

The Cost of Delay

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Summary

Cordell, Geng,
Goodman,
and Yang
Discussion

- Descriptive analysis of foreclosure and REO timelines
- State by state computation of time it takes to foreclose and time from REO to REO liquidation
- Hazard model relates timelines to state mortgage laws
- Provides estimates of foreclosure costs by state and by time period using proprietary model
- Important to have these numbers as we consider state-specific g-fees by GSEs and for private lenders
- Paper has data to dig a bit deeper to give state-level legislators some sense of what specific laws are adding to the costs

Comments on Paper

1. Black box cost estimates

- Cost model is black box and not appropriate for an academic paper
- Without any details of the model, fails replicability
- For publication in a peer-reviewed journal, need to provide details of how costs are calculated
- Black box for costs also makes the cost estimates much less credible in a policy paper designed to inform people with opposing points of view
- More minor quibble: in abstract and intro, state that costs are % of *outstanding principal balance*

Comments on Paper

2. Can we get more precise estimates of costs of various foreclosure laws?

- At present, no identification
- May be able to use methodology of Pence (2006) to get estimates of effect of judicial review requirement on timelines
 - e.g., look at timelines in MSAs that straddle two states that had enough foreclosures to identify the effect from
- Still need to be careful to check
 - whether states had different state-specific foreclosure prevention (delay?) programs
 - whether states differ in other aspects of mortgage law

Comments on Paper

3. Treatment of Redemption Rights

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- Paper has binary classification based on statutory redemption rights
- Equitable redemption rights are at least as long in many states
- In practice, almost all states have *some* equitable redemption right
- In some states, redemption rights routinely waived in the promissory note
 - e.g., NJ

Comments on Paper

3. Treatment of Redemption Rights

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- Substantial variation in redemption rights
 - AL, AK, and MO have 12 month redemption periods (NMSRD, 2008)
 - NM only has 1 month redemption period (NMSRD, 2008)
- Paper treats AL, AK, and MO as having no redemption rights at all but NM as a redemption state
- Better classification would exploit variation in length of redemption rights including equitable redemption rights

Comments on Paper

Quibbles

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- Quibble 1: Use of term 'statutory' to describe non-judicial (or power-of-sale) states is non-standard
- Quibble 2: Paper classifies ME as a judicial state but foreclosure by advertisement (the standard in ME) is a nonjudicial procedure
- Quibble 3: Attribution of HAMP as cause of foreclosure delay in period 3 needs much more evidence
 - by then, there are a lot of foreclosure backlogs in the courts that could be causing the delay
- Quibble 4: Division into 5 periods seems somewhat arbitrary
 - would prefer to see division based on econometric test for structural break

Bigger Picture

What Function does Judicial Foreclosure Serve?

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Discussion

- Relic of the evolution of foreclosure laws that no longer seems necessary
- Do we need it to prevent foreclosure fraud?
 - foreclosure fraud in the technical sense occurred *en masse*
 - extremely little foreclosure fraud in an economic sense
 - exceptions are foreclosures on active-duty military personnel
- Perhaps only thing judicial foreclosure accomplishes is forced forbearance
 - but why not just have a mandatory 6 (or 12, or 18) month equitable redemption period that starts at 90DPD status?

Bigger Picture

Harmonization of Laws Across States: How to Get It

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and Yang
Discussion

- Getting rid of judicial review would save mortgagors and lenders money
- Could save even more money through harmonization
- Even within judicial vs. nonjudicial distinction, major differences across states in paperwork requirements and exact legal procedure
- Jones (1879):

An examination of the statutes of the several states in relation to the foreclosure of mortgages can hardly fail to surprise one at the great diversity of systems in use, and at the difference in detail between those which are based on the same general principles.

Bigger Picture

Harmonization of Laws Across States: How to Get It

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Discussion

- At least five distinct harmonization attempts since 1920s, all failed
 - states rights
- But Fannie and Freddie could strongly encourage it with g-fees
- Fannie and Freddie essentially set standards for mortgages in US
- Come up with single set of residential mortgage laws
- Offer states that adopt this set of laws rock bottom g-fee
- Everybody else, even if relatively lender-friendly mortgage laws, pays a higher fee

Conclusion

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Discussion

- Paper provides extremely useful descriptive analysis of foreclosure timelines
- Cost estimates are interesting but black box is not appropriate for an academic audience and makes it less useful for policy discussions
- Would like to see some attempt at causal effect of particular provisions on foreclosure timelines