Raising The Bar on Foreclosure Prevention Efforts — Implementing Pro Bono Programs To Help Michigan Homeowners

Sponsored By
The Federal Reserve Bank of Chicago - Detroit Branch

Friday, October 28, 2011
9:00 AM - 11:30 AM
Federal Reserve Bank of Chicago - Detroit Branch
1600 East Warren
Detroit, Michigan

Planning Committees:
The Federal Reserve Bank of Chicago - Detroit Branch
The American Bar Association Coalition on Racial and Ethnic Justice (COREJ)
Ten Commandments of Real Estate Law Society (10CORE™ Law Society)
Raising The Bar On Foreclosure Prevention Efforts -
Implementing Pro Bono Programs To Help
Michigan Homeowners

Sponsored By
The Federal Reserve Bank of Chicago

In Conjunction with
10COREtm
ABA Coalition on Racial & Ethnic Justice (COREJ)

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- Florise R. Neville-Ewell, Associate Professor, Thomas Cooley Law School
  (Moderator)
- Rawle Andrews, Jr., Regional Vice President, Mideast Region States, American
  Association of Retired People (AARP)
- Tracie Coffman, MSW, Financial Counseling Manager, Home Repair Services
- Brian Gilmore, Director, Associate Professor, Michigan State University College
  of Law
- Karlos Griffin, VP- Regional Manager Homeownership Center, JP Morgan Chase
- Nelson P. Miller, Associate Dean and Professor, Thomas M. Cooley Law School
- Marilyn Mullane, Executive Director and Staff Attorney, Michigan Legal Services
- Professor Joon Sung, Director, Foreclosure Defense Clinic, University of Detroit
  Mercy School of Law
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Statistical Overview of Foreclosure in America and Michigan, Professor Florise Neville-Ewell

Home Repair Services – Financial Counseling Program, Tracie Coffman

Equitable Options and Considerations For The Foreclosure Crisis, Professor Brian Gilmore

Foreclosure Defense, Associate Dean & Professor, Nelson Miller

General Training Manual – Pro Bono Junior Associates, Associate Dean & Professor, Nelson Miller

Retaining Occupancy on Foreclosure (ROOF) Agreement, Marilyn Mullane

State Bar of Michigan Pro Bono Reference Manual (Table of Contents Only)
“Raising the Bar on Foreclosure Prevention Efforts - Implementing Pro Bono Programs to Help Michigan Homeowners”

Sponsored By:
THE FEDERAL RESERVE BANK OF CHICAGO
In Conjunction with
10CORE™
ABA Coalition on Racial & Ethnic Justice

Friday, October 28, 2011
Federal Reserve Bank of Chicago – Detroit Branch

Agenda

8:30 AM  Registration and Breakfast Buffet

9:00 AM  Welcoming Remarks

Program Moderator
Florise Neville-Ewell, Professor
Thomas M. Cooley Law School

Desiree Hatcher, Community Affairs Program Director
Federal Reserve Bank of Chicago

Amy Timmer, Assistant Dean of Students and Professionalism
Thomas M. Cooley Law School

Rachel Patrick, Director, American Bar Association
Coalition on Racial & Ethnic Justice

9:15 AM  Panel Discussion

Moderator:  Florise Neville-Ewell, Professor
Thomas M. Cooley Law School
10CORE™ Law Society

Panelists:  Nelson P. Miller, Associate Dean and Professor
Thomas M. Cooley Law School

Marilyn Mullane, Executive Director and Staff Attorney
Michigan Legal Services

Karlos Griffin, VP Regional Manager Homeownership Center
JP Morgan Chase

Rawle Andrews, Jr., Regional Vice President – Mideast
AARP
Tracie Coffman, MSW, Financial Counseling Manager
Home Repair Services

Brian Gilmore, Director, Associate Professor
Michigan State University College of Law

10:30 AM     Break
10:40 AM     Questions & Answers
11:15 AM     Next Steps, Closing Remarks and Adjourn
TAB 2
ON BEHALF OF THE PEOPLE OF MICHIGAN
I, Rick Snyder, Governor of Michigan, do hereby proclaim October 2011 as

PRO BONO MONTH

WHEREAS, countless Americans are unable to afford the legal representation that they need when facing legal obstacles that affect basic needs including family safety, housing, health and economic security; and,

WHEREAS, legal professionals throughout Michigan have the capacity, through pro bono work (no or low cost legal assistance), to contribute specialized skills and expert knowledge to the thousands of citizens in Michigan that qualify for assistance from legal aid agencies because their annual income is below the federal poverty level; and,

WHEREAS, the State Bar of Michigan and the American Bar Association have recognized Pro Bono Month since 2008; and,

WHEREAS, during this month, we join with the State Bar of Michigan to raise awareness of pro bono legal services among the public and the legal profession; we encourage citizens that may need no or low cost legal assistance to learn more about pro bono opportunities and we recognize the legal professionals who continue to volunteer their services to assist those in need;

NOW, THEREFORE, I, Rick Snyder, Governor of Michigan, do hereby proclaim October 2011 as Pro Bono Month in Michigan.
TAB 3
The Structure of the Federal Reserve System

Federal Reserve Banks

Organization of the Banks
Federal Reserve Banks operate under the general supervision of the Board of Governors in Washington. Each Bank has a nine-member Board of Directors that oversees its operations.

Federal Reserve Banks generate their own income, primarily from interest earned on government securities that are acquired in the course of Federal Reserve monetary policy actions. A secondary source of income is derived from the provision of priced services to depository institutions, as required by the Monetary Control Act of 1980. Federal Reserve Banks are not, however, operated for a profit, and each year they return to the U.S. Treasury all earnings in excess of Federal Reserve operating and other expenses.

Monetary Policy Role
The primary responsibility of the central bank is to influence the flow of money and credit in the nation's economy. The Federal Reserve Banks are involved in this function in several ways. First, five of the twelve presidents of the Federal Reserve Banks serve, along with the seven members of the Board of Governors, as members of the Federal Open Market Committee (FOMC). The president of the Federal Reserve Bank of New York serves on a continuous basis; the other presidents serve one-year terms on a rotating basis. The FOMC meets periodically in Washington, D.C., and determines policy with respect to purchases and sales of government securities in the open market, actions that in turn affect the availability of money and credit in the economy.

Second, the boards of directors of the Federal Reserve Banks initiate changes in the discount rate, the rate of interest on loans made by Reserve Banks to depository institutions at the
York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco. Twenty-five Branches of these Banks serve particular areas within each District.

The map shows locations of the Reserve Banks and their Branches, along with District boundaries and assigned District numbers.

Supervision and Regulation
In addition to its money and credit responsibilities, the Federal Reserve has broad supervisory and regulatory authority over the activities of state-chartered member banks and bank holding companies, including their foreign activities and Edge corporations, and foreign banks operating in the United States. It is also charged with writing regulations for the major federal consumer credit laws.

Some of these supervisory responsibilities are delegated to the Reserve Banks by the Board of Governors. These responsibilities include the conduct of field examinations and inspections of state-chartered member banks, bank holding companies, and foreign bank offices in this country and the authority to approve

certain types of bank and bank holding company applications.

**Government Services**
The Federal Reserve System, through the Reserve Banks, performs various services for the U.S. Treasury and other government, quasi-government, and international agencies. Each year, billions of dollars are deposited to and withdrawn by various government agencies from operating accounts in the U.S. Treasury held by the Federal Reserve Banks.

The Federal Reserve Banks hold, in their vaults, collateral for government agencies to secure public funds that are on deposit with private depository institutions. In addition, Reserve Banks receive for deposit to the Treasury's accounts such items as federal unemployment taxes, individual income taxes withheld by payroll deduction, corporate income taxes, and certain federal excise taxes.

The Federal Reserve Banks also issue and redeem instruments of the public debt, such as savings bonds and Treasury securities. They have certain responsibilities for allotment and delivery of government securities and for wire transfer of securities. In addition, the Reserve Banks make periodic payments of interest on outstanding obligations of the U.S. Treasury, federal agencies, and government-sponsored corporations.

**Depository Institution Services**

**Currency and Coin**—The Federal Reserve Banks distribute currency (paper money) and coin to depository institutions to meet the public's need for cash. During periods of heavy cash demand, such as the Christmas season, institutions obtain larger amounts of cash from the Federal Reserve Banks. When public demand for cash is light, institutions deposit excess cash with the Reserve Banks, for credit to their reserve accounts. Currency and coin received at the Federal Reserve Banks are sorted and counted. Unfit currency and coin are destroyed and replaced with new currency and coin obtained from the Treasury Department's Bureau of Engraving and Printing and Bureau of the Mint.

**Check Processing**—The Federal Reserve serves as a central check-clearing system, handling approximately 18 billion checks a year. Using high-speed sorting machines, the Federal Reserve Banks process these checks, route them to the depository institutions on which they are written, and transfer payment for the checks through accounts that depository institutions maintain with the Federal Reserve Banks.

**Wire Transfers**—The Federal Reserve Banks and about 7,800 depository institutions are linked electronically through the Federal Reserve Communications System, a network through which depository institutions can transfer funds and securities nationwide in a matter of minutes.

**Automated Clearinghouses**—Federal Reserve Banks and their Branches operate automated clearinghouses, computerized facilities that allow for the electronic exchange of payments among participating depository institutions. Automated clearinghouses are used primarily to effect recurring transactions, such as direct deposit of payrolls and payment of mortgages, and serve as a replacement for checks. The Treasury Department uses automated clearinghouses extensively to make social security, payroll, and vendor payments.

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. In 1994 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**

- The War Against Foreclosures: Combating Foreclosures and Mortgage Crisis in Communities of Color (July 31, 2011, Baltimore, MD)
- 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 & Ethnic 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

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Website: http://www.americanbar.org/groups/diversity/racial_ethnic_justice.html
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10/23/2011
TAB 5
OVERVIEW

BACKGROUND OF 10CORE™ LAW SOCIETY

A. PARENT ORGANIZATION

B. STUDENT ORGANIZATION(S):
ORGANIZATIONAL STRUCTURE,
COMMITTEES, AND GOALS

1. SCHOLARSHIP
2. EDUCATIONAL OUTREACH
3. COMPUTER DONATIONS
PARENT ORGANIZATION

A. 10CORE™ LAW SOCIETY

B. MICHIGAN NON-PROFIT

C. GOALS

1. TO SUPPORT STUDENT ORGANIZATIONS ACROSS THE COUNTRY
2. TO COLLABORATE WITH OTHER ENTITIES/ORGANIZATIONS AND PROMOTE PRO BONO ACTIVITIES;
3. HELP PROMOTE LITERACY REGARDING REAL ESTATE ISSUES, GENERALLY, AND FIGHT WAR AGAINST FORECLOSURE, IN PARTICULAR

D. CURRENTLY, COOLEY LAW SCHOOL HAS THE FLAGSHIP CHAPTER, BUT GIVEN INTEREST, MORE WILL BE ESTABLISHED
STUDENT ORGANIZATION(S)

A. 10CORE™ LAW SOCIETY STUDENT ORGANIZATION AT “X” LAW SCHOOL

B. OPERATES UNDER PARENT’S UMBRELLA AND IN ACCORDANCE WITH EACH LAW SCHOOL’S REQUIREMENTS

C. SPECIFICALLY, MODEL BYLAWS ESTABLISH PARAMETERS AND GOALS
SECTION I — Purpose OF 10CORE™ Law Society

A. The primary educational mission is to provide the community with practical and comprehensive information about real estate issues.

B. Specifically, 10CORE’s™ 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 confirm 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. **EDUCATIONAL OUTREACH**: Although participants will not provide legal advice, lawyers, supervised students, government officials, bankers, 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 distribute computers (donated to the Parent organization) to local non-profits within the Law Society’s region. With these computers, approved non-profits will be able to establish or enhance centers for families who lack computer access.

C. Given its purpose, and to accomplish its mission, 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 and bankers.
IN ADDITION TO ITS PRIMARY GOAL, WHICH IS NEEDED TO EDUCATE THE LAY COMMUNITY GIVEN THE DIRE STATE OF OUR COUNTRY’S ECONOMY, ADDITIONAL BENEFITS EXIST:

- Organization encourages lawyers and law students to recognize the importance of *pro bono* activities;
- Through synergy created with lawyers, other professionals (e.g. bankers), 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/entities within the community;

By using the web as a medium, the public will have access to information even if they never connect to outreach efforts;

By providing information, people will develop “antennae” and sense danger or breaches of protocols in real estate processes;

By translating information provided to the public, it will recognize and celebrate the diversity of our communities; and
By participating in the three committees, supervised students will not only help the public, they will also enhance their skills and benefit from meeting and working with others; notably,

– Through the Scholarship Committee, supervised students will create another “law review” for the public;

– By participating on the Educational Outreach and Computer Donations Committees, supervised students will enhance their oral advocacy skills and potentially meet lawyers, politicians, bankers, community activists and other prominent members of their communities.
***

SPECIAL THANKS

FEDERAL RESERVE BANK OF CHICAGO
DETROIT BRANCH

AND

AMERICAN BAR ASSOCIATION
COALITION OF RACIAL AND ETHNIC JUSTICE
Professor Neville-Ewell

FOUNDER OF 10CORE™ LAW SOCIETY
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TAB 6
PRESENTERS ROSTER

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Rawle Andrews Jr.

Rawle Andrews Jr. is a regional vice president for AARP's State and National Group. His duties include providing leadership and oversight of AARP's operations and activities in eight states across the Mid-Atlantic and Ohio River Valley sections of the United States including Michigan. Previously, Rawle was AARP's senior state director 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. Rawle is a member of the District of Columbia Bar (Recipient, 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 (Member, Board of Directors). He also active on several civic panels, including the Maryland Long-Term Care Reform Work Group; the Multi-Disciplinary Urban Gerontology Advisory Board at Morgan State University, as well as AARP's Multi-State Utilities Campaign. A frequent lecturer on consumer protection and elder law issues, Rawle holds adjunct professorships at Georgetown University and Howard University School of Law, where he graduated, with honors, during 1990. 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.).

Tracie Coffman

Tracie Coffman is the Financial Counseling Manager at Home Repair Services. She has her Master's Degree in Social Work and has been leading the foreclosure intervention program at HRS for the past 10 years. In that time the counseling team has stopped over 2600 foreclosures. Tracie is a certified foreclosure counselor through NeighborWorks America and the Michigan State Housing Development Authority. She sits on the steering committee for the State Foreclosure Task Force and the board of directors for CEDAM. Tracie has presented on the topic of foreclosure in many different venues including the Michigan State Affordable Housing Conference and the Regional Training Conference for Legal Services. Tracie was named Counselor of the Year in 2009 by MSHDA and HRS received the Grand Rapids Bar Association 2010 Liberty Bell Award for their foreclosure intervention work.

Brian D. Gilmore

Brian Gilmore is a Clinical Associate Professor of Law and Director of the Housing Law Clinic at the Michigan State University College of Law. He was formerly a Clinical Professor and Supervising Attorney with the Clinical Law Center at Howard University School of Law in Washington, DC from 2005-1010, where he was born and raised. He is a long time public interest attorney with more than 10 years of experience encompassing the Neighborhood Legal Services Program and the Washington Legal Clinic for the Homeless. He is also an avid writer and lecturer and scholar publishing essays regularly on the issues of economic inequality and restorative and social justice. Since 2003, he has been a columnist with The Progressive Media Project and has also contributed his writings to many other well known publications.
Karlos L. Griffin
Karlos Griffin has been a mortgage professional for 15 years in the area of default servicing and foreclosure prevention. He is currently responsible for business operations for the Chase Homeownership Centers in the states of Michigan, Ohio, Indiana, Illinois, Wisconsin and Minnesota. Over the last 3 years he has been a contributor to the growth and development of foreclosure prevention efforts for JP Morgan chase as a center manager, job coach manager, operations manager and mentor within the organization.

Karlos received his education at Bowling Green State University in Ohio. He has served and participated in several initiatives in the state of Michigan geared towards foreclosure prevention as well as efforts to educate consumers and assist homeowners facing the prospect of losing their home. Most recently Karlos served as the co-chair of the Detroit HOPE Partnership and represented JP Morgan Chase as an advisor to the Detroit Office of Foreclosure Prevention and Response.

Nelson Miller
Nelson Miller is Professor and Associate Dean at Thomas M. Cooley Law School’s Grand Rapids campus. Before joining Cooley in 2004, Dean Miller practiced civil litigation for 16 years, representing individuals, private and non-profit corporations, government agencies, public schools, and public and private universities, and winning and defending multi-million civil cases in products liability, personal injury, airliner and helicopter crashes, civil rights, securities, employment, real estate, and business disputes. Dean Miller is an editor and author of 10 books and dozens of articles on civil procedure, torts, ethics, and legal history, philosophy, and education. He has also been the board president of the Legal Assistance Center, a courthouse-based service providing legal forms and information to thousands of unrepresented parties annually in Kent County. The State Bar of Michigan recognized Dean Miller with the John W. Cummiskey Award for pro-bono service.

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.

**Joon Sung**

Mr. Sung currently teaches at the University of Detroit Mercy School of Law as an Assistant Clinical Professor. He leads the Foreclosure Defense Clinic, a course in which students learn about foreclosure law and represent homeowners in foreclosure. He helped to establish and lead the Veterans Law Clinic and Project Salute, programs to assist veterans to obtain disability benefits. Prior to joining University of Detroit Mercy, Mr. Sung practiced housing and consumer protection law at the Legal Aid and Defender Association of Detroit, as a staff and managing attorney for 10 years. Mr. Sung obtained his B.A. from the University of Michigan and J.D. from Boston College Law School.
TEN COMMANDMENTS OF REAL ESTATE LAW SOCIETY

10CORE™ LAW SOCIETY

FEDERAL RESERVE BANK OF CHICAGO
DETOIT BRANCH
October 28, 2011
STATISTICAL OVERVIEW

A. FORECLOSURE ACROSS AMERICA

B. FORECLOSURE IN MICHIGAN
FORECLOSURE ACROSS AMERICA
January 2007 - December 2009

Banks started foreclosure actions against 25 million families. Most were owner occupied with mortgages that originated between 2005 and 2008.
Top 5 states with the highest foreclosure rates followed by their rates of foreclosure:

- **Nevada**: 1 in 114 Households
- **Arizona**: 1 in 205 Households
- **California**: 1 in 1248 Households
- **Michigan**: 1 in 352 Households
- **Florida**: 1 in 372 Households

RealtyTrac, July 2011
FORECLOSURE

IN

MICHIGAN
Geographical Comparison - Wayne county, MI

Percentage of Units by Area

<table>
<thead>
<tr>
<th>Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wayne</td>
<td>0.32%</td>
</tr>
<tr>
<td>Michigan</td>
<td>0.24%</td>
</tr>
<tr>
<td>National</td>
<td>0.16%</td>
</tr>
</tbody>
</table>

Geographical Comparison
Is your area's foreclosure rate as high as state and national averages?
More info

RealtyTrac, July 2011
***

SPECIAL THANKS

FEDERAL RESERVE BANK OF CHICAGO
DETROIT BRANCH

AND

AMERICAN BAR ASSOCIATION
COALITION OF RACIAL AND ETHNIC JUSTICE
Professor Neville-Ewell

FOUNDER OF 10CORE™ LAW SOCIETY
FACULTY ADVISOR, THOMAS M. COOLEY LAW SCHOOL

nevillef@cooley.edu

10CORE™ LAW SOCIETY
Home Repair Services

Financial Counseling Program
Foreclosure Counseling Agency

- **Agency Overview**
  - Repair Program
  - Tool Library
  - Fix-It School
  - Builder’s Abundance
  - Home Access Ramps
  - Air Sealing
  - Financial Counseling
Financial Counseling Program

Began June 2001

- Number of Cases Resolved: 2600+

- Average cost per resolution: $1,000
Foreclosure Counseling Agency

**Certifications:**
- HUD Certified Counseling Agency
- MSHDA (Michigan State Housing Development Authority)

**Trainings:**
- NeighborWorks (National Certification)
- HUD
- Investor
Making Home Affordable:

- HAMP: Home Affordable Modification Program
- HARP: Home Affordable Refinance Program
- HAUP: Home Affordable Unemployment Program
- HAFA: Home Affordable Foreclosure Alternatives
Foreclosure Prevention Initiatives

- **Step Forward (MSHDA):**
  - Unemployment Subsidy
  - Rescue Funds
  - Principal Curtailment
Attorney/Counselor Partnership

- **Review Loan Documents**: Look for Red Flags or Discrepancies to screen for attorney referral on both origination and modification documents.

- **Pursue Loss Mitigation**: Assist homeowners with the application process of loss mitigation, along with advocating on their behalf for workout programs.

- **Access to funds**: Coordinate with other social service agencies in the community.

- **90 Day Law**: Assist clients with the 90 day law process in Michigan, making attorney referrals when we feel there has been a violation.
MFPP Legal Services Referral – Legal Aid of Western Michigan

FAX NO. 616 774-2412 - ATTN Karen

Date: __________________________ Referring Agency: __________________________

CLIENT INFORMATION

NAME: __________________________ PHONE NUMBER: __________________________

ADDRESS: __________________________

SOURCE(S)/AMOUNT OF GROSS INCOME: __________________________

Is client a citizen of the US? [ ] YES [ ] NO. If no, what is status? __________________________

Is this client billable under NFMC and if so, have you completed the Level I counseling? ______

Is the client's primary residence (do not refer investment properties)? __________________________

Referral for legal analysis/advice in the following area(s). (check all that apply)

- Fraud suspected
- Tenant of foreclosed home
- Mistake by lender
- Errors in foreclosure process
- Foreclosure rescue scam
- Other (please describe): __________________________

Attached is/are the following: [ ] MSHDA profile/intake or other agency intake (required)
[ ] Release/authorization [ ] HUD 1 or HUD 1-A [ ] TIL Disclosures [ ] Note
[ ] Loan Application [ ] Settlement Stmt [ ] Other: __________________________

NAME OF LENDER: __________________________

ADVOCATE NAME AND CONTACT INFORMATION:

______________________________________________________________________________

PENDING DEADLINE(S)? IF SO, PLEASE EXPLAIN:

______________________________________________________________________________

Please explain briefly the reason for the referral (attach extra sheets if necessary):

______________________________________________________________________________

Please attach MSHDA profile, authorization/release and any relevant legal documents
Thank-You!
Please attach MSHDA profile, authorization/release and any relevant legal documents
Equitable Options and considerations for the foreclosure crisis

Using the extensive research of Courtney Edwards, a third year law student at the Michigan State University College of Law, and my own recent research from a recent paper on this issue; this presentation will discuss solutions long since dismissed by government officials and the financial sector which include, but are not limited to:

- A moratorium on foreclosures in the state of Michigan (and elsewhere);
- Reform of the bankruptcy laws to allow bankruptcy judges to adjust the principal amounts of those who are underwater and can actually;
- Overall principal reduction efforts;

In addition, this presentation will consider the original mistake made by the U.S. in addressing the crisis: the bailout of the banking system and Wall Street. Using the 1992 Swedish banking crisis as a backdrop, this presentation will link the lingering housing crisis to the Wall Street protests and why the protests must become collective action now with proposals for policy changes presented to the Presidential candidates as the campaign forms in 2012. Unless, the banking system is fundamentally changed, there is little chance the crisis of 2008 won’t happen again soon. Moral hazard is almost state policy at this point.
FORECLOSURE DEFENSE

By Associate Dean Nelson P. Miller,
Thomas M. Cooley Law School

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   Working with Other Lawyers on Pro Bono
Chapter 6: Helping the Foreclosed
   Home Protection and Mortgage Relief—Helping Families Save Their Homes
Chapter 7: Law School Pro Bono Programs
   Coordinating Lawyer and Law Student Pro Bono

Preface

This manual has more than just a summary of foreclosure law. It has several other chapters to encourage the practitioner to represent the foreclosed-upon client. The first chapter explains why pro bono can build skills, practices, and attitudes that strengthen a law practice. The second chapter offers a framework for inter-cultural skills. The third chapter offers guidance on consultation skills, particularly those necessary to discern achievable legal goals that a constellation of personal problems and social issues may hide. The fourth chapter addresses skills and practices helpful to providing pro-bono services at or through community organizations and agencies. The fifth chapter offers guidance on inter-professional skills, meaning skills that enable you to coordinate your legal services with other professionals. The final chapter introduces the substantive law that a practitioner should know in order to serve foreclosed-upon clients. The last chapter then describes how law schools coordinate pro-bono service.

Acknowledgments

The pro-bono programs this manual describes are programs of Thomas M. Cooley Law School and its collaborative partners. Law schools can make great community partners. They can also be great places in which to preserve, promote, support, and stimulate the service
ambitions of lawyers and law students. My law school is one such community and professionalism partner, having recently won the American Bar Association’s Gambrell Award for its professionalism programs. It did so in large part because it so values and supports the service ambitions of its students, faculty, staff, and administrators, through its Center for Ethics, Service, and Professionalism. Associate Dean of Students and Professionalism Amy Timmer formed the Center for Ethics, Service, and Professionalism, and Director Heather Spielmaker has directed it since its inception with the support of Assistant Director Karen Rowlader and Administrative Assistant Kathleen Lawrence. There is no team more effective at supporting pro-bono programs.

Chapter One
Introduction
Building Practice with Pro Bono

This manual is a practical guide to and resource for pro-bono service to the foreclosed-upon client. Promotion of pro bono assumes that lawyers know how, when, and where to do it but just need more urging. In fact, many lawyers are not so well equipped for some of the special challenges and opportunities that pro bono offers. The following chapters describe some of the skills necessary to effective pro-bono service. As you acquire those skills, you also improve your skills for your paying practice. Pro bono can transform a law practice. Many lawyers sense that they must respond to new demands for which they need new skills. There is growing, not dwindling, need for legal services. Lawyers must simply find new ways to deliver meaningful legal service. Research, drafting, practice-management, communication, and presentation tools of law practice have changed enormously in the past 25 years. By drawing you into new fields to serve new client populations using new tools in new places, pro bono helps you embrace those changes.

Pro-bono practice challenges lawyers to build new skills, use new tools, and form new relationships within new service communities. It does so with ready-made clients whom the lawyer obtains at no marketing cost—indeed with a converse free-marketing benefit. The clients come or are sent to you, rather than you pursuing them, while judges, bar leaders, and community leaders laud and respect you for accepting them. The lawyer makes no promises or assurances in order to secure the professional relationship other than basic competence and diligence in the representation. With no fees earned or anticipated, the consideration is instead the meaningfulness of the professional relationship and service. Remove the economic question from your practice for just a portion of your day, and you may see longer-term opportunities and subsidiary reforms that will regenerate it.

Serving pro-bono clients can build or rebuild a law practice in at least four ways. First, it introduces you to new communities from which other clients may come. Second, it gives you a reputation for good works that sets you apart with important constituents. Third, it helps you develop new knowledge and skills at lower investment and risk. Fourth, it lends meaning to your practice. In the end, you should find yourself busier with paying clients because of your pro-bono practice.

Chapter Two
Inter-Cultural Skills
Serving Unlike Others

Pro-bono practice can require a broader range and more consistent application of interpersonal and intercultural skills than paying practice. The opportunity to develop, exercise, and study those skills is one of the primary rewards of pro-bono practice. In their
work, many lawyers encounter diverse individuals and populations. Lawyers must exercise the skills to maintain productive relationships with unlike others. Lawyers should have the capacity to work beyond what is sometimes-insular professional culture. What lawyers need is a culturally sensitive framework to help them adjust to individual practices and preferences. Pro-bono practice demands a skill that sociologists call idiographic adaptation. Observation-based attribution eliminates the hazards associated with category-based attribution. Lawyers should employ a framework for relevant, service-based attribution, through which lawyers observe clients, taking clues from what the clients express and the way in which they express it, to discern relevant preferences and interests. The attributes that the lawyer discerns through the inter-cultural framework must be both relevant, meaning helpful to the service, and value free, meaning that the lawyer must not judge the merits of those attributes. For example, attributing a client to be “lazy” and “rude” would be value-laden judgments not helpful to serving the client.

Five value-free categories describing client attributes, practices, and preferences most likely to be relevant to pro-bono legal service are the client’s (1) communication conventions, (2) cognitive habits, (3) reference systems, (4) resources, and (5) relationship preferences. If you develop a sensitivity to your pro-bono clients in each of these five areas, then you will be able to better understand, appreciate, and serve them. Briefly consider each in turn.

**Communication.** Communication conventions are surprisingly diverse but also surprisingly easy to recognize. They are also surprisingly important. Language is experiential. Our use of it reflects what we have acquired through experience. To the attentive lawyer attuned to intercultural communication, these signposts are like clues not only to the personal story of the client but to the way that the client thinks and values, and to the client’s emotional state. Culture, experience, and emotional state are silent languages. Verbal communication reveals them to the capable lawyer. Many lawyers learn to evaluate, adapt to, and employ communication conventions intuitively. Most lawyers would benefit by understanding them expressly. A common framework sociolinguists employ to understand communication conventions is the formality scale. Clients speak more or less formally depending on their education, experience, preferences, emotional state, cognitive practices, and other important markers. Sociolinguists divide the formality scale into registers, from static or frozen register on one far end of the scale, down through formal register, consultative register, and casual register, and finally to intimate register on the far other end of the scale. Register boundaries are uncertain, as to some extent are the definitions of the registers themselves. Yet their value to effective legal consultations can be substantial in at least two respects. Because registers tend to give clues to education, experience, emotional state, and other important markers, you can use them to hear and see the client more clearly. You can then adjust your communication accordingly.

**Cognitive Practices.** Pro-bono clients may have different cognitive practices and habits than those that you typically employ, assume, and rely on in other clients. In professional relationship, a lawyer and client typically follow structured practices that include: (1) discerning the client’s objective; (2) generating a plan to achieve the objective; (3) assigning and completing tasks within the plan; (4) assessing and altering the plan as needs arise; and (5) recognizing and evaluating the objective’s achievement. Some pro-bono clients do not live in stable social environments in which objective-setting, planning, and implementing plans produce predictable outcomes. You may recognize these clients when they eschew the usual consultative communication register you see paying clients employ, and adopt instead dependent or formal registers. If clients are not speaking in consultative register, then they are not thinking in consultative terms. Do not assume that they are incapable of achieving objectives or disinterested in doing so. In those instances, you can support the pro-bono client’s cognitive practices by making explicit the steps the client must follow and skills the client must exercise. Help the client discern objectives with questions like “How can I help you?” and “What would you like to see happen?” Accept that not every consultation will have a clear
objective and that it may take more than one consultation to develop the trust and context to discern clear objectives.

Reference. Pro-bono clients may have different reference points, belief systems, or worldviews. Worldview affects how lawyers and clients think, perceive events, communicate, form and maintain relationship, and determine goals. Lawyers may believe that they operate without a worldview, even while their worldview is highly articulated and readily apparent to others. Lawyers may also believe that their worldview is properly dominant, when for the pro-bono client it may be discrete and insular, and even confusing and unhelpful. Identify your cultural references, belief system, and worldview so that you can appreciate how distinct it may be from the worldview held by pro-bono clients. It is not the client’s responsibility to adapt to the lawyer’s worldview. It may serve the client for you to recognize, adapt to, and draw on the client’s worldview. Clients communicate their reference points, belief systems, and worldviews through both overt and subtle statements and behaviors. Be sensitive to the diversity, power, fit, and appropriateness of pro-bono clients’ worldviews. Draw on clients’ cultural references, belief systems, and worldviews.

Resources. Pro-bono clients may have different available resources. Resources include tangibles like food, housing, and transportation but also intangibles like an official address, a recognized legal status, flexibility of schedule, available time, and a calendar or other system by which to keep a schedule. Your paying clients may tend to have the same resources. For pro-bono clients, avoid assuming that resources exist or do not exist. Pro-bono clients vary in their willingness and ability to communicate their resource limitations. Be sensitive not only to available resources but to the pro-bono client’s willingness and ability to articulate them. Especially avoid blaming clients where their failures are due to lack of resources. Also, be aware of how your resources differ from those the client possesses and how that disparity may change your perspective or influence your advice. Be ready to recognize, inventory, and draw upon a client’s particular strengths. Clients without material resources may possess significant character resources. Consider ways in which you can help pro-bono clients address resource issues.

Relationship. Finally, pro-bono clients may have different preferences for different forms of professional relationship. Individuals form relationships along various spectrums, for instance, from individual to collective, independent to interdependent to dependent, competing to sharing, and authoritarian to egalitarian. One client may act as a loner, eschew offers of help, hoard resources, and demand rights and equal treatment from others. Another may act as if an old friend, welcome social and other support, give away personal assets, and readily submit to the superior rights and authority of others. These and other behaviors and preferences may have much to do with the way the client anticipates and constructs relationships. Recognize that there is a variety of appropriate forms of professional relationship. Avoid assuming that the usual way in which you conduct the professional relationship will best serve all clients. Consider ways in which you can alter your standard treatment of the relationship in order to serve unique or unusual client needs.

Chapter Three
Consultation
Discerning Achievable Goals

One substantial challenge in providing pro-bono legal service to under-privileged clients is that often, there are multiple legal issues affecting one another. Legal problems can appear insurmountable when combined with related social issues like poor physical and mental health, poor job skills and prospects, limitations that substance-abuse treatment programs and the terms of probation for criminal conviction place on the client, and strained or non-existent relationships with relatives and others on whom the client might depend for social and financial
Some under-privileged clients need only limited specific help with one or more of the issues addressed above on landlord-tenant law, public benefits, or private insurance. Most, though, need more holistic consultation and counsel because the problems are multiple and complex. Those circumstances mean that the primary skill in helping many under-privileged clients is to establish a positive relationship that creates and maintains hope, while articulating clear and simple plans to pursue achievable and meaningful goals. Serving the under-privileged client is a perfect laboratory for clarifying a lawyer’s critical skills. Consider the following 10-step rubric for those skills:

- **Client.** Develop a sense of who the client is. Construct a demographic profile including the client’s income (some homeless clients have Social Security or other income notwithstanding their homelessness), assets (some homeless clients own homes occupied by others or have trusts or assets managed by others), employment (some homeless are employed), marital status (including the quality of the relationship with the spouse or ex-spouse), family status (children, how many, ages, and relationship), citizenship status (potentially affecting rights and benefits), and language skills (English second language);
- **Cause.** Determine what the immediate motivating cause was for the client consulting you. What happened that the client sought your legal advice? Clients who are unfamiliar with professional services and consultations may resist disclosing an immediate cause, because of either embarrassment or unfamiliarity with the skill of determining relevance. You need to know what brought them to you, and often the sooner you find out, the more effective your consultation can be;
- **Goals.** Clarify the client’s goals. Find out what the client wants you to help the client accomplish. Under-privileged clients may have so many problems, many of which seem insurmountable, that they relate their problems to you rather than help you identify their objectives and goals. Help these clients focus on the achievable;
- **Resources.** Be sure that you understand the client’s resource limitations. Do not mistakenly assume that the client has the money, time, schedule, language or vocational skills, transportation, citizenship, or freedom (from restraining orders or probation terms, for instance) to do that which you propose. As you consider options, also consider the individual steps that those options would require, while also considering the resources that those actions take;
- **Plans.** Develop and document a clear and achievable plan for the client. List and prioritize each step, showing the client in writing and explaining to the client what the client needs to do to implement the plan. Keep the steps simple. List only so many steps as the client can reasonably follow. Indicate when the client should return to see you or another lawyer for additional advice on additional plan steps;
- **Progress.** Be sure that you identify for the client how to assess the plan. Under-privileged clients, as much or more so than paying clients, may need clear markers for when they are making progress on a plan. They may live in such uncertain and fluid social circumstances that their actions may not often produce predictable and reliable results. Show them how early steps in the plan should cause specific results along the way toward achieving the larger goal;
- **Documentation.** Document your instructions to the client on your own record of the consultation. Doing so ensures that you addressed the client’s need. In addition, a pro-bono client may return seeking confirmation of the plan that you and the client developed at an earlier visit. Without the instructions you wrote for the client, you may recall little of the plan;
- **Referral.** Refer the under-privileged client to others who can help the client achieve the client’s goals more quickly and easily. Do not refer the client to anyone without confidence that the referral will lead to help. If you refer the under-privileged client, then document
the referral. Consider whether you need to contact the referral destination so that the client receives the service for which you referred the client and whether the client might benefit from your having done so;

- **Tasks.** If you agree to perform certain tasks for the client or have your office do so, then be specific with the client as to what tasks and when you and your staff will complete them. If you have not agreed to do anything further for the client at the end of the consultation, then tell the client so. End every consultation with a summary of what you will or will not do for the client so that the client has clear expectations;

- **Return.** If you do expect to see the client again, then arrange for or discuss when. If the client must accomplish other things first or wait for other events to occur first, then make that clear to the client. Encourage the client to maintain the professional relationship until it no longer will help the client. If you want to see the client again, then tell the client so.

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### Chapter Four

**Agency Relationship**

Supporting Community Organizations

Pro-bono work is not simply about productive interaction with clients. Pro-bono work, like paying practice, can also often involve working with the social-service community of medical-care providers, counselors and social workers, schools, and other agencies. At times, that work can include interaction with local governance structures, both public government and private philanthropic and business leadership, or even regional, state, and national institutions. Legal services are in part institutional. The institutions on which lawyers depend include the social-service, governance, and philanthropic communities. Lawyers doing pro-bono work depend on those same institutions but relate to those institutions somewhat differently. As is the case with client relationships, the difference that the charitable nature of your work makes is a large part of pro bono’s practice-building value. Pro bono relates you to important institutions in ways that can improve your relationship with them and hence improve your legal skills and resources, and law practice.

Lawyers can work with established agency programs to receive pro-bono assignments. Local legal-aid organizations and bar associations employ pro-bono coordinators to develop and maintain lists of volunteer attorneys qualified to practice in specific areas. Those coordinators develop referral criteria, advertise the availability of free legal service, and refer pro-bono clients after applying case and service criteria. There are several advantages of these programs to both client and volunteer lawyer. They provide a single point of contact for both client and lawyer, mechanisms for screening qualified applicants, identifying their legal issues, and assigning the legal work only to qualified counsel. They may also offer practice forms and links to other resources. Perhaps most of all, they offer clear roles and reliable structure for client, lawyer, and program administrator, making for efficient use of everyone’s time and resources. Consider joining the pro-bono roster of existing programs. You may find training, materials, client referrals, and professional networks that benefit your law practice.

Whether there are established pro-bono programs available to you, also consider reaching the under-served pro-bono client directly. Do-it-yourself pro bono, making your own direct connections with pro-bono clients and the institutions that serve them, can be particularly meaningful and helpful to your law practice. Community centers, cultural centers, churches, and other charitable, religious, and educational organizations may already offer a range of social services like childcare, financial-literacy classes, vocational programs, and healthcare services. Consider offering your pro-bono legal service at or through an organization that already provides other social services. Choose an organization that low-income, disadvantaged clients visit frequently for other activities including other social services. Reaching the under-served
client requires overcoming barriers of culture, confidence, and place. Go where the
disadvantaged client feels most at home. Do not expect pro-bono clients to come to you.

Evaluate your experiences and interests either within the law or beyond the legal field. Select as your pro-bono service site an organization whose mission carries meaning for you, while also enabling you to serve an under-served population. Your service site might be a cultural center where you can renew, improve, or learn foreign-language skills that you have always wanted. Your service site might be a faith organization whose spiritual commitments you already share or wish to further develop or explore. Your service site could be in a part of your city or town where you have no outside contacts, perhaps even one near your office. You could serve at an organization with whom you feel an affinity and for whose patrons you sense a stronger compassion. Selecting your pro-bono service site can be the single most intentional action that reignites your passion for law and its practice. Clients bring their own issues. You should not create issues for them. Yet you can go to the place where you expect to find the people, work, and causes that most attract or inspire you. You could even deliberately choose to go to the place least attractive to you to see what you might discover that is different about it.

When you select an organization whose site welcomes the disadvantaged, first meet the organization’s executive director, staff, and board. Do not just show up unannounced. Explain to the organization’s leadership what you expect to do to help the organization’s under-served patrons. Also, explain why you are helping, including that lawyers have an ethical obligation to serve. Describe the specific need for legal services that you expect to encounter, how you expect to help meet that need, and what meeting that need may do for the client, community, and organization. Also, explain that there is no constitutional right to civil legal representation and little public funding for it. Illustrate how pro-bono legal advice can make a difference. Explain how civil legal service saves jobs, homes, marriages, and families, and otherwise contributes to community welfare. Through your conversations with the organization’s leadership, be sure that your service goals match the sponsoring organization’s mission. Do not provide service without first obtaining the sponsoring organization’s approval.

Once approved, all you need from the organization is a table and a few chairs in a private room. Do not expect and do not ask for anything else. You do not need and do not want your own permanent office. Charitable organizations often have limited funds and heavily used facilities. You have a paying practice that needs you. Expect to borrow someone else’s desk and office for the few hours every so often when you will be there. It is helpful if the office you use is near the community center’s reception, waiting, or lobby area. Bring the forms described below. That is all you need, although if you also bring or have available an Internet-ready computer and telephone, you may find that you can better serve the client.

Establish a regular time you expect to be there, typically two to three hours once a week, every other week, or once a month. Make the time convenient to you, or you will find yourself canceling frequently, defeating the purpose. Also, make the time convenient to your pro-bono clients. The homeless and jobless follow schedules for meals, laundry, showers, and other available services and facilities. See that staff posts your service times and publishes them in newsletters and service bulletins so that potential pro-bono clients know when you will be there. Keep the same time each week so that pro-bono clients grow accustomed to and publicize by word-of-mouth your availability there. It is acceptable for you to cancel. Pro-bono clients and sponsoring organizations understand that you have other commitments. Yet let the organization know as soon as you know, so that they can alert potential clients. Otherwise, clients may come and wait for you at substantial inconvenience to them and embarrassment to the sponsoring organization.

Many individual client matters are resolved in a single consultation of 15 to 30 minutes. Simple, straightforward, basic legal advice is what many clients need and want. You will be surprised at how much you do to help pro-bono clients, with so little time and resources, especially if the client population is reasonably resourceful. You need not conduct the matter as you would for a client who prefers to pay you to handle the entire matter. You may instead be
able to structure the relationship and tasks to draw on the pro-bono client. It may benefit the pro-bono client more if you involve the pro-bono client in completing tasks within the client’s capabilities and resources. Doing so may build the pro-bono client’s knowledge, skills, and confidence, while giving the client greater opportunity to interact with you as a model or mentor. If, for instance, you would ordinarily obtain records necessary to address the legal matter, but the client has the means to do so, then consider giving the client that opportunity (with appropriate instructions), asking that the client return with the records. For some clients, the sense of initiative and accomplishment accompanying completion of subsidiary tasks may be more significant than actually completing the legal matter. Make these judgments with sensitivity. Do not burden a pro-bono client with tasks that you or your office staff could readily perform without trouble, but do see the value of sharing responsibility with the client.

Chapter Five
Professional Relationship
Working with Other Lawyers

Pro-bono work is not simply about productive interaction with clients and the community organizations and agencies that serve them. Pro-bono work also often involves working with other lawyers. Pro-bono work is professional and institutional, just as is all law practice. In a paying practice, the institutions on which lawyers depend include the community of local lawyers and the networks they maintain. The same institutions support pro-bono work. Yet lawyers doing pro-bono work relate to other lawyers and their institutions somewhat differently. That difference is a large part of pro bono’s practice-building value. Pro bono relates you to important professional constituencies in fresh ways, invigorating you, those relationships, and your law practice.

This chapter gives you some tips to help you maximize those opportunities, through pro bono, for improved relationships with the professionals on which your law practice depends. The chapter addresses how lawyers relate productively to one another when sharing legal work, especially pro-bono work. Lawyers do not do all pro bono in isolation. A benefit of pro bono is that it encourages and allows lawyers to associate with lawyers with whom they have not previously worked. The association may be within a law firm, when a junior associate takes an assigned task from a partner or senior associate who is handling a pro-bono matter. The association may instead be as co-counsel with a lawyer from another law firm, sharing a pro-bono case that requires more time and skill than one lawyer is able to devote to the matter. The association may instead be a straight referral of a pro-bono case. In each instance, there are practices and conventions that lawyers can follow to strengthen the professional relationship. Consider how lawyers work most productively with other lawyers on pro-bono matters.

New lawyers in law firms of any size depend on partners and senior associates for assignments of work. In a sense, the first “client” for a new lawyer is the lawyer through whom the new lawyer receives assignments. It can take months or years for a new lawyer to develop a substantial enough client base not to need assignments from other lawyers to keep busy and productive. Client interaction is one of the benefits of pro bono. In the meantime, the new lawyer must meet the expectations of the lawyers who have the extra work to share. Relationships in which partners and senior associates assign work to the new lawyer are critical to the new lawyer’s success within the law firm. Assignments vary in quality, some expanding a new lawyer’s skill through interaction with highly successful partners doing meaningful work for committed clients but other assignments lacking in challenge, meaning, relationship, and focus. Regardless of the assignment, the new lawyer’s ability to gain the trust of those who have work to assign is a critical ingredient for success.
The ability to gain the trust of another lawyer is important not just within law firms but also for the solo practitioner. Most solo practitioners practice within a network of professional relationships that promotes referrals. That network can operate much like the roles of practice groups within law firms. The solo practitioner who handles only bankruptcy and tax matters refers business litigation to another solo practitioner and family-law matters to still another solo practitioner. Those referrals need to be reliable for a variety of reasons including repeat-client service and malpractice liability. Alternatively, some solo or small-firm practitioners will form co-counsel relationships with other solo or small-firm practitioners rather than making a straight referral. Co-counseling can be a way of sharing the costs or workload associated with a major matter or a means of learning new skills in unfamiliar practice areas. Some of the same work-generating skills that serve a new lawyer well in a law firm also serve a new lawyer well in solo practice settings.

Accepting pro-bono assignments and referrals can be low-risk opportunities to demonstrate your skill not merely to clients but to other lawyers. Do not regard a pro-bono referral as the referring lawyer sloughing off thankless non-paying work to an under-employed lawyer. Leading lawyers perform and share important pro-bono work. Co-counseling or otherwise sharing pro-bono work with another lawyer can be a powerful association, given that the relationship centers on the meaningfulness of the work rather than its economic basis. Referring lawyers also use pro-bono work to test the skills of new lawyers and their interest in developing a professional relationship. What starts as referral of a pro-bono matter may end up as referral of paying matters or an offer of employment. You do not have to take every referral of a pro-bono matter. Yet you might especially want to accept referrals that will broaden and strengthen your professional relationships with other lawyers. When it comes to getting work from other lawyers, it is all about being there. Pro bono can be a good start.

Certain practices strengthen a lawyer’s professional relationship with other lawyers when sharing pro-bono and other work. Lawyers keep schedules to get them to places that they must go—court hearings, depositions, settlement conferences, and client meetings, for instance. Lawyers do not miss appointments. Lawyers also follow workflow calendars that have multiple due dates and times—some flexible, some inflexible. They must produce certain work for certain clients by certain times of day on certain dates. Lawyer workflow has both short- and long-term commitments with some “soft” deadlines that the lawyer may ignore and some “hard” deadlines that the lawyer must not miss. Put the two together—a schedule of appointments plus a workflow calendar—and you get a sense of the accommodation that lawyers need from other lawyers. Because of the highly structured nature of a lawyer’s schedule and workflow calendar, lawyers tend to require flexibility from other lawyers on whom they depend.

The lawyer who wants to prove worthy of an assignment, co-counsel relationship, or referral must first be available for the work. Availability depends on communication. The other lawyer for or with whom you do legal work must be able to reach you. That usually means email but may also mean telephone, especially cellular phone. Make a consistent practice of checking email and telephone messages. Reply promptly, even if your reply is that you must get back to the other lawyer later at a specific time or date because of other commitments. If you want assignments, and you want to gain trust, make your schedule work for the other lawyer, not the other lawyer’s work for you.

When receiving a new assignment, request to co-counsel, or referral from another lawyer, do not hesitate to ask questions. Some lawyers include abundant information with an assignment or referral. Others include none, for different reasons. Those reasons may include other pressing work. Another lawyer may also give you little or no information to start because the other lawyer does not know any other information. Some work including pro bono is exploratory. The lawyer may also have forgotten what it is like to face unfamiliar legal work. Often a lawyer assigning or referring work is doing so because the lawyer has not had enough time to determine what the work should encompass. The lawyer may also just want to see you work without direction, not vindictively but as an opportunity for you to prove your mettle.
You may think that by asking no questions, you demonstrate your competence and confidence, and that by asking questions you do the opposite. Avoid the tendency to play smart. Playing smart when you are not is playing dumb. Asking questions shows that you are smart enough to ensure you have the necessary skills. Here are some questions you might consider asking to clarify the assignment or referral:

- **Purpose.** Ask how the other lawyer will use your work. Know why you are doing the work;
- **Time.** Ask how much time the other lawyer thinks you should spend on the matter. Experienced lawyers develop a keen sense of how long legal work should take, depending on the depth, complexity, significance, and polish of the work that the lawyer expects;
- **Due Dates.** Ask when the lawyer needs any work back from you (when it is due). If there is no hard (determinate) deadline, ask for a soft (suggested) deadline so that you can balance the assignment with other work;
- **Starting.** Ask the other lawyer where the lawyer would start. The other lawyer may take your question as respect for the lawyer's skill. Many lawyers like to share their skills with other lawyers;
- **Exemplars.** Ask the lawyer who assigns or refers you a pro-bono matter if there are any examples of what the lawyer would like to see in the finished product. It can save you much time and trouble, and lead to a significantly better work experience and product;
- **Support.** Ask the other lawyer about available staff support. If your work would benefit by access to law-office equipment (telephone, copier) or facilities (library, conference room), then ask if those resources are available;
- **Progress.** Lawyers who assign or refer pro-bono work, or who co-counsel, may want to know your progress. Your brief communication updating the other lawyer on your progress gives the other lawyer confidence that you are proceeding apace with the work;
- **Communication.** Above all, communicate in a manner that reaches and supports the other lawyer. Some lawyers prefer email. Others depend on the telephone. Others find meeting the most productive.

Chapter Six

The Foreclosed

Home Protection and Mortgage Relief—
Helping Families Save Their Homes

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 were 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 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 steps that are more concrete.

**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 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 the owner has mortgaged it.
**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.*, GÉORGIA 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 with 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. ALAN M. WHITE & JONAS HERRELL, JULY 27, 2009 COLUMBIA COLLATERAL FILE SUMMARY STATISTICS 6 (2009). 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 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 and remained so bad 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 service 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.

The above text describes 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.

Chapter Seven
The Pro-Bono Program
Coordinating Pro-Bono Service—Helping Others Serve

You can find, create, or support other kinds of pro-bono programs at law schools, legal-aid offices, and bar associations. Creating or supporting a pro-bono program can help build your law practice. You do not need a program to perform pro-bono service. Yet you can help others provide pro-bono service by finding, creating, or supporting a credible pro-bono program. When you do so, you develop a network of strong, positive relationships with clients and attorneys. Find a pro-bono-program director whom you like and trust, and whose work you want to support. There are few stimulants to good service that are more powerful than a kindred spirit. Ensure that you identify with the population whom the program serves. Evaluate the pro-bono program to ensure that it meets the criteria for a responsible and effective program. Then support the program, either by volunteering as a service provider or in its administration. If you cannot find such a program, then find a service population and create the pro-bono program to serve it. Here is a list of things to consider when choosing a pro-bono program to create or support:

- **Independence.** Be sure that when you take a pro-bono matter, you are free to represent the client in the manner that your professional ethics and commitment require. If you create or evaluate a program, be sure that the lawyer/service providers in the program have the same independence;
- **Utility.** Be sure that the pro-bono program you choose or create serves real needs;
- **Coordination.** Be cautious about pro-bono programs that seem to stand alone, without the resources of or coordination with other social-service programs;
- **Client Relationship.** Choose or create a pro-bono program that articulates clearly the nature and extent of the lawyer-client relationship. Do not let pro-bono clients assume that you or your program are handling all legal matters when you are providing limited advice and support on only one matter or a limited number of matters;
- **Mentor.** Consider a pro-bono program through which you can mentor other lawyers and law students. Rely on law students to serve as your law clerks in performing pro-bono legal work. Support the participation of other lawyers and law students in continuing education and public-service work;
- **No Unauthorized Practice.** Avoid pro-bono programs that appear to permit law students or paralegal students to give legal advice. Only licensed lawyers or law students in clinical programs approved for practice under state rules should give legal advice.
- **Recognition.** Consider the recognition that the program will give to your work and the work of other volunteers. Your reputation and standing are important not only to you but to your family, friends, firm, clients, community, and profession;
- **Educational Programs.** Choose or create a program that educates the volunteers.
- **Professionalism.** Choose or create a program that emphasizes professionalism.
- **Support.** Find support for your pro-bono program. Connect your pro-bono program to resources provided by other similar programs.
• *Law Schools.* Investigate the pro-bono programs of the law school from which you graduated or a nearby law school. Law schools can support a quantity and breadth of pro-bono service that law firms find it hard to duplicate.
GENERAL TRAINING MANUAL—
PRO BONO JUNIOR ASSOCIATES
A Resource of Thomas M. Cooley Law School’s Grand Rapids Campus
By Associate Dean Nelson Miller based on work by Associate Dean Ann Wood

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PREFACE

A first competence that many new lawyers must have is how to gain the trust of another lawyer. New lawyers in law firms of any size depend on partners and senior associates for assignments of work. In a strong sense, the first “client” for a new lawyer is the law-firm partner who supervises the new lawyer, through whom the new lawyer receives assignments. Client interaction comes next and may come slowly. It can take months or years for a new lawyer to develop a substantial enough client base not to need assignments from other lawyers in the firm to keep busy and productive.

In the meantime, the new lawyer must meet the expectations of the lawyers who have the extra work. Relationships in which partners and senior associates
assign work to the new lawyer are critical to the new lawyer’s success within the law firm. The willingness of partners to make assignments to a new lawyer can make all of the difference. Assignments vary in quality. Some assignments challenge and expand a new lawyer’s skill, through interaction with highly successful partners doing meaningful work for committed clients. Other assignments lack focus or do not expand the new lawyer’s skills. Regardless of the assignment, the young lawyer’s ability to gain the trust of those who have work to assign is a critical ingredient for success.

The ability to gain the trust of another lawyer is also important to the solo practitioner. Most solo practitioners practice within a network of professional relationships that fosters and promotes referrals. That network can operate much like the roles of practice groups within law firms: the sole practitioner who handles only bankruptcy and tax matters refers business litigation to another sole practitioner, and family-law matters to still another sole practitioner. Some of the same work-generating skills that serve a new lawyer well in a law firm also serve a new lawyer well in solo practice and small-firm settings.

The school designed Pro Bono Junior Associates to help you develop these skills. Pro Bono Junior Associates do meaningful work within the community through specific projects including Prisoner Civil Rights Support, Bankruptcy Adversary Proceeding Support, and legal services for Homeless Mission, Community Center, and Adult Residential Projects. Pro Bono Junior Associates provides indigent clients with much-needed legal services while giving you an outlet to serve your pro bono commitment, expand your community contacts, improve your knowledge of the law, and expand your interpersonal skills. Yet its primary value to you is in developing your abilities to interact productively with lawyers who are accustomed to assigning work to junior associates and other new lawyers. It gives you practice in the first skill most of you will need to exhibit: the production of timely, quality work product that will expand the confidence of more senior attorneys in your abilities.

I. GETTING THE ASSIGNMENT

When it comes to getting an assignment from a lawyer who needs your legal work, it is all about being there. Here is why.

A. The Role

Practicing lawyers depend on a network of other professionals. Those professionals may include a legal assistant (paralegal) and administrative assistant or secretary. The network may also include an office manager, librarian, and bookkeeper. The administrative work that these other professionals do is critical to the success of a practicing lawyer.

Yet when it comes to getting help with the legal work itself—drafting pleadings, motions and briefs, and discovery papers, analyzing claims and defenses,
preparing to examine witnesses, drafting agreements, and the like—a lawyer often depends on other lawyers. Those other lawyers may be law partners or associates. They may even be senior associates who themselves assign work to junior associates.

A lawyer who needs help with legal work may also rely on a law clerk. A law clerk is a law student whose legal education permits the law clerk to do meaningful legal work for the lawyer within a law firm, under the supervision of a practicing, licensed attorney.

Unless you are a licensed lawyer or in a clinical program approved for practice under state rules, your legal work supporting the work of a lawyer is as a law clerk. As a law clerk, you must not practice law. In some states, including Michigan, to do so is to commit a crime or contempt of court. See MCL §600.916. In all states, it would jeopardize your future law license.

You must instead perform your work for the lawyer who asks and supervises you, without giving legal advice to or otherwise representing a client. The State Bar of Michigan’s Board of Commissioners adopted Guidelines for the Utilization of Legal Assistant Services. The guidelines are available at http://www.michbar.org/opinions/ethics/utilization.cfm. Although they apply to legal assistants, the State Bar’s website recites that many of the guidelines also apply to other non-lawyer assistants, presumably including law-student clerks. Citing specific ethics opinions, the guidelines state in brief as follows:

1. Lawyers must ensure that legal assistants comply with lawyer conduct rules;
2. Lawyers may assign work to legal assistants provided that the assistants are capable of the work, the lawyer supervises the work, the lawyer reviews the work before it leaves the law firm, everyone knows that the assistant is not a lawyer, the assistant does not advise others outside the firm about the law, and the assistant makes no appearances;
3. Lawyers must not permit assistants to form lawyer-client relationships or establish fee arrangements;
4. Lawyers may identify assistants as such on letterhead and business cards;
5. Lawyers must ensure that assistants have no conflicts of interest;
6. Lawyers may charge for assistants’ work with client informed consent;
7. Lawyers must not split fees with assistants but may compensate for the work; and
8. Lawyers should support assistant participation in continuing education and public-service work.

**B. The Demands**

Practicing lawyers keep schedules to take them places that they must go—court hearings, depositions, settlement conferences, and client meetings, for instance. Lawyers do not miss appointments.
Practicing lawyers also follow workflow calendars that have multiple due dates and times—some flexible, some inflexible. They must produce certain work for their clients by certain times of day and by certain dates. In other words, their workflow has both short- and long-term commitments with some “soft” deadlines that are aspirational and some “hard” deadlines that they must not miss.

Put the two together—a schedule of appointments plus a workflow calendar—and you get a sense of the support that practicing lawyers need from other professionals. Because of the highly structured nature of a practicing lawyer’s schedule and workflow calendar, lawyers tend to require flexibility from those other professionals (secretaries, legal assistants, law clerks, and junior associates) on whom they depend to meet all of their professional expectations.

So again, it is all about being there. The junior associate or law clerk who wants to prove worthy of an assignment must first be available for the assignment. Availability depends on communication. The lawyer for whom you do legal work must be able to reach you. That usually means email but may also mean telephone. Make a consistent practice of checking email and phone messages. Reply promptly, even if your reply is that you must get back to the lawyer later at a specific time or date because of school or other commitments. If you want assignments, and you want to gain trust, make your schedule work for the lawyer, not the lawyer’s work for you.

The content and tone of your communications is equally important. You are now operating in a professional environment. Email and phone messages permit some informality including (for instance) first names and less formal salutations. Your communications need not be stiff. But they must be professional and appropriate. Avoid slang, quips, jocularity, and colloquialisms. Avoid rambling. Simply make your communications clear, to the point, helpful, and respectful. Remember, there is no nuance in email—no one can hear the light tone in your voice to understand that you intend your comment to be funny.

In your communications, saying “yes” also helps. Yet you may and should qualify your “yes.” Reply to a lawyer’s request for help saying that you have so many hours available, that you are available on such-and-such a day, or that you are available for certain tasks (computer research and drafting, for instance) even if not for others (travel, for instance).

II. CLARIFYING THE ASSIGNMENT

When receiving a new assignment from a lawyer, do not hesitate to ask questions.

Some lawyers include lots of information with an assignment. Others include none, for different reasons. Those reasons may include other pressing work. A lawyer may also give you little or no information to start because the lawyer does not know any other information. Some work is exploratory. The lawyer may also have forgotten what it is like to be a law student facing unfamiliar legal work. Often
a lawyer assigning work is assigning it because the lawyer has not had enough time to determine exactly what the task should encompass. Or the lawyer may just want to see you work without direction (not vindictively but as an opportunity for you to test and prove your mettle).

You may think that by asking no questions, you demonstrate your competence and confidence, and that by asking questions you do the opposite. Avoid the tendency to play smart. Playing smart when you are not is playing dumb. Asking questions shows that you are smart enough to ensure you have the tools necessary to complete the assignment.

When you ask questions, you not only help clarify for yourself what you are to do, but you also help the lawyer evaluate your level of skill and experience. That evaluation is important to the lawyer. No lawyer wants to see you flounder. Lawyers who assign or refer work to other lawyers want to make the most of the assignment or referral. For instance, when you ask about the assignment, the lawyer may be able to direct you to a resource that will save you time and get higher-quality work to the lawyer faster.

There are other benefits to asking questions. Your questions can reduce your anxiety over the assignment and your relationship with the lawyer. Your questions also show the lawyer that you are taking initiative.

Here are some questions you might consider asking to clarify the assignment. Tailor them to your own style.

A. Use

Ask how the assigning lawyer will use your work. You should understand your work’s use. It might be to evaluate a claim or defense internally. It might be to provide the basis for a client communication or demand to an opposing party. It might even form the first draft of a court-filed brief. The audience for your work makes a difference in the level of sophistication, nuance, complexity, advocacy, and candor your work should reflect. Know why you are doing the work.

B. Effort

Ask how much time the lawyer thinks you should spend on the project.

Some junior associates and law clerks only want to know when the project is due. They then work continuously up to the due date, only to find out that the lawyer thinks that they spent too much time on the project. Or they work only sporadically, and the lawyer wonders why they did not exhibit the requisite effort. Avoid that frustration and confusion.

Experienced lawyers develop a keen sense of how long some legal work should take. Those expectations can relate to the depth, complexity, significance, and polish of the work that the lawyer expects. If you ask how long to take, and the lawyer says just an hour, then you will know that the lawyer expects only a rough draft or review as all that the lawyer needs. If the lawyer says 10 or 20 hours, then you will know that the lawyer expects something significantly more extensive and polished.
Notwithstanding that innate sense of how long something might take, lawyers also understand that research projects can be indeterminate. New lawyers will experience having a partner assign them to find a statute that the partner believes exists when it in fact does not exist or to ascertain that a certain proposition does not exist. These are necessarily indeterminate tasks, taking the same eternity as proving the negative. Do not be frustrated by the indeterminate.

If the lawyer's answer is unclear, try follow-up questions that relate to your specific availability:

- I am available two afternoons this week. Should I spend both afternoons on this project or is this a shorter project?
- May I work at home or the law school this evening? Or do you prefer that I finish the work here before I leave?
- Are you looking for more of a draft or finished product?

C. Due Date

Ask when the lawyer needs the work back from you (when it is due). Use simple questions like, “When do you need this back from me?” or “Is there a deadline you need to meet with this work?” If there is no hard (determinate) deadline, ask for a soft (suggested) deadline so that you can balance the assignment with other work.

Do not find yourself doing great work but submitting it too late because you failed to ask. Surprising as it may seem to you, some lawyers will not ask you for your work product if they do not have it when they need it. They may have alternative plans (they often do when working with inexperienced law clerks or junior associates). If you do not know when the work is due, and you take too much time, then your work may be all for naught.

If the lawyer does not give you a clear answer to your question about when the project is due, consider suggesting a due date. There may be no specific due date (there often is not), but it may help the lawyer to know what you are thinking. Consider:

- Should I have a draft ready by Wednesday when I am next here?
- Would you like a draft the week before the filing date?
- When should I have a draft ready for your review?

D. Getting Started

Getting off on the right foot can make all of the difference.

Lawyers who make assignments often have already discerned where to start. They may even have looked at a few cases, outlined a motion, or done other preliminary work. They may assume that you would start at the same point, when you would not.

Ask the lawyer where the lawyer would start. The lawyer may take your question as respect for the lawyer’s skill. Many lawyers like to share their skills with new lawyers. If, instead, the lawyer says that where to start is up to you, but
you feel that you need some initial guidance, then consider the following questions. Otherwise, do as you think best. You have to walk before you can run.

- Do you prefer Westlaw, Lexis-Nexis, or book research?
- Do you like the ALRs or a state digest?
- Do you have in mind any key words or phrases for my research?
- Do you use a favorite treatise this kind of research?

E. Exemplars

Do not reinvent the wheel.

Lawyers constantly work from their prior work product and the work of others. Ask the lawyer who assigns you the work if there are any examples of what the lawyer would like to see in the finished product. It can save you much time and trouble, and lead to a significantly better work experience and product. Many firms develop and keep formbooks and patterns that reflect the firm’s preferred style. Style can be everything. Your work may be perfectly sound but not suited to the lawyer’s preferred style. Avoid a disappointing result by asking for a pattern. It is much easier to produce a product from a familiar prototype. If you do not get a satisfactory response, consider these follow-up questions:

- Is there an example of a similar type of document in a practice guide or file of another client matter?
- Whom might I ask for a copy of a similar document?

F. Staff

The new lawyer’s best friend is the supervising partner’s secretary, who knows the partner’s habits, practices, and preferences.

Your Pro Bono Junior Associate work is likely to be without staff support. You will do the work without the direct help of others. On the other hand, there may be an opportunity for you to use the lawyer’s staff for some guidance or support. Consider asking, “Is there anyone in your office on whom I should rely for administrative questions like routing the final product to you?” or “Whom should I ask for any assistance?”

Do not assume that clerical and office support is automatically available to you. Law firm staff members have many responsibilities. Your support is not necessarily one of them. Asking the question avoids misunderstanding. Consider these follow-up questions if things still seem unclear:

- Is there a telephone or computer for me to use if needed?
- Do I use the law firm’s books and library? Are any resources off limits?
- Should I do my own copying? Is there a code to use?

G. Progress

A stitch in time can save nine.

Lawyers want to know your progress, especially with complex assignments. You may believe that the lawyer’s time is too valuable for you to interrupt.
Probably, though, your brief communication updating the lawyer on your progress will instead give the lawyer confidence that you are proceeding apace with the work. It also gives the lawyer the opportunity to guide your work. By the same token, you need to be respectful of your supervisor’s time. If you find you have a lot of questions, consider building a list before you impose yourself on your supervisor’s time.

Lawyers constantly assess their progress on legal work against their initial estimate. They adjust work accordingly. The lawyer who assigns you a project may not realize its challenges or complexity. When you communicate your progress, it gives the lawyer a chance to adjust expectations and give new instructions about the work. You may end up with clarification about the assignment that will make all of the difference in the quality and usefulness of your work.

If you feel that you need more extensive communication than a short email or phone message, then ask the lawyer to meet with you for five or ten minutes. Consider:

- I am here on Tuesday and Thursday. What time is good for you?
- Would it help if I send you a draft, copies of cases, or a research list?

**H. Communication**

Above all, communicate.

Recognize that lawyers differ in their communication preferences. Some prefer and even require email. Others go nowhere near email and instead depend on the telephone. Others find person-to-person communications the most productive. Meeting may require scheduling an appointment or, by contrast, an informal encounter in a hallway or reception area. Other lawyers work with written memoranda back and forth with junior associates and law clerks, either handwritten or typed, with varying levels of formality.

Determine your lawyer’s preferences, and follow them. It may be more than preference. Office systems including billing, quality control, and conflict checking, may require certain methods of documenting certain interactions. If your lawyer does not indicate a preference, and you cannot discern it from your interaction, then consider these follow-up questions:

- Are there days or time when it is easier for you to discuss issues?
- How should I reach you if you are not immediately available?
- Would you prefer that I stop by your office or send an email or memo?

Remember, your “best friend,” your supervisor’s secretary, can be a valuable resource regarding your supervisor’s preferences and idiosyncrasies.

**II. ASSESSING YOUR WORK**

**A. Why Assess**

Your pro bono work benefits your lawyer’s client—and it can benefit you. It prepares you for the practice of law in an authentic professional setting. The first
few days may be challenging because you may work in a new office, with new people, and with a lot of new information and procedures.

Feedback at the beginning of your pro bono experience helps for two reasons. First, it reassures you that you are learning. The learning curve the first time that you do legal work for a practicing lawyer is steep. You may never again learn so much so quickly. If the lawyer's feedback is positive, your confidence builds. On the other hand, if the feedback is constructive about how you can improve your work, you are also learning. The more you know about your lawyer's expectations, the better your work product is going to be.

B.  Attitude

There is no such thing as "bad" feedback. There is only constructive feedback—indications on how you can do things better. If you get no feedback, then you are not learning.

Do not confuse constructive feedback with personal criticism. It is not personal. It is not all about you. Indeed, it is not really about you at all. It is about your skill set and the needs of others (the lawyer and the lawyer's client). Be sure that you know the difference between personal and professional criticism. Personal criticism, inappropriate in professional settings, suggests personal capacities and attributes. Professional criticism tells you how to do better next time.

If your written work product comes back covered in red ink, do not confuse this professional critique with personal criticism. Be tough—lawyers need thick skins. Do not be bothered by professional criticism. Learn from it, incorporating its suggestions on the next project. Be grateful that your lawyer took the time to give you this feedback. It is the lawyer's sign of respect for you, not rejection or condemnation.

C.  Getting It

It may be hard to catch your lawyer to get effective feedback. Attorneys carry a lot on their plates on any given day. Whatever they planned for their day will generally change, too. Sometimes it is hard to get feedback on your work. It is often true that no feedback is a sign that your work is good. When it is not, you will hear about it. Be patient and respectful. Beyond that, here are suggestions to stimulate feedback:

- Set time aside to talk with your lawyer. Ask for feedback during this time. A lawyer may be reluctant to give you feedback, worrying that it will hurt your feelings or make you feel less confident. Invite them to give constructive criticism.
- Travel with your lawyer to court, a meeting, a deposition, or other professional event. Ask for feedback on the way back to the office from that event.
- Put a cover sheet on your work product that asks specific questions. For example, a research memorandum might include a cover sheet stating, "I used these search words and these databases to find this research."
Would you have used different search criteria?” Outline assumptions in the cover sheet. Ask for feedback in your cover sheet.

- Get a copy of the final product that your lawyer filed in court or sent to the client, and compare it to your submitted work. This investigation gives you perspective on the larger project and helps you evaluate whether you contributed.

D. Giving It

It is not your role to make your lawyer a better lawyer. On the other hand, your lawyer may want to know how the lawyer could make the experience better for you or another Pro Bono Junior Associate next time.

Do not talk to others about your lawyer’s pitfalls. Gossip within the profession is just as destructive as it is elsewhere. Talk directly but tactfully to your lawyer about any communication, activity, or behavior that interfered with a productive relationship. The same rules apply that it is professional not personal criticism. It is not about the lawyer’s attributes or capacities. It is about professional behaviors.

Use this construct:

- Begin with reflection like, “Remember the other day...,” recalling the unproductive event or behavior. Do not judge the event. Simply relate it. More often than not, your lawyer will analyze and explain the situation to your satisfaction without more effort on your part.

- If you get no explanation, then employ a prompt like, “That even made me think... . Was I mistaken?” Very briefly relate your perspective on the event as if you might well have been mistaken. More often than not, your lawyer will take the cue to explain the situation to your satisfaction.

- If you still do not understand how to avoid future similar situations, then suggest a specific prescription like, “It would help me if you could... .”
Retaining Occupancy on Foreclosure (ROOF) Agreement

Acknowledgements

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Honigman Miller Schwartz and Cohn LLP
JPMorgan Chase Bank, N.A
Michigan Foreclosure Prevention Task Force
Michigan Foreclosure Prevention Project
Michigan Legal Services
Potestivo & Associates, P.C.
United Community Housing Coalition
**DISCUSSION DRAFT: 9/4/09**
*For Limited Circulation*

**RETAINING OCCUPANCY ON FORECLOSURE (ROOF) AGREEMENT**

September 4, 2009

**Index of Documents**

1. Retaining Occupancy On Foreclosure (ROOF) Agreement Concept
2. Introduction to ROOF Agreement
3. Occupant Advice of Rights
4. Application for ROOF Agreement
5. Application Cover Letter
6. ROOF Agreement
Attachment

1
ROOF Agreement Concept

Foreclosures in Detroit and Michigan, as well as much of the country, remain a continuing, seemingly intractable, problem. Fewer than 50% of the mortgages that go into delinquency are being saved. Therefore the issue of vacancy is a significant problem, especially in "weak market" cities like Detroit, where credit is tight, thus making sales of REO problematic. Large scale vacancies cause a variety of problems:

- serious population relocation
- reduced property values
- neighborhood blight and destabilization.

In 2006 home prices in Detroit averaged approximately $96,000 with REO sales just under $50,000. At the end of 2008 market sales in Detroit had fallen to around $84,000, but REO sales had fallen to a city-wide average of $12,000. That disastrous decline in REO sales is primarily a consequence of wide spread residential vacancies.

The object of the ROOF Agreement (Retaining Occupancy On Foreclosure) is to provide a program and an accompanying legal vehicle for stemming the tide of vacancies in such a way as to provide servicers, investors, former home owners, renters, and potential buyers incentives for maintaining supportive occupancy in a foreclosed house during the period of its disposition. While there are clearly competing interests within such a group, there are also common interests as well. The ROOF Agreement is built on the common interests while reducing the friction of the conflicting interests.

- For the servicer/investors the object is to provide a relatively simple, inexpensive way to maintain the integrity of the house and support a higher value at the eventual sale of the property without subjecting the servicer to the difficulties and liabilities of a landlord/tenant relationship.

- For the former homeowner, it provides a more graceful exit over a longer period of time, and at greatly reduced expense so as to be financially prepared for the time they will need to exit the house.

- For the tenant, and for the servicer grappling with the new Federal Tenant Law, it offers a more balanced and longer-termed process for keeping the home occupied.

- For the potential buyer (especially investor buyers) it provides the opportunity to have a ready occupant to maintain the house while actions are taken to determine the best investment strategies for the new asset.
• And of course, for the city, neighborhood, affected families, and everyone, vacancy blight is reduced so as to maintain the viability of the neighborhood.

In the creation of this Agreement, proponents and counselors to essentially every affected constituency have been involved and contributed. All aspects of the needs of each constituency have been considered and dealt with, resulting in a highly vetted and census-approved document.

Due to the nature of the significant problem facing the City of Detroit, the ROOF Agreement is tailored to address Detroit-specific issues. Yet the principles of the Agreement, the topics covered, and much of the drafting were designed for ease of application to other communities in Michigan. For example, the Detroit Water Dept and the Building and Safety Engineering Dept have agreed to the particular approaches built into the Agreement for dealing with problematic utility and code enforcement issues. Those processes could be emulated in other communities but would require some discussion with the applicable agencies in those communities to produce similar results.

In addition, the ROOF Agreement has been created to conform to State of Michigan and Federal laws governing the foreclosure process and timing, the legal rights of the parties, and the resultant actions regarding property, etc. However, we believe the essence of the Agreement’s purpose translates to other States and that with relatively slight changes to conform to local State and municipality statutes, the ROOF Agreement could be used generally across the United States.

We intend to promote this ROOF Agreement with Federal agencies such as Fannie Mae, Freddie Mac, OCC, Federal Reserve and FDIC, and in the private sector with the American Securitization Forum and the Mortgage Bankers Association, with individual servicers and their law firms, and with housing counselors and homeowner and tenant advocacy organizations and their counsel. We also intend to publicize its efficacy through media promotions and other means so as to encourage communities to consider requesting its use in their vicinity.

It is our hope that this Agreement will be another tool in the increasing arsenal of effective measures for dimming the foreclosure crisis and its attendant issues.
Attachment 2
INTRODUCTION TO RETAINING OCCUPANCY ON FORECLOSURE (ROOF) AGREEMENT

Property Address: ___________________________ Date: _________________

This information is addressed to both former owners and tenants of the above property, which was subject to a foreclosure sale held on ______________ and is now owned by __________________________ (Owner). Please review the information below, as there may be an option available for you to remain in the property for a period of time after the six (6) month statutory redemption period expires on __________________________.

Due to current institutional and market conditions, many residential properties remain vacant after a foreclosure sale. This has resulted in a “vacancy crisis” in many municipalities. In an effort to fight this vacancy crisis, the Owner of this property may offer you the opportunity to remain in the property after the redemption period expires under a Retaining Occupancy On Foreclosure (ROOF) Agreement (which applies to both foreclosed homeowners and their tenants).

If you are a tenant of the previous homeowner and renting the property, you may have the right under federal law to continue living in the property for a defined period of time under the Protecting Tenants at Foreclosure Act of 2009. However, in addition to the rights under this law you may also be eligible to enter into a Retaining Occupancy On Foreclosure (ROOF) Agreement with the Owner of the property. If you have any questions regarding your rights under the Protecting Tenants at Foreclosure Act of 2009 or the ROOF Agreement, please see the enclosed list of agencies that will assist you in understanding these rights.

For both previous homeowners and tenants, the ROOF Agreement will provide for the following. Please note that the following list does not include all of the terms of the ROOF Agreement but only highlights key terms and is not meant to be binding on any party:

- All agreements are originally entered into for a ninety (90) day or three (3) month term, with an option to renew for one three (3) month initial renewal period, and then to remain on the property on a month-to-month basis thereafter.
- During the initial ninety (90) day term the Owner will have access to the property to perform necessary city inspections as well as market the property. However, the Owner will not be able to sell or dislocate the occupant for this initial ninety (90) day period.
• During the initial ninety (90) day term and all renewal periods, the Owner will have the ability to market the property and will be allowed access to show the property with reasonable notice.

• If the property is sold, the Owner can require the occupant to move out with one month’s notice starting at the end of the initial three (3) month term.

• There will be a ROOF Availability Fee that will be paid up front or on a monthly basis. The amount of the fee will depend on your ability to pay.

• The occupant under the agreement will be responsible for paying the utilities, including but not limited to water. If the property is in the City of Detroit, the Occupant must go to the Detroit Water Department and establish a tenant water account. Please note that if you are the previous homeowner, any past due water bills will be switched over to what the Department calls a “tenant account” and will be your personal responsibility.

• The occupant will have to maintain the yard in attractive condition and perform routine repairs in and keep up the home.

• At the end of the agreement the occupant will receive a refund of up to 50% of the ROOF Availability Fee if the occupant moves out on time.

If you are interested in being an occupant under a ROOF agreement then please contact ____________ at ____________ to obtain an application and discuss any questions or concerns. If you wish to speak with a housing counselor or Legal Aid office, please see the attached contact information for various organizations you can contact to discuss this agreement further.

Please note that by entering into a ROOF agreement and obtaining the benefits it provides, you may also be waiving some rights. You may wish to consult with an attorney to discuss those rights and this agreement.
Attachment

3
DISCUSSION DRAFT: 9/4/09  
For Limited Circulation

WARNING: YOU SHOULD CONSULT AN ATTORNEY BEFORE SIGNING THIS AGREEMENT

You have been offered a temporary opportunity to continue to live in your home under this "ROOF" agreement. This agreement requires you and the owner of your home and anyone connected to the owner to waive all rights to sue each other for any problems which occurred prior to the signing of this agreement (Paragraph 19). If you have any concerns about your mortgage or how you were treated by anyone managing your mortgage or payments, YOU SHOULD NOT SIGN THIS AGREEMENT without first obtaining the advice of a lawyer.

Free legal advice is available through the following organizations in Detroit:

Michigan Legal Services, 964-4130, 220 Bagley, Suite 900, Detroit, 48226
United Community Housing Coalition, 963-3310, 220 Bagley, Suite 224
Legal Aid and Defender, 967-5555, 613 Abbott, Detroit, 48226.
Neighborhood Legal Services of Michigan (seniors only) 937-8291

You may also hire your own attorney or contact the Detroit Metropolitan Bar Association for a referral to a private attorney at (313) 961-3545.

EVEN IF YOU DO NOT HAVE CONCERNS ABOUT YOUR MORTGAGE, YOU ARE STRONGLY ADVISED TO OBTAIN LEGAL ADVICE BEFORE SIGNING THIS AGREEMENT. YOU MAY HAVE LEGAL RIGHTS OR CLAIMS THAT YOU DO NOT KNOW ABOUT.

Paragraph 19 also requires the mortgage company or owner of your home to waive all rights to sue you for any issues related to the foreclosure of your mortgage or problems involving your mortgage which may have occurred prior to signing this agreement. This includes suits for any money you might owe because your home was sold for less than what was owed on your mortgage at the sheriff’s sale.

I acknowledge that I have received a copy of this recommendation to obtain an attorney.

__________________________________________  _________________
Date                                      Occupant
Attachment

4
APPLICATION FOR RETAINING OCCUPANCY ON FORECLOSURE (ROOF) AGREEMENT

If you are the previous homeowner, please provide the following information:

<table>
<thead>
<tr>
<th>Name (Previous Homeowner)</th>
<th>Daytime Phone:</th>
<th>Alternate Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Email Address (if available):</td>
<td></td>
</tr>
</tbody>
</table>

Total number of individuals living in household:_______

If you are a tenant of previous homeowner please provide the following information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Daytime Phone:</th>
<th>Alternate Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Email Address (if available):</td>
<td></td>
</tr>
<tr>
<td>Number of Months/Years you have resided at this address:</td>
<td>Do you have a current lease (if yes please provide a copy):</td>
<td>Amount of Current Monthly Rent:</td>
</tr>
</tbody>
</table>

Total number of individuals living in household:_______

Both previous homeowners and tenants should provide the following information in the column that applies:

<table>
<thead>
<tr>
<th>EMPLOYMENT HISTORY</th>
<th>PREVIOUS HOMEOWNER</th>
<th>TENANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are you currently employed?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>If yes, how long?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If self-employed, what is the name of your company?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Income | Previous Homeowner | Tenant
<table>
<thead>
<tr>
<th>Yearly wages (gross amount)</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other yearly income (gross amount)</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

Please provide proof of income in the form of copies of pay stubs, tax returns or other sufficient documentation. If more than one individual is employed or has other sources of income, please obtain additional sheets so that each individual can enter the information.

THIS APPLICATION IS FOR INFORMATION ONLY AND DOES NOT OBLIGATE ANY PARTY TO EXECUTE A RETAINING OCCUPANCY ON FORECLOSURE (ROOF) AGREEMENT OR TO REMAIN IN OR DELIVER POSSESSION OF THE PREMISES.

I, the undersigned applicant(s) have read and agree to all of the provisions of this application and represent and promise that the information contained herein is true and correct.

Signature: ___________________________  Date: ______________________
Signature: ___________________________  Date: ______________________

DETOIT:3797290.1
Attachment

5
Mr. & Mrs. Occupant  
1234 West Street  
Anytown, MI

RE: Retaining Occupancy On Foreclosure (ROOF) Agreement

Dear Mr & Mrs. Occupant,

We are pleased that you are interested in the ROOF Agreement. Enclosed you will find an Application and a proposed ROOF Agreement. Please complete the enclosed application and return it to ______________ at ______________ for consideration. After review of your application you will be contacted regarding your eligibility and exact terms of your agreement.

Please note, you may be waiving some rights under this agreement so if you wish to discuss this application and proposed agreement with a certified housing counselor or Legal Aid attorney please see the attached contact information for the various organizations in which you can contact to discuss this agreement further.

We look forward to receiving your application and entering into a ROOF Agreement in an effort to fight vacancies that sometimes result from a foreclosure.

Very truly yours,

Enclosures

DETROIT:3797734.1
Attachment

6
Retaining Occupancy On Foreclosure (ROOF) Agreement

This Retaining Occupancy On Foreclosure (ROOF) Agreement is entered into ________, 200__, by and between ____________________________, a (“Owner”) and ____________________ [and __________________], whose address is __________________________ [(collectively,] “Occupant”).

ROOF AGREEMENT - BACKGROUND

A. Owner is the owner of a residential property located in ________ County, Michigan, the address of which is ____________________________ (the “Property”). Owner acquired its interest as the result of a foreclosure sale of the Property held ___________ (the “Foreclosure Sale”).

B. Occupant is the [previous owner of the Property/tenant of the Property [under a written lease agreement dated ________________] [a month-to-month oral lease agreement] between Occupant and the owner of the Property].

C. The Property is one of many residential properties that have been recently foreclosed, resulting in unprecedented numbers of vacant homes in the municipality in which the Property is located and in many other jurisdictions.

D. Under current institutional and market conditions the vacancy crisis is likely to continue for an extended period, displacing homeowners and tenants from their existing homes and adversely affecting and raising the costs to post-foreclosure owners challenged with maintaining their properties in a secure, non-derelict condition. Even foreclosed properties purchased by third party investors are remaining vacant. The result is disrupted family lives, severed school affiliations for children, deteriorated properties with significant loss of value to lenders and investors, destabilized, blighted neighborhoods, and a diminished tax base.

E. In the face of widespread post-foreclosure vacancies and all their ensuing costs and disruptions, an agreement between the foreclosing owners and the foreclosed owners or tenants allowing the former residents to remain in their homes for a reasonable transitional period will provide a material benefit to the affected parties and to neighboring communities.

F. In light of the above, and having fully considered their individual and mutual interests, Owner and Occupant have decided to enter into this Retaining Occupancy On Foreclosure (ROOF) Agreement (the “Agreement”) in order to provide for continuing occupancy of the Property by Occupant on the terms set forth below.

On the basis of the above and in consideration of the rights and obligations set forth in this Agreement, Owner and Occupant agree as follows:

1. LICENSE TO OCCUPY PROPERTY.

1.1 License Agreement. Owner grants to Occupant a personal license to occupy the Property subject to the terms and conditions set forth in this Agreement.
1.2 *Not A Lease.* This Agreement is a personal license, giving Occupant a limited contractual right to occupy the Property. This Agreement does not convey any interest in the Property, is not a lease and does not create a landlord-tenant relationship between the parties.

1.3 *Joint And Several Rights And Obligations.* If “Occupant” consists of more than one individual, each Occupant will be entitled, individually, to all of the benefits of this Agreement, and each individual will also be obligated to Owner on a joint and several basis for all payment and other obligations, provided that Owner may accept payments from any individual Occupant and return any payments (including escrow payments under Section 7 below) to any individual Occupant without liability to the other(s).

2. **TERM; TERMINATION.**

2.1 *Initial Term.* This Agreement provides for an initial three (3) month period of occupancy (the “Initial Term”). The Initial Term begins (i) on the day after the date of expiration of Michigan’s statutory redemption period if Occupant is a former owner, and (ii) (subject to Section 2.4 below) on the day that is ninety (90) days after the date of expiration of Michigan’s statutory redemption period if Occupant is a former tenant (in each case, the “Start Date”).

2.2 *Renewal Terms; Termination.* Upon the expiration of the Initial Term, this Agreement will automatically renew for one three (3) month renewal term, and after that, for successive one month renewal terms, unless either party notifies the other in writing at least thirty (30) days before the end of the Initial Term or the then current renewal term, as applicable, that it has elected not to renew this Agreement. If the Agreement is not renewed, it will terminate on the last day of the then current term, and Occupant will immediately vacate the Property.

2.3 *Owner Option To Sell; Early Termination; Notice.*

2.3.1 Occupant recognizes that Owner likely will be marketing the Property to third party purchasers during the term of this Agreement. Accordingly, if Owner enters into a purchase and sale agreement for the Property with a third party, Owner may terminate this Agreement by written notice given to Occupant at any time after the Start Date if Occupant is a former tenant, and three months after the Start Date if Occupant is a former owner, and Occupant will vacate the Property within the later of thirty (30) days after such notice or by any later date specified in the notice.

2.3.2 Notwithstanding Section 2.3.1, if Owner has already provided the requisite thirty (30) days notice that this Agreement will not be renewed for a subsequent term, no additional notice to vacate will be required on account of a purchase and sale agreement entered into during the current term.

2.3.3 Owner recognizes that it would be desirable in principle to encourage the possibility of continued occupancy and discourage vacancy following sale
of the Property to a third party purchaser. Accordingly, if during the Initial Term or any renewal term Owner enters into a purchase and sale agreement for the Property with a third party, Owner agrees, subject to Owner’s sole commercial judgment and without being obligated to do so, to offer the purchaser the opportunity for Occupant to remain in the Property pursuant to this Agreement, and if the purchaser is willing, Owner will assign this Agreement to the purchaser on mutually acceptable terms, and Occupant’s rights and obligations will continue as provided in this Agreement following such assignment.

2.4 Special Provision Regarding Former Tenants. The Federal Protecting Tenants at Foreclosure Act of 2009, Public Law 112-22 (the “Protecting Tenants Act”) provides certain protections to former tenants of foreclosed residential properties. In order that this Agreement conform to the requirements of the Protecting Tenants Act, if Occupant, is occupying the Property following foreclosure under a qualifying lease under the Protecting Tenants Act the term of which extends beyond what would otherwise have been the Start Date under Section 2.1 above (an “Extended Lease”), then the Start Date will instead occur on the day following the last day of the then current term of the Extended Lease.

3. OCCUPANT'S USE OF PROPERTY.

3.1 Use Of The Property. Occupant will live in the Property full time during the entire term of this Agreement and, except as provided in Section 3.2, Occupant will use it solely for residential purposes. Occupant will comply with all applicable laws, ordinances and regulations relating to the Property.

3.2 Home Businesses. Occupant may continue Occupant’s previous use of the Property for a home business upon receipt of approval from Owner; provided that approval will not be given unless (i) the business does not require the Property to be open to the public, (ii) Occupant furnishes Owner with evidence of the requisite licenses and insurance and (iii) so long as Occupant operates the business in compliance with all applicable laws, ordinances, regulations and subdivision or other private restrictions.

4. OCCUPANCY OF PROPERTY IN "AS-IS" CONDITION.

4.1 "AS-IS" Condition. Occupant has previously lived in and is familiar with the Property and agrees to continue to occupy the Property in its current, "AS-IS" condition. Owner will have no obligation as to the condition of the Property at or following the Start Date. Except for any breach of this Agreement, Occupant releases Owner, and Owner releases Occupant, from any and all claims, liabilities, causes of action, expenses, and demands relating to the Property or its condition at the Start Date or thereafter.

4.2 Municipal Inspection And Habitability Requirements.

4.2.1 Prior to the Start Date, if required by municipal ordinances or regulations,
the Property will be inspected (both internally and externally) and must be found to satisfy minimum habitability requirements applicable under local or state law in order to permit continued occupancy under this Agreement (including any grace period for the Property to be brought into conformity with minimum requirements for occupancy). The inspection will be arranged for and the cost will be paid by Owner. Any requirements to carry out repairs required for occupancy as a result of the inspection will be paid by Owner, but Owner, at its sole discretion, may elect not to carry out such repairs and, instead, may immediately terminate this Agreement, subject to the notice and vacation provisions set forth in Section 5.3 below.

4.2.2 Notwithstanding the inspection requirement, the unavailability of municipal inspectors to conduct an inspection prior to the Start Date will not prevent the commencement of this Agreement at such Start Date, and Occupant will bring no claim against Owner with respect to the fact that the inspection was delayed or with respect to any finding of the inspection once it occurs. In the event the inspection occurs following the Start Date and reveals that the condition of the Property is below minimum habitability, then the terms of Section 5.3 below will apply.

4.3 **Inventory Report.** Immediately prior to the Start Date, Owner and Occupant will participate in and agree on a written inventory of items relating to the existing state of repair of the Property (the "Inventory Report"), and each of them will retain a copy of the Inventory Report. Assembling the Inventory Report does not commit either Owner or Occupant to repair any conditions disclosed in the Inventory Report.

4.4 **Notify Owner Of Problems.** Subject to the provisions of Section 5.3 below, during the course of occupancy under this Agreement, Occupant will promptly, and in writing, bring to Owner's attention any conditions requiring major or emergency maintenance or any condition that if left unattended could cause major damage to the Property. In an emergency, notice may be given by telephone or email at a number or address that Owner will provide.

5. **MAINTENANCE.**

5.1 **Occupant's Obligation For Day-To-Day Maintenance.** Subject to Section 5.2 below, Occupant will be solely responsible at his/her expense for keeping and maintaining the Property in its current, as-is condition as existed at the Start Date, normal wear and tear excepted throughout the term of this Agreement and any renewal thereof. Among other maintenance obligations, Occupant will make sure the lawn is regularly mowed, snow and ice cleared and trash, clutter and debris picked up, so that the Property has an attractive, “lived-in” appearance.

5.2 **Limitations On Occupant's Maintenance Obligations.** Notwithstanding Section
5.1, Occupant will not have any obligation to improve the Property or to carry out major maintenance and repair, including deferred maintenance from prior to the Start Date, unless the need for any major maintenance and repair results from Occupant’s willful misconduct or gross negligence after the Start Date. Major maintenance and repair items are those having a cost (including materials and labor) in excess of $250 for a single item and $750 in the aggregate over the term of the Agreement. Occupant will be responsible for providing estimates of the cost of any repairs that may be major items and receipts for work done if requested by the Owner.

5.3 Limitations On Owner’s Maintenance Obligations. Under no circumstances will Owner be required to make any repairs, replacements or capital expenditures to the Property. If the need for such repairs or replacements arises in such manner as to threaten safety or habitability, as defined by minimum municipal standards, and Owner is unwilling to carry out such maintenance or repairs, then Occupant may terminate this Agreement on fifteen (15) days written notice to Owner, or if the condition is such that the Property has become unsafe or uninhabitable, by either Owner or Occupant on seven (7) days notice.

6. UTILITIES.

6.1 Occupant’s Responsibility For Utilities. Occupant will be solely responsible for the payment of all utility charges, including, without limitation, all gas, electric, water, sewer, cable television, DSL, internet and telephone charges, including (subject to Section 8 below) any such charges that were past due at the Start Date, which remain due thereafter, for which Occupant was previously responsible. Occupant will pay all current utility charges when due and will pay any penalties imposed by providers because of Occupant’s late payment of bills. Occupant will, at the request of Owner, provide evidence to Owner that electric, gas and water service is being furnished to the Property. Occupant may discontinue utilities services other than gas, electric and water.

6.2 Occupant Water Account For Detroit Property. If the Property is in the City of Detroit, Occupant will open an account with the Detroit Board of Water Commissioners (the “Occupant Water Account”) and will assume responsibility for any past due water charges for the Property for which the Occupant was responsible and any future water charges incurred at the Property during the Initial Term and any renewal term. Occupant will use its best efforts to provide evidence to Owner of Occupant’s Water Account within ten (10) days after the Start Date, and such failure to do so will be an event of default under Section 9.2. If local procedures require a personal appearance or signoff from Owner for opening an Occupant Water Account, Owner will make reasonable commercial efforts to cooperate in such respect, and Occupant’s obligation to open the account will be deferred until Owner is able to do so.

6.3 Occupant Not Responsible For Certain Charges; Owner To Arrange For Change Of Name On Accounts Following Termination.
6.3.1 Notwithstanding anything herein to the contrary, Occupant will not be responsible for any past due charges as of the Start Date for which Occupant was not previously legally responsible or for charges that Occuodant, if a former tenant, paid to an owner of the Property and were not properly applied.

6.3.2 Owner will cooperate with Occupant and all utility providers to terminate service in Occupant's name and remove Occupant from utility accounts for the Property following termination of the Agreement and vacation of the Property by Occupant.

7. ROOF AVAILABILITY FEE.

7.1 Roof Availability Fee. As partial consideration for Owner's willingness to make the Property available to Occupant under this Agreement notwithstanding foreclosure and the expiration of any post-foreclosure redemption period, Occupant will pay to Owner an availability fee (the "Availability Payment") in the amount of $_______ for each month or fraction of a month during the term of the Agreement (including any renewal term) calculated in accordance with Schedule ____ attached to the ROOF Agreement Application. The first Availability Payment will be due either on the Start Date or on an alternative date agreed to in writing by the parties, and subsequent Availability Payments will be due on the same date of each month thereafter during the Initial Term and any renewal term.

7.2 Escrow Of Availability Payments. Each Availability Payment will be paid by Occupant to an escrow account (the "Escrow Account"), established with ______________________ (the "Escrow Agent") for the protection and benefit of Owner and Occupant. Each Availability Payment will be made payable to Escrow Agent at the following address for Escrow Agent (or to such other address as Owner or Escrow Agent has previously indicated in writing to Occupant):

[insert address]

7.3 Disposition Of Escrow At Termination. Upon the termination of this Agreement, Escrow Agent will disburse the Availability Payment funds held in the Escrow Account as follows:

7.3.1 If Occupant vacates the Property on the earlier of the date of expiration of the then current term or on the date required by any notice of early termination given pursuant to this Agreement, Occupant will be entitled to reimbursement from the Escrow Account of one-half (1/2) of Occupant's total Availability Payments to such date. Escrow Agent will promptly pay to Occupant such funds pursuant to Section 7.5, and Owner will cooperate to cause such payment to be properly made.
7.3.2 Should Occupant be ineligible to receive the refund set forth in Section 7.3.1, Escrow Agent will pay the entire amount held in the Escrow Account to Owner.

7.4 Escrow Fees. Owner will pay all of the fees charged by Escrow Agent.

7.5 Terms Relating To Escrow.

7.5.1 Escrow Agent agrees that it will accept each Availability Payment received from Occupant under Section 7.2. Upon receipt of each Availability Payment, Escrow Agent shall hold the funds in escrow. Escrow Agent shall not release any of the Escrow Funds to anyone except as provided herein.

7.5.2 Upon termination of this Agreement, Owner shall provide written notice to Escrow Agent, with a simultaneous copy to Occupant, directing the Escrow Agent as to the payment of the Escrow Account funds in accordance with Section 7.3 (the “Escrow Release Notice”). Unless Escrow Agent receives written notice objecting to such payment from Occupant within ten (10) days following Escrow Agent’s receipt of the Escrow Release Notice, Escrow Agent shall disburse the funds held in the Escrow Account in accordance with Section 7.3.

7.5.3 In the event of a dispute as to the disposition of the funds held in the Escrow Account, Escrow Agent is authorized and directed to do any of the following (the determination of which shall be made by Escrow Agent in its sole discretion): (i) file an interpleader action as provided by law, in which event Escrow Agent shall be released from any further liability under this Escrow Agreement, (ii) hold the funds until Escrow Agent receives an order of a court of competent jurisdiction or (iii) hold the funds until Escrow Agent receives a single set of written instructions from Owner and Occupant directing Escrow Agent with respect to the disposition of such funds.

7.6 Disposition Of Escrow Upon Continuation Of ROOF Agreement Under Third Party Ownership. Should this Agreement be assigned to and assumed by a third party purchaser, (i) Occupant shall continue making the required Availability Payments to escrow for the benefit of the new Owner; (ii) Escrow Agent shall release to the selling Owner one-half (1/2) of the funds in the Escrow Account calculated on a prorata basis as attributable to the period from the Start Date until the closing date of the sale to the new Owner (the “Sale Date”), and (iii) the new Owner shall have the rights, and be subject to the obligations set forth in Subsections 7.3.1 and 7.3.2 with respect to returning to Occupant, as applicable, the half of the escrowed funds as of the Sale Date not released to the selling Owner.

8. INSURANCE.
8.1 **Owner’s Insurance.** Owner will maintain for Owner’s benefit property and general liability insurance and such other insurance as Owner deems necessary in such amount as Owner may determine. Occupant may, but is not required to, carry at his/her expense, insurance covering Occupant’s personal property located on the Property, liability insurance protecting Occupant, and any other insurance Occupant may desire.

9. **DEFAULTS.**

9.1 **Monetary Defaults By Occupant.** If Occupant fails to make an Availability Payment when due, Owner may (at its option and in addition to its other remedies provided by law and this Agreement) immediately terminate this Agreement.

9.2 **Non-Monetary Defaults By Occupant.** If Occupant defaults in performing any non-monetary terms of this Agreement (including for the purpose of this Section 9.2 any obligations relating to timely satisfaction of utility requirements), Owner will give Occupant written notice of the default and if Occupant fails to cure the default within ten (10) days after receipt of the notice, Owner may (at its option and in addition to its other remedies provided by law and this Agreement) immediately terminate this Agreement.

9.3 **Vacation Of Property On Default.** If Owner terminates this Agreement pursuant to this Section 9, Owner will notify Occupant in writing of the termination date and Occupant will vacate the Property within fourteen (14) days after the termination date.

9.4 **Agreement To Use Of Summary Proceedings Act.** Should Occupant fail to vacate the Property when required by any provision of this Agreement, Owner may initiate proceedings to evict Occupant pursuant to the Summary Proceedings Act, MCL 600.5701 et seq., as Owner’s sole procedural remedy to recover possession of the Property.

9.5 **Defaults By Owner.** In the event of a default by Owner which is not cured by Owner within ten (10) days after written notice from Occupant, Occupant may exercise any legal and equitable remedies available, including seeking the remedy of specific performance.

10. **ABANDONMENT.**

10.1 **Abandonment Of Property.** If Owner determines in good faith that Occupant has abandoned the Property, Owner may (in addition to any other remedies provided by law and this Agreement) re-take possession of the Property and terminate this Agreement. The Property will be presumed to be abandoned if both (i) any Availability Payments are unpaid for thirty (30) days following the due date, and (ii) the Property, upon internal and external inspection by Owner or its agents, is determined to be vacant.
11. **CASUALTY.**

11.1 *Uninhabitability On Account Of Fire Or Other Casualty.* If the Property becomes partially or wholly uninhabitable during the term of this Agreement or any renewal thereof by fire or other casualty, Owner may terminate this Agreement (without any liability to Occupant) by notifying Occupant in writing. In such case, Occupant will vacate the property in accordance with Section 9.3.

12. **ASSIGNMENT.**

12.1 *Owner May Assign.* Owner and Occupant agree that Owner may assign this Agreement to any party, including without limit a third-party purchaser of the Property as provided in Section 2.3.1, and Owner will be released from any obligation hereunder if the assignee assumes this Agreement.

12.2 *Occupant May Not Assign.* Occupant will not sublease, license or rent the Property to others or assign this Agreement, and any such agreement will be null and void and not enforceable against Owner.

13. **MARKETING OF THE PROPERTY FOR SALE.**

13.1 *Marketing Of The Property By Owner.* Owner and its agents will be permitted to market and show the Property during the term of this Agreement. Owner and its agents may also enter the Property in an emergency or to perform repairs, maintenance, code inspections, appraisals, insurance inspections, or for other reasonable purposes consistent with the purposes of this Agreement as determined by Owner. Except for entry during an actual or apparent emergency, Owner and its agents will provide at least twenty-four (24) hours notice to Occupant before any entry, and such entries will be made during reasonable hours by arrangement with Occupant and with commercially reasonable efforts to minimize disruption to Occupant during the entry.

13.2 *Cooperation By Occupant.* Occupant will cooperate with Owner and its agents in such marketing, including by permitting Owner and its agents to maintain a yard sale sign on the Property and to enter the Property for the purposes of showing the Property to prospective purchasers. During such showings, Occupant agrees to leave the Property and to remove from the Property all feisty dogs and other pets likely to inspire fear or alarm.

14. **BANKRUPTCY.**

14.1 *No Challenge To Lifting Stay.* Occupant acknowledges that it is receiving a substantial economic benefit from this Agreement and agrees that in the event that Occupant files for protection pursuant to the Bankruptcy Code, Occupant will not contest a motion filed by Owner to lift the automatic stay to enforce its rights under this Agreement at the end of the applicable term.
15. NOTICE.

15.1 How Notice Is Given. Whenever under this Agreement provision is made for notice of any kind, it will be deemed to have been duly and sufficiently given if (i) a copy thereof has been deposited in the United States mail, (ii) placed for delivery with an overnight expedited courier or direct or personal delivery service, or (iii) sent by fax of which receipt is confirmed, at the address set forth below (or to such other address as Owner or Occupant will have last furnished in writing to the other for such purpose). The effective dates of such notices will be three (3) business days following the delivery of same to the United States Post Office for mailing, one day following placement of the notice with an overnight delivery service, and upon confirmation of delivery of a fax. [Include phone, fax, email numbers]

If to Occupant:  

__________________________

__________________________

If to Owner:  

__________________________

__________________________

With a copy to:  

__________________________

__________________________

15.2 Personal Contact Information. In order to facilitate communications, Owner and Occupant shall make available and keep updated information needed to facilitate convenient communication between the parties, such as telephone and email. Each party will furnish sufficient information for the other party to be able to speak or email to a live person who is responsible for matters relating to the Property or this Agreement.

16. MODIFICATION.

16.1 Amendments, Etc. The parties agree that this document contains the entire agreement between the parties and this Agreement will not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties.

17. GOVERNING LAW.

17.1 Michigan Law. This Agreement will be governed solely by the laws of the State of Michigan.
18. SEVERABILITY.

18.1 Unenforceable Terms. If any provision of this Agreement is prohibited by statute or ordinance or declared unenforceable as a result of any judicial action, that provision will be null and void, and will not be considered a part of this Agreement. In such event, the remainder of this Agreement will not be affected and will remain in full force in effect.

19. RELEASE OF CLAIMS.

19.1 Release Of Claims By Occupant. Occupant hereby releases and covenants not to sue Owner, Owner's corporate successors, any assignees or transferees of any interest in the Property held by Owner, any predecessor-in-title to Owner who or which held title to the Property subsequent to the Foreclosure Sale, any person or entity who or which, at the time of the Foreclosure Sale, held any of the debt secured by the foreclosed mortgage, any servicer of such debt prior to, during, or following the Foreclosure Sale, any manager of the Property on behalf of Owner or other person or entity who or which held title to the Property following the Foreclosure Sale, and any of the aforesaid person's or entity's respective officers, other employees, directors or constituent shareholders, members or partners (all of the foregoing, collectively, the "Occupant Released Parties"), on the basis of any claims, liabilities, demands and causes of action ("Claims") accruing with respect to any events, conditions, acts or omissions, whether known or unknown, asserted or not yet asserted, fixed or contingent, and including, but not limited to, Claims arising under federal and state statutes and common law (the "Occupant's Release of Claims"); provided, however, that Occupant's Release of Claims hereunder shall apply only to Claims arising from acts or omissions of the Occupant Released Parties occurring before the Start Date, and further provided that no third party other than the Occupant Released Parties as expressly defined herein shall benefit from or have or assert any right or interest under or with respect to the Occupant's Release of Claims.

19.2 Release of Claims by Owner. Owner hereby, for itself and on behalf of all of the Occupant Released Parties, hereby releases and covenants not to sue Occupant, the estate of Occupant and any executors or administrators thereof, any heirs of Occupant and any beneficiaries of any trust established by Occupant (all of the foregoing, collectively, the "Owner Released Parties") on the basis of any Claims accruing with respect to any events, conditions, acts or omissions, whether known or unknown, asserted or not yet asserted, fixed or contingent, and including, but not limited to, any Claims for a deficiency on account of any debt preexisting the foreclosure sale or common law claims for recoupment with respect to any promissory note or other evidence of debt at any time secured by the foreclosed mortgage (the "Owner's Release of Claims"); provided, however, that Owner's Release of Claims hereunder shall only apply to Claims arising from acts or omissions of the Owner Released Parties occurring before the Start Date, and further provided that no third party other than the Owner Released Parties as expressly defined herein shall benefit from
or have or assert any right or interest under or with respect to the Owner’s Release of Claims.

Owner and Occupant intend this Agreement to be effective on the date set forth in the initial paragraph.

Owner:

______________________________
Print Name:

Occupant:

______________________________
Print Name:

______________________________
Print Name:

Escrow Agent has signed this Agreement effective on the date set forth in the initial paragraph and hereby agrees to the terms and conditions of Section 7 of this Agreement.

Escrow Agent:

______________________________
Print Name:

DETOIT.3771027.21
Pro Bono Reference Manual

Updated February 2008

Entire Manual 2.15MB PDF

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