



Ministerial Statement

By

The Hon. Walter H. Roban, JP, MP

Minister of Home Affairs

24th July 2020

Implementing Measures to Protect Mortgage and Lending Customers

Mr. Speaker, I rise to inform Honourable Members of the steps being taken to bring to this Honourable House legislation to implement measures to protect customers from the challenges arising in mortgage and lending transactions.

Mr. Speaker, because of the economic impact of the Covid-19 pandemic, many persons are unemployed or under-employed and struggling to make ends meet. Many of these persons are home owners with significant mortgages or loans. I am making this statement at this time to assure the public that help is on the way.

Mr. Speaker, you may be surprised to learn that our Consumer Protection Act 1999 explicitly excludes from the definition of “goods” financial transactions with lenders. There is also no regulated code of conduct that governs the conduct of lending agencies and lending officers. Hence consumers and small businesses currently have little or no redress for unfair or inequitable conduct by lending agencies.

Mr. Speaker, some of the practices that have come to our attention, include the following:

- A lender forecloses on a property and sells the home. The customer’s property was sold at fair market value and the net sales proceeds when applied to the principal balance left a shortfall of \$100,000. The customer has been paying off the shortfall for approximately 6 years. As a result, the former owner ends up with no asset and still paying a debt that they can ill-afford to pay. In a number of other jurisdictions, this practice has been discontinued as banks have insurance to underwrite the writing off of bad debts.
- A customer has a 30 year mortgage term and has made 180 payments on a regular and timely basis and is now in default. It should be noted that these payments have contributed a significant amount of interest to the lender. The lender has the option to restructure the debt to have the effect of a lower mortgage payment and making the mortgage more affordable. Alternatively the lender could allow the property to

be rented and set the interest rate very low which can be changed to a higher rate when the customer's financial position improves. None of these remedies were considered and the customer was threatened with foreclosure.

- A customer was finding it difficult to find a job, her tenant had moved out of the property she was extremely frustrated and fearful of the mortgage going into arrears. She insisted that the Lender take her keys to the property. The Lender instructed the customer to take the key to their Attorney. The Lender's attorney rented the property and there was no communication between the Lender and the mortgagor, although the customer is still the owner. It should be emphasised that lenders are not in the business of owning real estate and therefore, should not accept keys from a mortgagor whose account was not in arrears.
- A lender had written to a customer requesting that the customer reduce the mortgage principal balance by more than \$60,000 in order to bring the loan to value (LTV) to an acceptable lender loan value. In other words, the value of the home is less than the outstanding loan amount. The collateral value had been reduced as a result of the economic downturn brought about by the 2008 recession. The customer, who had been current on all her payments, sought independent advice. It was determined that based on the current

payment, her LTV would be at an acceptable level within 6 months. Had she not sought the advice, she would have had to find the \$60,000 to pay the lender which would have put her even deeper in debt. Instead, the mortgage has now been restructured.

- There have been a number of complaints over the years of conflicts of interest. One example that was communicated to me was about an owner who was in arrears and was trying to find a way to save his house from foreclosure. He submitted a long-term rental agreement where the rents could pay his monthly mortgage payment. The agreement was refused by the Lender and the property was foreclosed. It was discovered later that the property was purchased by a senior member of the lending institution.

Mr. Speaker, these are just a few of the many complaints we have received. These scenarios are made all the worse because of the imbalance between the lending agencies and the individual customer. Agencies, such as Banks, have a great deal of legal and financial clout as opposed to individuals and owners of small businesses. Most customers do not read and understand the entire contract nor do they understand the terms. Often they are not informed that there are alternative solutions to address their financial challenges. This problem affects persons at all educational and financial levels.

Mr. Speaker, you would agree that an individual who is already struggling cannot afford the services of a lawyer or adviser. Many lawyers are conflicted as they are either customers of or have represented the lender. There are also too few lawyers that specialise in real estate and mortgage law.

Mr. Speaker, as a government, we have committed to ensuring protections are in place to safeguard consumers from financial harm due to a disproportion of influence. We are currently working on policies and tabling legislation to achieve those ends. We expect that the proposed legislation will be tabled in the next session of the House.

Some of the protections that we will be introducing are, but not limited to, the following:

- Amending the Consumer Protection Act 1999 :
 - 1) to give the Minister responsible for Consumer Affairs the authority to create regulations relating to consumer protections for mortgages and loans;
 - 2) establishment of a tribunal to consider complaints by consumers and arbitrate disagreements;
 - 3) introducing penalties for non-compliance with the regulations;
 - 4) providing community communication and education on lending.

- Introducing a code of conduct that will govern the conduct of all lending officers and agencies. This will include:
 - outlining best practices in lending;
 - defining unfair customer treatment and/ or unfair lending practices and introducing remedies for addressing such instances;
 - defining rules governing foreclosures, including the disposition of property and any shortfall;
 - requiring lending agencies to introduce “truth-in-lending” practices. This means that the customer will have the right to detailed and clear disclosure of the following:
 - a) the loan amount and payments;
 - b) prepayment penalties;
 - c) due dates and late charges
 - d) upfront fees;
 - e) variable and fixed rates;
 - f) payment default and foreclosures.

Mr. Speaker, we have all become acutely aware of the different ways in which vulnerability can manifest itself especially in times of uncertainty. A home is often a Bermudian family's most valuable possession, therefore keeping families in their homes, preserving communities, and

maintaining the family unit is a priority. Through these amendments, we will be putting Bermuda on par with many other jurisdictions, and most importantly, we are putting Bermudian families first. Lending practices that intimidate and cause fear in those who aspire to a peaceful healthy financial future must end.

Mr. Speaker, this government is committed to leveling the playing field and providing oversight accountability to ensure protections are in place to safeguard consumers from financial harm. I must remind Honourable members that this Government has already completed the first phase of consumer financial protection through the implementation of the Debt Collection Act 2018. This initiative represents Phase II of our financial protection initiative.

Mr. Speaker, at this juncture, I would like to acknowledge the excellent work that is being produced by Executive Officer, Consumer Affairs, Karen Marshall and our consultant, Ms. Frederica Forth. Ms. Forth has had 35 years' experience in lending, first in the mortgage department of Bank of Bermuda where she held a position of Vice President of Mortgage and Personal Lending Department and subsequently with HSBC, as Senior Service and Sales Manager, where she remained until early retirement in 2008. Since 2008, she has been in the Real Estate Industry in addition to offering real estate training and mortgage consultation. Honourable members will agree that Ms. Forth has the

right experience to assist with this initiative. She is also passionate about identifying protections for consumers in the area of lending.

Mrs. Marshall and Ms. Forth have almost completed their recommendations on the proposed amendments to legislation, policies and procedures to implement the required protections.

Thank you, **Mr. Speaker.**