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Perfect storm means busy time for mortgage enforcement lawyers

By **Scott Lennox and Scott Lemke**

Law360 Canada (August 7, 2024, 2:41 PM EDT) -- Despite the Bank of Canada's (BOC) recent cuts to the overnight lending rate, bellwether signs suggest a looming spike in mortgage enforcement against defaulting borrowers caught in a perfect storm. That has mortgage enforcement lawyers buckling up for action.

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The two recent 0.25 per cent cuts by the BOC reducing the overnight lending rate to 4.5 per cent is a great start, but many homeowners — including private borrowers — are renewing in distress. Their mortgage payments have skyrocketed.

While these reductions in June and July marked the first rate decreases since the tightening cycle of 10 hikes starting in March 2022 aimed at combating inflation, many mortgage enforcement lawyers predict it’s too little too late for some private borrowers.

Recent facts on Canada’s mortgage market include:

- Equifax Canada reported that mortgage delinquencies (90 days or more without payment) in Ontario exceeded $1 billion in the first quarter of 2024 — a first-time milestone. Equifax also noted more than 34,000 households in Ontario missed a mortgage payment in Q1 2024, a 23 per cent jump from the same time last year.

Tetiana Garkusha: ISTOCKPHOTO.COM

- Even in supposedly hot markets like Toronto, the share of mortgages in delinquency jumped an eye-watering 71.4 per cent in a year, says *Better Dwelling*.
- According to December 2023 data from the Bank of Canada, 45 per cent of mortgages taken out before the BOC hikes began, experienced a rise in payments by November 2023. By the end of 2026, "virtually all" of these remaining mortgagees in this group will renew with potentially higher payments.
- 44 per cent of all mortgages in Canada are up for renewal in the next year and a half.
- Analysts estimate $331 billion in mortgages are up for renewal this year and $352 billion in 2025, says a CTV report.
- 11.7 per cent of all brokered mortgages in Ontario were with private lenders in 2022, up from 8.4 per cent in 2014, according to the Financial Services Regulatory Authority of Ontario. The value of private mortgages in 2022 was $25.9 billion, says a *Financial Post* story.
- According to the Canada Mortgage and Housing Corp., nearly one per cent of private lender mortgages were delinquent in the 2023 third quarter compared to the industry rate of 0.15 per cent.

Private lenders charge considerably higher rates than the big banks and additional fees that increase the cost of borrowing, which means this sector is particularly vulnerable. It's a good sign that rates are going down, but they aren't going to sink to the heady pandemic levels (a.k.a. "free money") anytime soon and will severely impact a good block of mortgage renewals going through now.

With the annual risk outlook from the Office of the Superintendent of Financial Institutions (OSFI) predicting a higher incidence of "residential mortgage loans falling into arrears or defaults," many a mortgage enforcement lawyer says it's a numbers game: when you combine the enormous volume and the current environment, since a healthy portion now are with private lenders, it's inevitable delinquencies will grow.

Many homeowners whose mortgages are up for renewal can expect mortgage payments to increase between 30 and 40 per cent — something that very few people can absorb and face a bad case of "interest rate shock."

Generally, when a borrower receives a private mortgage, the hope is they are somehow going to better their personal financial circumstance in the short to midterm, which will allow them to qualify for better financing. For these borrowers — with mortgages that are commonly a year — who bet that by now the BOC would have lowered the rate earlier and enough so they could afford to renew or pass the stress test with a traditional lender, mortgage enforcement may loom. And those who secured a two- or three-year term that's ending now potentially face possible power of sale or foreclosure actions.

Reuters reports that LandBank Advisors analyzed more than 1,000 mortgages taken out between 2020 and January 2024. Importantly, its study revealed that approximately 90 per cent of homeowners in the Greater Toronto Area who were compelled to sell due to default obtained their mortgages from private lenders.

While rate cuts provide some immediate relief, they may not be sufficient to prevent private lenders from turning to mortgage enforcement to handle borrowers who have been stretched thin by previous rate increases and the ongoing high costs of living.

The inevitable result is busy days ahead for mortgage enforcement lawyers.

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