



**NEW YORK  
CITY BAR**

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**ASSEMBLY STANDING COMMITTEE ON JUDICIARY  
ASSEMBLY STANDING COMMITTEE ON HOUSING  
ASSEMBLY STANDING COMMITTEE ON BANKS**

**PUBLIC HEARING: IMPACT OF THE MORTGAGE  
FORECLOSURE PROCESS AND CRISIS**

**NOVEMBER 17, 2010**

**ASSEMBLY HEARING ROOM  
250 BROADWAY, NEW YORK, NY**

**TESTIMONY OF LYNN ARMENTROUT  
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**INTRODUCTION**

Thank you for the opportunity to testify on the important topic of state funding to aid homeowners in foreclosure. My name is Lynn Armentrout and I am the Director of City Bar Justice Center's pro bono Foreclosure Project. The Justice Center is the public service affiliate of the New York City Bar Association, and its mission is to leverage the resources of the New York City legal community to increase access to justice. The Justice Center, through its pro bono programs and legal hotline, assists more than 20,000 clients a year.

Providing legal services to homeowners in foreclosure is fundamentally important not only because of the help provided to the individual homeowners and their families, but because saving homes from foreclosure protects the larger community and economy from the destabilizing influence of large numbers of vacant and foreclosed homes. The demand for foreclosure prevention services cannot be met by the City's non-profit legal service providers

alone. Due to the sheer number of homes affected, the private bar, through pro bono foreclosure defense programs, must be an integral part of any effort to address this crisis.

Yet, foreclosure defense is a challenging area for a pro bono project for several reasons: the complexity of the issues, the absence of participation from the City's large law firms, and the absence, so far, of effective solutions to the foreclosure problem. Because of these challenges, the need for strong and innovative programs like the Foreclosure Project is great.

The monies appropriated in the State budget to aid victims of subprime lending have been a critical resource for our project and the many other service providers with whom we collaborate. The funding has allowed us to help many more homeowners, directly and indirectly, than the Project initially envisioned. Since the numbers of pending foreclosure cases are increasing as the cases pile up in settlement conferences, and the filing of new foreclosure cases has not abated, renewal of the funding will be essential to continue to protect families and communities from the devastation wrought by large numbers of foreclosed homes.

If the funding is renewed, however, it is important that it not be limited to assisting only those homeowners with subprime loans. The foreclosure crisis is no longer a subprime lending crisis but an economic one. The majority of the clients we now see are victims not of predatory lending but of a sour economy.

## **BACKGROUND OF THE PRO BONO FORECLOSURE INITIATIVE**

The Foreclosure Project began in June, 2008, as the Lawyers' Foreclosure Intervention Network (LFIN), a joint project of the Justice Center and the Federal Reserve Bank of New York. It was the first pro bono foreclosure defense project in the City. In keeping with the tradition of the Justice Center's pro bono projects, LFIN began with a small staff -- an attorney

project director and a non-attorney project coordinator – with the goal of maximizing the number of clients served by leveraging the pro bono resources of the private bar.

LFIN's first hurdle was conflicts of interest: the majority of the City's large law firms, a deep pool of pro bono talent, represented the majority of the financial institutions who were suing homeowners in foreclosure. This obstacle was met with a twofold approach: the Federal Reserve encouraged the financial institutions to waive the conflicts of interest in order to allow their outside counsel to negotiate - but not litigate - on behalf of homeowners, while the City Bar's Ethics Committee issued an opinion letter to the effect that the conflict could be waived in this circumstance.

LFIN was thus off to a start, nine months before the federal loan modification program was announced and when the only foreclosure settlement conferences being held were part of a pilot project in Queens. At the time, the foreclosure problem was directly and almost exclusively linked to subprime mortgages.

Things did not turn out as expected. The large law firms largely did not participate in LFIN. But when the economy nearly collapsed in October 2008 and hundreds of lawyers suddenly found themselves laid off, deferred, or simply unemployed, LFIN was inundated with volunteers. Many of these volunteers had little or no legal experience, and since most of the volunteers were unassociated with firms, LFIN's capacity was immediately challenged by the enhanced need for mentoring and supervision.

Fortunately, LFIN was able to meet this challenge when it obtained additional funding in November 2008 from the New York State Housing Trust Fund. With the Trust Fund grant, LFIN expanded into the Foreclosure Project, hiring a full-time staff attorney and full-time

paralegal. The Foreclosure Project now combines a direct representation and pro bono approach in an effort to best meet the demand for foreclosure prevention legal services.

In the early months of the Project there was no loan modification program and settlement conferences were only beginning to be provided, for only some homeowners. Many of our early cases involved default judgments and homes scheduled for auction. Some of those involved victims of foreclosure rescue scams, such as Mr. D, an 81-year old blind World War II veteran who lost his home of 50 years in what he thought was simply a refinance. Other clients were the victims of deceptive practices when the loan was originated, leaving them with burdensome debts they did not understand. This was a challenging scenario for pro bono lawyers with little legal experience – complex cases with no opportunity to negotiate a restructuring of the loan.

Two important developments changed the landscape of foreclosure litigation and allowed us to streamline our efforts and increase capacity, allowing for a greater return on the funds supporting the Project. These two developments were the federal Home Affordable Modification Program (HAMP), which began in March 2009, and the foreclosure settlement conferences, which under State law became mandatory for residential homeowners with subprime loans in August 2008 and mandatory for all residential homeowners in February 2010.

With a loan modification program in place, there is now a tangible goal for advocates, with guidelines on how to get there. Since the foreclosure case is stayed pending the outcome of the settlement conference, our volunteers may now appear in foreclosure cases on a limited basis, obviating the need for litigation skills and theoretically simplifying the representation. Our goal in most cases is to obtain loan modifications for our clients.

At the same time, having a full-time staff attorney allows the Project to continue to try to save the home of our World War II veteran, as well as seek redress for clients who are the victims of a new fraud – the loan modification scam. While our litigated cases represent a small portion of our total caseload, the fact that our project is able to provide a full range of services makes it that much more effective in addressing the real problems facing New York City homeowners.

## **ACCOMPLISHMENTS AND CHALLENGES**

The funds which the Foreclosure Project has received through the Housing Trust Fund grant have been highly effective. With these funds, the Foreclosure Project has been able to maintain an active panel of over 200 volunteers and provide direct legal representation in 214 foreclosure cases, thereby assisting the 400 individuals living in those homes, which number does not include the many tenants who rent units in our clients' two- to four-family homes. Our volunteers do not just provide a lawyer for the day – they provide the homeowner with ongoing representation until the case is resolved. The Foreclosure Project provides pro bono representation to homeowners in every borough.

In addition to the clients to whom the Project provides full representation, we have provided 70 homeowners with brief services, which include legal consultations to sort through options and assistance in preparing documents, and have provided well over 100 homeowners with referrals to other service providers. The Foreclosure Project paralegal screens an average of 15 calls from homeowners per week.

The Housing Trust Fund grant provides benefits greater than those measured by the numbers of individuals directly served. The funds, which have been distributed widely throughout the state, have led to collaborations which support and strengthen the various

programs and foreclosure defense in general. The frequent CLE trainings we must offer in order to continually recruit volunteers are provided by organizations who have received Housing Trust Fund grants for that purpose. There is a City-wide foreclosure task force that meets bi-monthly, where advocates share ideas and strategies, and there are at least three active foreclosure listservs where important information is exchanged. All of this is made possible by the increased personnel funded by the Housing Trust Fund grants.

In addition, there is now a foreclosure practice area on the website [probono.net](http://probono.net), which was developed collaboratively by the Foreclosure Project, Legal Services of New York, and Pro Bono Net. The site's library contains substantive information on loan modifications, tips and best practices, trainings, and templates; it has 300 members statewide and last month received over 1,000 visits from users. It was made possible only because of the increased personnel resulting from the Housing Trust Fund grants.

The funding also has an impact on the quality of homeowner representation taking place outside of the programs receiving funds. Many of our volunteers who found themselves unemployed as a result of the recession have started their own practices and are developing foreclosure defense as a new practice area. Their clients will benefit from the training, as well as the intensive mentoring, these attorneys have received as members of the Foreclosure Project. In addition, this Project has launched a "low-bono" foreclosure defense panel, consisting of volunteers who have handled at least one of our cases and handled it well. The "low-bono" panel will provide foreclosure defense at a discounted fee. This expansion of affordable legal services would not have happened if the Foreclosure Project had not received funds allowing it to expand to its current size.

The funding from the Housing Trust Fund to provide legal services for homeowners, coupled with the federal loan modification program and the mandatory settlement conferences, have the potential of providing a real solution to the foreclosure epidemic in New York City.

However, if the funding is to continue to have an impact, its reach should not be confined to homeowners with subprime loans. From June 2008 until March 2009 the Foreclosure Project handled 100 cases; only 3 of them involved mortgage loans that were not subprime. For the most part, our clients were in foreclosure because the loans themselves were never sustainable. In 2010, however, less than one-third of the loans we have seen are subprime, and the majority of our clients are in default because they've lost jobs, lost hours on their jobs, or lost their small businesses. If the funding is to continue to do the good work of stopping foreclosures, then it must be applied beyond the narrow category of cases involving subprime loans. The number of those cases is dwindling, but the number of foreclosure cases is not.

In addition, the Home Affordable Modification Program and the mandatory settlement conferences are being undermined by significant problems that threaten their ultimate effectiveness, and the effectiveness, therefore, of the funding. The experience of the Foreclosure Project mirrors the data reported to the Department of Treasury: even though the majority of delinquent mortgage loans are being serviced by financial institutions that have agreed to participate in HAMP, the number of actual modifications is far less than what was projected when HAMP was launched. Indeed, of the 100 or so loan modification applications we have handled since HAMP began, we have obtained only 25 permanent modifications. The rest are all still pending.

The problem, from where we sit, is twofold: servicer non-compliance with the HAMP guidelines, and foreclosure plaintiffs' non-compliance with the rules governing the mandatory settlement conferences.

The HAMP program is voluntary; the guidelines are not regulations and they are not enforceable by homeowners. But the settlement conference legislation, codified in CPLR 3408, has the force of law and is at present the best leverage homeowners have. Servicer non-compliance with HAMP guidelines is arguably a breach of CPLR 3408's requirement to negotiate in good faith. In addition, CPLR 3408 holds promise for those homeowners who are not eligible for HAMP, by including as a purpose of the conference "determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home" and by requiring, again, that the plaintiff negotiate in good faith.

In our experience, though, the foreclosure plaintiffs routinely violate the rules governing settlement conferences. In the vast majority of conferences, plaintiffs appear by per diem attorneys who not only have no authority to settle but usually know nothing about the case or the status of the loan modification application. This is a direct violation of CPLR 3408's requirement that the plaintiff appear by an individual or representative with authority to settle, and negotiate in good faith. It creates undue delay in getting relief to homeowners and causes the repeated adjournment of these conferences, with no resolution in sight.

At present, there are no consequences when plaintiffs breach their obligations under CPLR 3408. While some advocates are making applications for sanctions, there is no specific authority or procedure for such applications. And those applications do not benefit the majority of homeowners who are still unrepresented by counsel. The settlement conferences would be far more effective if sanctions were readily available for non-compliance with the statute.

## **CONCLUSION**

New York State, through its funding of foreclosure prevention legal services and legislation addressed to the fairness and integrity of the prosecution of foreclosure cases, has made giant strides in preventing unnecessary foreclosures and protecting homeowners and communities from the destruction that comes in the wake of massive foreclosures. We are grateful to have received state funds to do the important work of foreclosure intervention.

In order to continue making progress on this difficult front, it is respectfully submitted that the funding should be continued, the restriction of the funding to subprime loans should be lifted, and rules should be passed providing for sanctions against foreclosing plaintiffs who fail to abide by the rules governing settlement conferences.

Thank you again for giving me the opportunity to testify about the importance of New York's foreclosure prevention funding.