

A STUDY OF FORECLOSURES IN LOWELL, MASSACHUSETTS: 2007-2010

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This report examines foreclosures in Lowell, Massachusetts from 2007 through 2010 based on data obtained from the Grantor-Grantee Index of the Middlesex North Registry of Deeds in Lowell, Massachusetts.¹

Major Findings

1. The number of Foreclosure Deeds and Orders of Notice recorded for property in Lowell:

<i>Year</i>	<i>Foreclosure Deeds</i>	<i>Orders of Notice</i>
2007	283	523
2008	392	471
2009	252	465
2010	344	578

2. The average and median number of days a foreclosed property was most likely vacant (time from the auction to a subsequent sale to a third party).
 - a. 2008 – Average – 268 days; Median – 234 days
 - b. 2009 – Average – 187 days; Median – 164 days
3. The average decrease in value of foreclosed properties from the 2008 city assessment of those properties to their post foreclosure sale to third parties:
 - a. 2008 – decrease of 44%
 - b. 2009 – decrease of 45%

¹ There are 21 registries of deeds in Massachusetts. The Middlesex North Registry includes the communities of Billerica, Carlisle, Chelmsford, Dracut, Dunstable, Lowell, Tewksbury, Tyngsborough, Westford and Wilmington although this study utilizes data from the city of Lowell only.

4. A major difference between the housing crisis of 1992-94 and that of 2007-10 is the nature of the foreclosing lenders. In 1992-94, three of the top ten entities conducting foreclosures were local banks, four were regional banks, and three were national. In 2007-2010, the top ten were all national banks.
5. Only 63% of the Orders of Notice recorded from July 1, 2006 to June 30, 2010 for property in Lowell resulted in a foreclosure. The other 37% either had no corresponding Foreclosure Deed (31%) or were duplicates (6%).

The Foreclosure Process in Massachusetts

To understand foreclosure statistics for Lowell it is first necessary to understand the foreclosure process in Massachusetts:

A “mortgage” in Massachusetts is really two different transactions. First, the borrower signs a *note* which is a contract by which the borrower agrees to repay the lender an amount of money with interest in regular installments. The *note* does not get recorded but remains in the possession of the lender. Second, the borrower executes a *mortgage* which is a conveyance of an interest in real estate by the borrower to the lender. The interest granted to the lender is the right to force the sale of the property and use the proceeds of the sale to pay down the amount owed on the note. That sale is called a *foreclosure* because it cuts off or forecloses the borrower’s right to redeem the property by paying the entire debt.

When a borrower defaults on repaying the note, the lender may commence foreclosure proceedings. The first step is to comply with the Service Members Civil Relief Act which is a Federal law that grants additional protections against foreclosure to home owners who are serving in the US military. In most states, this law is complied with by the lender signing an affidavit certifying that no one with an ownership interest in the house is serving in the military. In Massachusetts, however, compliance with Service Members requires a judicial proceeding.

To begin the foreclosure process in Massachusetts, the lender must file a Petition to Foreclose in either the Land Court or the Superior Court. The only issue in this lawsuit is whether anyone with an ownership interest in the property is serving in the military. To ensure that everyone with an interest in the property receives timely notice of the Petition to Foreclose, the court issues an Order of Notice instructing the lender seeking to foreclose to (1) serve the Order of Notice on the homeowner; (2) publish it in the local newspaper; and (3) record the Order of Notice at the registry of deeds. If the homeowner is in the military, he or she files a response in the court and a hearing is held. In the great majority of cases, however, the law does not apply, no response is filed, and the lender is granted a Default Judgment by the court, authorizing the lender to go ahead with the

foreclosure. This step also signals the end of judicial involvement in a Massachusetts foreclosure.

The Order of Notice recorded at the registry of deeds is widely used as an indicator of a pending foreclosure sale. Media reports about *foreclosure filings* refer to newly recorded Orders of Notice and the underlying lawsuits.

The foreclosure itself is organized and controlled exclusively by the lender with no judicial oversight. The lender selects a day to hold an auction at the property and prepares a Notice of Mortgagee’s Sale which describes the property and the mortgage being foreclosed, and sets the terms, date, time and place of the sale. This Notice is served by the lender on all parties with an interest in the property and is published in the local newspaper on three successive weeks with the first publication being not less than 21 days before the sale.

On the date set for the sale, the lender, its attorney and the auctioneer appear at the property and an auction is held. While others may purchase the property, in most cases the lender is the high bidder at the auction.

Once the auction is complete, the lender prepares a Foreclosure Deed by which the lender conveys title to the property to the high bidder at the auction – which means the lender often conveys the property to itself. Sometime after the auction, the Foreclosure Deed is recorded at the registry of deeds which is the first public confirmation that the foreclosure has occurred and that there is a new owner of the property.

The Number of Foreclosures in Lowell

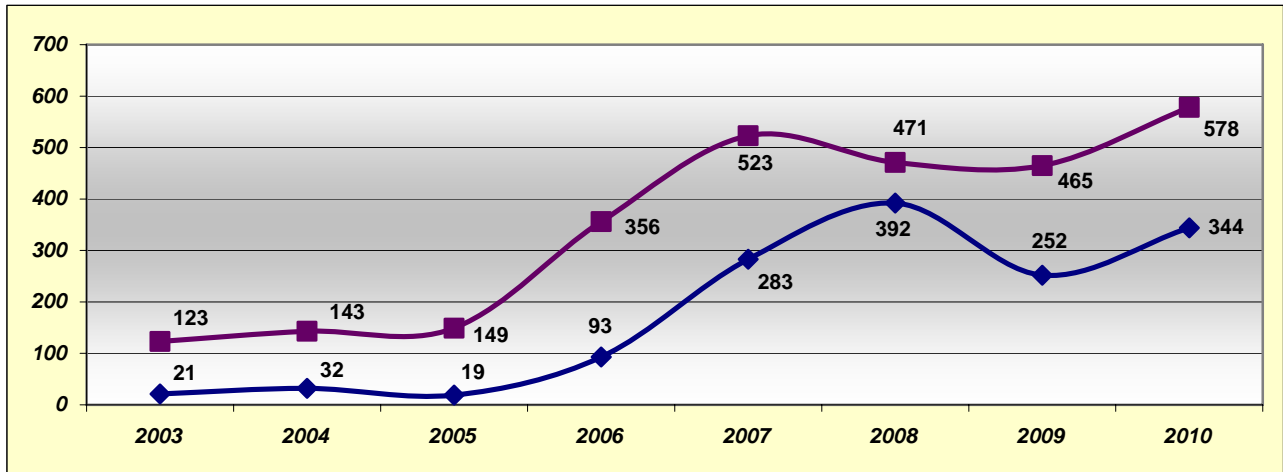
The most accurate measure of the number of foreclosures is the number of Foreclosure Deeds recorded at the registry of deeds. Figure 1 puts the rate of foreclosures in a 20 year context. Many are surprised that the average number of foreclosures during 1992-94 (378 per year) exceeded the rate in 2007-10 (317 per year).

Figure 1 - Foreclosures in Lowell, 1991 – 2010

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
FDs	227	361	394	380	234	253	201	125	60	44
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
FDs	26	23	21	32	19	93	283	392	252	344

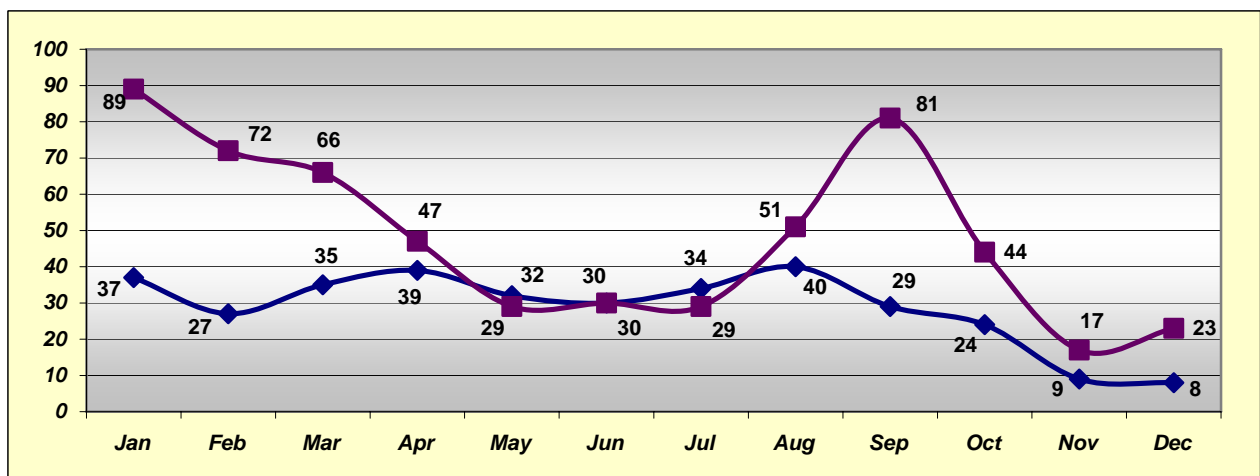
Notwithstanding the higher annual average of foreclosures for the early 1990s, the most recent housing crash was still substantial as is shown by the chart in figure 2 which shows the number of Foreclosure Deeds and Orders of Notice recorded for property in Lowell.

Figure 2. Foreclosure Deeds (blue diamonds) and Orders of Notice (purple squares) For Lowell, Massachusetts: 2003 to 2010



The above chart shows a rapid increase in foreclosures from 2005 to 2008, then a slight dip with a turn upward in 2010. However, as is evident from the month-to-month breakdown of foreclosures in 2010 as shown in Figure 3, there was a substantial decrease in the number of foreclosures in the last quarter of 2010, a trend that continued into January 2011 which saw foreclosures drop 61% and orders of notice drop 84% from the same month in 2010.

Figure 3. Foreclosure Deeds (blue diamonds) and Orders of Notice (purple squares) in Lowell, Massachusetts by month for 2010



One of the major differences between the 1992-94 and the 2007-10 housing busts was the identity of the entities conducting the foreclosures. Figure 4 below identifies the ten lenders with the most foreclosures during the two periods.

Figure 4. Top Ten foreclosing lenders in Lowell, 1992-94 & 2007-10
 NOTE: Entities such as MERS & FDIC omitted to avoid duplication

2007-10		1992-94	
Deutsche Bank	179	Shawmut	91
US Bank NA	146	Lowell Institution	52
Wells Fargo	134	Bank of NE	36
Bank of New York	56	First Eastern	36
HSBC Bank	56	Central Savings	34
BAC Home Loans	47	Lowell Five	32
Citimortgage	40	Dime Savings	29
Countrywide	39	GE Capital	29
GMAC Mortgage	34	Baybank	25
JPMorgan Chase	33	Meridian Mortgage	25

Of the top ten entities conducting foreclosures in 1992-94, three – Lowell Institution for Savings, Central Savings Bank and Lowell Five Cent Savings Bank – were based in Lowell. Four more – Shawmut, Bank of New England, First Eastern and Baybank – were regional institutions. Only three – Dime Savings Bank, GE Capital and Meridian Mortgage – could be considered “national” lenders.

Contrast that with 2007-2010 when all ten of the top foreclosing entities were national institutions. During the recent bust, no Lowell-based bank had more than six foreclosures in this registry district. Partly this was due to the changing nature of the home mortgage industry, but it was also a case of those in charge of the local banks that survived the 1992-94 bust – Lowell Institution and Central Savings both failed and were seized by the FDIC – learning a lesson from the past and adhering to more rational loan underwriting standards than did the national lending industry.

This nationalization of the home mortgage industry put more distance between lenders, borrowers, and communities such as Lowell that had significant numbers of foreclosures. With the housing collapse affecting the entire country and not just limited pockets, the administrative infrastructure of national lenders was overwhelmed and what should have been routine actions and decisions were delayed or done improperly. Consequently, foreclosed properties tended to remain vacant for extended periods of time.

Post Foreclosure Vacancies

There are four important dates in almost every foreclosure:

1. The date the Order of Notice is recorded
2. The date the auction is conducted
3. The date the Foreclosure Deed is recorded
4. The date the Deed to a third party buyer (if any) is recorded

While the three recording dates – Order of Notice, Foreclosure Deed and third party Deed – are all in the registry of deeds database, they are not linked together. The fourth date – the auction – is not in any database; it is only available within the image of the foreclosure deed itself. Consequently, collecting and collating these dates by property address is a time and labor-intensive process that has not been done on a citywide scale.

For this study, these dates were obtained for all Lowell foreclosures recorded in 2008 and 2009 and were then used to calculate the amount of time between the various events for each of these years. Because of isolated problems with data, not every foreclosure was included in this study (369 of the 392 foreclosure deeds recorded in 2008 and 231 of the 252 recorded in 2009 are included).

As shown in Figure 5 below, of the 369 foreclosures from 2008, 360 (98%) were purchased at the auction by the foreclosing lender. Only nine of the properties (2%) were sold to third parties at the auction. As of September 1, 2010, only ten of the properties (3%) that had been purchased by lenders at auction had not yet been sold to third parties. The other 350 properties (97%) had been sold to third parties.

For 2009, this study includes 231 of 252 foreclosures. Of that number, 206 (89%) were purchased by the foreclosing lender at the auction and 25 (11%) were sold to third parties at the auction. Of the 206 purchased by the foreclosing lender, 182 (79%) had been sold to third parties as of September 1, 2010 leaving 24 (10%) unsold.²

Figure 5- Foreclosure auction sales to foreclosing lenders and third parties in Lowell for 2008 and 2009

	2008	2009
Foreclosure deeds recorded for Lowell	369	231
Purchased by lender at auction	360 (98%)	206 (89%)
Purchased by third party at auction	9 (2%)	25 (11%)
Post-auction sale by foreclosing lender to third party	350 (95%)	182 (79%)
Still owned by foreclosing lender (as of 9/1/2010)	19 (3%)	24 (10%)

² This study examined post foreclosure sales up to September 1, 2010, so the post-foreclosure market for 2008 foreclosures was longer than for 2009 foreclosures which may account in part for the shorter times shown for 2009 properties.

In most foreclosures, the homeowner-borrower vacates the premises before the auction is held. Because the foreclosing lender is most often the high bidder at the auction, the property is not reoccupied until the property is subsequently sold by the foreclosing lender to a third party. **The time between the auction and the subsequent deed therefore is the period during which the property is most likely vacant.** This time calculation for 2008 and 2009 foreclosures is shown in Figure 6 below.

Figure 6 - Time between foreclosure auction and subsequent sale to third party

2008 n=350 Average – 268 days Median – 234 days			2009 n=182 Average – 187 days Median – 164 days		
Days	# of FDs	% of total	Days	# of FDs	% of total
<90	20	6%	<90	32	18%
91-180	103	29%	91-180	73	40%
181-365	154	44%	181-365	65	36%
366 – 730	66	19%	366 – 730	12	7%
>730	7	2%	>730	NA	NA

By this measure, properties that were foreclosed in Lowell in 2008 remained vacant an average of 268 days (38 weeks). In 2009, the average dropped to 187 days (27 weeks). Because a measurement of the “average” can be unduly influenced by a few outliers (a number much higher or lower than most of the numbers in the set) this study also calculates the median which is the number that half the values in the set fall above and half fall below. For 2008, the median time that properties remained vacant was 234 days (33 weeks) while in 2009 the median dropped to 164 days (23 weeks).

Figure 6 also shows the distribution of foreclosures among different time ranges. For instance, in 2008, 29% of properties purchased at auction by banks were subsequently sold to third parties between three months and six months after the auction, while 44% of those foreclosed properties were resold between six months and one year. Contrast that with 2009 during which 40% of bank-purchased foreclosures were resold between three and six months after the auction, while only 36% were resold between six months and a year after.

The following table (Figure 7) calculates the time between the Order of Notice being recorded and the foreclosure auction. While it is rare for a homeowner to move out of the property upon being served with the Order of Notice, homeowners frequently move out just before the auction. The calculations in this table measure the time from the first public notice that a foreclosure has commenced (Order of Notice being recorded) to the point at which the property is most likely to become vacant. Additionally, the issuance of

the Order of Notice by the Court is the date on which the registration requirements of the city of Lowell’s “Vacant and Foreclosing Property” ordinance commence.

Figure 7 – Number of days between recording of Order of Notice and occurrence of Foreclosure Auction.

2008
n=369 foreclosure deeds
Average – 93 days
Median – 49 days

2009
n=231 foreclosure deeds
Average – 130 days
Median – 63 days

Days	# of FDs	% of total
<30	28	8%
31-60	208	56%
61-90	41	11%
91-120	23	6%
121-150	9	2%
151-180	11	3%
181-365	37	10%
>365	12	3%

Days	# of FDs	% of total
<30	17	7%
31-60	95	41%
61-90	39	17%
91-120	17	7%
121-150	10	4%
151-180	9	4%
181-365	25	11%
>365	19	8%

Although the auction date is when the homeowner is most likely to vacate the property, the first public notice that title to the property has been conveyed to another is when the Foreclosure Deed is recorded. The following table (Figure 8) shows the time between the first public notice that a foreclosure is underway (recording the Order of Notice) and the first public notice that there is a new owner of the property (recording the Foreclosure Deed).

Figure 8 – Number of days between recording of Order of Notice and recording of Foreclosure Deed.

2008
n=369
Average – 200 days
Median – 158 days

2009
n=231
Average – 198 days
Median – 143 days

Days	# of FDs	% of total
<60	6	2%
61-90	43	12%
91-120	71	19%
121-150	53	14%
151-180	39	11%
181-365	119	32%
>365	38	10%

Days	# of FDs	% of total
<60	19	8%
61-90	39	17%
91-120	32	14%
121-150	35	15%
151-180	27	12%
181-365	51	22%
>365	28	12%

The time between the auction and the recording of the Foreclosure Deed is a type of legal limbo. The borrower/property owner most likely moved out on the date of the auction, but until the foreclosure deed is recorded, there is no public record that identifies the new owner. Because the new owner in a majority of foreclosures is the lender that conducted the foreclosure itself, it is hard to understand why it takes several months for a single entity to deed property to itself. But it does, as is evident from the table below (Figure 9).

Figure 9 – Auction to recording of the Foreclosure Deed.

2008 n=369 Average – 107 days Median – 89 days			2009 n=231 Average – 68 days Median – 50 days		
Days	# of FDs	% of total	Days	# of FDs	% of total
<30	40	11%	<30	66	29%
31-60	80	22%	31-60	69	30%
61-90	68	18%	61-90	39	17%
91-120	62	17%	91-120	26	11%
121-150	42	11%	121-150	13	6%
151-180	27	7%	151-180	8	3%
181-365	46	12%	181-365	9	4%
>365	4	1%	>365	1	0%

The recording of the Foreclosure Deed officially transfers title to the high bidder at the auction which in most cases is the foreclosing lender. That new owner (the foreclosing lender) almost immediately puts the property on the market in search of a third party buyer. The following table (Figure 10) shows the time between the recording of the foreclosure deed and the date of a subsequent sale to a third party. That sale is typically the first time since the foreclosure auction that a true homeowner occupies the property.

Figure 10 – Recording of Foreclosure Deed to Subsequent Sale by Foreclosing Lender

2008 n=350 Average – 159 days Median – 122 days			2009 n=182 Average – 117 days Median – 91 days		
Days	# of FDs	% of total	Days	# of FDs	% of total
<90	140	40%	<90	90	49%
91-180	84	24%	91-180	55	30%
181-365	97	28%	181-365	22	12%
366 – 730	26	7%	366 – 730	5	3%
>730	3	1%	>730	0	0

The following table (Figure 11) measures the longest stretch – the time from when the original homeowner/borrower gets notice that a foreclosure action is underway (the Order

of Notice) until the lender who purchased at the foreclosure auction sells the property to a third party.

Figure 11 – Recording of Order of Notice to Subsequent Sale by Foreclosing Lender

2008 n=350 Average – 359 days Median – 314 days			2009 n=182 Average – 313 days Median – 267 days		
Days	# of FDs	% of total	Days	# of FDs	% of total
<90	0	0	<90	0	0
91-180	56	16%	91-180	48	26%
181-365	158	45%	181-365	80	44%
366 – 730	114	33%	366 – 730	47	26%
>730	22	6%	>730	7	4%

Impact of Foreclosure on Property Value

There is a strong sense that a foreclosure drags down the value of the property and causes collateral damage to the value of other properties in the vicinity. The following tables measure the change in value of the foreclosed properties by comparing the city of Lowell’s 2008 assessed value with (in Figure 12) the high bid at the auction which is also the “Foreclosure Deed sales price”; and (in Figure 13) the sales price on a subsequent deed of the property from the foreclosing lender/new owner to a post-foreclosure third party buyer. The amount of the decrease shown in Figure 13 includes the decrease measured in Figure 12. They are not cumulative.

Figure 12 – FY08 City of Lowell assessed value of foreclosed properties Compared to high bid at foreclosure auction.

2008 n=368 foreclosures		2009 n=231 foreclosures	
Average FY08 city of Lowell assessment	\$253,742	Average FY08 city of Lowell assessment	\$261,364
Average Foreclosure Deed sales price	\$188,504	Average Foreclosure Deed sales price	\$176,229
Difference	\$65,238	Difference	\$85,135
Percentage change	-26%	Percentage change	-34%

**Figure 13 – FY08 City of Lowell assessed value of foreclosed properties
Compared to sales price at subsequent sale to third party by foreclosing lender.**

2008 n=349 foreclosures		2009 n=182 foreclosures	
Average FY08 city of Lowell assessment	\$253,454	Average FY08 city of Lowell assessment	\$255,227
Average resale price by foreclosing lender	\$141,023	Average resale price by foreclosing lender	\$141,229
Difference	\$112,431	Difference	\$113,998
Percentage change	-44%	Percentage change	-45%

The following table (Figure 14) shows the distribution of post foreclosure sales to third parties as measured by the percentage of the 2008 assessed value for which the property sold. For example, in cases in which the foreclosure occurred in 2008, 75 properties (22%) sold for between 41% and 50% below the 2008 assessed value of the property.

Figure 14 – Distribution of FY08 City of Lowell assessed values of sales to third parties of previously foreclosed properties

2008			2009		
349 foreclosing lender resales 8 sold for > assessed value 341 sold for < assessed value n=341			182 foreclosing lender resales 4 sold for > assessed value 178 sold for < assessed value n=178		
% < assessed value	Cases	% of all	% < assessed value	Cases	% of all
0-10%	4	1%	0-10%	4	2%
11-20%	13	4%	11-20%	10	6%
21-30%	47	14%	21-30%	22	12%
31-40%	72	21%	31-40%	32	18%
41-50%	75	22%	41-50%	41	23%
51-60%	63	18%	51-60%	32	18%
61-70%	47	14%	61-70%	25	14%
71-80%	16	5%	71-80%	10	6%
81-90%	0	0%	81-90%	2	1%
91-100%	3	1%	91-100%	0	0%

To put the previous data regarding the decline in value of properties as a result of a foreclosure into context, the following table shows the median price of all deeds recorded for Lowell each year from 2001 through 2010. Only deeds with sales prices between \$75,000 and \$750,000 were used in calculating the median price.

**Figure 15 – Median price of deeds for property in Lowell, 2001-2010
(between \$75,000 and \$750,000)**

<i>Year</i>	<i>Number of Deeds</i>	<i>Median Price</i>	<i>% change/prior year</i>
2001	1512	\$162,000	NA
2002	1600	\$187,375	16%
2003	1757	\$217,000	16%
2004	2115	\$238,600	10%
2005	2211	\$254,900	7%
2006	1572	\$247,000	-3%
2007	1381	\$225,000	-9%
2008	1072	\$184,900	-18%
2009	1021	\$178,500	-3%
2010	961	\$180,000	1%

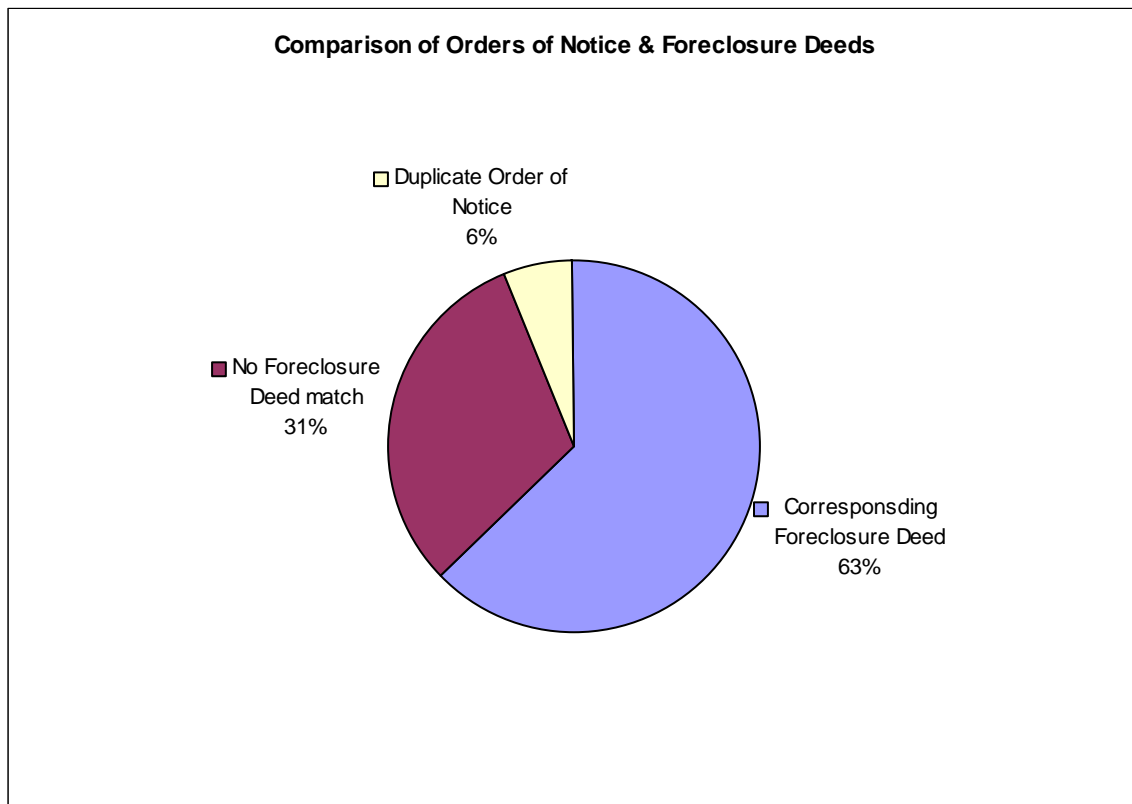
Ratio of Orders of Notice to Foreclosure Deeds

Two documents form the bookends of every foreclosure: the Order of Notice which comes at the beginning and the Foreclosure Deed which comes at the end. But every Order of Notice does not necessarily result in a Foreclosure Deed. A borrower who is the recipient of an Order of Notice might avoid foreclosure by (1) negotiating a modification of the mortgage with the lender; (2) obtaining sufficient funds from other sources to bring the mortgage current; (3) refinancing the mortgage; (4) selling the property; (5) conveying the property to the lender with a deed in lieu of foreclosure; or (6) some other option.

Most attempts to quantify the ratio of Orders of Notice to Foreclosure Deeds have been anecdotal and subjective. To arrive at an evidence-based answer to that question, the following query was constructed. A list of all Orders of Notice recorded for property in Lowell from July 1, 2006 to June 30, 2010 was generated. Then, a list of all Foreclosure Deeds recorded for property in Lowell from January 1, 2007 to December 31, 2010 was created. The six month offset was to account for the approximately six month gap between the recording of the Order of Notice and of the Foreclosure Deed for the same property that is shown in Figure 8 above. The two lists were then combined and sorted by address and date. Every Order of Notice on that list was then categorized as (1) having a corresponding foreclosure deed; (2) having no corresponding foreclosure deed; and (3) being a duplicate of another Order of Notice.

There were a total of 2053 Orders of Notice on the list and only 1305 Foreclosure Deeds. The number of Orders of Notice that matched Foreclosure Deeds was 1284 (63%); the number that had no corresponding Foreclosure Deeds was 645 (31%); and the number of Orders of Notice that were duplicates was 124 (6%).³ Figure 15 shows the distribution of Orders of Notice in these three categories.

Figure 15



³ There were also 21 Foreclosure Deeds for which a corresponding Order of Notice could not be located. Most of these involved corporate borrower-owners. Since a corporation cannot be in the military, there is no need to file an action under the Service Members Relief Act in cases involving non-human owners. Consequently, there is no Order of Notice in these cases.

Conclusions

1. More public oversight of foreclosures needed, earlier in the process.

A mortgage foreclosure in Massachusetts is a complex process that is controlled by the lender. In normal times, this works satisfactorily from a public policy perspective, but in times of crisis in real estate, this private process creates serious negative consequences for the community and the general public when foreclosed homes are neglected and left vacant for extended periods of time. While local ordinances such as Lowell's Vacant and Foreclosing Properties Ordinance are reasonable attempts to mitigate this harm, they are nevertheless after-the-fact actions that leave local government playing catch-up in times of crisis. Consequently, more governmental involvement and oversight much earlier in the foreclosure process is desirable. This would best be accomplished at the state level.

2. Local banks are better able to respond to a real estate crisis than are national lenders.

Local banks learned a valuable lesson from the real estate crash of the early 1990s when local lenders were the most active foreclosing entities and two historic Lowell banks, the Lowell Institution for Savings and Central Savings Bank were forced to close. This time, local banks were involved in only a handful of the thousand-plus Lowell foreclosures. But even with the high rate of local bank foreclosures back in the 1990s, the incidence of vacant and abandoned homes was much less than today because local lenders with a local presence were better able to care for and quickly resell foreclosed properties. To the extent that local, state and federal government can influence the home lending industry, there are clear community benefits to having strong and active local lenders, especially in tough times.

3. Foreclosure prevention programs benefit the community by preserving property values.

While the value of all property in Lowell decreased during the housing crisis, the value of foreclosed properties dropped at a much faster rate. The steep decline of these properties dragged down the value of all around them.

4. An Order of Notice on a property does not always result in foreclosure.

When a homeowner receives an Order of Notice, it is a clear indication that financial problems do exist, but less than two-thirds of all Orders of Notice recorded during the height of the real estate crisis resulted in foreclosures, so many borrowers in distress do find ways to avoid foreclosure.

5. More rental property will be needed.

Those who have lost their homes to foreclosure and many others whose credit has been badly damaged in the real estate crisis will find it hard to purchase a home for years to come which will increase the demand for rental property in the city. Beyond that, both government and society are pulling back from the “ownership society” ideal that said almost everyone could and should own a home. This philosophical shift will make rented living quarters a more attractive option for many city residents.

Questions or comments about this report are welcome. Please direct them to Richard P. Howe Jr., Middlesex North Register of Deeds, 360 Gorham Street, Lowell MA 01852. (978) 322-9000. DickHoweJr@gmail.com.