About the Committee

The Committee on Community Economic Development (CED) provides a forum for lawyers to share their expertise and perspectives derived from working with (i) entrepreneurs and community-based organizations seeking to revitalize communities and (ii) the institutions that finance such initiatives. The Committee provides an opportunity to (i) share knowledge and develop policies on the emerging law of CED, (ii) support transactional lawyers involved in CED, and (iii) work with other committees of the Business Law Section, as well as other ABA entities. To join the Committee go to http://www.abanet.org/committee_join/ocj_action.cfm?comid=CL746000

Message from the Chair

Rutledge Simmons
NeighborWorks America
Washington, DC

Thanks for taking the time to review the Committee on CED e-newsletter. The submissions in this issue address two significant topics. First, Mr. David Chunn summarizes how state attorneys general have attempted to thwart mortgage rescue scams. These scams occur when a scammer charges a borrower an upfront fee and promises to save the borrower's home from foreclosure, but expends little or no effort to do so. Rescue scams add to community decline by increasing the number of abandoned properties in communities. This issue is very important to states with high foreclosure rates since homeowners worried about foreclosure are often susceptible to scams.

Second, the featured profile and subsequent articles focus largely upon pro bono CED opportunities for transactional lawyers. In addition, the New York City CED Network, the subject of the featured profile, provides a framework for bringing together CED professionals to share information. It could possibly be replicated in other jurisdictions.

With respect to Committee on CED initiatives, the Committee on CED was very pleased with its 2009 ABA Spring Meeting panel, "An Insider's View of Community Economic Development: How to Add Value to Clients Working with Governments and Agencies with CED Goals and Initiatives." If you missed the panel discussion, please review the article "What is Community Economic Development Today? Several Professionals Offer Perspective," which can be found in the ABA's November/December 2009 issue of Business Law Today. It touches on many of the topics discussed during the panel.

Lastly, the Committee on CED continues to encourage members and non-members to visit the Committee on CED listserve to share ideas and to offer suggestions on how to improve the Committee on CED and the CED website. Happy holidays.
Interview with the New York City CED Network

What was the motivation behind convening the group in NYC?

The motivation for starting the NYC CED Network was to bring together the various CED legal advocates in New York City on a regular basis to discuss best practices and issues confronted by our clients and to strategize and make connections amongst one another.

Who is involved and what do you discuss when you meet?

The Network is comprised of nearly all the nonprofit CED legal practices in New York City, including the Community Development Project of Urban Justice Center, the CED Unit of Brooklyn Legal Services Corporation A (Brooklyn A, an affiliate of Legal Services NYC), Legal Aid Society - Community Development Project, New York Lawyers for the Public Interest, Lawyers Alliance for New York, Housing Conservation Coordinators and National Employment Law Project, and the CED clinics of Fordham University School of Law, Columbia Law School, Brooklyn Law School, New York University School of Law, Hofstra University School of Law and CUNY Law School. We also have members who are public interest lawyers whose practices may not be exclusively CED work, but who remain interested in a CED model, including lawyers from the New York Appleseed, Asian American Legal Defense and Education Fund, Enterprise Community Partners, and the New York City Bar, as well as attorneys from private law firms who are involved in CED pro bono, externships, and deferred associate programs.

At each meeting we try to have Network members present on a substantive area in which they are engaged; we have had presentations on choice of legal structure for worker-owned cooperatives, ongoing legal issues confronted by low-income tenant-owned cooperative housing development fund corporations, green building by not-for-profit developers and working with "micro-business" start-up corporations. We also try to have a guest speaker come to each meeting to discuss issues affecting our practice. So far, we have had a presentation from a national advocacy group on the federal stimulus legislation. Lastly, we also raise and discuss best practices.

What common issues do you find among your clients across practice areas?

Whether we are working with low-income tenants groups, or with affordable housing developers, or with worker-owned cooperative businesses, the need for affordable housing, decent services, and quality jobs for low- and moderate-income New Yorkers has never been higher. In many cases, the twin problems of gentrification and recession-driven, government belt-tightening have been squeezing our clients. A guiding principle in many of our practices is assisting our clients in maintaining, growing and controlling the assets of their communities and the revenue generated (be it from a small business start-up to the expansion of a community controlled health care center).
What are some of the different types of matters that participating attorneys typically handle?

The specific types of matters that the attorneys work on vary within the group as a whole, but the matters include: not-for-profit incorporation and tax exemption, negotiating, reviewing and drafting contracts, leases and other real estate transactions, advising on governance matters and corporate and transaction structuring, land use and property zoning issues, assistance with annual filing requirements for charitable organizations, drafting and updating personnel policies and assistance with employment issues.

What resources has the group developed to share information?

The primary mode of communication amongst the group is an email list (a "Google Group") we formed after the first meeting. We pose practice questions, announce events, and share documents through the Google Group. Lawyers Alliance for New York hosts the "Community Development and Nonprofit Law" section of Probono.net in New York, which offers free downloadable model documents and memoranda relevant to representing nonprofits. Brooklyn A has also been working on creating a national CED attorney directory to facilitate networking and communication throughout the US amongst CED practitioners, and the Legal Aid Society's Community Development Project has been developing a CED-related section on Lawhelp.org.

How are you partnering with law firms to facilitate pro bono work?

All of our members work with pro bono attorneys from law firms. Each organization has its own framework for coordinating work with pro bono partners.

How could this model be replicated in other cities?

The Network could be replicated in any city that has multiple CED practices. The Urban Justice Center and Brooklyn A started the Network by brainstorming to develop a comprehensive invitee contact list of all the CED attorneys in New York City. We sent an invitation to the kick-off meeting to this contact list and asked to forward the invitation to anyone we might have inadvertently missed. The Google Group is free and we rotate between the members’ offices to host the meeting and to develop the agendas and speakers for each meeting.

What are some pressing needs or challenges transactional CED attorneys can address in their work?

With the current state of the economy and the attendant cutbacks in the availability of many sources of government funds, transactional CED attorneys are needed more than ever to be able to provide legal advice to community groups without causing them to drown in legal fees on the one hand, or forcing them to take on legal work without counsel on the other. This becomes especially necessary for established community groups that tackle increasingly complicated transactions in housing development, community healthcare facility projects, and other areas that each present a community organization with new areas of statutory, regulatory, and financial hurdles. Transactional CED attorneys must also be able to address new client needs in the economic downturn (like cooperative models and job training programs), as well as some emerging trends that will only grow within our field.
(like sustainable development and joint ventures between CDCs and private developers). At the moment, many CED practitioners must adjust to these hurdles while their own funding may be diminishing, as government, corporate, and law firm sources of funds have contracted for many of us.

Attorneys interested in joining the NYC-CED Google Group may email the group at mhaber@bka.org.

2010 Spring Meeting Panel

The White House Office of Urban Affairs and its Effect on Community Economic Development

Friday, April 23, 2010
2:30 - 4:30 PM

Chair: Mr. Howie Wong
Cosponsored by: Pro Bono Committee

As part of the...
2010 ABA Business Law Section Spring Meeting
Denver, CO
April 22 - 24, 2010

» Meeting Registration
» Website

Featured Articles

Mortgage Rescue Scams Undermine CED Efforts: What Are State Attorneys General Doing About Scams?
David Chunnn

This past summer I interned at NeighborWorks America's Washington DC office, and researched state attorneys general efforts to combat rescue scams. The scams largely entail the act of charging distressed homeowners fees while promising to save their homes, but doing very little to do so. The scams are hugely problematic because they undermine foreclosure prevention efforts, thus adding to community decline. Using information found in the public realm, I collected data to get a better idea of what each state was doing and compared their efforts. The search focused on four areas: enforcement, legislation, collaboration and advocacy. The purpose of the research was to review trends and examples of state approaches to consumer protection and enforcement as a means of combating scam activity.

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**Transaction Opportunities for Pro Bono Attorneys in CED**

Edward W. De Barbieri and Anneliese Gryta

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This article highlights ways firms and corporate general counsel officers are partnering with legal service providers to involve transactional attorneys in pro bono CED projects. It also introduces some particular substantive matters where creative solutions are being crafted for complex issues. These issues include creating and retaining jobs through worker cooperative business forms, and small business development.

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**CED Lawyering at the Grassroots Level: A Case Study**

Laurie Hauber

In 2007, Organized Neighbors of Edgehill (the "Client"), a neighborhood group in a predominately low-income African-American neighborhood in Nashville Tennessee, sought legal assistance from the Community & Economic Development Clinic at Vanderbilt Law School (the "Clinic") to help the Client as well as other residents and community activists exert control over neighborhood development and help ensure that any development would meet the needs of all residents and preserve the character of the neighborhood. The Client was aware anecdotally of resident displacement, rapidly increasing home sale prices, and changing demographics of home-buyers moving into the neighborhood. The Client's leadership recognized that they needed a more in-depth understanding of the changes taking place in order to determine what to do about it and how to effectively advocate on behalf of the neighborhood. Through a discussion of this project, which entailed the Clinic helping to design a development strategy and then assisting with its implementation, this article presents an example of how law school clinical programs and pro bono attorneys can use their skills to engage in community and economic development initiatives at the grassroots level.

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**The Power of a PBLO Partnership at Artscape Wychwood Barns and Evergreen/Brick Works**

Pro Bono Law Ontario

When PBLO Executive Director Lynn Burns attended the opening of the Artscape Wychwood Barns in November 2008, she didn't expect to see a photo of her late grandfather on the wall. An artist in his Irish homeland, Burns' grandfather, Francis O'Neill, had traded his craft for a career as a TTC streetcar driver upon moving to Toronto in the 1920's.

"There's something ironic," says Burns, "about the fact that my
The historic Wychwood TTC streetcar repair barns are now a revitalized centre of arts, culture, environmental leadership, heritage preservation, urban agriculture and affordable housing. As the broker behind two law firm-community partnerships at the Barns, Burns played an important role in bringing the $22 million project to fruition.

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Submit Articles for the Community Economic Development Newsletter

The Committee on CED invites you to submit an article for possible publication in future issues. The articles do not need to be long. Submitting an article is a great way to share your perspective and/or expertise with fellow practitioners and to participate in Committee activities. If interested, please email your article for consideration by clicking on the name of any of the newsletter editors listed above.

Thanks.
This past summer I interned at NeighborWorks America’s Washington DC office, and researched state attorneys general efforts to combat rescue scams. The scams largely entail the act of charging distressed homeowners fees while promising to save their homes, but doing very little to do so. The scams are hugely problematic because they undermine foreclosure prevention efforts, thus adding to community decline. Using information found in the public realm, I collected data to get a better idea of what each state was doing and compared their efforts. The search focused on four areas: enforcement, legislation, collaboration and advocacy. The purpose of the research was to review trends and examples of state approaches to consumer protection and enforcement as a means of combating scam activity.

This article addresses (i) enforcement activity by the attorneys general; (ii) state advocacy and outreach efforts; (iii) legislative work to strengthen the tools at the disposal of the attorneys general; (iv) collaboration initiatives among the states; and (v) trends encountered during the research.

It is a perilous time to be a homeowner. For many the ideal of homeownership in America has become a nightmare for an ever-growing number of homeowners who desperately cling to the edge of financial disaster. Indeed, it is estimated that nearly half of all U.S. mortgages will be underwater (owe more than the house is worth) by 2011.

Yet, for an entrepreneurial few, the foreclosure crisis represents a golden business opportunity. And business is booming. The economic downtown has spawned an astounding number of scam operations seeking to take advantage of troubled homeowners. A popular scam just now beginning to reach critical mass in the public consciousness is the foreclosure or mortgage rescue scam.

Using sleek salesmanship and hurried tactics, the typical rescue scammer entices the unsuspecting homeowner into an arrangement that promises a loan modification or foreclosure relief in exchange for up-front fees. Unfortunately, these services are rarely rendered and the homeowner’s situation becomes dire. Many homeowners, unaware of what is happening until it is too late, become victims of not just foreclosure rescue fraud but of identity fraud as well.

On the enforcement effort, some novel approaches stand out. The Florida Attorney General’s office has established a website dedicated to educating consumers on mortgage fraud in the state of Florida. While many states have websites that promote state efforts and community outreach, Florida prominently posts a list of business entities that have
had legal action taken against them by the state as well as press releases detailing convictions. The press releases show the actual booking pictures, or “mug shots,” of the individuals arrested for mortgage fraud. A list of current public investigations is also available for viewing.

Attorneys general in states such as Texas, New Jersey, Colorado, and Illinois have also compiled a long list of arrests and convictions against suspected scam artists. Enforcement, coupled with strong consumer protection laws, has scored numerous victories against large rescue fraud entities operating in these states. The victories resulted in funds being returned to some consumers.

State efforts with respect to consumer advocacy and outreach follow the same pattern as enforcement. Every state has moved to make resources available online through the establishment of state websites dedicated to assisting homeowners in distress. Links to federal programs such as Making Home Affordable and information on how to connect with foreclosure counselors are basic resources being offered to the public. For most states that are not largely affected by the crisis, posting links is the extent of their outreach.

Alternatively, in heavily impacted states like Arizona, Michigan and Nevada outreach campaigns are bolstered by advertising and feature public events crafted to help homeowners in need of assistance. For example, the state of Michigan has sponsored the Save the Dream campaign.

However, enforcement and advocacy have their limits. In some cases even an aggressive attorney general is restricted by the legal tools available under existing state consumer protection laws. Those states at the epicenter of the foreclosure crisis, states like Florida and California, have pushed through legislation to bolster existing protection laws. For example, in California, legislation sponsored by the Speaker of the State Assembly established regulations allowing Attorney General Jerry Brown to direct foreclosure consultants to be registered with the state or face violating state law.

Often, an attorney general will collaborate with the local legislature to push through badly needed legislation. Last December, Texas Attorney General Greg Abbott and State Senator Craig Estes announced a legislative initiative called the Foreclosure Rescue Fraud Prevention Act. The legislation seeks to enhance the Attorney General’s enforcement authority and place new restrictions on foreclosure prevention consultants. Such restrictions would require that contracts between homeowners and consultants be written in plain language and require a customers’ written consent before beginning any services or accepting any fees. A written disclosure statement instructing homeowners to contact an attorney or an housing counselor before signing mortgage rescue agreements is mandated by the new legislation.

Findings from the research suggest that collaboration among the states is present but not to a large extent. The most recent example was the announcement of “Operation Loan Lies,” a coordinated national law enforcement effort to crack down on mortgage
modification scams. Involving the Federal Trade Commission (FTC) and twenty-three state attorneys general and other federal and state agencies, the operation resulted in 189 separate legal actions against defendants. This collaboration is unique in that it sets a precedent in the coordination of a large number of state and federal partners working against mortgage modification scams.

The Federal Bureau of Investigation (FBI) announced in December 2007 that it was launching mortgage fraud task forces to be located in thirty-two field offices across the country. Research showed that collaboration exists between certain states and the FBI mortgage fraud task forces present within those states. Other than “Operation Loan Lies” and the FBI mortgage fraud task forces, no other data suggests the presence of a large collaborative effort between the states.

The foregoing is not indicative of collaboration happening within the states themselves. Many states have established task forces within their borders to prevent foreclosure and to research and collect data so as to give state lawmakers continuous reports on the foreclosure crisis developing within their communities. Other task forces provide assistance to distressed homeowners by way of advocacy and publicly-held events that introduce those in need to free counseling. Task forces also assist attorneys general in bringing action against mortgage fraud.

Some notable trends became evident during my research. Not surprisingly, states with high foreclosure rates were states most likely to be active in combating both mortgage modification fraud and avoidable foreclosures. States with low foreclosure rates were generally inactive with respect to efforts to deal proactively with mortgage fraud.

Although foreclosure rates and mortgage fraud activity vary between states, I learned that mortgage fraud is prevalent throughout the country. Areas experiencing low foreclosure rates generally experience low fraud rates.

Another trend is that many scammers are claiming to be attorney-backed. This claim can bolster the image of scams as being trusted legitimate businesses. Another difficult issue facing enforcement is that scams are often operating out-of-state, thus making them difficult to track or to regulate. To meet this problem, numerous states have begun to enact legislation requiring all foreclosure consultants to be registered with the state. These efforts are recent and it will take time to assess their effectiveness.

Like the legend of the Dutch boy who sticks his finger in the leaky hole of a dike in order to avert disaster, attorneys general are plugging holes to hold back the flood waters. Yet as the number of foreclosures continues to rise, state attorneys general will find that plugging one hole just reveals three more in need of repair.
Transactional Opportunities for Pro Bono Attorneys in CED
By Edward W. De Barbieri & Anneliese Gryta

I. Introduction

While litigation attorneys interested in doing pro bono work tend to have a variety of matters to choose from, transactional attorneys typically have less opportunity to do pro bono work in an area of their expertise. Nevertheless, there are many ways transactional attorneys can use their skills to represent clients on a volunteer basis. In fact, opportunities for transactional pro bono matters in community economic development are growing.

This article highlights ways firms and corporate general counsel officers are partnering with legal service providers to involve transactional attorneys in pro bono CED projects. It also introduces some particular substantive matters where creative solutions are being crafted for complex issues. These issues include creating and retaining jobs through worker cooperative business forms, and small business development.

Strategies for involving transactional attorneys in pro bono work

Firm lawyers have worked on a broad range of CED projects over many years. Organizations like Brooklyn Legal Services Corporation A (an affiliate of Legal Services NYC), Insight Center for Community Economic Development in California, and Lawyers Alliance for New York and other long-standing nonprofit CED practices have provided opportunities for firm lawyers to volunteer service on many matters, including the following: childcare, health centers, charter school, all sorts of diverse social service programs, community benefits agreements, as well as corporate, regulatory, licensing and financing issues.

Externship and individual firm fellowship programs are two ways firms are committing attorneys to pro bono work. In an externship program, associates with several years of experience spend two to four months working as staff attorneys for non-profit legal services providers. If needed, these externs are trained in substantive issue areas and begin to represent clients, generally following a conflicts check with their firm. Often these externs are able to continue representations following the end of their externship, provided the matter is still ongoing.

While many firms place externs, some firms have created specific fellowships allowing associates to work full-time with legal services organizations. These fellowships provide dedicated resources to more senior associates to spend time working at legal services providers that have expressed a need and capacity to take on full-time firm fellows. Firms choosing to create internal fellowship programs can complement their externship programs by having experienced attorneys contribute time to legal services providers greatly in need of expertise in a variety of CED areas.

Another opportunity to involve transactional attorneys is through forming partnerships with post-graduate public interest law fellowships. Post-graduate public interest law fellowships, typically funded by law firms, corporations, bar foundations, or other interested individuals, tend to focus on a particular issue or community. These fellowship projects have the potential to generate
transactional pro bono opportunities for firm sponsors, corporate counsel, or other interested CED attorneys. Equal Justice Works, Skadden, and other similar fellowships present the opportunity for firms to fund innovative transactional projects that will eventually lead to increased pro bono opportunities in transactional work.

Given the current economic crisis, deferred associates are an additional source of talent and expertise that can contribute to CED projects. Even though deferred associates may not have experience working with community groups, they often have a unique awareness and understanding that can be crucial in representing clients engaged in activities to support low-income, immigrant and other vulnerable populations. In many cases where language barriers are an issue, attorneys can often offer language skills to the legal services they provide.

Although there are efforts to expand the types of CED matters available to transactional attorneys, it is clear that many successful strategies already exist for involving transactional lawyers in pro bono matters. The most common of these transactional matters include incorporating nonprofit corporations, seeking federal income tax exemption, advising on lease, or other real estate matters, and general compliance issues. Below are a few examples of successful pro bono opportunities for transactional attorneys.

II. Successful pro bono partnerships for transactional attorneys

Worker Cooperatives: an Alternative Democratic Business Form

With the decline in the economy and increase in unemployment, job creation and retention strategies are vital for all workers, especially in low-wage and immigrant communities. These populations are the most vulnerable because they tend to have nontraditional employment. Workers in service industries in particular are at risk of becoming victims of abuse by unscrupulous employers.

In these instances, vulnerable workers consider alternative business structures to allow for increased autonomy and asset-building. Models for worker ownership include more well-known and readily accepted strategies, such as Employee Stock Ownership Plans (ESOPs), which provide tax favored treatment when an owner decides sell a business to its employees. There are also worker cooperative (“Co-op”) structures that may be formed under state Co-op corporation or limited liability company laws.

Recently, CED attorneys have turned to creative worker ownership strategies for the very low-wage, and immigrant populations most at risk in the economy. Examples of these types of cooperative ownership structures have been developed in the Bay Area of Northern California in the housecleaning industry, as well as in areas of high poverty or new immigrant arrivals in New York’s South Bronx, or Sunset Park, Brooklyn.

Because of the charitable activities involved in the creation of these Co-ops, there tends to be an exempt entity providing support in the form of professional development staff, including community organizers and/or attorneys. Transactional attorneys play a critical role in
incorporating these not-for-profit entities, applying for federal tax exemption, and advising entities on which business activities qualify for exemption.

Co-ops typically are not able to avail of federal income tax exemption under section 501(c)(3) of the Internal Revenue Code since they have a business purpose and benefit a defined group of people. Co-ops do, however, have other tax advantages. First, Subchapter T of the Internal Revenue Code allows Co-ops to treat as exempt income from so-called “patronage” activity, or trading done with a user or producer of the goods or services sold by the Co-op. The theory behind this exemption is that income generated from sales with Co-op members is internal since co-op members are also owners, and therefore not a taxable event.

Second, there may be other federal income tax exemptions under section 501(c) of the Internal Revenue Code depending on the exact type of Co-op and how it operates. In addition, Co-ops that form as LLCs are able to take advantage of “pass through” taxation, while maintaining democratic decision-making structures and equal ownership that are key principles of Co-op development.

Transactional pro bono attorneys can contribute to worker Co-op development by representing organizations on a variety of start-up matters, including advising on selecting a corporate entity structure, educating clients about various cooperative corporation laws (or LLC options), which vary by state, drafting organizational and governance documents, and advising on other small business issues like capitalization, insurance, applicable licenses, and others.

*Transactional Attorneys Incorporate Women’s Housecleaning Cooperative in Brooklyn*

In 2009, a worker cooperative was formed with the assistance of transactional pro bono attorneys in Brooklyn. Attorneys and law students from a law firm, not-for-profit legal service provider, and a law school CED clinic formed a legal team to represent a women’s housecleaning Co-op. This team included staff attorneys from the Community Development Project of the Urban Justice Center, attorneys from a large New York firm, and clinical faculty and law students from a law school CED clinic. The partnership of legal professionals combined their efforts to represent around 25, mostly Latina, women members in creating a cooperative to share in marketing and administrative work.

Si Se Puede! Women’s Cooperative, We Can Do It! Inc. was incorporated in New York State in Spring 2009. Based in Sunset Park, Brooklyn, the members of Si Se Puede! are each entitled to one membership certificate and to one vote on governance decisions. Since the organization is non-stock, governance is based on membership, not capital contribution.

The members of Si Se Puede! share a phone line that customers can call to obtain cleaning services. As new clients call the customer line, the co-op passes along the customer’s name to the next co-op member on a list. Each co-op member is responsible for contributing a specific number of service hours to the co-op in exchange for being a member.

Si Se Puede! relied heavily on the administrative and organizational support of a nonprofit social service provider called the Center for Family Life. The Center was key in facilitating the
creation of the cooperative, staffing the co-op phone line, and in engaging professional resources, including pro bono counsel.

Pro bono transactional attorneys played key roles in supporting the organizing work of the Center by providing educational materials, often in English and Spanish, and presentations to co-op members. These educational materials and presentations included substantive issues such as New York State Co-op corporations laws, governance and operations issues, and compliance with federal, state and local laws. Attorneys were also crucial in drafting incorporation documents, bylaws and other cooperative documents that Si Se Puede! uses in its operations.

As described above, Si Se Puede! is a primarily a marketing Co-op, not a worker Co-op in the sense that the Co-op is providing a good or service. However, worker Co-ops provide much greater roles for lawyers in helping worker-owners structure governance and finances. This is especially true if investors or other incubating or support organizations are involved. Examples of these types of worker co-ops exist in many parts of the country and are worth exploring further for attorneys interested in taking on co-ops as part of their CED work.

Leveraging Corporate Counsel pro bono on CED projects

Legal services providers are increasingly creating pro bono partnerships with corporate legal departments in order to meet the needs of low income entrepreneurs and non-profit clients that cannot afford legal assistance. Legal services providers are realizing that corporate counsel is uniquely positioned to provide targeted assistance to each of these groups. At the same time, corporations are realizing the benefits of giving back to the community through pro bono projects.

There are many reasons why these projects are a win-win. Many civil legal aid providers wish to provide assistance to the low income entrepreneurs in their client population but cannot due to high volumes of casework in traditional assistance areas. On the other hand, corporate counsel may be reluctant to take on traditional pro bono matters like divorce or custody cases, due to a lack of expertise in the subject matter. And it’s no secret that these types of cases can blow up into quite substantial time commitments. Also, while many big firms provide malpractice coverage for pro bono cases, some corporate legal departments do not, so it can be essential to partner with a legal services provider who does.

Legal aid programs are often willing to work with a corporate legal department to create a signature transactional pro bono project. Legal Aid of Western Ohio (LAWO), based in Toledo and Dayton, provides a good example of one such corporate pro bono partnership. The corporate legal department of Marathon Oil approached LAWO with a desire for pro bono work in its area of expertise. LAWO responded by creating a Small Business Development Clinic in downtown Toledo. Less than an hour from Detroit, Toledo has been hit hard by the recession and many out of work Toledoans are responding to the crisis by starting their own businesses or venturing into self-employment.
In order to connect to small business clients, LAWO called on Assets Toledo, an organization providing training to urban entrepreneurs. LAWO screened graduates of this program for legal problems and income eligibility before pairing them with Marathon attorneys in a brief-advice clinical setting. It is worth noting that in some states, initial brief-advice meetings obviate the need to clear conflicts. However, before engaging in brief-advice work, attorneys should consult their state’s ethics rules on pro bono representations.

Marathon attorneys were accorded a great degree of flexibility over the types of cases they saw, and were allowed to select their own clients from a pool of applicants seeking pro bono assistance. LAWO provided attorney participants with extensive information about clients in advance of the clinic in case they wished to do any additional preparation. Attorneys were also given the choice to take on matters for extended service. LAWO’s screening measures ensured that attorneys met with businesses that not only could not afford legal services, but were established enough that they would benefit from concrete advice.

The attorneys reported a high level of satisfaction with the program, as it allowed them to use their everyday expertise in contract, employment and corporate law to achieve immediate impact in the community. Clients are left empowered and enriched. One attorney participant was amazed that he would be able to help a small business stay afloat with a ten minute call to a landlord. Business pro bono matters can often be discrete, defined tasks that are relatively simple for the corporate attorney used to working on large-scale transactions.

The benefits of corporate pro bono collaborations run in many directions. For example, corporate legal departments may benefit from opportunities for free CLE. Future clinics at LAWO will involve a CLE component. Philadelphia VIP holds a yearly Corporate Pro Bono Day, which allows corporate pro bono attorneys to conduct “Legal Check-Ups” on small businesses after a morning CLE session. Some states, such as New York, even allow attorneys to earn CLE credits for completing pro bono hours.

Plus, the leadership of a corporate legal department can have lasting benefit in the community. As a result of Marathon Oil’s participation, other Toledo firms decided to get involved in the Small Business Development Clinic.

Corporate counsel are also finding pro bono projects designed around non-profit assistance. Programs across the country work with corporate counsel on non-profit CED matters. Community Legal Resources in Detroit exists solely to screen and place non-profits with corporate counsel for year-long attorney-client relationships. LAWO also places non-profit clients with corporate pro bono counsel. Texas C-Bar is another organization with a well-established non-profit pro bono program. These pairings ensure that important social service providers, educational programs and arts organizations continue to strengthen the community.

Through projects like these, a small investment of time on the part of corporate counsel can have a large-scale impact on the community.
IV. Conclusion

Law firms and corporate counsel offices have several opportunities to involve transactional attorneys in meaningful pro bono work. The examples given above provide very brief summaries of some innovative projects worthy of volunteer attorney time and expertise. As innovative CED projects continue to address meaningful issues facing families and communities, transactional attorneys have the opportunity to get involved and create positive change.

Edward W. De Barbieri is a Staff Attorney and Equal Justice Works Fellow, sponsored by FJC and Kramer Levin Naftalis and Frankel LLP, at the Community Development Project of the Urban Justice Center in New York City. He can be reached at edebarbieri@urbanjustice.org. Anneliese Gryta is an Attorney and Equal Justice Works AmeriCorps Legal Fellow at Legal Aid of Western Ohio. She can be reached at agryta@lawolaw.org.

Thanks to Nicole O. Prenoveau, Tony Cheng and Brian Glick for their comments and assistance editing drafts of this article.
CED Lawyering at the Grassroots Level: A Case Study
By Laurie Hauber

In 2007, Organized Neighbors of Edgehill (the “Client”), a neighborhood group in a predominately low-income African-American neighborhood in Nashville Tennessee, sought legal assistance from the Community & Economic Development Clinic at Vanderbilt Law School (the “Clinic”) to help the Client exert control over neighborhood development and help ensure that any development would meet the needs of all residents and preserve the character of the neighborhood. The Client was aware anecdotally of resident displacement, rapidly increasing home sale prices, and changing demographics of home-buyers moving into the neighborhood. The Client’s leadership recognized that they needed a more in-depth understanding of the changes taking place in order to determine what to do about it and how to effectively advocate on behalf of the neighborhood. Through a discussion of this project, which entailed the Clinic helping to design a development strategy and then assisting with its implementation, this article presents an example of how law school clinical programs and pro bono attorneys can use their skills to engage in community and economic development initiatives at the grassroots level.

Phase I: Information gathering

In order to provide the Client with relevant information to inform its decision-making, the Clinic focused much of its initial work on identifying the various data points requiring analysis, gathering the data and presenting the analysis in a series of neighborhood meetings that included the Client, as well as other residents and community activists. The Clinic examined local demographic changes compared to changes countywide, such as racial/ethnic makeup; median income, including that of first time homebuyers; and the increase in median home prices, rental prices and property taxes.1

Determining the extent to which displacement occurred in the neighborhood proved critical to the analysis. For the purpose of the analysis, the Clinic defined displacement as situations in which (i) residents moved elsewhere because they could no longer afford to own or rent their dwelling, and (ii) the displacement appeared to result from some form of a scam – people selling their homes voluntarily at below market rate or losing title to their homes as a result of a home rescue scheme. Based upon information from residents, foreclosure prevention scams appeared to be a common practice in the neighborhood, particularly among the elderly.

In an attempt to quantify the problem, the Clinic looked at listings of foreclosures, bank-owned properties, bankruptcy filings, and property tax liens. To get a better handle on the number of individuals and companies engaged in homeownership rescue scams, the Clinic examined parcel

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1 The Clinic collaborated with Neighborhoods Resource Center, an umbrella neighborhood group in Nashville that assists residents form and expand neighborhood organizations, and a PhD student from Vanderbilt’s Peabody College of Education and Human Development to help analyze and present these general demographic changes.
level sales price and ownership information obtained from the Nashville Tax Assessor’s office. The Clinic focused on properties with a sales price that increased dramatically over a short period of time and with an initial sales price that was below the market value of the property. In addition to quantifiable data, the client felt it was critical to be able to tell a story. Therefore, the Clinic wrote narratives on all the properties that experienced a dramatic sales price increase, showing the sales history for the past ten years. While the information gathered had some gaps, it provided a picture of the scale of displacement in the area and gave the Client sufficient information to create a plan that identified specific strategies to pursue.

The information gathering phase also involved researching and presenting a range of gentrification mitigation strategies that had been implemented effectively in other cities, such as housing production and retention strategies, as well as business development strategies. This information helped the Client determine which strategies would be most viable. In addition, the Clinic conducted workshops for residents of the area on pressing substantive topics such as foreclosure prevention. The Clinic also created a separate community development corporation to protect the core outreach programs of the Client and then worked with the Client to apply for tax exempt status.

**Phase II: Direct development**

During one presentation on the Clinic’s research findings to the Client, a neighborhood leader asked the Clinic to brainstorm about possible development options for a particular vacant parcel of land in the neighborhood. After researching the legal constraints and financing options, the Clinic’s law students presented possible development scenarios for the property. Upon settling on a strategy, the students became involved in all aspects of the development project and transformed it from a mere idea to a concrete plan virtually ready for financing.

To determine the best and most feasible option for the neighborhood, the Clinic researched a variety of sources to devise the best way to develop and finance the project. The Clinic’s assessment was based largely on information gleaned from meetings the Clinic and the Client’s leadership conducted with various players involved in affordable housing development in

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2 Obtaining in-depth information on rental displacement was virtually impossible for the Clinic as very little information could be found through public records. The Clinic could not track evictions through the court, nor could the Clinic find a comprehensive way to determine those instances where a renter moved due to a rental increase, owner unwillingness to renew the lease or a change of ownership in connection with a condo conversion. The Clinic was able to identify when and how many Low Income Housing Tax Credit units in Edgehill would be eligible for conversion to market rate housing.

3 See, e.g., Levy, Diane K., Jennifer Comey, and Sandra Padilla, *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, 2006, THE URBAN INSTITUTE METROPOLITAN HOUSING AND COMMUNITIES POLICY CENTER (discussing large scale development initiatives in St. Petersburg, FL; Sacramento, CA; Atlanta, GA; Los Angeles, CA; Seattle, WA; and Chicago, IL)
Nashville, including developers, architects, government officials and potential funders. Additionally, a Clinic student performed an extensive literature review on best practices in affordable housing development and interviewed several affordable housing developers around the country.

The Clinic played a critical role in the development process by distilling the information learned from the meetings, conducting research, and presenting the salient points in a way that made it easier for the Client to evaluate its options and make decisions. Students did in-depth analysis on typical development-related considerations, such as ownership versus rental, affordability restrictions, financing strategies and cost recovery at different AMI levels. Based on this analysis, the Clinic also drafted a proposal that was distributed to potential developers and funders, and helped secure a significant start-up grant from a department within Vanderbilt University.

To ensure that the development of the parcel of land represented the needs and interests expressed by a broad cross-section of residents, the Clinic worked with two graduate classes from Peabody College of Education and Development. The graduate students conducted extensive resident interviews to help the Client better understand residents’ concerns around the issue of gentrification and resident needs as they related to any development. These interviews confirmed that the top priority for residents was a pharmacy -- the closest one was three miles outside the neighborhood. The feedback from these interviews informed the client’s decision to build a pharmacy along with affordable housing units to address this tremendous unmet need.

**Conclusion**

This type of project provides students as well as pro bono attorneys tremendous opportunity to utilize and develop a range of lawyering skills. In addition to conducting legal research and writing memoranda and reports, which were major components of the project, students had to understand the complicated concepts and laws they were researching well enough to discuss such information with the client and other stakeholders involved in the project. Moreover, students learned how to facilitate meetings. They also gained significant public speaking experience through presentations to the client, the client’s board of directors and other residents, as well as by teaching educational workshops.

In a project such as this one that involves the challenges not only of group representation, but also of dealing with other residents and community activists, students learn how to build consensus among various groups and individuals, many of whom have different interests and perspectives despite sharing the same overall goal. Students also gain experience managing a project with multiple facets and demands. In addition, students are exposed to the myriad of challenges facing low-income communities and learn the vital role lawyers can play to help a community initiate change. This type of project also provides an opportunity for collaboration with non-legal players.
Finally, the value of these kinds of projects extends beyond the benefits gained by the particular neighborhood. They have the potential to become models for other neighborhoods and even possibly other cities experiencing similar change. In fact, a city-wide group of Nashville community leaders convened a group to turn the Clinic’s work on the Edgehill project into a model to be used by other Nashville neighborhoods.

*Laurie Hauber founded and directed the Community & Economic Development Clinic at Vanderbilt Law School from 2004 to the spring of 2009.*
The power of a PBLO partnership at Artscape Wychwood Barns and Evergreen/Brick Works

When PBLO Executive Director Lynn Burns attended the opening of the Artscape Wychwood Barns in November 2008, she didn’t expect to see a photo of her late grandfather on the wall. An artist in his Irish homeland, Burns’ grandfather, Francis O’Neill, had traded his craft for a career as a TTC streetcar driver upon moving to Toronto in the 1920’s.

“There’s something ironic,” says Burns, “about the fact that my grandfather’s photo is here.”

The historic Wychwood TTC streetcar repair barns are now a revitalized centre of arts, culture, environmental leadership, heritage preservation, urban agriculture and affordable housing. As the broker behind two law firm-community partnerships at the Barns, Burns played an important role in bringing the $22 million project to fruition.

Three years ago, she brokered the not-for-profit urban development organization, Artscape, to the partners at McCarthy Tétrault. With support from PBLO, the two inked an agreement that saw the national law firm advising on key issues related to the Artscape Wychwood Barns project, from financing deals to matters of governance.

“The kind of deals we’re doing are really out of the mold,” says Artscape Vice President of Operations, Celia Smith. “McCarthy’s was integral to the success of the project.”

The firm prepared Artscape’s multi-million dollar financing contract and helped to finalize lease agreements with many of the artists and non-profit arts and environmental organ-

izations occupying the 60,000 square foot facility. The McCarthy’s team is now assisting with revisions to the organization’s corporate bylaws.

Every contract, every agreement, provided free of charge.

Nick Saul understands the power of a partnership through PBLO. When the Executive Director of The Stop Community Food Centre wanted to open a satellite centre in the Artscape Wychwood Barns, he picked up the phone and called Lynn Burns who promptly brokered a partnership for The Stop with law firm Borden Ladner Gervais (BLG).

For the last few years, BLG partners Joanne Poianowski – who passed away unexpectedly last year – and Brennan Carroll, have supported The Stop in its mission to increase community access to healthy food.

Pojanowski and Carroll walked Saul through every step of The Stop’s lease agreement with Artscape in 2007 and then went on to help the charity craft its own sub-leans-
THREE-WAY PARTNERSHIP GIVES EAST SCARBOROUGH A HAND UP

Anne Gloger calls her first year of community development work with Heenan Blaikie a “three-way partnership” that also includes PBLO.

Pro Bono Law Ontario helped to pair the national law firm and East Scarborough Storefront, a collaborative of more than 35 agencies and community groups providing services, programs and expertise to the at-risk Kingston Galloway community. After just 12 months, Storefront Director, Gloger, says the three partners are “getting on like gangbusters!”

Heenan Blaikie has guided the non-profit through a major shift in governance that involved transferring all of the Storefront’s assets and staff to a new organization. They’re planning a series of legal seminars for local groups and are building a program to represent community members in court.

A small business incubator to help local residents become entrepreneurs is also in development.

As far as pro bono work goes, this experience really stands out,” says Carroll, a partner in BLG’s commercial real estate practice group. “It allowed me the freedom of time to think about things, to be creative and to approach things a little differently.”

“At the end of the day,” he says, “the project wouldn’t have unraveled as efficiently or with such attention to detail without the involvement of PBLO.”

“We’ve done something wonderful for the benefit of our city.”

Lynn’s grandfather would be proud.
Blakes legal team plays critical role behind the scenes at Evergreen/Brick Works Project

Every weekday evening, Peter MacGowan exchanges his suit for microfibre, hops on his bike and winds his way from the heart of Toronto’s Bay Street along the Don River Valley to his home in Hoggs Hollow. In the last year, though, his routine has changed. Now, when he approaches the floodplain just north of the channelled stretch of the Lower Don, he slows for a measure of what’s new at the former Don Valley Brick Works complex.

A partner at the 150-year-old powerhouse business law firm Blake, Cassels & Graydon LLP, MacGowan has both a professional and a personal interest in the 16 heritage buildings and adjacent 16-hectare public park – which 100 years ago yielded the clay bricks that built much of Toronto’s downtown core.

Last year, the corporate and finance lawyer was hand-picked to be a part of a special Blakes team providing pro bono law services to Evergreen, the non-profit organization behind – among other things – the revitalization of the Brick Works.

Along the way, he’s fallen in love with the charity’s vision.

“Without a firm like Blakes on their side, I doubt Evergreen could have closed the deal.”

“This is an organization that’s going to have a significant impact on a large number of people,” MacGowan predicts.

Seven years ago, Evergreen founder Geoff Cape looked at the derelict buildings and surrounding lands, and saw an international showcase for urban sustainability and green design. This year, construction began on the former brick works site. By next June, it will be an education centre, a demonstration garden and nursery, a farmer’s market, the site of heritage tours and workshops on clay-making, organic food and leading edge green design techniques, even a woodworking school.

Blakes’ role in realizing the Evergreen Brick Works has been “extraordinary” says Cape. In the five years since Pro Bono Law Ontario’s executive director Lynn Burns orchestrated the partnership, 85 Blakes partners, associates, law clerks and paralegals have worked to make the project a reality.

Realizing this dream has been a long, uphill climb, but one Cape swears he couldn’t have completed without Blakes and people like MacGowan and Blakes’ partners Kim Harle, Rob Collins and Peter Gilchrist.

“For years, we felt like we were chasing our tail,” said Cape. “Then we hit the tipping point and, suddenly, things started to fall into place.”

According to Harle, Blakes’ many contributors included members of the firm’s financial services, real estate, municipal law, corporate, tax, intellectual property and employment groups. “It just goes to show how varied and intense the work was,” she says.

Last fall, Evergreen finalized a 21-year lease agreement with the City of Toronto and the Toronto and Region Conservation Authority. In March of 2009, surrounded by the 134-
page lease agreement and more than 40 legal documents negotiated by Blakes on behalf of Evergreen, Cape inked a $12.5 million financing deal with RBC. The shovels went in the ground soon after.

And, remarkably, it all took place without Evergreen paying a cent in legal fees.

“This was a major undertaking,” says Glenn Garwood, manager of strategic policy and projects with the City of Toronto. “Without a firm like Blakes on their side, I doubt Evergreen could have closed the deal.”

Cape credits the entire Blakes team, but especially MacGowan, for helping to “quietly offer up the questions and clear answers” that broke through what most thought were definite deal breakers around the lease and financing.

In recognition of their community commitment, Blakes was awarded the 2008 National Law Firm Award, beating out more than 20 other major law firms with pro bono policies that count pro bono time as billable time – an achievement Burns credits in large part to Blakes’ work with Evergreen.

Now that the deal is signed and construction is underway, Cape and MacGowan pick up the phone a little less often, but the Blakes team remains on call to help with day-to-day legal matters and issues that may arise when Evergreen Brick Works opens next year.

“We’re in for the long haul,” says Harle.

Indeed. Peter Gilchrist – now retired from Blakes – has joined Evergreen’s Board of Directors.

And Peter MacGowan is biding his time until he can sink his teeth into the next Evergreen project. Meanwhile, he’s getting all the inspiration he needs in the view from his bike seat.

“Boy, is it ever rewarding to ride home and see the fruits of our labour take shape.”

“This is an organization that’s going to have a significant impact on a large number of people.”

Evergreen Brick Works lease and financing closing. Legal representatives for Evergreen, City of Toronto, Toronto and Region Conservation, and Royal Bank of Canada gather to celebrate.