US HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE WRITTEN TESTIMONY
FORECLOSED JUSTICE: CAUSES AND EFFECTS OF THE FORCLOSURE CRISIS
DECEMBER 2, 2010

INTRODUCTION

There must be a true understanding the real life effects of the foreclosure mortgage crisis and the disingenuous nature of lenders in refusing to offer any assistance to borrowers locked into horrible subprime adjustable rate loans or who fall behind on their mortgages due to job loss or wage reductions.

Today the foreclosure crisis continues to intensify. An estimated 2.8 million foreclosures are projected across the U.S. during 2010, with foreclosures totaling 9 million for the years 2009 to 2012. The total lost home-equity wealth due to foreclosures is expected to be $1.9 trillion for the years 2009 to 2012. (Center for Responsible Lending, Aug. 20)

Contrary to media hype and popular belief, the average individuals affected by subprime lending are the poor, minorities and elderly. In my practice, which unfortunately now consists almost solely of predatory lending cases and foreclosure matters--the vast majority of my clients are the working class, poor, minorities, and senior citizens over the age of 75 years old, who initially owned their home outright until steered into ARMs, despite the fact they were on a fixed income, and now face foreclosure and homelessness.

Several associates and myself have committed our practices to attempting to help these people and bring some sense of justice back into the legal process. I would like someone to truly address the foreclosure issues, and look at the front line stories that we see every day. My client who works every day, with a mother suffering from pancreatic cancer who is still fighting to stop an eviction after being denied a modification from Countrywide/Bank of America, which just received an additional 7 billion dollars for modifications in January of 2010. The senior citizen with dementia since 2000, who was placed in a pay option ARM loan by Washington Mutual in 2007, and is now fighting in litigation with Chase for some type of resolution. The 79 year old man whose home is worth $12,500.00, but the predatory mortgage is almost $200,000.00, and Citimortgage refuses to modify or let him purchase the home at fair market value, but would rather foreclose and evict him and collect the full mortgage value from Fannie Mae. This is just a very small example of the instances I encounter every day resulting from the unjust and unreal rollercoaster of predatory lending, and of everyone getting assistance except for people defrauded.

THE GOVERNMENT ROLE IN THE FORECLOSURE CRISIS

What makes the foreclosure crisis is even more outrageous is the fact that the government now owns or backs 75% of residential mortgage loans through Fannie Mae, Freddie Mac, the FHA or Veterans Administration.

Fannie Mae and Freddie Mac were formerly government-sponsored enterprises, private corporations chartered by the federal government to give them enhanced standing to buy or back up mortgage loans.

However, in July 2008 Fannie Mae and Freddie Mac were taken over by the federal government due to massive losses they incurred as a result of the record rise in foreclosures caused by the fraudulent and predatory lending practices of the banks. The federal government placed Fannie Mae and Freddie Mac in trusteeship under the Federal Housing Finance Administration, guaranteeing up to $200 billion in federal tax dollars to back up their loans. That figure was raised to $400 billion, and is now uncapped.

According to a June 3, 2009, statement by then FHFA Director James Lockhart, Fannie Mae and Freddie Mac own or guarantee 56 percent of single-family mortgages worth $5.4 trillion in the U.S. When combined with the Federal Housing Administration, the federal government backs or issues a whopping 75 percent of the country's mortgages. (Associated Press, Sept. 9, 2008)

What this means is that when a borrower goes into foreclosure, the bank which made the loan gets paid off at the loan's full value by Fannie Mae or Freddie Mac. In addition, the government pays the bank to process the foreclosure. Then the government takes over the home, evicts the homeowner and any tenants, places the home on the market, and sells it at a fraction of the loan's value.

The difference in what the government paid the bank for the loan, and what the home sells for after foreclosure and eviction, is paid for by taxpayers. That arrangement amounts to a silent bailout of the banks.

For example, a home several doors from where this writer lives in Detroit sold for $137,000 in 2001. The home was then foreclosed and the loan was taken over by Fannie Mae. The home is now being listed by Fannie Mae for $31,000. The $99,000 difference between the $130,000 still owed on the home for which the bank received full value, and the $31,000 for which Fannie Mae is selling the home, is paid for out of taxpayer funds.

This bailout to the banks, which occurs with virtually every foreclosure, has already amounted to $145 billion.

While the FHFA estimated that the total cost of this bailout will be $221 to $363 billion, in 2009 the Congressional Budget Office estimated that Fannie Mae and Freddie Mac would require $389 billion in federal subsidies through 2019. (Bloomberg News, Oct. 21)

Barclays Capital Inc. analysts put the price tag as high as $500 billion, and Sean Egan, president of Egan-Jones Ratings Co., estimated that the total taxpayer bailout to the banks through Fannie Mae and Freddie Mac will total $1 trillion. (BN, June 13)

These figures do not include the additional hundreds of millions of dollars in federal subsidies on FHA-backed loans.

Instead of using its authority to stop foreclosures and evictions based on its federalization of the mortgage industry, the government encourages the lenders to speedily carry out foreclosures and the government carries out the actual evictions. It was recently exposed that Fannie Mae and Freddie Mac are using the same law firms that prepared the fraudulent documents for the major banks in their processing of foreclosures and evictions. Fannie Mae and Freddie Mac are sanctioning loan servicers if they do not toss people out of their homes within a short period of time. (NYT, Aug. 22)

Instead of the government continuing to bail out the banks and throw people out their homes, it's time for the President and Congress to immediately implement a two year moratorium on foreclosures, so the 9 million families facing foreclosure by 2012 can stay in their homes and communities and property values can be stabilized for all Americans.

LENDERS AND SERVICERS ACT IN BAD FAITH AND FAIL TO ASSIST BORROWERS

The primary federal loan modification programs to help homeowners is the Making Home Affordable Program otherwise known as the Home Affordable Modification Program, which was adopted in exchange for the original $700 billion to the banks of September 2008.

HAMP and other programs are supposed to be mandatory for the banks. But the banks do not comply to help homeowners in any significant way. The government relies on the banks themselves to carry out these modifications, and the federal government and most courts have refused to enforce any sanctions for refusal to perform them.

With the banks knowing they will be getting paid full value on the loans after foreclosure, the banks have little incentive to modify loans and have sabotaged HAMP and led to the program's virtual collapse. As of August 2010, less than one-sixth of the 3 million homeowners who were supposed to be helped have received loan modifications, and the number of borrowers being offered trial modifications has drastically declined. (NYT, Aug. 20)

Lenders make great media comments about assisting borrowers, but in reality make no attempts to work with borrowers in these outrageous loans. The very financial institutions and Servicers that signed Servicer Participation Contracts under the Making Home Affordable program go into Court and say the program is voluntary. How can it possibly be voluntary when the lenders signed a contract with Treasury to participate in the program, and are paid financial compensation for engaging in modification efforts pursuant to this contract? Yet the lenders and the courts refuse to enforce the mandate under the Making Homes Affordable Program, and borrowers continue to be foreclosed upon and evicted. **The Helping Families Save Their Homes Save Act passed by Congress in May 2009, stated that it was the sense of Congress that there be a moratorium on foreclosures until the Treasury Department certified that the Home Affordable Modification Program is being implemented, yet lenders and servicers have sabotaged the program by modifying less than one-sixth of the 3-4 million loans that were eligible. How come the Moratorium has not been put into place?**

In addition, because the lenders are economically subsidized by getting paid the full value of loans after foreclosure, they can afford to litigate a case for years and appeal eviction cases, instead of negotiating a reasonable solution. In contrast, the working class, poor, minority and elderly citizens are not able to afford the legal resources necessary to fight against these rich corporations. It is difficult trying to fight the system for justice for the working class, senior citizens, minorities and the poor, while the very entities that have defrauded these people are being bailed out and continue to get rich.

Even the most recent program, Hardest Hit Homeowners, has failed to provide any relief to unemployed borrowers because the lender and servicer must sign up for the program. The major banks and lenders have refused to participate in the program. Thus in Michigan, the $500,000,000.00 earmarked for the program just sits in a pot and less than 200 of the 30,000 unemployed homeowners that were supposed to receive assistance have actually been helped. The bottom line is trillions of dollars have been expended to “stabilize the housing market”, yet this stabilization has had very little positive impact in assisting borrowers who are the real victims of the subprime market and economic crisis retain home ownership, while the banks who caused the crisis continue to be bailed out by the taxpayers.

THE LIFTING OF THE BANKS RECENT “FORECLOSURE MORATORIUMS”

The lifting of the major banks’ recent short-lived “foreclosure moratoriums,” which had been instituted to stem the outcry over massive fraud in the processing of foreclosure documents, further demonstrates the necessity for a genuine two-year moratorium on foreclosures and evictions predicated on the premise that housing is a fundamental human right.

For example, Bank of America on October 18 announced its intent to resume foreclosures in the 23 states which have judicial foreclosures. BOA had suspended foreclosures in those states on Oct. 1 due to revelations of fraud in the processing of foreclosure documents. BOA also announced it would resume foreclosures in a few weeks in the remaining 27 states. This move will likely encourage JP Morgan Chase and GMAC, who had similarly suspended foreclosures in the 23 judicial foreclosure states, to resume taking people’s homes. (New York Times, Oct. 18)

In announcing its resumption of foreclosure activity, Barbara J. Desoer, president of Bank of America Home Loans, stated, “We did a thorough review of the process and we found the facts underlying the decision to foreclose have been accurate. We paused while we were doing that, and now we’re moving forward.”

While most commentators treated this announcement with the cynicism and derision it deserved, Bank of America was emboldened to make this move because of the backing of the federal government. Bank of America noted that the major holders of its mortgages, Fannie Mae and Freddie Mac, had been consulted during the review and had signed off on the decision to resume foreclosures. Of 14 million mortgages BOA services, one-half of them, worth $2.1 trillion, are owned or backed by Fannie Mae and Freddie Mac.

THE EFFECTS ON COMMUNITY

The effect of lenders refusal to work with borrowers, and more importantly Fannie Mae and Freddie Mac’s refusal to work with borrowers and instead their being the primary agents for evictions, is reflected in countless homes being left vacant in the aftermath of home foreclosures. Often these vacant homes are stripped and left abandoned here in Michigan and especially in the City of Detroit. Fannie Mae then turns the homes over to the City of Detroit for demolition, without even providing adequate funds to demolish the properties. Earlier this year, approximately 1,100 homes that were previously occupied were sent for demolition to the City of Detroit. The average cost of demolition as of a few years ago was $12,000.00 per home. . The failure to prioritize home retention and to instead emphasize foreclosure and eviction leaves vacant houses as eyesores, and creates havens for crime destroying neighborhoods and the community. These very properties would be occupied if borrowers were given an opportunity to retain home ownership, millions in demolition itself could be saved, property values would be stabilized, and the taxpayers would come out ahead in the process.

IT'S TIME FOR A TWO YEAR MORATORIUM ON FORECLOSURES

It is time that the federal government at all levels take a closer look at the millions of families being destroyed by the foreclosure crisis and address this issue from the bottom up rather than the top down. It's time for Congress to:

1) Place an immediate two year moratorium on foreclosures and foreclosure-related evictions. During this moratorium courts should be empowered to set payments at a reasonable amount based on the borrower's current income. Similar moratoriums were enacted in 25 states during the 1930's. The foreclosure moratoriums were upheld as constitutional by the U.S. Supreme Court in the case of *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (54 Sup. Ct. 231, 88 A.L.R. 1481) (1934). The Supreme Court held that the people's right to survive during a period of economic emergency supersedes the contract clause of the US constitution.

2) Institute a review of all predatory and fraudulent loans so principal can be reduced to reflect the actual value of the home.

3) Clearly articulate in statutory language, enforceable in court by the borrower, that loan modifications are mandatory, not voluntary, if a lender is a participant in the Home Affordable Modification Program.

4) Use the federal government's authority based on the federalization of the mortgage industry to end the silent bailout to the banks, and make the priority keeping families in their homes while long-term solutions to this horrendous crisis that has destabilized the entire U.S. economy are developed.

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