



# Getting Back In Gear

Better Ways to Move Stalled and Vacant Foreclosures Forward

# Judicial Perspectives on Expediting Foreclosures

The judges and magistrates who oversee the foreclosure process have seen their dockets swell in recent years. As a result, many courts report enormous backlogs and sometimes-long delays in the adjudication of cases. This session will explore how some court officials are dealing with the increased workload, including their attempts to mitigate the impact of delays.

# Panelists

- ▶ Steve Bucha, Chief Magistrate, Cuyahoga County Court of Common Pleas
- ▶ Barbara Reitzloff, Chief Magistrate of the Cleveland Municipal Housing Court
- ▶ Michael McKeever, Esq., CEO, KML Law Group

## *Moderator*

- ▶ Alan White, Professor, CUNY School of Law

# Diversity in programs reflects community concerns

- ▶ Mandatory programs may fit well in populated areas with higher foreclosure volumes
- ▶ “Opt In” programs – at initiation of the case or pre–sheriff sale
- ▶ Hybrid – may apply only in cases where a homeowner contests the foreclosure

# Creating successful Diversion/Conciliation/ Mediation programs

- Involve all stakeholders – relationship building/community banking
  - Homeowners
  - Housing Counselors/HUD Approved/Non-Profit
  - Servicers and their legal counsel
  - State and municipal agencies
  - Pro bono attorneys and Judicial officials
  - Court and Court Professionals
  - Housing Community Activists and Groups
  - Consumer Advocates

# Creating successful Diversion/Conciliation/ Mediation programs

- Key role of Housing Counselors – Establish a HOTLINE – door to door
- Case management tool for Owner occupied properties only
- Protection of Contractual Rights - Education about role of servicers and limitations
- Adherence to document submission timelines
- Focus on expediting vacant property foreclosures
- Two tier approach – initial hearing to remove non-responsive homeowners from the program.
- Delays equal losses to the Lender, the borrower and the Community.
- Avoid program intervention that would involve the Courts in examining “lifestyle” choices made by homeowners: where they shop, what they spend, how hard they work. Is this an appropriate role for the Courts?
- Program should monitor excessive delays and hearings so that parties do not use them to avoid their legal obligations.

## Foreclosure/Diversion/Conciliation/ Mediation – Holistic Remedies

- ▶ Provides an opportunity for the homeowner and the lender to effectively communicate under the Court's jurisdiction, within a time frame that does not substantially impact the lender's legal and contractual rights.
- ▶ Leave the blame game outside the Courtroom door.
- ▶ Creation of a process that provides assistance to the borrower in financial distress.
- ▶ Recognizes that the financial stress also creates other issues.
- ▶ Direct homeowners to appropriate social services

# Foreclosure/Diversion/Conciliation/ Mediation – Holistic Remedies

- ▶ Graceful exit is a viable option
- ▶ Informal discussion is favored over a formal hearing
- ▶ Report Rescue Scams to US Attorney Task Force
- ▶ Allow the legal representative of the lender to appear at the Conciliation/Mediation Conference.
- ▶ Plaintiff/Lender representative with Settlement Authority may be ordered to appear at any subsequent Conciliation/Mediation Conference if such action is deemed warranted by the Court to facilitate resolution.



# Benefits of Court Diversion/Conciliation/ Mediation programs to Lenders/Serviceers

- ▶ Relief valve for courts, public officials, homeowners and lenders.
- ▶ Housing Counselors provide a level of professionalism and a consistent point of contact.
- ▶ Strengthen community ties.
- ▶ Provides a systemic and comprehensive structure for communication.
- ▶ Promotes more predictability and uniformity of results. Reduction of litigated or contested foreclosure cases.
- ▶ Avoids wholesale delay caused by blanket moratoria or judicial or other governmental action.
- ▶ Promotes development of “fast track” foreclosure process in states that have a lengthy process at present.

## The Future of Mortgage Servicing

Consumer Finance Protection Agency to oversee Mortgage Servicing and create national mortgage servicing standards.

- ▶ Larger servicers will downsize
- ▶ Growth of smaller servicers with different investment expectations
- ▶ Cost of Compliance shifted to consumer
  - Costs of NMS is at least \$25 billion, compliance, legal and other settlements easily exceed an additional \$150 billion
  - Fannie Mae/Freddie Mac conservatorship cost is about \$147 billion
  - Large mortgage servicers have hired thousands of employees to review modification requests and to review and execute legal documents.
- ▶ More thorough documentation of initial workout process will likely lead to fewer, but more complex disputes and resolutions when cases presented in Court.
- ▶ Re-defaults rates will continue to rise, Defaults on HAMP modifications at about 35%
- ▶ Decreased defenses as increased governmental oversight reduces servicing issues

# Code Violations

- ▶ Lenders had in the past outsourced this to 3<sup>rd</sup> party vendors due to increased volume
- ▶ Thousands of municipalities with various levels of enforcement
- ▶ Constant evaluation of performance, risk management and costs
- ▶ Move towards consolidation of industry communication platforms may drive more consistent responsiveness and promote better tracking
- ▶ Payment flow and why that matters to a municipality

# Controllable delays and cost of Delay

- ▶ HUD – Interest Curtailment
- ▶ Fannie Mae/ Freddie Mac  
Compensatory Fee Allowable Delays
- ▶ VA – due diligence requirements

# How to Contact a Servicer in property violation matters

- ▶ Direct Contact with Servicer
- ▶ Property Preservation Contractors
- ▶ Assigned Brokers
- ▶ Contact through law firm representing lenders – data sharing opportunities
- ▶ Contact through industry groups
  - MERS [mersinc.org](http://mersinc.org)
  - Compliance Connection (Safeguard)
- ▶ Thousands of municipalities with various levels of enforcement
- ▶ Communication to Mortgage Servicing Industry – CFPB role?

# Concerns about Expediting Foreclosures Treading on thin ice in terms of represented vs. unrepresented parties?

- ▶ Cash for Deed or Keys
  - Disclosures required – Court Records?
- ▶ Acceptance of Service
- ▶ Consent Judgment or Settlement Agreements