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Officials Push for Clarity on Oil and Gas Leases

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Federal lawmakers, bank regulators and law enforcement officials are broadening their efforts to ensure that the growing number of oil and gas leases being signed by landowners across the country comply with mortgage rules and do not create new risks for lenders, appraisers or landowners.

The efforts stem from mounting concern that mortgages may be invalidated by people's signing such leases without first getting permission from their banks.

Leases often allow certain activities, like storing hazardous waste on a property, that are expressly forbidden by mortgages because they can harm resale values. Such activities also violate rules set by institutions like Fannie Mae, Freddie Mac and Farmer Mac, which buy mortgages from banks.

Banks have become increasingly reluctant to give mortgages for properties with gas leases on them. Lenders have predicted that the conflicts between leases and mortgage rules are not likely to lead to foreclosures, but are likely to result in new rules from local banks and additional hurdles to getting a home loan or refinancing an existing mortgage.

As a result, lawmakers and regulators have called for investigations — and started their own — to determine the scope of the problem and potential solutions.

Representative Raúl M. Grijalva, Democrat of Arizona, sent a letter this week to the inspector general of the Federal Housing Finance Agency, which oversees Fannie Mae and Freddie Mac, asking him to conduct an audit to estimate how many mortgages that have been bought or sold by these federally backed agencies have leases on them. The letter also called for the inspector general to determine whether additional guidance should be provided to mortgage lenders, homeowners and potential borrowers.

"It is clear to me that we cannot wait any longer, and a strictly hands-off 'buyer beware' attitude is no longer appropriate," Mr. Grijalva wrote.

In another letter sent last month, Representative John Sarbanes, Democrat of Maryland, asked the House Committee on Financial Services to hold a hearing to discuss how Fannie Mae and Freddie Mac plan to address these issues.

Brendan Smialowski/Bloomberg News

Edward J. DeMarco, acting director of the Housing Finance Agency, has said many leases are not filed with local officials.

“These potential conflicts also pose major risks for the fragile housing market,” Mr. Sarbanes wrote in the Oct. 26 letter, explaining how the conflicts may result in secondary mortgage lenders facing new financial burdens. “Investors could attempt to walk away from any security backed violated mortgages.”

Several other members of Congress have sent letters asking about conflicting language in mortgages and leases to other federal agencies, including the Department of Veterans Affairs and the Federal Housing Administration, which provide federal assistance to mortgage borrowers, and to state regulators.

The actions come after an article in The New York Times last month that described the growing concerns about conflicts between mortgage rules and millions of oil and gas leases. State officials have also started investigating the problem.

“After reviewing a limited number of leases, we have concerns,” Maryland banking regulators wrote to federal regulators in an Oct. 24 letter. Aside from the conflicts between leases and mortgages found in other states, the state regulators pointed to provisions in Maryland regulations that could allow drillers to use land in ways that further violate mortgage standards.

In Ohio, bank regulators sent a letter in September to state lawmakers warning that if borrowers did not get their lenders’ consent before signing a drilling lease, they would be violating the terms of their mortgage. The regulators added that they planned to begin contacting banks to find out what steps they were taking to mitigate risks of such conflicts.

State lawmakers in Maryland, Ohio and Texas have also written their state bank regulators in recent weeks asking them to review the problem.

Bank regulators from Maryland, New York and Pennsylvania said they were planning a regional meeting on the matter in the next several months with officials from the Federal Reserve Bank of New York and the Federal Deposit Insurance Corporation, which acquired some mortgages when banks collapsed in the aftermath of the financial crisis. Plans of the meeting were discussed in a letter sent by state regulators to a Maryland lawmaker, Delegate Heather R. Mizeur, whose office has started working on legislation.

An article in The New York State Bar Association Journal’s November/December issue stated that the leases affected not only mortgages but also home insurance. In October, the Maryland attorney general, Douglas F. Gansler, published a statewide alert warning landowners to check mortgages before signing a natural gas lease.

Aside from the mortgage rules themselves, Mr. Gansler said that title insurance also often contains restrictions that, “if violated, would make it difficult to get title insurance and thus, difficult to get a mortgage or refinance.” He added that his office had convened a team of lawyers that was working on a landowners’ guide about the conflicts, to be published in coming months.

Last month, Maryland real estate officials also wrote about the issue to a commission appointed by the governor that is reviewing drilling regulations. The officials asked that the commission consider creating a registry of all leases in the state so that regulators and the public could determine which properties also had mortgages on them.

Over 100,000 acres in Maryland have already been leased for drilling, but the state has imposed a temporary moratorium on any new drilling while state officials review regulations. Officials at the Federal Housing Finance Agency have said they are still studying the issue.

In letters sent to Congress, the agency said that before it decided whether to issue additional guidance for banks it was waiting for results from an Environmental Protection Agency national study on the safety of drilling and the technique commonly used after drilling known as fracking, which involves injecting at high pressure millions of gallons of water and chemicals into underground rocks to free the gas or oil trapped there.

“Clearly, F.H.F.A wants to assure that no threats to collateral occur,” a letter from the Housing Finance Agency said. “At the same time, the agency does not want to impact adversely homeowners by addressing a matter that has not been determined by the responsible agencies.”

But several members of Congress have urged the agency not to wait for the E.P.A. study since it is not focused on mortgage rules or ways in which values might be affected by drilling.

In an interview, an official with the Housing Finance Agency who is not authorized to speak to the press, said the agency is still reviewing the matter. During a Nov. 3 House subcommittee hearing on the mortgage market, Edward J. DeMarco, the acting director of the Housing Finance Agency, said that his staff was finding it hard to gather information about the number of mortgages on leased properties, in part because many of the drilling leases were not being filed with local officials.

“I’d be very happy to go back and take a serious look at whether an audit is in order, whether that’s feasible and practical,” Mr. DeMarco said. “Our ability to effectively gather this information is uncertain at the moment.”