home mortgage lending, and so as to enable prospective home owners to take full advantage of the assistance afforded by recent federal private housing credit legislation. It is also apparent that there is great need for a revision of the substantive law of mortgages and for shorter, more simple and understandable mortgage instruments.

The federal private housing credit agencies have for the first time begun to realize the need for such a revision of this field of the law, to take steps to draft a standard act which will meet the criticisms against existing law, and to make plans to see that it is adequately presented to state legislatures. It is to be hoped, therefore, that the time is not far distant when there will be a complete revision of the law in this field.

<sup>35</sup> Related to the problem of mortgage law and home financing, though outside the scope of this article, is the problem of land title examination and proof because, before a mortgage loan is made, it is necessary to ascertain whether the prospective home mortgage borrower is vested with a good and indefeasible title to the property which he offers as security for the loan. For a discussion of the four systems of land title examination and proof, i.e., abstract and attorney, attorney, title company and land title registration, the costly, time-consuming procedures required under each system, and the criticisms which may be made of each, see Russell and Bridewell, *Systems of Land Title Examination: An Appraisal* (1938) 14 J. OF LAND & PUB. UTIL. ECON. 133.