

Proposal C: 'Lender greed' vs. 'business'

By Tim Richard
staff writer

Proposal C doesn't divide people politically on classical union-management, liberal-conservative or class lines.

Rather, it divides the business community itself. Pushing it is Southfield commercial real estate broker Sandy Eichenhorn. His supporters include the United Auto Workers, AFL-CIO, Michigan Citizens Lobby and Michigan State Building and Construction Trades Council.

C's enemies also charge that the drive for C is "spearheaded" by Detroit Bond & Mortgage Corp., a firm which deals in land contracts.

Opposing C is a committee headed by Sharon Kellogg, a Lansing real-estate agent. Supporters include the Michigan Association of Realtors, the Michigan Home Builders Association, the State Chamber of Commerce, Michigan Savings & Loan Association and Michigan Bankers Association.

C's PURPOSE is to frustrate lender use of what used to be an obscure clause in standard mortgages — "due on sale." In times of high interest rates, a lot of money is at stake.

Proposal C, if adopted, would attack the matter in two ways.

First, suppose you bought a house years ago at 8-percent mortgage interest. Now you want to sell. Your property is very attractive if a buyer can cover your equity with his down payment and take over, or "assume," your mortgage payments.

But the lender is unhappy with such an assumption. The lender would rather make a new loan at 15 or 16 percent interest, rather than let your buyer assume your 8-percent mortgage.

So the lender invokes the "due on sale" clause. It says that when the property changes hands, the balance of the loan becomes due and payable. You as seller have six months to pay up. You probably don't have that kind of cash. Your deal falls through.

A SECOND way Proposal C would inhibit "due on sale" procedures involves federally chartered savings and loan institutions.

State regulation of "due on sale" clauses doesn't apply to federally-chartered banks and S&Ls. But Proposal C gets around this by extending the lender's foreclosure time from six months to 48 months.

"The foreclosure, or redemption, period would be extended from six to 48 months," said Eichenhorn.

months, were the lender allowed to proceed with the foreclosure for some reason," said Eichenhorn.

Said Robert Ianni, assistant attorney general: "The 48-month period of redemption would only apply to a foreclosure which results from the enforcement of the due-on-sale clause. It would not apply to all foreclosures generally."

Thus, it wouldn't apply to foreclosures made because the borrower defaulted on payments or property taxes.

BOTH SIDES charge the other with greed.

Eichenhorn said those who foreclose want "simply to rid their mortgage-loan portfolios of as many of their low-interest mortgages as they can. Lender abuse of the 'due-on-sale' clause is one of the biggest reasons thousands of 'For Sale' signs are rusting on front lawns

all over Michigan." Attorney General Kelley says his office has received more complaints from "due-on-sale" abuses "based on any other issue in his 20 years in office."

Proposal C would codify into law a state Court of Appeals decision of 1977. That decision, in the case of Nichols vs. Ann Arbor Savings, held that lenders could not enforce due-on-sale clauses unless they could demonstrate that prospective buyers were not credit-worthy risks or posed some hazard to the property.

But a later U.S. Supreme Court ruling exempted federally chartered S & Ls from state due-on-sale laws and decisions.

OPPONENTS of Proposal C call it anti-lender legislation and say: "Michigan's poor image as a place to do business will be further darkened by passage of Proposal C. A state that

erects barriers to the flow of outside capital does not present the attractive business environment that would interest new corporations to settle here."

The argument runs like this: "Over one-third of the money used in Michigan (for mortgages) comes from sources outside the state. (Proposal C) proposes a foreclosure redemption period of 48 months, which would be by far the longest in the nation. . . .

"It is a simple matter of return on investment for the investor. The potential yield for an investor purchasing a million dollars in mortgages from a lender in Indiana with its three-month redemption period is significantly greater than the potential jeopardies to his yield" in Michigan with a 48-month redemption period.

"Clearly the investor would be reluctant to invest in Michigan under such a statutory deterrent."

OPPONENTS OF C also make the charge of greed at some Proposal C supporters.

Suppose the owner of a house sells it to another party on a land contract. The sale price for a land contract deal will tend to be higher than the sale price in a mortgage deal. Thus, the extensive use of land contracts, which Michigan has seen for two years or more, inflates property values.

A high selling price is great for the seller, the opponents argue, but the result of artificially higher prices is higher assessments and higher property taxes. Thus, opponents of C argue that the proposal will result in higher property taxes for everybody, while benefiting only a few who sell houses on land contracts.

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