



Testimony on PA Senate Bill 1291

Thank you, Mr. Chairman and members of the Senate Urban Affairs and Housing Committee, for this opportunity to testify on behalf of the Pennsylvania Bankers Association concerning [Senate Bill 1291](#).

My name is Tom Petro. I am president and chief executive officer of Fox Chase Bank, headquartered in Hatboro, PA. Previously, I served as president and CEO of First Federal Bank in Hazelton, now part of National Penn Bank, which has a significant presence here in this district and especially in Pottsville, with local bankers and banking offices and through the Schlitzler Insurance Agency. I am also a member of the PBA's Government Relations Policy Committee. I have been a banker in our Commonwealth for 28 years, beginning my career with Mellon Bank in Pittsburgh.

In addition to my banking career, I am deeply committed to tackling the most difficult and pressing issues facing the poor in our cities and towns, in Philadelphia, throughout our Commonwealth and in cities across the country. While I have volunteered in a myriad of capacities to help the poor in our towns and cities, allow me to speak to my involvement with two organizations that deal directly with issues of blight: I serve as a board member of the Leadership Foundations of America, an international network of faith-based organizations that brings together local faith and community leaders, churches, social service groups, and other organizations to reclaim our neighborhoods. I also serve as a trustee and Finance Chair of Eastern University, a Christian university built upon the integration of faith, reason and social justice with specific programs affecting the poor in neighborhoods in north Philadelphia.

My work as a banker and as a social activist has afforded me the opportunity to witness the issues of blight from two very distinct perspectives. While blight is often seen as a uniquely urban issue, I can say with certainty that it reaches into our most affluent communities as well.

The Pennsylvania Bankers Association is the statewide trade association representing approximately 200 financial institutions of all sizes located throughout the Commonwealth including national and state banks, bank and trust companies, trust companies, savings institutions, and their subsidiaries and affiliates.

The PBA appreciates this opportunity to state its concerns regarding SB 1291 which would address commercial and residential property maintenance.

Banks and savings institutions care deeply about the communities in which they operate. The health and vitality of these communities has a direct impact on financial institutions themselves and it is always in their best interests to work towards making their neighborhoods and communities strong and vibrant.

PBA supports the legislative intent of this bill to preserve properties and neighborhood values by timely intervention when properties are deteriorating through neglect or abandonment. Banks take an active role in dealing with such properties by inspecting them to determine vacancy, securing and boarding them, clearing debris, mowing lawns, and otherwise maintaining the properties through the delinquency/foreclosure process.

When notified of a code violation, banks contact borrowers to determine their plans to correct the violation. Mortgage payment default and abandonment of the property often go hand in hand, however. Because Pennsylvania has one of the longest foreclosure processes in the nation, properties in mortgage default may deteriorate for more than a year before the lienholder is able to acquiring title through foreclosure, access the property to inspect and secure it, and ascertain the need for repairs.

Property preservation costs paid by mortgage servicers in Pennsylvania during 2007 to a single vendor totaled over \$10 million. This figure includes inspection, preservation, grass mowing and insurance inspections. Add to that total the amounts paid to the other property maintenance firms that banks in the Commonwealth utilize and one would have a better picture of banks' significant efforts and expenditures to preserve properties in which they have an interest¹.

Not only do banks care about what happens to their real estate collateral, our regulators care. The Federal Deposit Insurance Corporation recently reminded the institutions it regulates that maintaining "Other Real Estate Owned" (ORE) according to local property codes contributes to an institution's safety and soundness and is subject to regulatory reporting.²

There are a number of concerns in SB 1291 and similar legislation pending before the General Assembly which PBA believes need to be addressed before enactment. If time permits, I would like to describe briefly each of our initial concerns regarding SB 1291:

1. Senate Bill 1291 imposes property maintenance responsibilities and liability on mortgage lenders 30 days following foreclosure on a property. (Subchapter C beginning pg. 11). I mentioned previously that Pennsylvania has one of the longest foreclosure processes in the nation. Owners facing foreclosure often neglect or even intentionally damage properties prior to vacating them. Given this long period during which lenders cannot access the property to prevent neglect or damage, 30 days following foreclosure is insufficient to adequately assess and correct a property's maintenance and repair needs prior to shifting liability to the lender for code violations. In addition, does "foreclosure" mean notice of intent to foreclose? Initiation of a foreclosure proceeding? Entry of an order of foreclosure? A better trigger of responsibility might be entry of an order giving a mortgage lender the right to occupy the property, or upon surrender of the right to possession by a delinquent borrower. Before such an order is issued, or occupancy rights surrendered, a mortgage lender might not have the legal or practical ability to take action to remedy code violations.
2. Not only is the lender not fully able to require mortgagors to maintain properties while a mortgage is in force, its ability to do so rapidly declines when the mortgagor lacks funds to pay the mortgage - let alone perform routine maintenance and repairs. Shifting repair and maintenance liability to a lender who already faces a significant loss on its loan and the value of its collateral is unfair in those cases where cost of repair is not justified by the remaining property value. Such a liability shift would increase mortgage lending risk dramatically and place lenders more in the role of a property casualty insurer than a lender. Therefore, the bill should be amended to stay the assignment of liability for code violations to a mortgage lender foreclosing upon title to a property (1) pending the disposition of a petition to establish a conservatorship; or (2) upon the filing by the lender of a notice of assignment and lien to a municipality, municipal authority or community

¹ PBA has not been able to locate an estimate of expenditures for all lender property maintenance in the Commonwealth.

² See <http://www.fdic.gov/news/news/financial/2008/fl08062a.html>

development organization providing the assignee the right to possession to correct code violations and a lien with priority over the interests of the lender to recover the costs of bringing the property into compliance with code requirements.

3. With regard to the conservatorship process (Subchapter D beginning page 15), we believe that the bill's process for notifying lien holders, such as bank mortgagees, is likely to result in PBA members' not receiving actual notice in time to notify the court of other litigation involving the property that might preclude the need for a conservatorship, such as a pending sheriff's sale by which the lender would gain title and access to the property for purposes of its possible repair or other disposition. This risk would exist because Section 6131 (c) beginning on page 16 provides a presumption that service of the notice of a petition for a conservator is complete if the mailed notice is not returned to the petitioner within 15 days. Fifteen days is simply not enough time to effect notice in these circumstances and is likely to result in unnecessary procedural conflict and increase time and expense, both for petitioners and for lien holders.
4. The bill does not define the qualifications of a conservator, nor does it define "conservator" or "conservatorship." While the legislation does state that the court may appoint a nonprofit corporation or other competent entity, it does not adequately specify the criteria the court must consider in determining conservator to be suitable. Would a municipality be held to the same standards as a "conservator?" We believe the legislation should be very specific in these regards. We are also concerned that the conservator's fiduciary duty needs to be explicitly stated. Otherwise, the potential for self-dealing and conflict of interest would exist.
5. Beginning page 17, the bill lists what we believe are vague and subjective conditions for conservatorship. In our opinion, a finding that only two of the eight listed conditions exist is insufficient for the purpose of naming a conservator. How could one be certain that the property has not been legally occupied for at least 12 months? Again, I note that a foreclosure proceeding can last at least 12 months.
6. The bill defines "public nuisance" as a "...[p]roperty which, because of its physical conditions or use, is regarded as a public nuisance in accordance with the local housing, building, health, fire or related code." Whose "regard" would be determinative in this finding?
7. A major area of concern is the bill's authorization to a conservator to incur debt that with priority over the lender's (mortgagee's) first mortgage lien. This potential loss of a lender's first lien position creates even more risk and uncertainty. A property in vacant or poor condition could still be sold to a responsible party through a short sale³, one of the common loss mitigation options available. Permitting a conservator to incur new, priority debt deprives the lender of a viable asset preservation option. PBA strongly recommends that this provision be deleted from the bill.
8. The bill awards broad powers to the conservator including management of the property. Under the bill, management of properties would be transferred to third parties who might not have the expertise to prudently award contracts, control expenses, repair and rehabilitate real estate or conserve the assets of the mortgagee and mortgagor. The bill does not even require the conservator to obtain multiple bids before awarding contracts. The conservator would not have a vested interest in obtaining the least-costly bid. PBA suggests the legislation be amended to require

³ A short sale is the sale of a property, with the authorization of the creditors, for less than what is owed on it.

the conservator to obtain multiple bids before awarding contracts and document the advantages of the successful bid.

9. PBA is also concerned that the bill allows the sale of the property by a third party who does not have actual ownership or even an interest in mitigating losses since those losses would be borne by the lender or investor, not the conservator. In addition, the legislation provides a “pay out” of sale proceeds that ensures the conservator is compensated for all debts incurred, including his management expenses, before the mortgage is satisfied. This could create additional losses for lenders thus increasing mortgage lending risk overall in a time when mortgage lending in general has become riskier due to market forces.

We hope you will consider these comments in the manner in which they are intended – to improve upon the framework of this legislation so that financial institutions can continue to partner with local neighborhood and community organizations to maintain and improve their communities for the benefit of the citizens of our Commonwealth.

PBA welcomes the opportunity to work with the bill’s sponsor and others concerned with this issue.