

Supreme Court Approved Banning All Foreclosures

Minneapolis attorney Marshall H. Tanick on Oct. 31 published the legal precedent, approved by the U.S. Supreme Court in 1934, for a legislative ban on home foreclosures. Writing in the *Minneapolis Star-Tribune* about the demand for a City Council foreclosure moratorium in that city, Tanick compared the situation there—340 foreclosed homes in the seven counties surrounding the Twin Cities, among the nearly 9,000 foreclosed properties in the metro area—to the Great Depression. “The Minnesota Legislature, a month after the inauguration of President Franklin D. Roosevelt, enacted a measure known as the Minnesota Mortgage Moratorium Law,” he writes. “The measure was widely hailed as the type of bold legislation necessary to help overcome the throes of the country’s economic catastrophe.”

Article I, Section 10 of the U.S. Constitution forbids states from enacting laws “impairing the Obligation of Contracts.” Mortgage holders asserted that the moratorium statute violated the provision by retroactively altering their rights under mortgage arrangements voluntarily entered into by homeowners.

The case reached the U.S. Supreme Court in 1934.... The high court at that time was no friend of intervention in the economic forces of the free marketplace.... But by a 5-4 vote, the Justices in Washington upheld the moratorium law. Writing for the majority, Chief Justice Charles Evans Hughes reasoned, as did the state Supreme Court, that the law was constitutionally valid and did not infringe the contract ‘impairment’ clause.... He declared that it was permissible because it was ‘clearly so reasonable as to be within the Legislative competency.’

“The court deemed the law to be a ‘rational compromise’ that did not impair the ‘integrity’ of the mortgage industry because homeowners were required to maintain payments during the freeze, and because the mortgagees could exercise their rights after the two-year period.

Does this sound like the Homeowners and Bank Protection Act in local miniature?

“Forget about voluntary foreclosure freezes,” attorney Tanick concludes. “Lawmakers should heed the edict of the Supreme Court in the Blaisdell case: ‘While emergency does not create power, emergency may furnish the occasion for the exercise of power.’”