The War Against Foreclosures: Combating Foreclosures and Mortgage Crisis in Communities of Color

KEYNOTE SPEAKER
Congressman Elijah E. Cummings
Representative, Seventh Congressional District in Maryland

Renaissance Baltimore
Harborplace Hotel
Baltimore Salon B
202 East Pratt Street
Baltimore, MD
Sunday, July 31, 2011
3 PM - 5 PM
The materials contained herein represent the opinions of the authors and the editors and should not be construed to be those of either the American Bar Association or the ABA Coalition on Racial and Ethnic Justice unless adopted pursuant to the bylaws of the Association. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

Copyright 2011 American Bar Association
THE NATIONAL BAR ASSOCIATION
THE AMERICAN BAR ASSOCIATION
10CORE™ LAW SOCIETY STUDENT ORGANIZATION

PROUDLY PRESENT

FORECLOSURE PLANNING COMMITTEE CO-CHAIRS

Professor Florise Neville-Ewell
10CORE™ Law Society Student Organization
Thomas M. Cooley Law School
2630 Featherstone
Auburn Hill, MI 48326
248/751-7800
nevillef@cooley.edu

Ellen E. Douglass
National Bar Association
Vice President of Sections & Divisions
Law Office of Ellen E. Douglass
53 W. Jackson Blvd.
Suite 1009
Chicago, IL 60604
312/461-0111

Rachel Patrick
Director
American Bar Association
Coalition on Racial and Ethnic Justice(COREJ)
321 North Clark Street
Chicago, IL 60654
Rachel.Patrick@americanbar.org
312/988-5408
The American Bar Association Coalition on Racial and Ethnic Justice
The National Bar Association
The 10CORE™ Law Society

Present

“The War Against Foreclosures: Combating Foreclosures and the Mortgage Crisis in Communities of Color”

Table of Contents

Welcome Letter ................................................................. ....... Tab 1

List of Sponsors (See Special Handout)................................. ....... Tab 2

Background Information on ABA Coalition on Racial and Ethnic Justice (COREJ) and List of Members ....................... ....... Tab 3

National Bar Association Background Information ............... ....... Tab 4

Overview of 10CORE™ Commandments of Real Estate Law Society Student Organization, Thomas M. Cooley Law School ................................................................. ....... Tab 5

List of Panelists and Contact Information.............................. ....... Tab 6

Moderator: Professor Florise R. Neville-Ewell, Thomas M. Cooley Law School
Keynote Speaker: Congressman Elijah E. Cummings

Panelists:
- Rawle Andrews, Jr., Regional Vice President, Mideast Region States, American Association of Retired People (AARP)
- Peter Holland, Professor, University of Maryland School of Law
- Donna B. Hurley, President/Executive Director, Housing Options & Planning Enterprises, Inc. (H.O.P.E.)
- Kim M. Keenan, General Counsel, National Association for the Advancement of Colored People (NAACP)
Yolanda D. McGill, Senior Counsel, Fair Housing and Fair Lending Project, Lawyers’ Committee for Civil Rights Under Law
Phillip Robinson, Executive Director, Civil Justice, Inc.
Vicki King Taitano, Director, Foreclosure Legal Assistance Project, Maryland Legal Aid Bureau

10CORE™ Student Biographies (Student Workshop Immediately Following Town Hall Forum)

Articles and Power Point Presentation ........................................... Tab 7

Under a Shadow: Dealing with the Threat of Foreclosure
Vicki Taitano, Director, Foreclosure Legal Assistance Project, Maryland Legal Aid Bureau

Maryland’s Foreclosure Mediation Law, Home Owners Preserving Equity (MDHOPE)

“Prevent Loan Scams,” Yolanda D. McGill, Lawyers’ Committee for Civil Rights Under Law

“Residential Real Estate Foreclosure”, Scott W. Reed, Esq. Cozen O’Connor, Attorneys at Law, PC

“How to Build Practice With Pro Bono,” Professor Nelson P. Miller Thomas M. Cooley School of Law
July 31, 2011

Dear Conference Participant:

On behalf of the National Bar Association (NBA), ABA Coalition on Racial Ethnic Justice (COREJ), the 10COREtm Real Estate Law Society Student Organization (Thomas M. Cooley Law School), and all of our illustrious co-sponsors (See List of Sponsors), we wish to extend our sincere note of thanks to you for participating in this significant symposium. We are excited about the dynamic and dedicated keynote speaker, Congressman Elijah Cummings and panelists that will share with you their experiences strategies and recommendations for addressing one of the most devastating crises confronting the country today.

We are honored that Professor Florise Neville-Ewell is spearheading this significant and cutting-edge panel presentation, and that some of the student participants from the 10COREtm program at Cooley Law School are in attendance today. Professor Neville-Ewell has designed the panel to address the issues from an educational perspective for the community, lawyers and law students.

Thank you for your participation, interest and concern in these crucial issues that are confronting the entire nation. With your continued support and assistance, we will collectively and individually assist thousands of families who are confronted with the challenges of foreclosure and the mortgage crisis.

Sincerely,

David A. Perkins
Chairperson
ABA Coalition on Racial & Ethnic Justice (COREJ)
TAB 3
A presidential Task Force on Minorities in the Justice system was created in 1992 in the aftermath of the Rodney King disturbances. Shortly thereafter, a report was issued with recommendations by the Task Force. The Task Force was re-named the Council on Racial and Ethnic Justice (now the Coalition or COREJ). The Coalition was designed to implement the recommendations and develop partnerships among community groups, civil rights organizations, businesses, religious organizations, and bar associations for the purpose of eliminating racial and ethnic bias in the justice system. Its primary goal is to serve as a catalyst for eliminating racial and ethnic bias in the justice system with a focus on systemic change.

COREJ (1) assists with the development of educational programs; (2) provides public forums for dialogue between legal institutions and non-legal groups; and (3) provides technical assistance and advice on how to implement specific programs, strategies, and partnerships that eliminate racial and ethnic bias.

Since its inception, COREJ has been on the cutting edge of social justice issues. It has focused on a number of substantive and diverse issues such as racial profiling, access to the justice system, overrepresentation of juveniles of color, indigent defense, racial profiling and the war on terrorism, voting disenfranchisement and the impact of technology, election protection, injustices and discrimination in Tulia, Texas and restoring justice and equity by providing strategies for disaster preparedness and response that reduce patterns of discrimination and unfairness in the delivery of disaster aid and services e.g. Katrina Project.

RECENT PROGRAMS

- Combating Foreclosures and the Mortgage Crisis in Communities of Color (February 12, 2011, Atlanta, GA)
- Stop Teen Violence: Time To Deliver (August 7, 2010, Golden Gate Law School, San Francisco, CA)
- Stop Teen Violence: Time To Deliver (May 3, 2010, Youthville Detroit, Detroit, MI)
- Stop Teen Violence: Time To Deliver (November 20, 2009, Chicago State University, Chicago, IL)

SIGNIFICANT PROJECTS

- **Overrepresentation of Juveniles of Color in the Juvenile Justice System**
  After an alarming number of national studies and reports revealed evidence that there is an overrepresentation of juveniles of color in the juvenile justice system and the justice system, the Coalition implemented a two-prong attack on the problems confronting juveniles of color. The first prong focuses on strategies that prevent young people of color from being trapped in the justice system; and the second prong focuses on strategies that divert young people of color and prevent their initial entrance into the juvenile justice system. A complete listing of juvenile justice programs sponsored by COREJ is attached.

- **Election Protection Project**
  COREJ developed a partnership in conjunction with the Lawyers’ Committee and five ABA sections, divisions and entities to remove barriers to the electoral process for citizens of color who sought to participate in the 2004 election. COREJ, along with the Section of Individual Rights & Responsibilities and the Election Law Committee renewed their partnerships for the 2008 Elections and broadened the scope of the Project.
The goals of the 2008 Election Protection Project were: (1) Safeguard voters’ rights before, during and after Election Day by giving voters the information and resources they needed to cast meaningful ballots; and (2) Provide a comprehensive support system for eligible voters across the country that included support for registration programs, developing voter education materials, and providing direct legal assistance to protect the rights of voters. A primary goal for COREJ was to train volunteer lawyers who worked with voters on a national and local level to monitor polling places, educate voters, facilitate dialogues with state and local election officials, provide legal support to poll monitors and help answer the Lawyers’ Committee Hotline.

The three primary ABA Partners for the Election Project developed a plan for recruiting volunteer lawyers and law students and the major activities began in June 2008. An Election Protection website was launched on the ABA website.

- **Katrina Project**
  The goal of the project was to educate, conduct outreach and coordinate resources and services across the country to assist those survivors that received disparate treatment in the midst and aftermath of Hurricane Katrina. These goals were accomplished by holding a national conference and three CLE programs, conducting outreach, and publishing a Report.

**NATIONAL CONFERENCES**

- **Third National Conference – “Making the Invisible Visible: A Dialogue About Lessons Learned in the Aftermath of Katrina”**

  **Conference Overview:** The Coalition brought together approximately 200 judges, lawyers and their clients, health care workers, social workers, doctors, psychiatrists, psychologists, high school, college and law students, community groups, religious organizations, public and private leaders, survivors, responders and others who have devoted time to assisting victims of Katrina. The primary goals of the Conference: (1) conduct a productive dialogue among the survivors, planners (commissioners), and the participants; (2) produce a Report which identifies the type of problems that might emerge due to race and ethnicity, how to avoid inequities based on race and ethnicity, and how to mitigate the problems; and (3) assist the survivors of Katrina with the rebuilding of their lives, restore justice and provide equity and respect to those victims that have been treated unjustly.

  **Educational Programs:** Three successful panel presentations have been presented (1) ABA Midyear Meeting in Chicago, 2006 titled “Equity for Racial & Ethic Survivors of Katrina;” (2) a jointly sponsored program with the National Bar Association as a Webcast Program “Hurricane Relief Seminar,” March, 2006 in Chicago; and (3) “Surviving Together; Healing Together” COREJ convened this special panel of experts in New Orleans to provide an in-depth status report of the communities that suffered disproportionately economically, legally, educationally and medically from Hurricane Katrina.

  **Report:** The Final Report of the Conference contains specific recommendations from the speakers, participants and survivors. The Report titled “Making the Invisible Visible: A New Approach to Disaster Planning and Response,” contains an analysis of issues ranging from communications and language skills, to resource allocation, to pre-existing economic and social inequities. A number of excellent recommendations were received from the Conference. The recommendations were included in the Report that was issued in August 2007.

- **Second National Conference on the Impact of Race and Ethnicity on the Justice System**

  In March 2002, the Coalition held a highly successful conference in Baltimore. The conference was diverse, intergenerational, interactive and action-oriented. Recommendations from the Conference were used as blueprints for COREJ programs and projects. A report is available on the Conference.
First National Conference on the Impact of Race and Ethnicity on the Justice System
In Los Angeles, CA 1999, after holding two "think tank" meetings, COREJ convened an extraordinary conference. Two reports are available: Report on the Impact of Race and Ethnicity on the Justice System provides a brief overview; and the Draft of the National Conference Proceedings with Recommendations.

Several major follow-up projects were developed from the 1999 conference:

1. Enhancing Access to the Justice System through Technology: Would Technology Have Changed the Outcome of the Vote in Florida?
2. Data Collection Project on Color/Racial Profiling: The Tulia, Texas Project
3. Friends of the Council

Honorable David A. Perkins, Chairperson
Rachel Patrick, Director
Rachel.Patrick@americanbar.org
Website: http://www.americanbar.org/groups/diversity/racial_ethnic_justice.html
2011-2012 COALITION ON RACIAL & ETHNIC JUSTICE

Chairperson
Honorable David A. Perkins
Wayne County Circuit Court
Detroit MI

Special Advisor
Dr. Gregory S. Prince, Jr.
Senior Consultant
Pathways to College
Norwich, VT

Members
Little Fawn Boland
San Francisco, CA

Jordi de Llano
Office of Institutional Integrity
Inter-American Development Bank
Washington, D.C.

Hon. Michael B Hyman
Domestic Relations Division
Chicago, IL

Basheera James
Cook County States Attorney
Chicago, IL

*Nathaniel R. Jones
Blank Rome LLP
Cincinnati, OH

Jorge A. Mestre
Rivero Mestre
Coral Gables, FL

*Jack B. Middleton, Esq.
McLane Graf et al
Manchester, NH

Katherine Fernandez Rundle
State Attorney’s Office
Miami, FL

David C Weiner
Charna E Sherman Law Offices Co. LPA
Cleveland, OH

Bettina Wing-Che Yip
Del Monte Foods Company
San Francisco, CA

Board Liaison
*Sandra R. McCandless
SNR Denton
San Francisco, CA

Diversity Center Liaison
Walter L. Sutton Jr.
Walmart
Legal Administration and External Relations
Bentonville, AR

Staff
Rachel Patrick
Staff Director
ABA Coalition on Racial & Ethnic Justice
321 N. Clark Street
Chicago, IL 60654
P: (312) 988-5408 F: (312) 988-5647
E: Rachel.Patrick@americanbar.org

Deidra Franklin
Program Assistant
ABA Coalition on Racial & Ethnic Justice
321 N. Clark Street
Chicago, IL 60654
P: (312) 988-5409 F: (312) 988-5647
E: Deidra.Franklin@americanbar.org

7/22/2011

*New Member
Signature Programs

MLK Advocacy Competition

The Dr. Martin Luther King, Jr. Drum Major for Justice Advocacy Competition is a contest designed to motivate high school students to excel in education. The Competition encourages students to express their views on a pre-selected topic and focuses on the ability of the students to communicate orally and in writing. MORE

Crump Law Camp

The National Bar Association Crump Law Camp was established by the National Bar Association to provide students entering the ninth through eleventh grades (between the ages of 14 and 17) with an introduction to the American judicial system. MORE

Expanding the Pipeline

This pamphlet is intended to present you with a brief summary of certain rights and responsibilities which you gain upon your 18th birthday. It is not providing you with legal advice. You should contact an attorney to represent you when needed for matters contained herein. MORE

NBA Mentoring Program

Sign Up Today to Become or Request an NBA Mentor. MORE

Connect with us:  

NATIONAL BAR ASSOCIATION
1225 11th Street, NW Washington, D.C. 20001
(202) 842-3900 Phone - (202) 289-6170 FAX
Legions of African-American lawyers affiliated with the NBA ushered in the rule of law through the turbulent 1920's and 1930's. R.D. Evans, for example, who later became a member of the NBA, tried the first case in Waco, Texas to prevent the Democratic Party from forbidding "colored people" to vote in election primaries in 1919.

From the 1920's through the 1950's, African-American lawyers such as the Honorable James A. Cobb, T. Gillis Nutter, and Ashbie Hawkins fought the famous segregation case of Louisville, and the Covenants case of The District of Columbia. Early NBA pioneers S.D. McGill, R.P. Crawford, and J.L. Lewis fought to have sentences of execution stayed in the Florida case popularly referred to as the "Four Pompano Boys." Wherever there was a fight to wage in defense of the rights of Blacks and poor people, the NBA was there.

In 1940, when the number of African-American lawyers barely exceeded 1,000 nation wide, the NBA attempted to establish "free legal clinics in all cities with a colored population of 5,000 or more." The NBA was ahead of the 'War on Poverty' programs of the 1960's, which gave birth to federal legal aid to the indigent. Members of the NBA were leaders of the pro bono movement at a time when they could least afford to provide free legal services and before poverty law became profitable.

When the Supreme Court outlawed school segregation in Brown v. Board of Education the NBA was only 25 years old. This decision culminated a long struggle by African-American lawyers. Thurgood Marshall, the first African-American United States Supreme Court Justice, and United States District court Constance Baker Motley, the first African-American female federal judge, are two outstanding jurists who helped make Brown v. Board of Education a pivotal case in American Civil Rights history. Through continuing service, the NBA has become known as America's legal conscience.

For the NBA, 1978 - 1979 proved to be the "Year of Affirmative Action." In the wake of Bakke v. Regents of the University of California, the organization addressed pressing issues laid bare by this momentous decision. The NBA gained international recognition for efforts on behalf of the disenfranchised and politically oppressed people of the world.

March of 1981 saw the first NBA Legislative Conference. The 1981 - 1982 bar year commenced on a historical note: Arnette R. Hubbard assumed leadership, making her the first woman president of a major bar association. In May 1982, the NBA named its mid-year dinner in honor of Gertrude E. Rush, the organization's only woman co-founder. The Gertrude E. Rush Award Dinner past honorees include: Ret. Gen. Julius Becton; Thomas Berkley, Esq., publisher of California's Post Newspaper; Hon. Jane Bolin, the nations first African American woman judge; poetess Gwendolyn Brooks; Hon. Maxine Waters; and Hon. L. Douglas Wilder.

In 1986, the NBA Hall of Fame was inaugurated by then President Fred D. Gray, Sr. to honor those lawyers who have been licensed to practice for forty years or more and who have made significant contribution to the cause of justice. Several prominent NBA members have been inducted into the Hall of Fame over the past few years. These inductees include: Hon. Louis Stokes; Cora T. Walker, Esq.; Hon. William Cousins, Jr.; and Hon. L. Clifford Davis.

The first Annual Wiley A. Branton Award Luncheon and Issues Symposium was held in Little Rock, Arkansas in 1989. The Symposium, established as a tribute to Wiley A. Branton, a stalwart in the Civil Rights arena, was first held in his hometown. Since 1989, the NBA has used this Symposium as an avenue to discuss pressing social, legal, and political issues affecting our communities. Wiley A. Branton Award Luncheon honorees include: Hon. Dennis W. Archer; Hon. James E. Clyburn; Marilyn Crawford; Fred D. Gray, Esq.; Hon. Eugene Hamilton; Dr. Dorothy Irene Height; Hon. Earl F. Hillard; Elaine Jones, Esq.; Tom Joyner; and Hon. Janet Reno; and H.T. Smith, Esq.

In 1996, the NBA submitted comments before the Federal Communications Commission (FCC) in the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy
Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines. 
Also in 1976, the NBA submitted an amicus curiae brief in Sloan et al v. United States of America 
(Docket No. 96-8145) to the United States Court of Appeals for the Eleventh Circuit. The focus of this 
case was the racially disparate impact of the enforcement of the federal "cocaine base distinction."

At present, the NBA is the nation's oldest and largest national association of predominately African- 
American lawyers and judges. It has 84 affiliate chapters throughout the United States and affiliations 
in Canada, the United Kingdom, Africa and the Caribbean. It represents a professional network of over 
20,000 lawyers, judges, educators and law students.
TAB 5
MEMORANDUM

TO: Rachel Patrick, ABA

FROM: Professor Florise R. Neville-Ewell

RE: Executive Summary of the Ten Commandments of Real Estate Law Society Student Organization (10CORE™)

DATE: February 7, 2011

OVERVIEW OF 10CORE™

The Ten Commandments of Real Estate Law Society Student Organization has one goal, educating the public about real estate issues. 10CORE™ seeks to accomplish this goal through three dimensions, as reflected in its Scholarship, Oral Advocacy and Educational Outreach, and Computer Donations committees reflected below.

In addition to its primary goal, which is particularly needed given the dire state of our country’s real estate market, additional benefits exist; namely

- it encourages lawyers and law students to recognize the importance of pro bono activities;
- through synergy created with lawyers and law students working together, projects are more likely to continue and get completed;
- through joint activities, lawyers will simultaneously mentor students;
- by coordinating activities, supervised students will expand the network of information available to the public through existing organizations within the community;
- by using the web as a medium, it will make information accessible to those who may never connect to outreach efforts; and
- by translating information provided to the public, it will recognize and celebrate the diversity of our communities.

ROLE OF 10CORE™ IN THE LAW SCHOOL ENVIRONMENT

As structured, 10CORE™ can exist in conjunction with existing clinical programs (designed to help the public combat real estate issues) or it can exist in law schools which lack such programs. In the latter case, since students, along with faculty, spearhead activities, the organization can thrive without funding typically needed for clinical programs.

My colleague, Professor Johnson, and I also propose extending 10CORE™ to include a post graduate clinic for recent graduates who, with supervision, can use their skills to help the public during these tumultuous times. Essentially, this clinic would indirectly assist understaffed legal aid offices who work diligently to assist people with real estate challenges.

Attachment
ARTICLE I

SECTION I — Purpose

A. 10CORE’s primary educational mission is to provide the community with practical and comprehensive information about real estate issues.

B. Specifically, the primary educational mission shall be accomplished through work completed by the following three committees:

1. SCHOLARSHIP: 10CORE’s mission shall be accomplished via the publication of articles written by attorneys with the assistance of law students who have completed Property I and II (with a B average in those courses or with approval from the faculty advisor). The Vice President of this committee shall work with the faculty advisor to ensure that students are matched with outside lawyers who address timely issues involving homeowners, investors, nonprofit developers and developers. Articles may be published on the 10CORE.COM website (“Website”) as resources for the community at large;

2. ORAL ADVOCACY and EDUCATIONAL OUTREACH: Although participants will not provide legal advice, lawyers, supervised students, government officials, and recognized experts will provide presentations about relevant and timely real estate issues through scheduled "town-hall" gatherings. The Vice President of this committee shall schedule sessions and invite people from the community and local organizations.

3. COMPUTER DONATIONS: To help close the digital divide that inhibits people from gaining access to information, the Vice President of this committee shall spearhead locating businesses to donate computers to those in need. This committee will ultimately distribute computers within the community, with a special focus on assisting families who lack computer access.

C. Given its purpose, and to realize its goals, 10CORE will also welcome distinguished guest speakers involved in the real estate industry to enhance the learning environment at the law school and within the community. Speakers may include local attorneys, governmental officials and other recognized real estate professionals.

1 10CORE™ is a trademark of NEVILLE COMMUNICATIONS CORPORATION (NCC). NCC has granted a royalty free license to The Ten Commandments of Real Estate Law Society for this sole purpose.
TAB 6
SPEAKERS ROSTER

DISCLAIMER: PRIVACY NOTICE

The material contained in this American Bar Association Town Hall Program Book listing is protected by copyright and is solely intended for the individual and private use of ABA members in a manner that is consistent with the ABA's mission, goals, and activities. All other use is strictly prohibited without prior written authorization from the ABA. Prohibited use includes but is not limited to the copying, renting, leasing, selling, distributing, transmitting or transfer of all or any portions of the material, or use for any other commercial and/or solicitation purposes of any type, or in connection with any action taken that violates the ABA's copyright. The material is not to be used for any mass communications and may be used only for one-to-one member communication. For information concerning appropriate use of the material, contact the ABA Service Center at 1.800.285.2221.

Keynote Speaker

Congressman Elijah E. Cummings
Representative, Seventh Congressional District in Maryland
1010 Park Avenue, Suite 105
Baltimore, MD, 21201

Moderator

Florise R. Neville-Ewell
Associate Professor
Thomas M. Cooley Law School
2630 Featherstone
Auburn Hill, MI 48326
Email: nevillef@cooley.edu

Presenters

Rawle Andrews, Jr.
Regional Vice President – Region 2 AARP
601 E. Street, N.W, Suite B8-55-0
Washington, D.C.20049
Email: RAndrews@aarp.org

Peter Holland
Visiting Law School Assistant Professor
University of Maryland School of Law
500 W. Baltimore Street,
Baltimore, MD 21201-1786
(410) 706-4256
Email: pholland@law.umaryland.edu

Donna B. Hurley
President/Executive Director
Housing Options & Planning Enterprises, Inc. (H.O.P.E.)
6188 Oxon Hill Road, Suite 700
Oxen Hill, MD 20745
(301) 567-3330
Email: dhurley@hopefinancial.org

Kim M. Keenan
General Counsel
NAACP Legal Department
4805 Mount Hope Drive
Baltimore, MD 21215
(410) 580 5791
Email: mlumley@naacpnet.org

Yolanda D. McGill
Senior Counsel
Fair Housing and Fair Lending Project
Lawyers’ Committee for Civil Rights Under Law
1401 New York Avenue NW Suite 400
Washington, DC 20005
(202) 662-8379
Email: ymcgill@lawyerscommittee.org

Phillip Robinson
Executive Director
Civil Justice, Inc.
520 W. Fayette Street, Suite 410
Baltimore, MD 21201
(410) 706-0174
Email probinson@civiljusticenetwork.org

Vicki King Taitano
Director
Foreclosure Legal Assistance Project
Maryland Legal Aid Bureau
6811 Kenilworth Ave. Suite 500
Riverdale MD 20737
(301) 560-2160
Email: VTaitano@mdlab.org
Congressman Elijah E. Cummings

Congressman Cummings has dedicated his life of service to uplifting and empowering the people he is sworn to represent. He began his career of public service in the Maryland House of Delegates, where he served for sixteen years and became the first African American in Maryland history to be named Speaker Pro Tem. Since 1996, Congressman Cummings has proudly represented Maryland’s 7th Congressional District in the U.S. House of Representatives.

Congressman Cummings often says that our children are the living messages that we send to a future we will never see. In that vein, he is committed to ensuring that our next generation has access to quality healthcare and education, clean air and water, and a strong economy defined by fiscal responsibility.

Congressman Cummings currently serves as the Ranking Member of the Committee on Oversight and Government Reform. As the main investigative committee in the House of Representatives, Oversight and Government Reform has jurisdiction to investigate any federal program and any matter with federal policy implications. As the Committee’s Ranking Member, Congressman Cummings fights to hold the Presidential Administration to a high standard of excellence and to ensure efficiency and effectiveness in the actions of the government of the United States. He also seeks to identify appropriate reforms that prevent waste, fraud and abuse and that ensure government programs meet the needs of the American people.

Congressman Cummings has consistently been an advocate for the rights of those facing foreclosure and holds regular Foreclosure Prevention Seminars for people who are at risk of being foreclosed upon. The homeowners are matched with lenders to work out loan modifications on site to prevent foreclosure. He began the 112th Congress by requesting that the first hearing in the House Committee on Oversight and Government Reform investigate the causes of, and potential solutions to, the foreclosure crisis.

Congressman Cummings serves on numerous boards and commissions. He is spearheading an effort to strengthen the Maritime curriculum at the Maritime Academy in Baltimore. He is the Chairman of the Maritime for Primary and Secondary Education Coalition (MPSEC). He also serves on the U.S. Naval Academy Board of Visitors, the Morgan State University Board of Regents, the Baltimore Aquarium Board of Trustees, and the Baltimore Area Council of the Boy Scouts of America Board of Directors. He is an honorary Board member of the SEED School of Maryland, KIPP Baltimore Schools, and the Baltimore School for the Arts.
Rawle Andrews, Jr.

Rawle Andrews Jr. is the regional vice president for AARP’s State and National Group. His duties include providing leadership and oversight of AARP’s operations and activities in the states of Michigan, Delaware, Indiana, Kentucky, Maryland, New Jersey, Ohio, and Pennsylvania. Previously, Mr. Andrews was the senior state director for AARP in Maryland and, before that, managing attorney of AARP’s Legal Counsel for the Elderly. He was in private practice for 16 years before joining AARP in January 2007. Mr. Andrews is a member of the District of Columbia Bar (2006 Pro Bono Lawyer of the Year Award), the Pennsylvania Bar, Phi Delta Phi International Legal Fraternity, and the Bar Association of the District of Columbia (board of directors). He is also active on several civic panels, including the Maryland Long-Term Care Reform Work Group; the Maryland Baby Boomer Initiative Council; and the Multi-Disciplinary Urban Gerontology Advisory Board at Morgan State University, as well as AARP’s State Advocacy Task Force and the Multi-State Utilities Campaign. A frequent lecturer on consumer protection and elder law issues, Mr. Andrews holds adjunct professorships at Georgetown University and Howard University School of Law. He also authored a book review on the American Bar Association’s "Legal Guide for Americans Over 50" and he is a chapter author of "Michigan Law of Damages and Other Remedies" (ICLE 3d ed.).

Florise R. Neville-Ewell

Florise R. Neville-Ewell is an Associate Professor of Law at Thomas M. Cooley Law School. At Cooley, she teaches Contracts and Ethics. Professor Neville-Ewell has published articles for academia and the public. As an academic, her most recent article awaiting publication is entitled *A Slice of History Underlying the Current Financial Pandemic: Black Women and Property 1800-1850 - Black Women as Property*. Sequels to the article are in progress. For the lay community, Professor Neville-Ewell has also published multiple articles regarding real estate issues in publications sponsored by Charter One Bank. In conjunction with being a faculty advisor for the Ten Commandments of Real Estate Law Society at Cooley Law School (Real Estate Law Society), a student organization dedicated to educating the public through outreach and articles released through 10CORE.COMTM, Professor Neville-Ewell continues to also write for the public.

Before joining the faculty at Cooley, Professor Neville-Ewell started her career as a law clerk for the Honorable Julian A. Cook, Jr., a federal District Court judge in the Eastern District of Michigan. A native Chicagoan, she returned to Chicago after the clerkship to work as an associate at Sidley and Austin. After marrying the Honorable Edward Ewell, Jr., she returned to Michigan to work as an associate at Honigman Miller and later joined the faculty at Wayne State Law School where she taught Property and Real Estate Finance. During the interim period, after teaching at Wayne State but before joining the Cooley faculty, she worked as General Counsel for the Detroit Housing Commission and as Chief of Contracts for the City of Detroit Law Department; and, in private practice, as counsel for multiple nonprofits, churches, private entities, and municipalities involved in residential, affordable housing, and commercial real estate development projects.
A frequent speaker, President Obama’s Financial Fraud Enforcement Task Force recently selected Professor Neville-Ewell to participate as a panelist at a Mortgage Fraud Summit. In addition, she periodically speaks on a radio program sponsored by the Detroit Area Agency on Aging, was once responsible for providing weekly commentary about mortgage issues on a radio program sponsored by Comerica Bank, and has spoken at events sponsored by AARP, the NAACP, the Michigan Attorney General's Office, and Fifth Third Bank.

Professor Neville-Ewell has received multiple awards and acknowledgments for her work and pro bono projects. Most recently in 2010, Cooley law students were instrumental in helping her become the recipient of the Great Deeds Award because of her commitment to serving others and the Equal Access to Justice Award because of her commitment to improving justice for all. As a result of work done with the Real Estate Law Society in 2010, Michigan State Bar President, Charles R. Toy and United States Attorney (for the Eastern District of Michigan) Barbara L. McQuade acknowledged her work and the student organization’s significance. Specifically, U.S. Attorney McQuade stated “[this] program . . . will make a big difference not only in the lives of the citizens you educate, but in the lives of law students who will see the value of public service.” In connection with select prior projects, the State of Michigan issued a Moment of Tribute in 2006 (for work done as an appointed member and chairperson of the Michigan State Housing Development Authority). In 1995, former City of Detroit Mayor Dennis W. Archer gave her a Making It Better Proclamation for work done on behalf of the city.

Professor Neville-Ewell received her B.A. cum laude and J.D. from Yale Law School in 1981 and 1984, respectively. She and her husband have two children, Edward Neville Ewell and Simone-Alyse Ewell.

**Peter Holland**

Peter Holland received his B.A. in Philosophy from Bard College, M.A. in Liberal Arts from St. John's College of Annapolis, and J.D. from University of Maryland School of Law, from which he received the Public Service Award. He concentrates on Consumer Rights cases such as Auto Dealer Fraud, Wrongful Repossessions, Mortgage Fraud, Predatory Lending, Foreclosure Rescue Scams, Debt Collection Harassment and Consumer Class Actions.

For the years 2008, 2009 and 2010, he was voted by his peers to be a "Maryland Super Lawyer" in the field of Consumer Law.

**Donna B. Hurley**

Housing Options & Planning Enterprises, Inc. was founded by Donna B. Hurley in 2005. Our mission is to provide financial literacy and housing options, through counseling, education, and development. Donna serves on numerous committees, such as:
Leadership group for Capital Area Foreclosure Network (CAFN). Serving as a liaison between CAFN, the Maryland Housing Counselors Network and the Prince George's Homeownership Coalition. The Leadership Group help sets the direction of CAFN but does not deal directly with governance issues which are handled by COG and the Nonprofit Roundtable.

Donna is Board Member for The Coalition of Homeownership Preservation in Prince George's County.

Vice Chairman of Maryland Housing Counselors Network Board of Directors.

The transition to an HUD-approved counselor was easy due to over twenty-five years of real estate experience. She is active with Prince George’s County Association of Realtors, Maryland Association of Realtors and the National Association of Realtors, as an instructor and serves on several committees; including Housing Affordability and Education Committees. Donna saw the need to bridge the gap of awareness between realtors, nonprofits and the government for the communities we all serve in the housing industry by working together as a team to find solutions!

**Kim Michele Keenan**

Kim M. Keenan is a native of Buffalo, New York. She is a graduate of Georgetown University's School of Foreign Service and the University of Virginia School of Law and a former member of the University of Virginia Law Alumni Council. After law school, she served as the law clerk to the Honorable John Garrett Penn in the United States District Court for the District of Columbia. She is currently the General Counsel of the National Association for the Advancement of Colored People (“NAACP”). Prior to joining the NAACP, she was the principal of the Keenan Firm in Washington, D.C. where her practice has focused on complex medical malpractice litigation, mediation and arbitration, litigation consulting, and public speaking. Prior to that she served in the litigation practices of two nationally recognized law firms for more than eighteen years. She was recently honored as a Washington, D.C. Super Lawyer and is recognized as a Top Lawyer by Washingtonian Magazine. In May 2007 the Women’s Bar Association named her “Woman Lawyer of the Year” for her contributions to the profession. In 2010, the American Bar Association named her a “Rebel In The Law” for her service to the profession. She is currently the Immediate Past President of the District of Columbia Bar, the second largest jurisdictional bar in the country. Although she was the 38th President of the organization, her service marked the 8th time that a woman has served as president.

Her career demonstrates a strong commitment to important issues affecting women and people of color, public service, and improving the legal profession. Ms. Keenan served as the sixty-second President of the National Bar Association (NBA), the oldest and largest bar association of lawyers of color in the world. During her tenure as President, the NBA deployed thousands of lawyers throughout the nation to educate voters regarding new voting laws. The Maryland Bar Foundation awarded her their Professional Legal Excellence Award for her national effort to provide nonpartisan voter education. She is
also a Past President of the Washington Bar Association, one of the oldest and largest affiliates of the NBA which was founded in the same year of the NBA.

In 2006, Ms. Keenan was recognized by Girls Inc. for her work in law, policy, and as a mentor to women. She is a member of the Leadership Metropolitan Washington Class of 2000 and was elected a Fellow of the American Bar Foundation in 2001 in recognition of her distinguished professional service. She is a nationally recognized lecturer on various legal topics and has spoken to numerous organizations including the Association of Trial Lawyers of America, the NAACP, the National Urban League, and the Maryland State Bar Conference of Bar Presidents.

Ms. Keenan was a regularly featured “attorney” on the first season of Fox’s “Power of Attorney” television show. She has been a commentator for Fox News and has appeared on Fox’s legal program “Dayside.” In July 2003, she served as a Guest Host on CNN’s Sunday Morning Legal Show “Attorney-At-Law.” She has also appeared on C-SPAN, Court TV, Fox News and numerous radio programs.

Yolanda D. McGill

Yolanda D. McGill is Senior Counsel in the Fair Housing and Fair Lending Project of the Lawyers’ Committee for Civil Rights Under Law in Washington, D.C. As Senior Counsel she manages the substantive portion of the Lawyers’ Committee’s work with respect to the Loan Modification Scam Prevention Network, coordinates overall management of the program with the Lawyers’ Committee’s Legal Mobilization Project and facilitates the Lawyers’ Committee’s engagement with federal, state and local authorities and stakeholders on mortgage rescue scams and related anti-fraud and consumer protection issues.

Ms. McGill attended University of Michigan Law School as a Clarence S. Darrow Scholar and graduated in 1999. After graduation she associated with Akin Gump Strauss Hauer & Feld LLP in Washington, D.C. Upon her selection as a Robert Bosch Fellow Ms. McGill left D.C. for Berlin, Germany where she was a visiting colleague at Deutsche Bank (Special Credit Management Division for the former East Germany) and CMS Turnaround Consulting, advising German bankers and turnaround consultants on corporate reorganizations, workouts and bankruptcy practice under U.S. law. Ms. McGill expanded her practice beyond debtor/creditor issues into banking and consumer credit practices when she joined the Center for Responsible Lending (CRL) in 2003, where she soon became CRL’s first Senior Policy Counsel. After four years with CRL, Ms. McGill returned to Berlin in 2007 to work with Wilmer Cutler Pickering Hale and Dorr LLP, until the outbreak of the subprime lending crisis compelled her to return to legal practice in the U.S. Ms. McGill resides in Raleigh, North Carolina where she is a long-time roller derby announcer for the Carolina Rollergirls, as well as a charter board member and the first General Counsel of the Raleigh Public Record, the capital city’s on-line community newspaper.
Phillip Robinson

Phillip Robinson is the Executive Director of Civil Justice Inc., a Maryland based public interest legal association which provides services to Maryland consumers. Civil Justice has been recognized as a model program bringing together a network of nearly Maryland solo and small firm attorneys interested in doing well while doing good.

Phillip was recognized as the 2008 Denis J. Murphy Maryland Consumer Advocate of the Year by the Maryland Consumer Rights Coalition and a Maryland "Super Lawyer" for 2008-2009 for his work as a leading public interest attorney helping consumers who are victim of unfair foreclosure, predatory lending practices, and mortgage fraud.

Phillip’s work at Civil Justice concentrates in certain program service areas designed to help at risk homeowners avoid becoming the victim of certain predatory real estate practices. He serves as class counsel in several class action lawsuits and project manager for several pro-active public education programs designed to prevent residents from entering into illegal transactions in the first instance. Phillip is a Member of the State and Federal Bars of the State of Maryland and has served as class counsel in the past. He has a BA in Political Science from American University in 1989 and attended both Georgetown Law Center and Widener University School of Law where he received his JD in 1998.

Vicki King Taitano

Vicki King Taitano is the Director of the Maryland Legal Aid Bureau’s Foreclosure Legal Assistance Project. She has worked on the foreclosure assistance project for the past three years, representing Maryland homeowners at all stages of foreclosure, including negotiations with lenders, mediation, litigation, and appeals.
STUDENT BIOGRAPHIES

Bobby Jean Bartlett

Bobby Jean Bartlett, a third year law student, is Vice President of the Educational Outreach Committee. In that capacity, she is responsible for coordinating town hall meetings for the public to educate them about real estate matters. To date, she has coordinated meetings to help people withstand or avoid foreclosure. If necessary, these meetings also involve translations into other languages to facilitate communicating with different ethnic groups. A native of Michigan, Ms. Bartlett is involved with 10CORE™ because she believes people should not lose their homes because they lack information. After graduation, she will take the Michigan bar exam.

Erin A. Moss

Erin A. Moss is a native Detroiter and a third year student at Thomas M. Cooley Law School in Auburn Hills. Erin graduated from Michigan State University with a Bachelor of Science in Industry Management, and after working for seven years in pharmaceutical and business-to-business sales, decided to pursue her goal of becoming an attorney. While attending Cooley, Erin has garnered several accolades including receiving an Honors Scholarship, being named to the Dean’s List, receiving first place in the American Bar Association National Client Counseling Competition, and representing the United States in the International Client Counseling Competition. She has interned with the Office of the General Counsel at Blue Cross Blue Shield of Michigan and for the Honorable Victoria A. Roberts of the United States District Court, Eastern District of Michigan. Erin is committed to her community and has volunteered for the State Appellate Defenders Office, the Federal Bar Association’s Pro Bono Law Day, and participated in Cooley’s Annual Spring Charity Event benefitting Haiti relief efforts and the Detroit Public Schools Homeless Children and Youth Program. Erin also serves as the President of the Black Law Students Association, Auburn Hills Chapter where her focus has been growing the chapter’s membership and leadership development. As a result of her efforts the organization has partnered with Cooley to create an endowed scholarship fund for deserving students who are members of BLSA. Erin plans to take the Michigan Bar Exam after graduating in May 2012, and would like to practice business law.

Teresa Ortiz

I am part of a Cuban generation that grew up in Cuba where government uses the political power to control every aspect of an individual’s life; a society where neither substantive nor procedural due process exists. In Cuba, I began to object to the compulsory attendance of political events and the ban on expressing any criticism of the
government. I was too inexperienced to recognize that human rights were at stake, but my mind remained open to this revelation, without knowing that the collapse of Socialism in Russia would be responsible for this awareness.

In the summer of 1989, I traveled to Russia on a scholarship. Due to the collapse of Socialism in Russia, my scholarship was terminated, and I had to return to Cuba. Upon my return, my determination to pursue freedom awakened. Determined now to defend human rights, I pursued a legal education by enrolling in the University of Havana School of Law. In 1995, I became an attorney at law but increasingly frustrated and disenchanted because of the maneuverings of the political system and the countless restrictions placed on my ability to speak out in defense of clients’ rights. With intense pain and sorrow, I decided to leave my loved ones behind in Cuba, and focus on my one goal: to learn more about democracy and the fairness of other systems of law.

In 1997, I was able to escape Cuba and relocate to Mexico where without a solid economic means or family survived for about two years until I was able to immigrate to Puerto Rico with a student visa to pursue an MBA. In 2001, I relocated to Florida and learned the English language. I attended Daytona Beach Community College for over a year primarily to improve my English language skills and to gain further knowledge of the Common System of Law.

In 2005, I earned an L.L.M degree from Stetson University College of Law. With the legal knowledge acquired during the L.L.M, I was able to learn about similarities and differences between the Common System of Law and the Civil System of Law and have come to appreciate the intricacies inherent in both systems. This invaluable education has inspired me to continue my legal education and to pursue a Juris Doctorate at Thomas M. Cooley Law School. I am most proudly of the fact that I became a U.S citizen and that I was employed for almost three years as legal assistant by the State of Florida, Office of the Attorney General.

My experience in Cuba, Russia, Mexico, Puerto Rico, in the United States of America, and the obtained background about two different systems of law have shaped me into an individual who will definitely enrich the legal profession in the United States. Finally, I am committed to support the American people by using my legal education to further the benefit for the greatest majority and more particularly to help those who have difficulties to obtain legal advice and guidance to protect their rights due to poverty, illiteracy, or language barrier. Additionally, I hope to support the Cuban people to obtain their desperate need for freedom. For that moment, I am getting prepared with a legal education that allows me to have another point of view in life, this time completely different, from what I had to learn under a dictatorship's regime.
On behalf of the 10CORE™ Law Society, the NBA and the ABA, you are invited to attend a special law student workshop immediately following the Town Hall Foreclosure Forum. The Student Workshop will be held from 5:00 p.m. - 7:00 p.m. (with refreshments) on Sunday, July 31, 2011 in the same location as the Town Hall.

This dynamic presentation by 10CORE law student panelists will explain how you can utilize your skills to give back to your community while receiving training to help save homes. An interactive discussion will be facilitated by 10CORE students from Thomas Cooley Law School. The students will explain how the 10CORE project benefits students, lawyers and communities. You will not want to miss this cutting-edge discussion.

In order to register, please click here to complete the Registration Form for both the Town Hall Forum and write in your availability for the Student Workshop on the form.

Contact Deidra Franklin for additional information Deidra.Franklin@americanbar.org or 312/988-5409.

Visit our website: http://www.americanbar.org/groups/diversity/racial_ethnic_justice.html
TAB 7
Under a Shadow

Dealing with the Threat of Foreclosure
What is FORECLOSURE?

Foreclosure is a legal process whereby property is sold to satisfy an unpaid secured debt.

The debt is usually a home mortgage, but foreclosures also occur to satisfy unpaid property taxes, mechanics liens, condo fees, and/or other debts secured by property.
WHY is this happening?

When you bought your house, you signed two important legal documents:

1. A Promissory Note, which was your personal promise to pay back the money you borrowed, and

2. A Deed of Trust, which backed this promise up by securing the Promissory Note with a lien on your property.

If you fall behind on your payments – even for reasons beyond your control – you violate the terms of the Promissory Note, which allows the lender to foreclose on your property to recover all of the money you owe.
Life happens. Homeowners fall behind for a number of reasons – changes in household financial circumstances due to job loss, divorce, a death in family, illness, or an unexpected increase in expenses.

People make mistakes. They may have purchased more house than they can actually afford, and/or may spend beyond their means.
The sooner you act, the more options the lender has to help you.
THE WORST THING you can do is ignore the problem and hope that it will go away.
Factors that work FOR you . . .

+ You have an excellent payment history and your payments have consistently been on-time.

+ You are proactive and address the problem early.
  When you are only a month or so behind.

+ Your financial setback was finite or temporary.
  You were sick but are well again, or laid off but now back at work.

+ You have a high interest rate (or other unfavorable terms) and no prepayment penalty on your existing mortgage, and you can refinance your current mortgage.
Factors that work AGAINST you

- You have a history of late payments.
- You failed to act until the foreclosure sale date was scheduled.
- You have had a permanent setback that affects your ability to pay the mortgage.
**Maryland Foreclosure Timeline**

- **Default**
  - 2nd day of the month

- **Notice of Intent to Foreclose** sent via certified mail

- **Order to Docket**
  - approx 90 days
  - 45 days
  - 45 days

- **Mediation**
  - IF timely Request is made

- **Foreclosure Sale Date**

- **Filing Exceptions**
  - 30 days

- **Ratification Of sale**

- **Possible Deficiency Judgment/ Tax Consequences**
  - 3 years after sale
Under Maryland law,

A Homeowner must receive two separate legal notices regarding a foreclosure action:

- A **Notice of Intent to Foreclose**, a 2 page letter sent via Certified mail to each homeowner

  And as early as 45 days later . . .

- An **Order to Docket**, a 15-20 page legal document, which is the formal lawsuit/foreclosure action. This will be personally served OR sent via certified mail to every homeowner.

A sale date *may* occur as early as 45 days after the Order to Docket is filed.
As of July 1, 2010

An Order to Docket, must include one of two affidavits:

A Preliminary Loss Mitigation Affidavit, which invites the homeowner to apply for loss mitigation programs.

OR

A Final Loss Mitigation Affidavit, confirming that the homeowner was considered for and did not qualify for any loss mitigation options.

This should also include a Request for Mediation, which allows the homeowner to request a mediation session with a neutral third party and someone from the lender who is empowered to authorize a workout option on the spot.
Mediation Allows for A Final Review

The homeowner **MUST** opt in by **REQUESTING** a mediation session within 15 days of when the foreclosure action is filed.

To opt in, complete a simple form and send a $50 check to the Circuit Court (and a copy of all paperwork to the attorney representing the lender).

A 2-hour mediation session will be scheduled within 30-45 days.

You (and the lender, through their attorney) will have to exchange certain documents **BEFORE** the mediation so you can both **prepare** in advance.

**PREPARATION IS KEY!**
Prepare Yourself

• **PHYSICALLY** - Gather some information so you can determine where you are and what options are best suited to your situation.

• **MENTALLY** – To avoid foreclosure, you are going to have to be rigorously honest with yourself about what is realistic for you AND be **PERSISTENT** to convince your lender of the same.

• **EMOTIONALLY** – Facing foreclosure is incredibly stressful. You will need a support network to help you through this difficult time.
Partner with People You Can TRUST

**BEST OPTION:** Make an appointment with a legitimate housing counseling agency.

Verify that the agency is a [HUD-certified housing counseling agency](#), and your counselor has been certified.
How much will it COST?

This is not a case of you get what you pay for. Many fine counseling agencies do not charge anything for their services, and other nonprofits have a sliding fee scale.

BEWARE of anyone who charges you an upfront fee and/or “guarantees” an end result.
What can a housing counselor do?

◊ Help you prepare a budget, assess where you are, determine other ways you might improve your financial situation

◊ Develop a strategy that will enable you to get back on track

◊ Engage the lender (with whom they may have a special relationship) and recommend a plan to enable you to catch up.

◊ Help you stay current on changes in the industry, and avoid missteps and/or common mistakes

◊ Help you understand all of your options so you can make the best decision for you and your family.
2nd Best Option: If you cannot get an appointment with a counselor, do your homework and contact the lender yourself.

IDEALLY you will combine your own efforts with those of a HUD-certified housing counseling agency.
BE CAREFUL!

WHEN YOU ARE AFRAID, you become VULNERABLE to the many scams that are out there.
Common Foreclosure/Credit Rescue Scams

- **Phantom Help** – the supposed “rescuer” charges upfront fees for services that it never provides.
- **False Bailout** – homeowner surrenders the property title to the “rescuer” thinking they will get it back.
- **Bait and Switch** – homeowner surrenders ownership without realizing it until it is too late.
- **Credit Repair Companies** ‘guarantee’ to erase bad credit for you and charge upfront fees but cannot deliver on their promise.
Remember . . .

► Don’t believe what someone else says! Read EVERYTHING and don’t sign ANYTHING until you understand it completely. Let an attorney review it for you if necessary.

► Don’t ever quit claim the interest in your house in a foreclosure.

► BE SUSPICIOUS of anyone who contacts you directly offering to rescue your home from foreclosure.

► ALWAYS consult with an attorney before signing a power of attorney over to anyone for any reason.

► Watch out for Lease-backs where the homeowner agrees to sell the property for the mortgage balance and “lease it back” from the investor.
When to Blow the Whistle

If there is obvious fraud, contact:

- Civil Justice 410-706-0174
  www.CivilJusticeNetwork.org

- Legal Aid 410-951-7777
  www.mdlab.org

- Attorney General’s Office
  Consumer Protection Division 301-470-7534
  www.oag.state.md.us
GET TO KNOW YOUR CURRENT LOAN:

► **What is the current INTEREST RATE?** Is it fixed or variable? Are you paying “interest only”? Is your current payment one where you can choose the amount?

► **What TYPE of loan do you have?** FHA? VA? Conventional? Is it a Fannie Mae or Freddie Mac loan? (Your workout options will vary depending on your answer.)

► **What is the TERM of your loan?** 30 years? 20 years? 40 years? Does it require a Balloon payment at some point?

► **Is there a prepayment penalty on your loan?** If so, how much, and for what period of time?

► **Is your loan insured?** Your insurer may be willing to help.
Where do I *find* this information?

In the closing papers from your settlement, like your TRUTH IN LENDING statement.

You can also call your lender and ask them to give you this information over the phone.
Gather the following . . .

► What is your current regular monthly mortgage payment? Are funds being held in escrow to cover your property taxes and hazard insurance OR are you paying them separately? How much are they?

► What are your ARREARS? (Arrears are the past due amount, including any late fees that may have been assessed.)

► What is your outstanding loan balance? Do you have any equity? Equity is the difference between what you owe and what the house is worth. (If you could sell your house for $200,000 and you only owe the bank $175,000, you have $25,000 in equity.)

► Are there unpaid property taxes, insurance, condo fees or other debts that may already be secured by a lien against the property? How much is owed and to whom?

► Have any legal notices been issued regarding a foreclosure action?

You will need this information for each lien / mortgage on the property.
Prepare to Create and Verify Your Current Budget

Include **all** expenses and sources of income

Review your most recent bank and credit card statements to see what you **ACTUALLY** spend each month.

*Be as honest with yourself as possible to get a true picture of where you currently are...*
Workout options to help you retain your home

1. "Reinstatement" brings the loan current – In Maryland, you have the legal right to reinstate your loan up to one business day before a foreclosure sale. Make sure you ask for a breakdown of costs and fees so you aren’t overcharged.

2. Repayment Plan – You resume making your regular monthly mortgage payment PLUS extra to pay off the arrears.

3. Forbearance Agreement – Temporarily reduces OR suspends your mortgage payment.

4. Loan Modification – Modifies one or more of the key terms of your loan (interest rate, loan term, principal balance).

5. Partial or Advance Claim – When the mortgage insurer agrees to pay a portion of the outstanding balance as a zero percent loan, which is due at the end of the loan term OR when the house is sold.
Options to help you transition from your home

1. **Fair Market Sale** – You sell your house and pocket any equity after all loans and liens are satisfied.

2. **Short Sale** – This happens when the current value of your home is LESS than you owe.

3. **Deed-in-lieu of Foreclosure** – You voluntarily “sign over” the property to your lender instead of selling it to a third party (usually only an option when there are no second liens).

**BUT WAIT. . .**
Remember . . .

. . . the Promissory Note is your personal promise to pay

So, if the lender releases the lien (Short Sale), or accepts your surrendering the property (Deed-in-Lieu), you may STILL be liable for the difference between the current market value of the home and what you still OWE.

This is known as a DEFICIENCY JUDGMENT.

IF the investor “forgives” this amount, you may have tax consequences because the IRS considers “debt forgiveness” to be “taxable income”.

Consult with a Tax Professional because you MAY qualify for a WAIVER.
What is best for your family?

• Do you want to save the house so much that you are willing to make some serious sacrifices?

• Would you prefer to relinquish the house, but would like to avoid having a foreclosure on your credit?
Do your choices support your goals?

- *Don't confuse ‘wants’ with ‘needs’*. You need food, shelter & utilities and little else.

- *Watch out for feelings of entitlement that can sabotage saving your house.* (E.g. "I'm the sort of woman who gets her nails done. That's just who I am.")

- Get a copy of *The Millionaire Next Door from the library for inspiration.*
If you have to choose what pay…

Know the difference between

SECURED DEBT, where things can be taken away if you don’t pay
Your mortgage is secured debt. (They can foreclose on your house.)
Your car payment is secured debt. (They can repossess your car.)

And

UNSECURED DEBT, which is not tied to any one thing you own.
Credit card bills and doctors’ bills are unsecured debt.
You still owe the money and they can take you to court,
but they can’t just swoop in and take something away from you.

Beware!

The less security the creditor has the LOUDER THEY WILL SQUAWK.
IGNORE THE NOISE and ALWAYS PAY YOUR SECURED DEBT FIRST.
How you balance your budget is up to you. You can reduce your expenses by:

- Carrying your lunch rather than eating out
- Donate *time* instead of money
- Transfer the kids into public school
- Plan a “stay-cation” near home
- Cancel your gym membership
- Quit smoking
- Cut the cable bill and/or phone bills
Increase your income by . . .

- Taking a second job
- Working overtime
- Renting out a room (or more) in your home
- Asking other adults who live in your home to make a financial contribution to the household expenses.
How might you raise the money?

Can you sell something?

Do you have retirement money you can tap? (Only if you have a realistic chance of saving your house)

THINK OUTSIDE THE BOX

Can you have a yard sale?

Sell the family jewels? Can you pay extra each month to catch up?
Do you have a tax refund coming?

Can you do without a car?

A boat? Your Elvis collection?
Write a hardship letter to explain WHY you fell behind. Things to mention may include:

- Unemployment
- Reduced Income
- Divorce/Separation
- Illness
- Medical Bills
- Too Much Debt
- Death of my Spouse
- Death of a family member
- Payment Increase
- Business Failure
- Job Relocation

Explain steps you have and are continuing to take to improve your financial situation.
Tips for working with your lender

◊ **Be Nice!** You are asking your investor to reduce their profit so you can keep your home. There are programs that allow this, but remember that you are ASKING SOMEONE ELSE TO DO YOU A FAVOR!

◊ **Act in good faith.** Be honest, and send them EVERYTHING they ask for ASAP.

◊ **Document everything about your financial situation.** (E.g. If you're going back to work – you will need a letter from your employer.)

◊ **Keep track of EVERYTHING.** Keep a log of when you talk with them, who you talk to (name, department, extension if available), and what they say. Keep COMPLETE copies of every package of info you submit, along with fax confirmation sheets and/or proof that they were mailed.

◊ **Be Proactive.** Contact the lender every 7-10 days.

◊ **Follow Through!** You can get a second chance, but not necessarily a third.

BELIEVE IT OR NOT, they WANT to help you!
On average, a lender loses $60,000 per foreclosure.
IF YOUR PROPOSAL IS ACCEPTED,
get EVERYTHING in writing.

IF YOUR PROPOSAL IS REJECTED,
DON’T WORRY – this is common.
Try to negotiate.
Find out what the investor might accept.
Try to keep the door open.
If it seems unreasonable or unfair, see if you can talk to a loss mitigation specialist or supervisor.
Notice of Foreclosure Sale Date

The State of Maryland has a relatively short notification period compared to other states.

• Notice will state the time, place, and terms of the sale.

• Notice will be published in a newspaper of general circulation for three (3) consecutive weeks at least once a week for at least 15 days before the sale and not more than one (1) week prior to the sale.

• The Notice also will be sent 10-30 days prior to the sale to the last known address of the debtor, both by certified mail and first class mail.
What Happens if the House Goes to Foreclosure?

_Foreclosure_ is one of the top ten most stressful life events, right up there with divorce and death in the family.

Starting over can be difficult, but you will be out from under and you can move forward from where you are.

You can survive and even THRIVE in the aftermath of foreclosure.

Even in foreclosure you still have SOME CHOICES and your ability to remain engaged can make a huge difference in the final outcome.
If your house is foreclosed at an auction…

and there is some equity in the home

FIRST, Pay off mortgage & fees

NEXT, repay add’l liens

YOU get whatever remains

REMEMBER -- You have to apply to the court to receive your share
If your house is foreclosed at an auction…

and there is *no* equity in the home (or your are ‘underwater’)

Pay as much as possible of the 1st Mortgage and add’l liens

YOU may still owe something

You get **NOTHING**. In fact, you could still **owe** money!
Things that can come back and bite you:

1. Lenders have 3 YEARS AFTER THE SALE to decide whether or not to pursue a deficiency judgment against you.
2. If the lender DOES forgive the deficiency, there may be tax liability on the “forgiven” amount.
3. You may lose equity in your home if you don’t file for surplus funds.
4. Foreclosure and bankruptcy remain on your credit report for a long time.
5. Both foreclosure and bankruptcy can impact your current or future employment and factor into ongoing expenses, such as car insurance premiums.
Right to Redeem Property

• After the foreclosure sale the debtor (former homeowner) has 30 days to file exceptions to the sale – these are generally highly technical

• If you believe that an irregularity existed with the foreclosure sale, or that for some reason the sale of your home was completely unfair, you should contact an attorney immediately
Could filing for Bankruptcy help?

Bankruptcy WILL stop a foreclosure sale
IF you file BEFORE the sale date and time.

• Chapter 7 is a liquidation; Chapter 13 involves a repayment plan.

• You can reduce or eliminate your unsecured debt including any second mortgage or HELOC that is completely underwater.

• Under Chapter 7, you will postpone the foreclosure temporarily. You will still need to work something out with your lender.

• Under Chapter 13, you can permanently postpone the foreclosure IF you immediately resume making your regular monthly mortgage payment and can pay back the arrears within 5 years.
Who should file bankruptcy?

**PROS:**

- Eases stress from the inability to pay your debts
- STOPS garnishments, most lawsuits, repossessions, utility turnoffs, & bank attachments
- Wipes out most of your debts, even most debts that you lost in court
- Provides you with a fresh start

**CONS:**

- When you file Chapter 7, you could lose a house, car or other valuable property
- The bankruptcy stays on your credit record for 10 years
- You can only file Chapter 7 once every 8 years. Will you need to do it later? (e.g. you are expecting more medical bills?)
- Should you wait till you’ve found a new place to rent?
- You cannot get rid of some debts even if you file bankruptcy
How soon can I buy another house?

It varies with the type of loan, but sometimes as soon as in two years.

Begin right now getting your credit and savings account in order!

Work with a good housing counselor to help you make the right choices going in the next time round.
Going through foreclosure does not mean you are a failure.

In fact you will be joining the ranks of the rich and famous.
Good luck and traveling mercies wherever your path takes you.
Recommended Resources

Books
• **Surviving Debt** - put out by the National Consumer Law Center
  $20.00 617-542-9595

• **Foreclosure Prevention Counseling** - National Consumer Law Center 617-542-9595
  – Designed for counselors, but useful to anyone trying to deal with foreclosure

Websites
• AARP  www.aarp.org
  – Good for elder related topics such as reverse mortgages.
• American Bankruptcy Institute  www.abiworld.org
• Better Business Bureau  www.bbb.org
  – Check out anyone you are thinking about working with
• Debtor Assistance Manual  www.mdb.uscourts.gov
Legal Resources

- **Legal Aid Bureau of Prince George’s County** 301-560-2100
- **Pro Bono Resource Center of Maryland** 410-837-6537
- **Community Legal Services of Prince George’s County** 301-864-8353
  (serves 50% of statewide median income)
- **Community Law Center** 410-366-0922
- **Civil Justice, Inc.** 410-706-0174
- **Prince George’s County Bar Association** 301-952-1442
National HECM Counseling Network

National Foundation for Credit Counseling (www.nfcc.org) - 1-866-698-6322

Money Management International (www.moneymanagement.org) - 1-877-908-2227

American Association of Retired Persons (www.hecmresources.org) - 1-800-209-8085

Additional Aging Resources

Extension Financial Counseling 301-868-9410

Maryland Department of Aging (www.mdoa.state.md.us) - 1-800-243-3425

Prince George’s County Division of Aging 301-265-8450

Department of Veterans Affairs (www.mdva.state.md.us) - 1-800-446-4926
MARYLAND'S FORECLOSURE MEDIATION LAW

WHAT YOU NEED TO KNOW ABOUT FORECLOSURE MEDIATION

Maryland's new Foreclosure Mediation Law became effective July 1, 2010. The law requires mortgage lenders and servicers to be much more responsive to homeowners facing foreclosure. The goal of the law is to help homeowners get relief through a loan modification if they qualify or to find an alternative to foreclosure. The law gives homeowners a new opportunity to meet with the lender and an independent party to ensure that alternatives to foreclosure have been considered and evaluated.

Mediation is a process that can be used to resolve disagreements outside a courtroom. Both sides meet with a neutral third party who tries to help them find a resolution. "Foreclosure Mediation" under this new law is designed to help foster a dialogue between homeowners and lenders to make sure a fair assessment is made and the homeowner is offered any options they may qualify for.

RESPONSIBILITIES OF LENDERS

Under this law, when a lender notifies a homeowner about possible foreclosure, the lender also must provide more complete information about options available to homeowners, including information about specific modification programs, such as the federal Home Affordable Modification Program (HAMP), any lender-specific programs, and resources and assistance available from nonprofit organizations and government. If a homeowner fills out and returns a loan modification application, the lender must evaluate the request and document their decision before foreclosure can proceed to the next step. Should a lender take the next step, and initiate foreclosure proceedings with the court system, they must also send the homeowner a "Request for Mediation" form.

RESPONSIBILITIES OF HOMEOWNERS

Homeowners must contact their lenders and be responsive to any applications for loan modification programs or other alternatives to foreclosure that they may offer. If the home facing foreclosure is a homeowner's principal residence, the homeowner will have the right to request mediation once the lender initiates foreclosure proceedings with the court system. At that time, the lender must send a "Request for Foreclosure Mediation" form. Homeowners must have 25 days to complete the form and file it with the Circuit Court. Homeowners must pay a non-refundable $50 fee when they formally file this request for mediation.

You should not wait until you can request mediation before starting efforts to save your home. The opportunity to participate in mediation occurs at a late stage in the foreclosure process and does not guarantee you may avoid foreclosure. Contact your lender and a housing counselor at the earliest sign of financial difficulty. A list of housing counseling agencies near you can be obtained by calling the MDHOPE hotline at 877-462-7555 or by visiting www.mdhope.org.

FAQs

How can I participate in mediation?

If your home is your principal residence and you are facing foreclosure, you may request mediation when your lender initiates foreclosure proceedings with the court system. Lenders will need to file one of two documents with the Circuit Court at the Order to Docket phase. Lenders must either submit a "Preliminary Affidavit" if they have not completed an analysis of your ability to repay the loan or a "Final Affidavit" if they have completed the analysis. As part of the Final Affidavit, your lender must send you a "Request for Foreclosure Mediation" form. You have 25 days from the time you receive this form to complete it and file the request for mediation with the Circuit Court. You must pay a non-refundable $50 fee when you formally file this request for mediation. This is the only time you will be offered the opportunity to request foreclosure mediation. Commercial and other non-owner occupied properties are not eligible for foreclosure mediation.

How will the mediation process work?

Once your mediation request is filed with the Circuit Court, the court refers it to the Office of Administrative Hearings (OAH). The OAH must conduct the mediation within 60 days after it receives your request from the court. They will schedule the session and notify you of the time, date and place for the mediation session. If you need an interpreter, you will need to fill out the "Request for Interpreter" form that comes with the notice from OAH and return it as soon as possible.

What role does the mediator have in trying to resolve the disagreement?

The mediator is not a decision maker nor does he/she have any legal powers to dictate an outcome. The mediator is neutral and does not take sides. Their goal is to assist the parties in finding common ground and helping them reach a solution that is satisfactory to both parties.

For the latest details on Maryland’s Foreclosure Mediation Program go to www.mdhope.org.
Thank you for submitting your complaint. It will provide valuable information that will help federal, state and local enforcement agencies stop illegal loan modification scams.

**You’ve Submitted A Complaint Now What?**

1) With your permission, we have shared your complaint with enforcement officials via the U.S. Federal Trade Commission’s Consumer Sentinel database, which is used by federal, state and local prosecutors. These agencies may use information in your complaint to prosecute scammers.

2) We are analyzing the information in all the complaints submitted to identify trends and scammers, and work with enforcement officials and prosecutors to put potential scammers out of business.

3) A volunteer, calling on behalf of the Loan Modification Scam Prevention Network, may follow up with you to gather more detailed information about your situation to help further enforcement actions (*Please note: Not all homeowners will receive a call for further information*).

4) You may receive e-mails providing you with helpful information about foreclosure prevention and loan modification scams to keep you up-to-date.

5) **FREE** help is available. Just call 888-995-HOPE to be connected with a counselor or visit www.loanscamalert.org or www.PreventLoanScams.org for more information on free counseling near you.

   Note: The Loan Modification Scam Prevention Network cannot represent you individually or promise you any relief from damages you may have suffered.

**Need More Information?**

Contact the Lawyers’ Committee for Civil Rights Under Law at scaminfo@preventloanscams.org or at 866-459-2162 (Toll Free).

The below organizations are the lead partners in this effort, along with government agencies, enforcement officials and national, state and local non-profits and private organizations.
**HOW TO SPOT A LOAN MODIFICATION SCAM**

1. A company/person asks for a fee in advance to work with your lender to modify, refinance or reinstate your mortgage.

2. A company/person guarantees they can stop a foreclosure or get your loan modified.

3. A company/person advises you to stop paying your mortgage company and pay them instead.

4. A company pressures you to sign over the deed to your home or sign any paperwork that you haven't had a chance to read, and you don't fully understand.

5. A company claims to offer "government-approved" or "official government" loan modifications.

6. A company/person you don't know asks you to release personal financial information online or over the phone.

**HOW TO REPORT A LOAN MODIFICATION SCAM**

CALL 1-888-995-HOPE (4673)

OR

VISIT WWW.PREVENTLOANSCAMS.ORG

AND CLICK “REPORT A SCAM!”

The Loan Modification Scam Prevention Network is a national coalition of governmental and private organizations led by Fannie Mae, Freddie Mac, NeighborWorks America™ and the Lawyers’ Committee for Civil Rights Under Law.
National Loan Modification Scam Database Fact Sheet
Loan Modification Scam Prevention Network (LMSPN)

July 2011

Ongoing Attorney Involvement in Scams

A large percentage of distressed homeowners allege that legal help offered to them was a scam.

As of July 13, 2011 over 26% of complaint reports indicate that legal representation was part of the reported scam.

The Lawyers’ Committee’s Database contains 15,676 complaints. The average loss per report is approximately $3000. Top complaint states vary month to month; California, Florida, New York, Texas, and New Jersey were the top states as of July 2011.

Attorney-related allegations include promises by non-lawyers to connect homeowners to non-existent in-house legal staff, referrals between non-lawyers and law offices that take money for no services, and attorneys soliciting homeowners through aggressive advertisement only to provide little or no services.

State Ranking (by # of complaints) (as of July 2011)

<table>
<thead>
<tr>
<th>State</th>
<th>Rank</th>
<th>Percentage of Total</th>
<th>Number of Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>#1</td>
<td>21.3%</td>
<td>3352</td>
</tr>
<tr>
<td>FL</td>
<td>#2</td>
<td>6.8%</td>
<td>1067</td>
</tr>
<tr>
<td>NY</td>
<td>#3</td>
<td>5.5%</td>
<td>863</td>
</tr>
<tr>
<td>TX</td>
<td>#4</td>
<td>4.8%</td>
<td>756</td>
</tr>
<tr>
<td>NJ</td>
<td>#5</td>
<td>3.4%</td>
<td>537</td>
</tr>
</tbody>
</table>

About the LMSPN

The Loan Modification Scam Prevention Network (LMSPN) is a national coalition of government agencies, non-profits, and service providers using education and a centralized complaint gathering process to help stop loan modification scams. This effort is led by Fannie Mae, Freddie Mac, the Homeownership Preservation Foundation (1-888-995-HOPE), NeighborWorks America (LoanScamAlert.org) and the Lawyers’ Committee for Civil Rights Under Law (PreventLoanScams.org). This report summarizes scam complaint-related data housed in the Lawyers’ Committee’s national Loan Modification Scam Database.

Homeowner Dollars Lost to Scams

As of July 13, 2011, homeowners filing scam complaints with the Loan Modification Scam Prevention Network (LMSPN) have reported losses totaling:

$40,639,693.36

Have Info? Need Info? Contact Us
Lawyers’ Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005
Toll-Free (866) 459-2162
Fax: (202) 783-0857
Website: http://www.preventloanscams.org

©2011 Lawyers’ Committee for Civil Rights Under Law All Rights Reserved
RESIDENTIAL REAL ESTATE FORECLOSURE

A White Paper analyzing the national residential real estate foreclosure crisis, its impact on the African-American community and how Federal and State governments are using mortgage modification programs to cope with the problem.

COZEN O’CONNOR

Scott W. Reid, Member
Robert A. Chu, Associate

1900 Market Street
Philadelphia, PA 19103
215-665-2152
sreid@cozen.com
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.  Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. Types of Foreclosure</td>
<td>1</td>
</tr>
<tr>
<td>III. Current Economic Landscape in the United States</td>
<td>2</td>
</tr>
<tr>
<td>IV. Costs of Foreclosure</td>
<td>3</td>
</tr>
<tr>
<td>V. Impact of Foreclosure on the African-American Community</td>
<td>4</td>
</tr>
<tr>
<td>VI. Mortgage Modification: A Potential Solution to the Foreclosure Crisis</td>
<td>6</td>
</tr>
<tr>
<td>A. Federal Government Response to the Foreclosure Crisis</td>
<td>6</td>
</tr>
<tr>
<td>B. State Government Response to the Foreclosure Crisis</td>
<td>8</td>
</tr>
<tr>
<td>VII. Conclusion</td>
<td>11</td>
</tr>
</tbody>
</table>
I. **Introduction.**

For Americans of all backgrounds, the American dream means owning their own home. And for most Americans, especially African-Americans, homeownership is their primary means of accumulating wealth. Simply stated, homeownership means more than mailing in a monthly mortgage payment. Homeownership symbolizes privacy, stability, responsibility and security. Homeownership increases the feeling of control over one’s life. Homeownership represents that a family has roots in its community and that the family is socially tied into its neighborhood, city and state. Most importantly, homeownership represents a long-term financial investment in the future of one’s family, community and municipality.

The current foreclosure crisis threatens these very ideals, all of which are imbedded in the fabric of American culture. Through foreclosure, millions of Americans are losing their homes and are literally being thrown out on the street. The goal of this white paper is to provide an overview of foreclosure, its impact on homeowners and how federal and state governments are addressing the problem. Section II defines the various types of foreclosure. Section III provides an overview of the current economic landscape in America. Section IV highlights the costs of foreclosure. Section V analyzes foreclosure’s impact on the African-American community. Section VI breaks down mortgage modification programs. Specifically, this section will discuss the Obama administration’s Home Affordable Modification Program (HAMP) and the Philadelphia Residential Mortgage Foreclosure Diversion Pilot Program.

II. **Types of Foreclosure.**

If a person has a mortgage on real property and that individual fails to make mortgage payments, that person will be in default on the mortgage and the mortgage is subject to foreclosure. As a general concept, real estate foreclosure is the legal right where a party (a mortgage holder or mortgagee or third party lien holder) who has loaned money secured by a mortgage or deed of trust on real property (or has an unpaid judgment), requires the sale of real property by the property owner (the mortgagor) to recover the money due, unpaid interest, plus the costs of foreclosure, when the debtor fails to make payment. Originally, foreclosure law provided that a mortgage default resulted in the automatic ownership of real property by the mortgagee. However, the law has since developed to allow mortgagors the opportunity to pay off the overdue payments before the property is taken away, i.e., repossessed. Each state handles foreclosure differently; however, there two widely used types of foreclosure.

*Judicial foreclosure,* or foreclosure by judicial sale, is available in every state and required by many. Judicial foreclosure involves the sale of mortgaged property under court supervision. After the sale of the mortgaged property, the proceeds are then used to satisfy the underlying mortgage and any amounts due to other lien holders with the remaining proceeds going to the mortgagor. The judicial foreclosure process is typically governed by state law, however, as a general matter the process is as follows: (1) a mortgagor signs a mortgage where real property secures the mortgage; (2) the mortgagor defaults on the mortgage; (3) the mortgagee files a foreclosure complaint against the mortgagor in the county where the property is located; (4) a trial (or a settlement) takes place and a judgment is entered; (5) a writ of sale is issued by the court clerk; (6) the real property is secured, notice of sale is given and the property is sold; (7) if the sale price is less than the amount owed the mortgagee can obtain a deficiency judgment against mortgagor; and (8) in some cases the mortgagor can execute a right of redemption and redeem the real property within a specific amount of time provided by law.
Non-judicial foreclosure or foreclosure by power of sale involves the sale of the property by the mortgagee but without court supervision. With this type of foreclosure, the mortgagee exercises a power of sale clause contained in the mortgage. Due to the lack of court intervention, non-judicial foreclosures typically take place faster than judicial foreclosures. Non-judicial foreclosures are processed in varying ways, however, in general they proceed as follows: (1) a mortgagor signs a mortgage where real property secures the mortgage; (2) the mortgagor defaults on the mortgage; (3) the mortgagee sends the mortgagor a notice of default; (4) the notice of default is recorded in the county recorder of deeds office; (5) after a period specified by law, the mortgagee may give notice of sale if default has not been cured; (6) at the expiration of the notice period the mortgagee has the option of selling the real property.

III. Current Economic Landscape in the United States.

The present economic state of mortgages is dismal. At the heart of this problem is the combination of negative equity, high unemployment, and resets on complex mortgages. According to the Mortgage Bankers Association, in the third quarter of 2009 the amount of U.S. homeowners in foreclosure was 4.5 percent. Additionally, 9.6 percent of borrowers were at least one payment behind during the same period. Stated another way, approximately five million households were behind in their mortgage obligations. The percentage of homes that were delinquent or in foreclosure in the third quarter of 2009 was 14.41 percent. This translates to 7.4 million households. To place this in perspective, this is the highest delinquency rate since the Association began tracking this statistic in 1972. In October 2009, 332,292 properties, or 1 in every 385 households, received a default or auction notice or were seized by banks. One-sixth of FHA mortgages were delinquent; and 3.32 percent were in foreclosure, the highest since 1979.

Other statistics also provide a grim picture. Prime loans were largely affected; 5.8 percent were delinquent, and the foreclosure inventory rose to 1.95 percent, the highest since 1972. RealtyTrac, a foreclosure listing service, predicts that lenders will issue 4 million foreclosure notices in 2010. Almost 2.4 million homes will actually be lost in 2010, and home prices are expected to drop by 10 percent. According to the FDIC, U.S. banks in the second quarter of 2009 held $34 billion in properties through foreclosure. In 2009, 777,630 properties were seized by banks. There are about 7 million more properties which are likely to be seized by the banks. Mortgage foreclosure filings are most prevalent in the Sun Belt states of Nevada, California, Florida, and Arizona. In Florida, one in four mortgagors are behind in payments.

The high foreclosure rate might be explained by the high number of homes which are “underwater.” A home is underwater if the borrower owes more on the mortgage than the house is worth. According to First American CoreLogic, a real estate research firm, 10.7 million homes were underwater, representing 23 percent of homeowners. The negative equity that many homeowners have in their homes decreases the incentive to meet their mortgage obligations. The foreclosure of underwater properties will further depress housing prices because it will increase the glut of housing inventory. Homes with negative equity represent a disproportionate amount of foreclosures; although only 12 percent of homes had negative equity, they represented 47 percent of foreclosures.
With unemployment over 10.2 percent in October 2009, the highest since 1983, many homeowners are defaulting on their mortgages on account of job loss.\textsuperscript{29} Besides the official unemployment statistics, others paint a worse picture. The true underemployment rate is 17.5 percent, and average employee wages continue to decline.\textsuperscript{30} Some housing specialists warn that a federal response that does not address unemployment will fail.\textsuperscript{31} Jay Brinkmann, chief economist with the Mortgage Bankers Association, bluntly states that “job losses continue to increase and drive up delinquencies and foreclosures because mortgages are paid with paychecks, not percentage point increases.”\textsuperscript{32}

Despite these dreary statistics, there are some promising indications of recovery. In November 2009, the number of foreclosure filings dropped by 8 percent from 332,292 in October 2009 to 306,627 or one in every 417 houses.\textsuperscript{33} Some warn, however, that this drop was artificially created through mandatory mortgage mediation programs, which delay foreclosures.\textsuperscript{34} In the third quarter of 2009, U.S. home prices fell 3.8 percent from a year earlier.\textsuperscript{35} This is the smallest decline since the first quarter of 2008.\textsuperscript{36} One commentator hypothesizes that the drivers of the decrease in the home price depreciation rate are: (1) the increase in demand due to the first-time homebuyer tax credit and (2) the decrease in foreclosure-driven price drops.\textsuperscript{37} Dennis Capozza, professor of finance and real estate at the University of Michigan, predicts that foreclosures will peak at about 2.75 million in 2009 and will fall to 1.75 million in 2010.\textsuperscript{38} This prediction is based on his assumption that: (1) the nation’s economy will improve, (2) home price depreciation will decrease, and (3) underwriters will tighten lending standards.\textsuperscript{39}

\section*{IV. Costs of Foreclosure.}

The natural response when one hears that another household has gone through foreclosure is “I’m glad it’s not me!” This type of response is short-sighted in that it ignores some obvious and not so obvious effects of foreclosure. This section summarizes some of these costs of foreclosure:

1. \textit{Families Suffer}—The loss of a house through foreclosure uproots a family from their community, schools, employment, social activities and support systems. It also divests the family of any financial stake in their home, i.e., equity. As a result, a family’s net worth is severely impacted. Credit histories are negatively impacted which in turn make it more difficult to secure employment, obtain educational loans, as well as secure future home ownership and/or property rental.\textsuperscript{40} Older family members are hit hard as well; the AARP reports that in the last half of 2007 more than one of every four mortgage delinquencies and foreclosures involved homeowners over the age of fifty.\textsuperscript{41} Elderly people who go through foreclosure have little time to recover lost income.\textsuperscript{42} Historically, the elderly rely on the equity in their homes for financial security and as a retirement safety net.\textsuperscript{43} Likewise, younger family members suffer. Foreclosure causes families to move. Moving causes instability at home and undermines academic performance, social adjustment and emotional development.\textsuperscript{44}

2. \textit{Neighborhoods Suffer}—When one house in a neighborhood goes through foreclosure all of the houses in the neighborhood are adversely impacted because neighborhood property values decrease. It is estimated that 40.6 million homes that are next door to a foreclosed property will suffer an average price decline of $8,667.\textsuperscript{45} This equates to an aggregate $352 billion dollar decline in property values.\textsuperscript{46}
The risk of crime is also a potential outcome of foreclosure. Besides the decline in property values, the appearances of neighborhoods with foreclosed properties deteriorate. When a property is foreclosed it becomes vacant. When a property is vacant upkeep of the property suffers. This results in neighborhood blight which signals neighborhood distress. Vacant properties can undermine the security of a neighborhood. These properties can be overtaken by squatters, become vandalized or robbed. This appearance of insecurity may increase the risk of crime for all residents of the neighborhood. A 1 percent increase in foreclosure signals a 2.33 percent increase in violent crime, due in part to vacant and abandoned buildings. A study performed in the Charlotte, North Carolina region indicated that in 13 neighborhoods with high clusters of foreclosure during the 2003-2007 period, those neighborhoods experienced higher rates of violent crime and property damage than a group of similar neighborhoods that did not have the same level of foreclosure.

3. **Municipalities Suffer**—Higher levels of foreclosure cause lost tax revenue, unpaid utilities as well as extra municipal costs (e.g., police, fire, maintenance and other essential services). The cost for cities or states to deal with vacant houses can stretch already thin municipal budgets. For example, in Atlanta the city property tax estimates are 15.5 percent below projections. The State of California estimates lost tax revenue from foreclosures to be $4 billion dollars for 2008.

V. **Impact of Foreclosure on the African-American Community.**

The mortgage foreclosure crisis has impacted the African-American community far more acutely than other race. Studies have revealed that a high number of African-American home owners are in foreclosure. According to the Center for Responsible Lending, in 2009 the total number of projected foreclosures for African-Americans will be 301,459. Over the next four years, the number of projected foreclosures for African-Americans will be 1,003,670. These high foreclosure rates are due in large part to lenders who targeted and sold African-American borrowers subprime loans.

It is well-documented that African-Americans are substantially more likely than whites to receive a high cost subprime mortgage. Subprime mortgages refer to “home loans that are made to borrowers who do not meet the requirements for competitive, prime loans.” These loans are designed for people with limited or spotty credit histories and are associated with higher interest rates. The costs of these loans to borrowers are huge. Subprime loans cost $50,000 to $100,000 more than comparable prime loans. This extra cost translates to a loss in equity which in turn translates to a loss in the borrower’s ability to use that equity to, among other things, fund an education, start a business or forestall foreclosure. Instead of building wealth the borrower uses the same money to pay the mortgage company.

A Federal Reserve study indicates that African-American home buyers received higher priced loans three times as often as non-Hispanic white buyers. Another study found that low to moderate income African-Americans were 2.1 times as likely as low to moderate income whites to receive subprime loans. The same study found that middle to upper income African-Americans were 2.7 times more likely than middle to upper income whites to receive subprime loans. Simply put, these types of loans are “steered” toward African-Americans on a systematic basis. This intentional targeting of African-American borrowers was confirmed in a
study by the United States Department of Housing and Urban Development which concluded that “there is a growing body of anecdotal evidence that an unscrupulous subset of these subprime actors—lenders (often those not subject to federal banking supervision) as well as mortgage brokers, realtors, and home improvement contractors—engage in abusive lending practices.” African-Americans were less familiar with fair loan pricing, desperate for credit, which made them vulnerable targets of these unscrupulous lenders.

Another tangible impact of the foreclosure crisis is the resulting loss of wealth in the African-American community. There are many positive virtues to homeownership. Besides building strong families and communities, homeownership also creates and sustains generational and community wealth. As compared to renters, homeowners are twelve times as wealthy and 66 percent of their wealth is in their home. Homeowners also accumulate an average of $44,000 in wealth in their first ten years of homeownership. With respect to community wealth, homeownership increases the value of all homes in a community. Homeownership produces home related goods and services such as: realtor fees; construction costs; tax revenues; and revenues for banks, lenders and servicers. In one single bound foreclosure destroys all of this.

Nationwide, 47.2 percent of African-Americans are homeowners. Primarily because of the foreclosure crisis the number of African-American homeowners has declined 2 percent between 2004 and 2007. The question is how is this tied into net worth? The answer is simple: the predominance of African-American wealth is tied into homeownership. Specifically, two-thirds of net worth held by African-Americans consists of home equity. Among African-American homeowners, the median family holds 88 percent of its total wealth in the form of home equity. Thus, homeownership is critical in developing and maintaining economic progress in the African-American community. The NAACP estimates that the total loss of wealth in the African-American community because of the discriminatory practices that, in part, led to the foreclosure crisis will be at least $164 billion dollars. With respect to African-American subprime borrowers, they are estimated to lose between $72 billion and $93 billion as a result of the predatory home loans made over the last eight years.

In addition to the economic losses and disproportionate number of foreclosures affecting the African-American community, there are other losses as well. African-American communities, with their high poverty rates, limited municipal services and high rate of unemployment are especially vulnerable to the mass destabilization of their neighborhoods that foreclosure can cause. There is evidence that suggests that property values in low income neighborhoods are destabilized by foreclosure sales. Foreclosure places a strain on city services. Also, foreclosed homes which are not sold lead to rundown and blighted neighborhoods which further decreases property values and staves off investment. Additionally, there are early studies suggesting that foreclosure can possibly cause adverse health effects and may increase the risk of mental and physical health conditions. These studies are not fully developed but there is a school of thought that exists which suggests that “while the literature has not fully explicated the health effects of foreclosure, related exposures have been linked with increased risk for several mental and physical health conditions. This, combined with the frequent finding that home ownership has largely positive associations with health and well-being, suggests that the current raft of home foreclosures may represent an increasing health threat.” All combined, the end impact of foreclosure on the African-American community...
does not bode well for community investment, new investment and African-American wealth building.

VI. Mortgage Modification: A Potential Solution to the Foreclosure Crisis.

A. Federal Government Response to the Foreclosure Crisis.

The Obama administration, as part of its Financial Stability Plan, has instituted a program called “Making Home Affordable.” This program’s aim is to stabilize the housing market by helping up to 7 to 9 million homeowners refinance their mortgages or modify their monthly mortgage payments to affordable levels. The Home Affordable Modification Program (HAMP) has at its disposal $75 billion for loan modifications to keep up to 3 or 4 million Americans who are facing foreclosure in their homes. Loan modifications generally entail reducing the interest rate of the loans or increasing the loan’s term to make the loan more affordable.

To be eligible for a mortgage modification under HAMP, the homeowner must:

1. Be the owner-occupant of a one to four unit home;
2. Have an unpaid principal balance that is equal to or less than:
   a) 1 Unit: $729,750
   b) 2 Units: $934,200
   c) 3 Units: $1,129,250
   d) 4 Units: $1,403,400;
3. Have a first lien mortgage that was originated on or before January 1, 2009;
4. Have a monthly mortgage payment (including taxes, insurance, and home owners association dues) greater than 31 percent of monthly gross (pre-tax) income; and
5. Have a mortgage payment that is not affordable due to a financial hardship that can be documented.

It is worth noting that a homeowner need not be behind on mortgage payments; one must only be in “imminent risk of default.” For example, a homeowner may be eligible if s/he is 1) suffering serious hardship, 2) experiencing a decline in income, 3) facing an increase in expenses, 4) undergoing an interest rate readjustment, 5) facing a high mortgage debt compared to income, or 5) owing more than the house is worth. Thus, the HAMP program does not penalize those who have been diligent in their payment obligations.

The following procedure is used by servicers to determine whether modification is applicable:
1. Evaluate whether the loan meets the eligibility requirements above;

2. Determine whether the borrower cannot meet the current mortgage payment obligations, based on income, assets, and expenses;

3. Evaluate whether the first lien mortgage payment is greater than 31% of the borrower’s gross monthly income;

4. Determine whether the present value of the loan to the investor would be greater if modified, including government incentive payments;

5. If the modified loan is of greater value to the investor, i.e., the present value of the stream of payments under the modified loan is greater than what the investor can get through foreclosure, the servicer must offer a trial modification;

6. If the borrower makes all the required payments and the submitted documentation is deemed accurate, the lender must offer a permanent modification.81

The Treasury Department’s incentives will help servicers write down the interest rate to as low as 2 percent, but the interest rate will only be reduced to a point where the modified payment will equal 31 percent of the borrower’s gross monthly income.82 In addition to interest rate modification, banks may stretch the loan term to as long as 40 years.83

The administration reports that at the end of November 2009, there were 728,000 modifications in process nationwide.84 Borrowers who are in loan modifications save an average of $550 per month.85 The administration is, however, disappointed that only 31,382 trial modifications have since been converted to permanent modifications.86 Phyllis Caldwell, Chief of Treasury’s Homeownership Preservation Office (HPO) said, “Our focus now is on working with servicers, borrowers and organizations to get as many of these eligible homeowners as possible into permanent modifications.”87

As a new program, HAMP has room for improvement. Assistant Treasury secretary Michael S. Barr said, “The banks are not doing a good enough job.”88 House Financial Services Chairman Barney Frank criticized the administration’s efforts, saying, “We have a great frustration with the failure of the combined efforts of elements of the federal government to make a substantial impact on the foreclosure crisis.”89 One potential reason that banks have failed to make many loans permanent is because it would forego lucrative fees from long-term delinquency.90 Servicers collect fees from investors of the mortgages that increase the longer a borrower is delinquent.91 Another potential reason is that there is no process of triaging the 7.5 million delinquent loans.92

There is anecdotal evidence that the reason why trial modifications have not been made permanent is because of the lack of diligence by homeowners to provide required documentation, such as pay stubs and tax returns, to make it permanent. According to Jack Schakett, a Bank of America risk management executive, of the 65,000 customers who have met their obligation of making three payments during the trial period, 50,000 are ineligible for permanent modification.
because they did not provide the required documentation. Similarly, at J.P. Morgan Chase, 51 percent of those offered trial modifications failed to submit required documentation to make them permanent. Some borrowers complain that the servicers are not being diligent themselves; they report servicers losing documentation and failing to respond to phone calls.

In addition to failing to provide necessary documentation, many homeowners under the modification program are failing to meet their reduced mortgage payments. According to government data, 25 percent of HAMP-modified borrowers are late on their mortgage payments. J.P. Morgan Chase noted that of its 178,000 modified loans, 22 percent of the borrowers failed to make their first payment. There are several hypotheses for why homeowners are failing to make the modified payments. Some commentators suggest that homeowners are confused by the modification process, especially with respect to the process of making the modified payments. Another possible explanation is a further deterioration in the borrower’s financial status after the application; borrowers are not permitted to a second modification for changed circumstances. Some commentators, such as Mark A. Calabria of the Cato Institute, posit that some borrowers are gaming the system by using the modification program to save their home or live for free in avoidance of foreclosure. In order to receive a trial modification, a borrower need only declare their income without providing confirmatory evidence. Further studies on why temporary modifications are not being converted into permanent ones would inform policymakers on how best to improve the operation of the system.

The Treasury Department is not idly watching the HAMP modification fail from the sidelines. In an effort to ensure that servicers are diligently requesting and processing documentation, it will send in “SWAT teams” to monitor the eight largest servicers and will request twice-daily reports from them. In addition, Treasury warns that it will withhold payments to servicers as a penalty for failing to make modifications permanent. Treasury Secretary Michael Barr said that it would also use shame to induce banks to improve their modification process; it will publicly list those servicers who move slowly in modifying loans. Thus, efforts are being made to ensure that banks meet their obligations, but there is a long way forward.

B. State Government Response to the Foreclosure Crisis.

As the foreclosure crisis deepens, many states are implementing their own mortgage modification programs. Foreclosure mediation programs are relatively new with the oldest programs having been in effect for a little over one year. However, implementation of these programs has been accelerated. Currently, there are at least 25 foreclosure mediation programs in operation in 14 states. Some programs refer residential foreclosures to the court’s existing alternative dispute resolution systems while other programs require special court supervised settlement conferences. Other programs do not involve formal mediation or mediators at all. For example, the Superior Court of the State of Delaware established a residential mortgage foreclosure mediation program on August 31, 2009. In the Delaware program, lenders must send notice of the program with the notice of foreclosure. Before participating in mediation, homeowners must meet with a HUD approved housing counselor and develop a good faith proposal where monthly mortgage payments will not make up more than 38% of their monthly income.
In New Mexico, the First Judicial District court in Santa Fe established a foreclosure mediation program as part of its alternative dispute resolution program. After serving a complaint and a summons, plaintiffs are required to provide a notice to the homeowner that provides information about where the homeowner can receive help. Both the plaintiffs and defendants may request a referral to foreclosure mediation.

Michigan enacted the Michigan Home Foreclosure Prevention Act. The Act authorizes a commissioner to review the lender’s and borrower’s information to determine whether foreclosure can be avoided. An extension of the filing date for a foreclosure can be up to 90 days or the commissioner may impose a requirement that the borrower and lender participate in mediation if new terms can be worked out.

While each of these and many other foreclosure mediation programs seek the same result, which is to prevent additional foreclosures, the Philadelphia Residential Mortgage Foreclosure Diversion Pilot Program has emerged as a national model that has enabled hundreds of troubled borrowers to retain their homes.

1. Philadelphia Residential Mortgage Foreclosure Conciliation Program.

On September 16, 2008, the Court of Common Pleas of Philadelphia County established the Residential Mortgage Foreclosure Diversion Pilot Program, an experiment which has drawn national attention. It was spearheaded by Judge Annette M. Rizzo, who organized a task force to address the mortgage foreclosure issue locally. The local court regulation mandates that all owner-occupied residential properties subject to foreclosure must be scheduled for a conciliation conference before the property is sold at a sheriff sale. A conciliation conference is an in-person meeting between the borrower and the lender designed to encourage compromise through such options as lower monthly payments, increased loan terms, or graceful exit, in which the borrower receives cash in exchange for vacating the property. Every homeowner is provided with a counselor, and some are provided with legal representation. Recognizing that homeowners facing foreclosure may be overwhelmed by the process, the city advertises the program through housing advocates and public service messages displaying the Save Your Home Philly Hotline. According to the city, the program has saved about 1,800 homes from foreclosure, and 3,500 homes are in-process.

At the conciliation conference, the borrower and lender must address:

1. Whether the Defendant is represented and if not represented, whether volunteer counsel may be available and appointed;
2. Whether Defendant(s) met with a Housing Counseling Agency, as required;
3. Whether the Housing Counseling Agency has prepared an assessment or report providing available loan work-out for the Defendant;
4. Defendant’s income and expense information;
5. Defendant’s employment status;
6. Defendant’s qualifications for any of the available work-out programs, upon review and application of guidelines established pursuant to this General Court Regulation;

7. Assistance with preparation of work-out programs, upon review and application of guidelines established pursuant to this General Court Regulation;

8. Assistance with preparation of work-out plans and required Court Orders, as appropriate;

9. The necessity of subsequent Conciliation Conference;

10. Whether the case may proceed to Sheriff Sale if there is no prospect of an amicable resolution; and

11. Any other relevant issue.115

If the conciliation is unproductive, a homeowner may request a mediation with a volunteer attorney, who then provides a recommendation to the Judge. The Court of Common Pleas issued this regulation in recognition of its ability under the Pennsylvania Rules of Civil Procedure to “assist the Court and the litigants in the simplification of the issues involved, and to address such other matters which may aid in the timely and efficient disposition of the action.”116 If the borrower fails to appear at a conciliation conference, the court may proceed with the sheriff sale upon proof of mailing the required notice.117

Volunteer lawyers are essential to the success of Philadelphia’s program. The Philadelphia Volunteers for the Indigent Program (VIP) regularly sponsors CLEs on mortgage foreclosure negotiation training to assist and encourage volunteer lawyers to represent those facing foreclosures at conciliation conferences. They educate attorneys on the essential aspects of the program, including a primer on mortgage foreclosure and pointers on how to negotiate a settlement. They also coordinate with local attorneys to ensure that the conciliation conferences are adequately staffed with pro bono counsel.

There are mixed reviews of this experiment. Philadelphia’s efforts have been lauded by the U.S. Conference of Mayors, which awarded Philadelphia the Outstanding Achievement Award for its mortgage diversion program.118 It has drawn national attention because it is a unique method of addressing the issue. However, some commentators, such as Philadelphia lawyer Matthew B. Weisberg, argue that it is an “ineffective stopgap prolonging what appears to be the inevitable, which is the loss of homes.”119 Unfortunately, many homeowners face tremendous financial pressures through the loss of employment or illness and are unable to make adequate concessions to which a lender would agree.
VII. Conclusion.

The severity of the foreclosure crisis permeates throughout America and shows no signs of abating. The dismal state of the economy combined with unemployment and high risk subprime mortgages have created an economic tsunami for many homeowners, especially African-Americans. This has resulted in disproportionately high rates of foreclosure in the African-American community. The resulting impact has caused an extraordinary loss of wealth in the African-American community.

This loss of wealth is not limited to finances either. Communities are suffering as foreclosed homes have created blighted blocks in neighborhoods. Municipalities are suffering because the dwindling number of homeowners continually shrinks the tax base. Foreclosure has also placed a strain on municipal services. Mortgage modification programs, on both the state and federal levels, may provide a necessary antidote to this problem. Because these mortgage modification programs are new, it is too early to determine whether they are effective. Only time will tell whether these modifications will help people survive the foreclosure crisis. Given the enormity of the crisis, the fact that banks, homeowners, legislatures and the courts are attacking the problem is promising.

At this point, however, there appear to be far more questions than answers: does mortgage modification work; can African-Americans rebuild their lost wealth; will the neighborhoods which have been decimated by foreclosure be rebuilt; should lenders issue a temporary moratorium on mortgage foreclosures; are lenders serious about resolving the foreclosure crisis or are they paying “lip service” to the issue; will state and federal legislatures draft laws to prevent this crisis from repeating itself in the future? One thing is clear, something drastic has to be done to fix this crisis. The future of African-Americans depends on it.

3 Id.
4 Id.
6 Enotes, supra note 2.
7 Martindale-Hubbell, supra note 5.
8 Id.
11 Id.
12 David Streitfeld, U.S. Mortgage Delinquencies Reach a Record High, N.Y. TIMES, Nov. 20, 2009.
13 Id.
14 Merle, supra note 10; Streitfeld, supra note 12.
15 Streitfeld, supra note 12.
16 Foreclosures Increase 19% Nationwide, DETROIT NEWS, Nov. 13, 2009.
18 Id.
21 Howley, supra note 17.
23 Dan Levy, U.S. Foreclosure Filings Surpass 300,000 for 8th Straight Month, BLOOMBERG, Nov. 12, 2009.
25 Streitfeld, supra note 12.
26 Kathleen M. Howley, Home Prices Declined 3.8% in Third Quarter on Foreclosures, BLOOMBERG, Nov. 24, 2009.
29 Howley, supra note 17.
32 Id.
33 Alan J. Heavens, Nov. Foreclosure Rates Drop 8% from Oct., PHILA. INQUIRER, Dec. 11, 2009, C2; Christie, supra note 22.
34 Christie, supra note 22.
35 Howley, supra note 26.
36 Id.
37 Id.
38 Carrie Bay, University Study Forecasts Foreclosures to Fall by Nearly 35% in 2010, DSNEWS, Dec. 4, 2009.
39 Id.
40 MELANCA CLARK & MAGGIE BARRON, BRENNAN CTR. FOR JUSTICE AT N.Y.U. SCH. OF LAW, FORECLOSURES: A CRISIS IN LEGAL REPRESENTATION 7 (2009).
42 Id.
43 Id.
44 Id. at 2.
45 Clark & Barron, supra note 40, at 8.
46 Id.
47 Id. at 10.
48 Kingsley et al., supra note 41, at 4.
49 Id.
50 Id.
51 Clark & Barron, supra note 40, at 8.
52 Id.
53 CTR. FOR RESPONSIBLE LENDING, PROJECTED FORECLOSURES TO AFRICAN-AMERICANS BY STATE (2009).
54 Id.
55 Clark & Barron, supra note 40, at 9.
56 Id.
58 Id.
60 Id.
61 Clark & Barron, supra note 40, at 9.
62 Id.
63 Id.
66 Id.
67 Id.
68 Id.
69 Id.
70 Id.
71 Clark & Barron, supra note 40, at 9.
72 Id.
73 Id.
74 Gary G. Bennett, Melissa Scharoun-Lee & Reginald Tucker-Seeley, Will the Public’s Health Fall Victim to the Home Foreclosure Epidemic, 6 PLOSMEDICINE 1, 1 (2009).
75 Id.
77 Id.
79 Id.
81 Id.
82 Id.
85 Id.
14
How to Build Practice with Pro Bono

Clients, Skills, Reputation, Relationship, and Meaning for Your Law Practice

By Nelson P. Miller
Homeowners have always faced the risk of foreclosure of a residence because of loss of income due to poor health, job loss, divorce, and other causes. Pro-bono service to some of those clients has long been necessary and appropriate. The loss of a home to foreclosure can destroy a family’s finances, security, future and relationships. When a client does not have the income to keep a roof over the client’s family, there is a good chance that there is no income to retain a lawyer. The recent collapse of the residential-real-estate market has greatly increased the need for legal services to homeowners facing foreclosure and greatly increased the need for pro-bono service. The nation has faced and continues to face a foreclosure crisis. The substantial percentage of homeowners who have no equity in their home and owe more than their home’s value suggests that the crisis will continue indefinitely into the future. The worst of the foreclosure crisis is not necessarily behind us. In addition to the fall in real-estate values, the temporary interest-rate advantages of nontraditional subprime mortgages continue to expire, resulting in rate increases and balloon payments. Even if the mortgage crisis is over, and even if home prices begin once again to rise, foreclosures will continue for the traditional reasons, meaning loss of income from job loss, disability, divorce, and similar reasons.
There are substantial opportunities for legal service in general and pro-bono service in particular to make a difference to the homeowner facing foreclosure. Pro-bono service to homeowners facing foreclosure introduces you to potentially productive professional and client networks, both among lenders and homeowners. Banks have substantial interests in keeping homeowners in their homes. Foreclosed homes sell below mortgage value, meaning that banks lose money on foreclosures. If there was any equity in the home, then the homeowner would have sold the home, realized the equity, and avoided the embarrassment, stress, and long-term credit effects of foreclosure. Banks have substantial incentives to work with homeowners not only to avoid foreclosure but to keep the homeowner in the home. Empty houses decline in value precipitously compared to occupied homes, due to the ravages of vandalism and effects of weather. Communities have a similar interest in keeping homes occupied for their tax revenue, neighborhood home values, and community aesthetics and safety. There are also regional, state, and national interests in home ownership. Effective pro-bono service can in many cases draw on this alignment of interests and the programs and opportunities the interests create and support, to keep a client in a threatened home. Consider an approach and attitude toward the pro-bono client facing foreclosure, before considering more concrete steps.

**Approach.** The pro-bono client facing foreclosure is in a highly fluid situation surrounding one of life’s most fundamental needs, meaning a roof over one’s head. The real prospect for homelessness may be either substantial or insubstantial. The client may have income with which to rent an apartment or relatives with whom to live. Yet the sense of uncertainty, loss, disruption, and displacement can loom larger than the actual risks. There is an emotional component to losing one’s home. That emotional component can, if not recognized and managed, affect the client’s prospects in other areas, particularly in gaining or maintaining employment and leading a family. The homeowner typically has multiple responsibilities. When foreclosure threatens one of them (keeping a roof over the family’s head), it threatens others. It is a time when legal advice needs to identify reliable actions. Security can take different forms. Families facing loss of a home can take security in a plan to remain together, maximize the benefit from current financial resources, minimize crippling financial obligations, put into place sound financial principles, and in the future lead a better, more stable life. The adversity principle applies here, too, that it can bring about needed and beneficial deeper change. Shape your legal advice to this approach, and you should find it producing benefits beyond the immediate legal challenge for foreclosure. Now consider the specific legal issues.

**Initial Planning.** First consider an outline of foreclosure assistance. Whether pro bono or compensated, foreclosure assistance follows an ordinary course. That course begins by determining where the lender believes that the
client borrower stands with respect to the borrower’s actual and claimed obligations. Ask the pro-bono client to show you the latest correspondence or other documents, including especially any court papers. Next, review any available transaction documents (note, deed, mortgage, and closing documents) for possible defects in execution or recording (incorrect or omitted names, missing signatures or notarization, incorrect property identification or description). Next, discern the mortgage balance, monthly payment, and amount in arrears necessary to bring the mortgage current. Try to get a reliable appraisal or estimate of the property value. Compare the estimated property value to the mortgage balance to determine if the borrower is “upside down” or “under water” with a larger mortgage debt than property value, considering probable costs of sale. Reviewing loan administration is a sensible next step, examining account representations and other communications as to the adjustment or waiver of terms. Discerning the lender’s and borrower’s goals is a good next step, including whether one or both parties wants the borrower to remain in the home, why or why not, and the reasons. Gathering this information, even generally in the first encounter with the pro-bono client, can help you generate options and evaluate proposals. You should also have or develop a sense of the local real-estate and lending markets. Finally, it helps to have a relatively clear sense of the property itself including its features and marketability, and the extent to which it is mortgaged.

**Foreclosure Concepts.** Next understand the key concepts surrounding foreclosure. While pro-bono clients may think of foreclosure as a single course of action that the lender takes, foreclosure in the broadest sense involves two options that the lender may take alone or together. The first is to take title to the home itself (literally to foreclose the homeowner’s interest), while the second is to pursue an action on the mortgage debt. The lender need not necessarily file a court action in order to take title to the home, that is, to foreclose. The lender’s foreclosure action may be by notice or court action (that is, foreclosure by notice or judicial foreclosure), depending on the terms of the mortgage, state law, and the lender’s strategy. If on the other hand, the lender wishes to pursue an action on the debt, then the lender must do so by filing a court action. In that case, the lender is almost certain to make that court action one for both foreclosure and a money judgment on the debt, unless the lender has already foreclosed by notice. The lender’s choice is likely to depend on how the lender hopes to manage any deficiency between the amount it realizes from the foreclosure and sale of the home and the amount the borrower owes after the lender applies those proceeds to the mortgage debt. If you understand these basic concepts and especially strategy regarding deficiencies, then you are likely to be able to help a pro-bono client with foreclosure. You must consult the applicable state law, which varies
widely, for specific procedures, but economics inform the strategic choice of procedures. The question of price adequacy is much, if not everything.

**Required Notices.** Your state’s foreclosure law may give you tools to help the pro-bono client avoid or manage foreclosure. Notice provisions are one of those tools. Some states have enacted special provisions requiring that the lender notify the defaulting borrower 90 days or a like period in advance of a foreclosure action. See, e.g., N.Y. REAL PROP. ACTS L. §1304. Those laws may require that the notice include the mortgage servicer’s contact information for workout options, contact information for housing counseling agencies, and warnings regarding losing the home to foreclosure. State law may require similar notices in the summons and complaint commencing the foreclosure action, see, e.g., N.Y. REAL PROP. ACTS L. §1320, and may even require a separate notice with the summons and complaint more specifically detailing the borrower’s procedural obligations, the available agency resources to meet those obligations, and the need to avoid foreclosure-rescue scams, see, e.g., N.Y. REAL PROP. ACTS L. §1302. State law may also require the foreclosing plaintiff to include in the complaint a statement that the plaintiff by assignment holds the note and mortgage at the time of the action’s commencement or otherwise has the mortgage holder’s authority, and that the mortgage complies with the state’s laws. See, e.g., N.Y. REAL PROP. ACTS L. §1302. State law may make the lender’s failure to give these notices a defense that pro-bono counsel can raise to a subsequent foreclosure action.

**Procedure.** The pro-bono lawyer unfamiliar with foreclosure proceedings may be heartened to know that foreclosure procedures tend to be like those for instituting and pursuing other civil actions. The lender must file the action in a court having jurisdiction and venue, typically in the county where the real property is located. The lender must serve the summons and complaint on the borrower, filing proof of service. The borrower must answer or otherwise defend within the usual period provided by the state’s rules of civil procedure, or suffer default. In instances where the borrower does not intend to remain in the home, default may be appropriate. The lender’s ability to take a prompt judgment of foreclosure and more quickly sell the home may prevent arrearages from accumulating and may result in the home’s preservation for sale and a higher sale price on the home, all to the borrower’s advantage. On the other hand, if the borrower has yet to exhaust available options and resources for remaining in the home, then the case may warrant an answer raising available defenses. An answer raising genuine issues of material fact as to the mortgage’s validity, the plaintiff’s assigned right to maintain the action, the lawfulness of the form of notice and timing of foreclosure, or the amount of the mortgage obligation, will likely place the case on the usual civil-litigation track, gaining the borrower additional time over default proceedings. Specific legal and equitable defenses to a foreclosure action may include fraud, breach of fiduciary duty, unclean hands,
unconscionability, Truth in Lending Act violations, or violation of statutory foreclosure and settlement procedures.

Settlement Procedure. State law may mandate special settlement procedures for foreclosure actions. If not, then the usual court rules will apply and may provide a similar opportunity. Settlement conferences for foreclosure actions are a good opportunity to exchange mortgage-modification proposals. The lender’s attorney will likely have a mortgage-modification application available. Conference orders typically require attendance of lender representatives who have authority to settle but may allow attendance by telephone. State law may require the lender’s representative’s attendance. See, e.g., N.Y. C.P.L.R. §3408(c). As is true in other settlement conferences, the critical aspect of a foreclosure-action settlement conference is ensuring that attendees have authority to negotiate.

Settlement Options. Depending on the lender’s authority and evaluation, the borrower’s settlement options may include: (1) reinstatement of the mortgage and loan with waiver of fees and penalties; (2) the borrower’s short sale of the home with the proceeds conveyed to the lender; (3) default allowing foreclosure to proceed uncontested by the borrower; (4) deed to the lender in lieu of foreclosure; or (5) modification of the mortgage for reduction of the monthly payment, by altering the interest rate or term, or even the principal balance. Reinstatement is generally possible only when the borrower has obtained other resources such as family assistance, there has been little delay, and the arrearage is not substantial. Deed in lieu of foreclosure has the advantage over default of avoiding foreclosure’s full effect on the borrower’s credit, although deed in lieu of foreclosure has its own effect on credit, and in both instances the borrower loses the home. Fortunately, under the Mortgage Debt Relief Act of 2007, Pub. L. 110-142 (Dec. 20, 2007), federal law now treats as non-taxable a lender’s forgiveness of a homeowner’s note to purchase or improve a primary residence. If a settlement conference generates one or more settlement options especially including renegotiation of the mortgage interest, term, or principal balance, then attempt to get the lender’s counsel to agree to accept negotiation communications rather than requiring the borrower to deal with an unfamiliar and potentially unresponsive and unaccountable lender representative.

Recourse. Consider closely in your pro-bono counsel whether the lender retains a right of recourse against the borrower after workouts in which the borrower vacates the home. An important aspect of any option involving the homeowner’s relinquishing the home, including in particular default or deed in lieu of foreclosure, is whether the bank retains recourse against the borrower for the loan deficiency after foreclosure sale. Unless the borrower intends a prompt bankruptcy, the borrower should avoid recourse settlements because of the lender’s ability to enforce the deficiency judgment through garnishment of wages and accounts or execution on non-exempt
assets. Non-recourse settlement for deed in lieu of foreclosure may be the borrower’s preferred option, especially if the mortgage balance substantially exceeds the home’s value. Note, though, that some states bar judgments for deficiency after a trustee’s sale, for foreclosure of smaller, single-family or duplex residential properties, instead requiring judicial foreclosure and sale for deficiency judgment. See, e.g., ARIZ. REV. STAT. §33-814(G). Some states also mandate through anti-deficiency statutes that purchase-money mortgages are non-recourse, effectively barring deficiency judgment unless the homeowner allowed the home’s waste (damage by flooding, for instance). See, e.g., ARIZ. REV. STAT. §33-729. Some states may also bar deficiency judgments after the lender agrees to a short sale by the homeowner unless the homeowner expressly agrees to pay the deficiency. See, e.g., Tanque Verde Anesthesiologists v. Proffer Group, Inc., 836 P.2d. 1021 (Ariz. Ct. App. 1992). Other states permit deficiency judgment after foreclosure by notice, but only if the lender applies to the court promptly after the deficient sale. See, e.g., GEORGIA CODE §44-14-161. It can certainly help that you know and rely on these statutes, but your practice should also be to make the parties’ agreement as to recourse or non-recourse clear in any settlement documentation.

Redemption. Lawyers representing homeowners faced with foreclosure should generally also know their state’s statutory law (if any) on the right of redemption. When a homeowner falls behind on payments, the homeowner retains an equitable right of redemption, meaning that the homeowner may pay the whole debt (extinguishing the mortgage) and retain the home so long as the lender has not foreclosed. In practice, lenders frequently reinstate the mortgage loan when the homeowner brings the mortgage current before any foreclosure. Foreclosure ends the equitable right of redemption. Yet about two-thirds of the states have statutes providing for a period for redemption after foreclosure. Those statutes permit a homeowner to pay the whole debt (extinguishing the mortgage) and retain the home even if the lender has foreclosed, so long as the homeowner does so within the defined period after foreclosure. Redemption periods range from a few months to as long as 18 months. In many states having statutory post-foreclosure redemption periods, the homeowner retains the right to remain in the home during the redemption period. A few states require the homeowner to post bond against waste, to retain possession. In other states, the buyer takes possession at the foreclosure sale subject to the borrower’s right to redeem. These rights may affect how long the foreclosed pro-bono client may remain in the home while attempting to redeem, arrange a buyout, or secure other housing including gathering the necessary finances.

Modification. In representing pro bono a homeowner facing foreclosure who wants to remain in the home, do not underestimate the lender’s incentive to modify the mortgage. Empirical study of tens of thousands of recent foreclosure sales suggests that foreclosure nets banks on
average as little as 35 cents on each dollar of mortgage-loan obligation. Loan modifications can save banks huge sums over foreclosure. Loan modifications can also reduce litigation and sale costs, and liability risks associated with foreclosure and sale. Bank modifications to date have largely been to repayment terms, not to the principal balance. There are political, legal, and economic incentives for banks to reduce principal balances. The legal incentive arises out of the federal Home Affordable Modification Program that pledged $75 billion to spur residential mortgage-loan modifications. Under the program, the federal government pays loan servicers $1,000 initially followed by $1,000 for each of three years for qualifying trial reductions, meaning in general those that reduce loan payments to 31% of the borrower’s gross income enabling the borrower to keep the obligation current. The program has so far had limited success, with far fewer than expected qualifying for permanent modification and high re-default rates even for those who do qualify, but the program may have accelerated banks’ willingness and ability to offer modifications. The mechanisms for modification may now be in place, even if housing-market and employment conditions have not yet supported widespread permanent mortgage reductions. The federal government continues to propose and plan home-mortgage subsidies for the unemployed and other measures to reduce foreclosures.

Modification Process. Because of the size of the foreclosure crisis and the unique circumstances that it presents to banks, you and the pro-bono client should expect delay, confusion, and frustration in any modification process. The work of modifying mortgages on this scope and to this extent is new to lenders. Lenders may only have just put modification mechanisms in place without fully staffing and training staff to make those mechanisms effective. Lenders may also be modifying the mechanisms to meet new conditions or to improve on poorly designed initial systems. Do not let frustration defeat your pro-bono service. Use the skills that you have learned in other equally uncertain circumstances. Keep the ball in the lender’s court. Respond promptly and completely to any lender request for information or documentation. Give frequent reminders without burdening or harassing the lender’s office. After submitting documentation, telephone to ensure receipt and processing. On the occasion of any delay, telephone to inquire as to the reason and then take the appropriate action to end the delay. If you have the resource available to you, then rely on legal assistants for these and similar forms of administrative monitoring. Document the lender’s egregious mishandling in the event that a trial judge will provide the borrower relief in foreclosure litigation.

Financial Counsel. The limited success (or failure) of the federal Home Affordable Modification Program and similar private programs highlights
that what borrowers tend to need most to save their homes from foreclosure is income, meaning jobs. The foreclosure crisis got as bad as it did and has remained as bad as it has because of a significant increase in unemployment. Pro-bono lawyers are not vocational experts and may not even be particularly effective or efficient at giving financial counsel. Referring pro-bono clients for career counseling and training in maintaining a household budget can be appropriate. Yet even if you are not particularly skilled or experienced in either subject (employment and personal finances), you can still reinforce some of the basic messages that pro-bono clients get from those other sources. Whether for general counsel or especially in evaluating legal options, explore with your pro-bono client the client’s mortgage-to-income ratio. Help the client understand and be realistic about the income that it takes to support a home mortgage and the income that a household must reserve for other necessities and contingencies. It may only take a few minutes of financial estimates to show the client that a mortgage payment or modified payment is within reach or outside of the client’s reach on a reasonable budget. As the Home Affordable Modification Program has proven, it does little good and can instead do harm to keep a homeowner in a house on modified mortgage terms that remain beyond the homeowner’s reasonable reach, particularly when those modifications extend the mortgage term and add fees and interest to the principal balance.

Mortgage Counseling. Your pro-bono client may find reliable sources for mortgage counseling in addition to your pro-bono service. There are many private for-profit, charitable nonprofit, and governmental agencies offering mortgage-assistance services. The federal government established the National Foreclosure Mitigation Counseling Program especially to reach low-income and minority homeowners facing foreclosure. There are many charitable nonprofit organizations providing similar services. The local Fair Housing Center may offer contact information for a network of those services or provide some services itself, particularly with respect to predatory-lending practices within its anti-discrimination mission. Counseling before foreclosure has proven successful. See Justin Wagner, Assisting Distressed Homeowners to Avoid Foreclosure: An Advocate’s Role in an Evolving Judicial and Policy Environment, 17 GEO. J. ON POVERTY L. & POLICY 423, 445–446 (2010). Consider encouraging your pro-bono client to access these additional resources. Your pro-bono service may prove valuable to the distressed homeowner simply by helping them locate reliable assistance from other organizations devoted to saving families from foreclosure.

Scams. Your pro-bono service may also prove worthwhile simply for helping the client avoid foreclosure-assistance scams. Unfortunately, some foreclosure-assistance offers are fraudulent, intended to dupe distressed homeowners out of much-needed cash reserves or, in some cases, remaining home equity. The fact that scam artists may discover mortgage-foreclosure
information through court filings and credit services and that distressed homeowners may have some assets and income and be desperate for assistance, makes those homeowners even more attractive targets. Scam perpetrators will advertise, telephone, and visit the homeowner’s home, possibly multiple times. Counsel the homeowner to avoid dealing with anyone who requires a substantial cash payment before providing any service. Many states prohibit any individual other than a lawyer from charging fees in advance of mortgage-modification services. Homeowners should ordinarily avoid paying substantial fees for completing a mortgage-modification application, that service requiring relatively routine skills the exercise of which does not generally justify substantial charges. If your pro-bono client did engage and pay a mortgage-assistance service, then contact the lender to determine what documentation the service submitted. If the service did not perform as promised, then help the client demand and obtain a refund of substantial amounts paid.

These are some of the ways in which you can assist a pro-bono client in avoiding foreclosure. Although the scope and depth of the foreclosure crisis may make the work look daunting, your effort on behalf of individual clients can be worth it. There are few legal services more worthwhile and immediate than saving a family’s home from foreclosure. Pro-bono efforts by lawyers, particularly those in sole practice or smaller law firms where conflicts of interest do not exist, can make a difference. The federal government has supported a pilot program of encouraging banks to waive conflicts for pro-bono lawyers from larger law firms who have corporate and banking clients. Professor Florice Neville-Ewell at the author’s law school has made a professional cause of foreclosure assistance, helping hundreds of families avoid or make the best of foreclosure, and deal more effectively with its consequences. The Grand Rapids Bar Association recently honored the local charitable nonprofit Home Repair Services with the Liberty Bell Award for its foreclosure-prevention program. Consider representing one individual or family with mortgage-foreclosure assistance and then building on your experience by representing multiple others.

The lawyer closed his laptop computer’s lid and set aside the file that he had brought with him to the community center when he heard and then saw the pro-bono client approach. His tiny office was just big enough to push a small desk up against one wall, leaving room for one small chair behind the desk and another beside it, but too small for the wastebasket that was outside the door. The office opened out onto the empty activities room with its gleaming linoleum floor. The community center was
in a drug-ravaged urban neighborhood, too poor to replace the stolen street signs. Although the lawyer had been serving here twice a month for nearly a year, he still had no good idea of what to quite expect each time. The pro-bono service seemed to be as unpredictable as the streets outside and the future of the neighborhood.

The lawyer noticed that the client was dressed for work in cheerful nurse's scrubs. As the client neared the lawyer, she shifted a manila folder from her right hand to under her left arm, with her left hand holding her purse. Before she had quite reached the lawyer who was now standing at the office door, she was already introducing herself while looking the lawyer straight in the eye, extending her free right hand before the lawyer could do so himself. Everything about the client bespoke competence, perhaps even fastidiousness, the lawyer thought. He wondered what the legal issue might be, already heartened by the client's neat appearance and confident demeanor.

The lawyer squeezed back into the tiny office to sit at the desk. The client settled respectfully on the lone chair beside the desk. The proximity of lawyer and client accentuated their every move. The lawyer made sure that he had a blank intake form at the ready and that there was nothing else visible to the client on the desk. The client placed her manila envelope on the corner of the desk and opened it to reveal neat notes. The lawyer also guessed that the client was a good bit younger than he had first surmised from her confident demeanor.

The client then began to explain her dispute with the bank that held her mortgage. She had taken two week's leave from work to care for her mother and then, a month later, two more weeks. She knew that her paychecks would be smaller, but they had been smaller than she thought. She had missed a mortgage payment and been late on another, and had not yet paid the bank this month's payment because of their dispute. The client began pulling the bank's notices from under her neat notes in the manila folder, handing each notice to the lawyer in order, as she explained the dispute over late charges. The bank was now claiming that she was three payments behind, not one, and threatening foreclosure. She had been in the house for a little more than a year and fixed it up some, and did not want to lose it. She had always kept her finances straight, but the bank personnel were not being helpful, even when she went in to speak to them in person.

The lawyer, too, had not been able to follow the bank's figures while listening to the client's explanation. "How much time do you have?" the lawyer asked the client. She explained that she was on her break from work and expected back in 20 minutes. "May I have copies of your papers and your permission to speak to the bank?" the lawyer asked. The client
explained that she had already made copies and that the manila folder and its contents were for the lawyer.

The lawyer then advised the client that he would request an accounting from the bank showing each charge and payment. The bank had likely applied the client’s late mortgage payment to charges and interest, the lawyer explained, so that from the bank’s perspective the client may well have been three payments behind. Because the client had the income to pay the mortgage and wanted to remain in the house, she should continue making mortgage payments during the dispute. Banks occasionally waived late charges, especially with customers who had always been on time and were communicating regularly with the bank, as the client had done. The lawyer would ask the bank for the documentation to show that the client had agreed to late charges when the bank made the loan. The lawyer would also examine the loan agreement for relief provisions and request a waiver of late charges.

The lawyer also asked the client if she had a household budget. She did not. The lawyer had discerned that as conscientious as the client was about her appearance, demeanor, affairs, and relationships, she had little financial experience and probably no financial training. In this community in particular, it would not have been surprising if the client had made her own way into a career but missed acquiring some of the financial skills that are more common in households in affluent communities. The lawyer asked the client if she would be interested in working with the lawyer’s assistant on a household budget and some financial skills. The client was delighted at the offer. It was time for her to return to work, but she looked forward to it. She would make a payment immediately and was sure that she could catch up on her mortgage. The client rose quickly but politely, shook the lawyer’s hand again, stepped out of the tiny office, and walked briskly across the gleaming linoleum floor toward the exit. The lawyer thought, if all consultations were only that simple.
Chapter Thirteen

The Soldier

Servicemember Laws—
Helping the Soldier Return Home

The significance of servicemembers’ contributions, together with the substantial economic and social costs servicemembers and their families bear because of those service commitments, make servicemembers and their families highly deserving pro-bono clients. United States military service is critical to national and international security. We have come to depend on an all-volunteer military force and come to depend on it ever more heavily. Many servicemembers have been pressed into multiple tours of duty, extending their volunteer service beyond what they initially anticipated and prepared to serve, and imposing costs they did not expect. The percentage of veterans in the United States population continues to shrink, so that fewer of our families share the burden of military service. The demographic of an all-volunteer military force has shifted from a general demographic touching all socioeconomic segments and geographic regions toward members of military families especially in the South, away from the affluent and middle class. The shift runs the risk of creating a divide between the national consciousness of military sacrifice and the individual experience of it. Servicemembers receive modest compensation for their risk and sacrifice. Agencies, employers, retailers, industries, and professions recognize and reward servicemembers’ sacrifice through benefits, discounts, and other programs. The legal profession should do likewise.
Approach. First, though, consider an approach or attitude toward serving the soldier. Military service can be hugely rewarding. Servicemembers choose it for that reason. Military service is voluntary. There is no draft. You should be prepared to celebrate, not denigrate, the servicemember’s voluntary military commitment. Because military service also involves personal sacrifice for national benefit, you should be prepared to recognize and show gratitude for the servicemember pro-bono client’s military commitment. Yet military service also has a fear factor. Military service carries with it a real risk of serious injury and death. The servicemember client and family members know and respect it. You should, too. Frivolity is rarely appropriate. There is a seriousness about helping the servicemember with legal issues affecting lives and relationships, even while one wants to avoid being morose. Military service is not a death sentence. It is a hugely valuable, voluntary commitment to sacrifice for the welfare of others, while gaining honor and respect for one’s self. Lawyers should be adept at setting the right tone for consultation with servicemembers, in ways that support and recognize the servicemember client’s ethic. Doing it right can be a highly satisfying professional effort.

Common Issues. Servicemembers face additional legal issues because of their service commitments. Legal service to soldiers has three general goals: (1) to help soldiers transition from civilian life to military service; (2) to keep soldiers’ minds clear of legal issues during their service so that they can effectively serve the country and safely return; and (3) to help soldiers transition from military service back to civilian life. Legal service to soldiers can involve virtually anything that legal service to others involves, from assistance with real and personal property rights including vehicle and apartment leases, mortgages, and home sales, through family-law issues like separation, divorce, and child custody and support, to personal injury, probate, and business matters. The goals of helping soldiers transition in and out of service, and maintain peace of mind in between, changes the usual perspective for those common legal services. Achieving the goals often requires suspending or modifying the soldier’s contractual and financial obligations, while confirming and preserving the soldier’s property rights and family status around a status quo. Servicemembers can benefit from pro-bono legal service before, during, and after active-duty service to achieve these goals. Pro-bono service to soldiers introduces you to a productive professional and client network. Although there are some more prominent categories or characteristics, servicemembers still come from all professions and demographics.

Servicemember Law. Both state and federal law can help a soldier achieve these legal goals. The principal federal law on which soldiers rely to manage their civil legal affairs while on active duty in the military service is the Servicemembers Civil Relief Act, 50 U.S.C. App. §§501-596. The Act’s
purpose is to help servicemembers on active duty “devote [their] entire energy to the defense needs of the nation” by providing for certain rights and procedural safeguards in civil litigation. 50 U.S.C. App. §502. The Act protects members of all four military branches including reserves, members of the Coast Guard and National Guard, and some other commissioned federal officers, when under federal orders to active duty, while extending some protections to servicemembers’ dependents. The Act applies to federal and state civil and administrative proceedings, though not criminal proceedings. 50 U.S.C. App. §512. This chapter summarizes the Act, suggesting how you may help a soldier pro-bono client rely on it. Another helpful resource on the Act is the Judge Advocate General’s School of the United States Army’s THE SERVICEMEMBERS CIVIL RELIEF ACT GUIDE (2006), available online. With United States Department of Defense support, some states have adopted family-law provisions to preserve the status quo as to child custody. This chapter also addresses those laws. First, though, consider two basic legal documents with which you can help ready a soldier pro-bono client for active duty.

Wills. Deploying military units routinely hold readiness events where the units gather for a variety of administrative activities. The legal-services aspect of those readiness events can include preparation and execution of a will for each deploying servicemember, with the support of volunteer lawyers. Soldiers face an increased risk of death. A will may not make much sense to the ordinary 25 year old but can give much peace of mind to a 25-year-old servicemember. A will’s thoughtful designation of beneficiaries and guardians for minor children can also demonstrate to a spouse and family members that the servicemember is thinking of them and their well-being in the servicemember’s absence. Wills for servicemembers look a lot like wills for nonmilitary individuals, although they will typically include a provision regarding military benefits like the following:

I have served in the Armed Forces of the United States. I therefore request that my personal representative make appropriate inquiries to ascertain whether there are any benefits to which I, my dependents, or my heirs may be entitled by virtue of any military affiliation. I specifically request that my personal representative consult with a retired-affairs officer at the nearest military installation, the Department of Veterans Affairs, and the Social Security Administration.

Power of Attorney. It can also greatly aid a servicemember to leave a general power of attorney with a spouse, parent, or other responsible family member or friend. The servicemember may while on active duty desire to sell a vehicle, bring a small claim to collect on a debt, join a class action regarding consumer rights, claim an inheritance, open or close an account, or pursue any number of other legal rights and claims while away. Federal law grants
special authority to a military power of attorney, as the following standard clause for those powers of attorney recites:

This document is a MILITARY POWER OF ATTORNEY prepared pursuant to 10 U.S.C. 1044b and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this power of attorney from any requirement of form, substance, formality, or recording prescribed for powers of attorney by the laws of a state, the District of Columbia, or a territory, commonwealth or possession of the United States. Federal law specifies that this power of attorney shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the jurisdiction where it is presented.

_Steps of Civil Actions._ The Servicemembers Civil Relief Act’s key procedural protection, 50 U.S.C. App. §522, offers the servicemember a minimum 90-day stay of civil court and administrative proceedings. The soldier pro-bono client may require your assistance in obtaining the stay. Perhaps surprisingly, the Act’s stay is not automatic. Rather, the stay arises in actions in which the servicemember receives notice of the action and requests the stay, unless the court grants the stay on its own motion. 50 U.S.C. App. §522(b)(1). The servicemember’s application for stay must show that active duty materially affects the servicemember’s ability to appear, state a date when the servicemember will be available, and include the commanding officer’s confirming statement adding that leave is also not available. 50 U.S.C. App. §522(b)(2). If the servicemember’s request meets those conditions, then the stay is mandatory. A stay request does not constitute an appearance and waiver of objections to jurisdiction. 50 U.S.C. App. §522(c). If the court grants only the minimum 90-day stay and the servicemember’s active duty continues beyond that period to materially affect the servicemember’s ability to appear and defend, then the servicemember may request an extension. 50 U.S.C. App. §522(d)(1). Another section of the Act, 50 U.S.C. App. §524, protects servicemembers against garnishment, attachment, and other forms of execution on judgments, where active duty interferes with the servicemember’s ability to comply with the judgment.

_Terms of Stay._ Consider the terms of stay for any stay that you assist a servicemember in obtaining. The terms of a stay may be critical to its effectiveness, particularly where there are joint obligors to the obligation that the plaintiff seeks to enforce against the defendant servicemember. Courts have the discretion to allow an action to proceed against non-servicemembers. 50 U.S.C. App. §525(b). Keep in mind that the court’s allowing the plaintiff to proceed against a servicemember’s spouse, other relative, or business partner may defeat the purpose and effect of a stay as to the joint claim against a servicemember. Courts have the discretion under the Act to stay a proceeding for the entire duration of active duty plus 90 days after release, or for shorter
The Act tolls limitations periods to protect plaintiffs who have rights and claims against servicemember defendants. 50 U.S.C. App. §526; Conroy v. Anisko, 507 U.S. 511, 517 (1993). Other than for Internal Revenue Service obligations, servicemembers gain no limitations-period bar by having stayed or avoided a civil action during active duty.

**Default Judgments.** Another important procedural protection, 50 U.S.C. App. §521, limits the circumstances and effect of default judgments taken against servicemembers while on active duty. The Act requires the plaintiff in a civil action to file an affidavit stating whether the defendant is in the military service, 50 U.S.C. App. §521(b)(1), authorizing fine and imprisonment for false affidavits, 50 U.S.C. App. §521(c). The Act also makes it the court’s duty to determine whether a defendant is on active duty, which the court can do with an inquiry to the Defense Manpower Data Center or the Department of Defense’s Servicemembers Civil Relief Act website. The Act does not bar a default judgment where the servicemember has appeared. Where the servicemember fails or refuses to appear, the Act authorizes the court to appoint an attorney for the military defendant. The Act stays the proceeding for at least 90 days if appointed counsel shows or the court on its own determines that there is a defense to the action that requires the defendant’s presence or that counsel has been unable to locate the defendant. 50 U.S.C. App. §521(d). The appointed attorney’s actions do not bind the defendant if the attorney is unable to locate the defendant. 50 U.S.C. App. §521(b)(2).

**Vacating Defaults.** You may be able to help a servicemember avoid a default judgment, but as in the case of other Servicemembers Civil Relief Act rights, doing so requires affirmative action. Under certain conditions, servicemembers may void default judgments taken in violation of the Act while the servicemember is on active duty or within 60 days after active duty. 50 U.S.C. App. §521(g). The servicemember must within 90 days of release from active duty file a motion to vacate the default judgment. 50 U.S.C. App. §521(g)(2). The motion must show not only a meritorious defense but also that active duty materially affected the servicemember’s ability to raise that defense. 50 U.S.C. App. §521(g)(1).

**Installment Contracts.** Some of the Act’s more significant provisions have to do with motor-vehicle leases, cell-phone contracts, apartment leases, and other installment contracts. See U.S.C. App. §532. Importantly, the installment-contract provisions protect not only the servicemember but also the servicemember’s dependents. 50 U.S.C. App. §538. The first important right is for servicemembers and their dependents to terminate installment contracts after the servicemember received orders for active duty. 50 U.S.C. App. §535(a). The right essentially gives the servicemember and dependents the opportunity to restructure a household budget to meet the limitations of military income, burden of military assignments, and fortuity of military
housing and other benefits. To terminate, the servicemember and dependent need not show that the military service materially affects their ability to perform the contract obligations. In most instances, they do need to show that they entered the contract before the military orders. 50 U.S.C. App. §535(b). Servicemembers must pay arrearages accumulating before the orders but are entitled to refund of prepaid amounts after termination. 50 U.S.C. App. §535(f). If the servicemember or dependent chooses not to terminate the contract, then the Act requires the court to order a stay and permits the court to adjust the contract, provided that the servicemember show that active duty materially affects the servicemember’s or dependent’s ability to perform the contract. 50 U.S.C. App. §532(c). Special provisions apply to cell-phone contracts, providing for suspension of the contract without early termination or reactivation fee. 50 U.S.C. §535a(b).

**Evictions.** As to another form of installment contract, residential leases, the Act prohibits evictions from a residence without court order, provided that the servicemember’s monthly rent does not exceed the annually adjusted rate set at $2,932 for 2009. 50 U.S.C. App. §531(a)(1)(A). A servicemember may seek to enforce the Act’s prohibition by court fine or imprisonment, or by private right of action for conversion. 50 U.S.C. App. §531(c). If a property owner brings an action to evict, then the court must, on the servicemember’s request, either stay the action for 90 days or adjust the lease obligations to preserve both the servicemember tenant’s and property owner’s interests. 50 U.S.C. App. §531(b)(1). The Act’s general stay provisions do not apply to eviction proceedings, which have their own stay proceedings. 50 U.S.C. App. §522(f). The Act also protects against foreclosure of a storage lien and sale of a servicemember’s stored household goods or other personal property, during and 90 days after active duty, without court order. 50 U.S.C. App. §537(a)(1). The court must stay those actions on the servicemember’s request and may adjust the storage contract, provided that the servicemember shows that active duty materially affects the ability to pay. 50 U.S.C. App. §537(b).

**Mortgages.** The Act also prohibits foreclosure without court order, during and up to nine months after active duty, of a servicemember’s residential mortgage entered into before active duty. 50 U.S.C. App. §533. In a court action to foreclose, the court must on the servicemember’s application either stay foreclosure or adjust the mortgage obligation, provided that the servicemember shows that military service materially affects the servicemember’s ability to comply with the terms of the mortgage. 50 U.S.C. App. §533(b). Conditional stays typically provide for partial payments within the servicemember’s military compensation. The Act prohibits mortgage late charges and other penalties during a stay. 50 U.S.C. App. §523(a). Importantly, active duty also tolls the statutory redemption period, effectively extending the redemption period for the time of active duty plus the statutory
period. 50 U.S.C. App. §526(b). If able to obtain alternative financing or otherwise satisfy mortgage arrearages, then a servicemember can redeem foreclosed property after active duty ends, within the statutory period for redemption. The Act tolls the redemption period whether or not active duty materially affects the servicemember’s ability to pay the mortgage obligations. Conroy v. Aniskoff, 507 U.S. 511, 517 (1993). It is important that the servicemember give notice of these active-duty rights because the Act does not protect the servicemember against bona fide purchasers for value. 50 U.S.C. App. §521(h).

**Interest Cap.** Another significant protection with which you can help a servicemember pro-bono client is the Act’s 6% cap on interest rates for debts incurred before active duty. 50 U.S.C. App. §527. Given the prevalence of substantial credit-card debt among the general population, you can expect many servicemembers to enter active duty with substantial credit-card debt on which they are paying double-figure interest rates. Adjusting that interest rate down to 6% can substantially reduce the payment and prevent the debt from accumulating during military service. The cap applies to the servicemember’s sole obligations, obligations the servicemember incurs jointly with a spouse, and obligations the servicemember incurs in the name of the servicemember’s business. The Act defines interest to include service charges, renewal charges, and late fees. 50 U.S.C. App. §527(d)(1). The interest-rate cap ends with the end of active duty except for mortgage debt, in which case the cap continues for a period one year beyond the end of active duty. 50 U.S.C. App. §527(a)(1). Your pro-bono advice and assistance can be especially helpful here because the cap is not self-executing. The servicemember must notify the creditor within 180 days of the end of active duty to be entitled to an interest-rate adjustment. 50 U.S.C. App. §527(b)(1). The Act permits a creditor to object to an interest-rate reduction but places the burden on the creditor to show that active duty did not materially affect the servicemember’s payment of the higher rate. 50 U.S.C. App. §527(c).

**Insurance.** The Act also protects a servicemember’s interest in health, life, and professional-liability insurance. 50 U.S.C. App. §§544, 593, 594. The Act entitles a servicemember to immediate reinstatement of a health-insurance policy suspended during active duty, provided that the servicemember applies for reinstatement within 120 days after release from active duty. 50 U.S.C. App. §594. Health insurers may generally not exclude coverage for conditions that arise because of the active-duty service. 50 U.S.C. App. §594(b)(3). Life-insurance providers may not reduce coverage or increase premiums during a servicemember’s active duty, provided that the servicemember had the insurance in place at least 180 days before the call to active duty. 50 U.S.C. App. §541(1)(A). The insurer may not forfeit, cancel, or otherwise terminate life insurance if the servicemember fails to pay premiums, during active duty and for two years after release from active duty, 50 U.S.C. App. §541(b)-(c),
provided that the servicemember or beneficiary applies for this protection through the Veterans Administration, 50 U.S.C. App. §543. Servicemembers who are professionals may on written request to the insurer suspend their liability insurance during active duty. 50 U.S.C. App. §593(b)(2).

Child Custody. The military may require a deploying soldier who has custody of children apart from the children’s other parent to complete a family care plan. Plans typically include temporary guardianship of the minor children, often with the servicemember’s parents or current spouse. A servicemember’s active duty may trigger the non-custodial parent’s request for a change in custody. The Servicemembers Civil Relief Act stay provisions apply explicitly to actions to change child custody. 50 U.S.C. App. §522(a). However, case law suggests that courts are reluctant to stay actions when considering the best interests of the child. As a consequence, about a dozen states have adopted their own specific provisions preserving the status quo as to child-custody orders. See, e.g., ARK. CODE §9-13-110; MICH. COMP. L. 722.27; N.C. GEN. STAT. §50-13.7A(a). Those provisions tend to prohibit courts from modifying child-custody orders or issuing new orders that alter custody while the servicemember is on active duty, raise the burden of proof for doing so, or require restoration of the servicemember’s custody rights on release. For example, under the Michigan provision, if the court has clear and convincing evidence that a change is in the child’s best interest, then the court may order that change but must reinstate the prior custody order when the servicemember returns from active duty. To ensure that the servicemember loses no right because of active duty, the provision also prohibits the court from considering the servicemember’s absence for active duty in making any subsequent change in custody. If your pro-bono client faces custody issues, then check your state’s law for these provisions. See Sara Estrin, The Servicemembers Civil Relief Act: Why and How this Act Applies to Child Custody Proceedings, 27 LAW & INEQ. 211 (2009).

Veterans Disability Benefits. Veterans, especially those disabled by service injuries, can benefit from pro-bono counsel. According to the National Center for Veterans Analysis & Statistics, there are about 23 million veterans of United States military service, about 3 million of whom receive disability compensation following active duty service and other-than-dishonorable discharge. Reserve and National Guard servicemembers qualify for federal veterans’ benefits if serving active duty under a federal order. A veteran can receive disability benefits on showing a current disability caused by disease or injury incurred or aggravated during service. 38 U.S.C. §1110. Federal law gives the benefit of the doubt to the veteran in making that showing. 38 U.S.C. §5107(b).

Procedure. Veterans make their disability-benefits claims to Veterans Administration Regional Offices, which must assign a percentage disability and effective date to qualifying claims. Litigation of benefits claims often
arises over the assigned percentage disability and effective date, and also over reratings of disability as the veterans’ condition changes. Veterans who disagree with the findings may appeal to the Veterans Administration by filing a notice of disagreement, entitling them to an informal hearing before a Decision Reviewing Officer at the Regional Office. 38 C.F.R. §20.201. Veterans who disagree with the informal-hearing decision may take a formal appeal to the Board of Veterans Appeals, and from there to the Court of Appeals for Veterans Claims, and then to the United States Court of Appeals for the Federal Circuit.

**Representation.** Veterans do not receive assigned counsel relating to disability-benefits claims. Veterans may retain counsel beginning at the informal-hearing stage. Attorneys may represent veterans disability-benefits claimants under a contingency-fee agreement presumptively reasonable in amount if limited to 20%. See 38 U.S.C. §5904(a)(5). Because of the paucity of counsel in early cases before the Court of Appeals for Veterans Claims and the substantial percentage of appeals involving avoidable error, the Veterans Consortium Pro Bono Program now recruits and coordinates pro-bono legal services for veterans appearing before the Court of Appeals for Veterans Claims. Several law schools also now have clinics assisting veterans with disability-benefits claims. See Steven K. Berenson, Legal Services for Struggling Veterans—Then and Now, 31 HAMLINE J. PUB. L. & POLICY 101 (2009). Some of those clinics recruit and support pro-bono counsel. Consider coordinating your pro-bono service to a veteran with one of these programs.

**Agency Assistance.** Assisting a veteran with a disability-benefits claim is not like litigating worker’s compensation, disability-insurance, and other personal-injury claims. Federal law requires the Veterans Administration to assist the veteran in establishing the claim. 38 U.S.C. §§5102-5103A, 5107. The Veterans Administration must give the veteran notice of what additional information is necessary for the veteran to establish the claim, what the Veterans Administration will provide, and what the veteran must provide. 38 C.F.R. §3.159(b). Litigation of veterans-benefits claims is often over whether the Veterans Administration gave the requisite notices. See Shinseki v. Sanders, __ U.S. __, 129 S.Ct. 1696 (2009). Federal law may also impose a duty on the Veterans Administration to attempt to obtain complete original medical records, particularly when counsel so requests. See Moore v. Shinseki, 555 F.3d 1369 (2009). That obligation can prove critical, given that hearing officers and courts decide veterans disability-benefits claims and appeals on the medical records. Federal law also grants the veteran several presumptions when proving a disability-benefits claim. Those presumptions include that the in-service injury or disease occurred in the line of duty and was not due to the veteran’s disqualifying misconduct, and that the veteran was of sound condition when entering military service. 38 U.S.C. §105(a); Holton v. Shinseki, 557 F.3d 1362, 1366-1367 (2009). The first of those presumptions
removes any issue (familiar to worker’s compensation counsel) whether the injury or disease occurred within the course or scope of service, establishing instead that soldiers are always at work when on active duty.

Other Benefits. Military service carries with it a variety of rights and benefits. Pro-bono counsel can assist the veteran in discovering, interpreting, and obtaining those benefits. Military benefits can relate to finances (discounts, Veterans Administration loans, life insurance, and the Thrift Savings Plan), compensation (standard pay, allowances, special pay, allotments, retired pay, and disability pay), healthcare (Veterans Administration facilities and Tricare), perks (military travel and lodging, burial benefits, and family benefits), education (tuition reimbursement, education loans, and assistance), military career (enlistment and re-enlistment bonuses, pay grades, advanced enlistment rank, deployment, mobilization, and relocation), and family (relocation, spouse education and training, family support, and support organizations). See publications like CHRISTOPHER P. MICHEL & TERRY HOWELL, THE MILITARY ADVANTAGE: THE MILITARY.COM GUIDE TO MILITARY AND VETERANS BENEFITS (2009), for comprehensive resources on veterans benefits.

Veterans Court. Several states and local county courts have created veterans courts as diversionary programs from the usual criminal-court docket. For a variety of reasons having to do with the length and violence of their military service, isolation from family and other social systems of support, financial and employment issues created by the service interruption, and mental and physical disability due to service, veterans can face unique issues reintegrating after active duty. Veterans courts recognize the unique experiences of veterans and their concomitant needs in sentencing and rehabilitation. Mentor, substance-abuse, mental-health, and vocational programs are key rehabilitation components. Because veterans courts handle primarily or solely criminal-law matters in which the defendant veteran faces the prospect of incarceration, the court is likely to have assigned counsel and arranged for that counsel’s compensation. Direct individual pro-bono service is often not necessary. Yet pro-bono counsel can support local and state-wide efforts to establish veterans courts.

These are some of the specific laws and issues that affect pro-bono service to soldiers. There are plenty of opportunities for that service. For example, the assistant director of the Center for Ethics, Service, and Professionalism at the author’s law school organizes the legal-services component for Grand Rapids’ annual Stand Down project serving veterans. At that event, area practitioners and faculty from the Grand Rapids campus help veterans with a variety of issues including family law, housing, bankruptcy, and collections. The school’s Public Sector Law Clinic is also helping to investigate a Veterans Court. The school also conducts a Service to Soldiers program that serves hundreds of soldiers on active duty or
preparing for or returning from active duty. Service to Soldiers refers
individual soldiers to a network of school faculty and alumni, and other
practitioners, for pro-bono legal assistance. The program also offers legal
services to deploying soldiers at military readiness events and to returning
soldiers. In 2010, Director Heather Spielmaker of the Center for Ethics,
Service, and Professionalism won the United States Department of Military
and Veterans Affairs Legion of Merit recognition for creating and leading
Service to Soldiers. Consider serving the soldier on your own or through an
organized program like Service to Soldiers.

The lawyer rose, straightened and buttoned his suit coat, and leaned
across his office desk to shake the pro-bono client’s hand. The assistant
who had shown in the client and his wife made sure that they were seated
comfortably and then took a seat herself, politely out of the way. The
assistant had already explained to the lawyer before the client and wife
arrived that the client was in the National Guard and preparing to deploy
to, well, war. The lawyer could not remember if the assistant had said
Afghanistan or Iraq. The military had somehow mis-scheduled the client
out of the usual readiness event. His commander had instead told him
what he needed to do, including to get a will and power of attorney. The
lawyer, who had done pro bono at Service to Soldier readiness events in
the past, had gladly agreed to the assistant’s request to help this client
individually at the lawyer’s office.

Since the moment that the assistant had shown in the client and his
wife, the lawyer had been thinking how young and innocent they both were,
and how precious. The lawyer had immediately discerned their faith and
excitement, from the client’s eager handshake and straight look, and the
wife’s equal effort to show confidence. He could also sense that fear
tinged their faith and excitement, from the slightly forced nature of
their confidence and, more obviously, from the client’s shaking hand and
voice. Later, the lawyer would realize that he made this intuitive
assessment of every client as they walked in the door, as to what their
condition reflected and how he should respond. In this instance, the
lawyer immediately committed to do everything he could to preserve and if
possible increase the couple’s confidence, helping (as so many others would
along the way) to turn it into rooted assurance. The couple would be
drawing heavily on that assurance throughout the next years, the lawyer
knew.

In this case, the lawyer could instantly tell that the assistant’s heart
had also gone out to the young couple. The assistant was ordinarily
cheerful, fresh air to all whom she served. With this young couple, though, the assistant was positively ebullient. The lawyer suspected the cause: the assistant had a son who was preparing to deploy. Realizing that it was going to be a hard for the assistant to get through the consultation without crying in maternal care for this precious young couple, the lawyer caught the assistant's eye as she prepared to sit, nodded graciously to her, and told her thank you. Let's both save the crying for later, the lawyer was thinking and knew from the assistant's brief look of acknowledgment that she was thinking the same thing, too.

They finished in exactly one hour. Lawyers must have an internal one-hour clock. The lawyer felt in retrospect that everything had gone well. Certainly, they had completed and executed the standard military will and power of attorney that Service to Soldiers uses. The client and his wife understood and much appreciated the documents. As is often the case, they had most appreciated discussing and agreeing on the guardianship designation. The young couple already had two children. The lawyer had carefully explained that the guardianship designation was only in the event of the demise or disability of both parents. The lawyer had anticipated a difficult moment. Instead, it appeared to have given the young couple another bond, that the husband was not the only one whose mortality was a possibility. It was also heartening to hear that the young couple was surrounded by trustworthy family and friends who could care for their children in their absence.

Playing on their relief at the session's conclusion, the lawyer had gotten a hearty laugh from them by joking that he would forego the usual drawing of blood, on account of the client's military service. In fact, the lawyer had realized part way into the session that the client appreciated a little levity. Preparing one's own will is an emotional task for anyone. It must be acutely emotional for a young soldier leaving behind a wife and two infant children, for a highly uncertain and dangerous war zone. The client had understandably adopted a little bravado. Yet given his youth and natural humility, it was also understandable that the client would attempt to leaven that bravado with youthful humor. The lawyer had worked with that youthful humor. When they had prepared the power of attorney in favor of the client's wife, the lawyer had told the client not to let any of his unmarried fellow soldiers sign one of these in favor of a girlfriend. The young couple had laughed and briefly hugged in the session's most endearing moment.

The lawyer felt in retrospect that every interaction but one had added to, rather than drawn from, the young couple's reservoir. The lawyer had long ago learned how to avoid insensitivity in directly addressing the client's potential death. Thankfully, there had been no
stumbles in that respect. The lawyer's one regret was when he had politely asked about the client's military assignment. When the client straightened in his chair and his face stiffened slightly to answer Afghanistan, the lawyer knew that he had unnecessarily stolen from the young couple a moment's peace. Yet the moment had passed quickly and not dampened the hour.

The assistant had given both the client and his wife huge hugs and all kinds of encouragement as they had left the office with their documents. She had then turned briefly back to the lawyer, said a quick thank you as she pulled a tissue from her pocket, and nearly bolted from the office, the lawyer was sure to find a private place to cry and pray for so magnificent and precious a young couple.