

November 21, 2008

**Foreclosure Prevention Is Good Policy.** Excessive foreclosures of unsustainable loans are at the root of the financial crisis. Although devastating for homeowners, the impacts of foreclosures are much broader. Neighbors lose property value; municipalities lose tax revenues; and the economy loses needed purchasing power. Any solution to the current crisis, therefore, must address the problem of runaway foreclosures. While mass, streamlined modifications are the best solution, voluntary loan modification efforts have been woefully inadequate. Below, CRL offers state and local policy options for reducing foreclosures.

## **Foreclosure Mediation/Intervention Programs**

**What?** Require or encourage mediation or other intervention in the foreclosure process in which the parties explore options for modifying loans and avoiding foreclosure. This type of program may also involve an extension of the foreclosure timeline and/or foreclosure deferral during intervention period.

**Why?** Intervention programs, especially if mandatory, can lead to greater foreclosure-prevention success by (1) ensuring communication and negotiation between the parties; (2) leveling the playing field and formalizing the process by involving a judge, attorney, or other experienced third party; and (3) providing increased transparency and oversight to communication and modification efforts.

- **City of Philadelphia** (court admin. order) – Mandatory pre-foreclosure mediation.
- **New Jersey** (Established by Judiciary) – Mandatory statewide foreclosure mediation program.
- **New York** (leg.) – Requires 90-day pre-foreclosure notice, and mandatory settlement conference for certain foreclosure proceedings. Court will appoint an attorney if needed.
- **Central Florida** (court admin. order) – mandatory pre-foreclosure conciliation phone conferences with pro bono attorney assistance for borrowers.
- **North Carolina** (emergency leg.) – Requires 45-day pre-foreclosure notice, and creation of foreclosure database that Commissioner of Banks reviews to determine which subprime loans are appropriate for foreclosure avoidance efforts. May delay foreclosure on these loans up to 30 days.
- **Connecticut** (leg.) – Optional mediation with foreclosure freeze during mediation period.
- **Ohio** (Ohio S. Ct.) – Model to encourage use of existing mediation resources in foreclosure cases.
- **Michigan** (proposed leg.) – North Carolina model with option of case-by-case mediation orders.
- **Minnesota** (AG proposal) – Mandatory pre-foreclosure mediation.

## **Foreclosure Deferment/Moratorium**

**What?** Impose a “time out” on foreclosure activity to allow mortgage holders and homeowners who continue to make payments more time to develop options for modifying loans and avoiding foreclosure.

**Why?** A foreclosure “time out” (1) gives the parties more time to explore a restructuring agreement; (2) allows homeowners the opportunity to use new market products to avoid foreclosure (*e.g.*, FHA’s Help for Homeowners, increasing bank liquidity); (3) eases the servicer logjam; and (4) maintains parties’ status quo by continuing to require certain level of monthly loan payments.

- **Federal HR 6076** (Matsui) (pending) – Up to 9 months deferral period for certain subprime and negative amortization loans. Borrower is required to pay minimum monthly payment.
- **Minnesota S.F. 3396** (passed by legislature; vetoed by Governor) – Up to 1-year deferral period for certain subprime, negative amortization and adjustable loans, with monthly payment requirement.
- **New York AB 9695** (passed General Assembly) – Court may issue up to one-year postponement orders upon application by homeowner, with Court setting monthly payment schedule.

## Foreclosure Process Extension/Modification

**What?** Extend and/or modify the foreclosure process. It may also include specific provisions designed to provide greater notice to homeowners, to provide greater access to counseling or legal services, and/or to encourage or require communication among the parties. Most effective in combination with other programs.

**Why?** Many states have a very short foreclosure process. This option may provide more time to consider options for avoiding foreclosure, and may shift the balance of servicer incentives away from foreclosure.

- [California](#) (emergency legislation) – Prohibits servicer from initiating foreclosure until 30 days after engaging in due diligence to meet with the borrower to discuss foreclosure avoidance options.
- [Maryland](#) (legislation) – Extended foreclosure process from 15 to 150 days.
- [Pennsylvania](#) (legislation) – 30-day period to meet with servicer or credit counseling agency. If unsuccessful, borrower may apply for assistance w/ foreclosure freeze during determination (60 days).
- [Connecticut](#) (legislation) – Extended notice, 60-day period for borrower to meet with lender or consumer credit agency. Additional funding for EMAP (refinance and payment assistance program).

## Loan Modification Data Collection and Reporting

**What?** Collect data about loan foreclosures and modification efforts and require servicer-specific reporting.

**Why?** By holding mortgage-servicing companies publicly accountable for their loan modification efforts, State policy makers can exert pressure on those whose efforts are lacking, especially where servicers have entered into public agreements or pacts to do more, or otherwise have publicly touted their efforts.

- [North Carolina](#) – Law (above) requires database. Unclear whether there will be public reporting.
- [Maryland](#) – Requires loan data reporting; unclear whether servicer-specific data will be made public.
- [California](#) – Dept of Corporations has been collecting and reporting on data, but servicer-specific results are not reported, and recent [legislation](#) states that *only aggregate data* may be reported.

## Public Enforcement Litigation

**What?** Litigation for unfair and deceptive business practices by attorneys general or city or district attorneys seeking injunctive relief to prohibit foreclosure actions and/or require streamlined mass modifications.

**Why?** Voluntary loan modification efforts have been wholly inadequate. Public litigation can achieve the desired results through successful litigation, or a favorable settlement agreement.

- **Massachusetts** – [AG action](#) against Fremont resulted in halt on foreclosures w/out court approval, and subsequent mass modification [agreement](#) with WMD Capital, which purchased the Fremont loans.
- **Multistate Litigation/Investigation** – litigation against Countrywide/Bank of America by the Illinois, California and Florida AGs, and investigations by other AGs resulted in national [settlement](#) that includes a proactive loan modification process aimed at providing sustainable mortgages.

## Servicer Incentive Adjustments

**What?** Impose a fee for initiating foreclosure, or offer benefits for providing sustainable loan modifications.

**Why?** Currently, servicers have financial incentives to foreclose because they get paid for foreclosures, but typically do not get paid to do loan modifications (which cost them resources and potentially fee income). A foreclosure fee or modification bonus would shift servicers' economic incentives away from foreclosure.

- [New Jersey](#) (proposed) – \$2,000 fee; will fund foreclosure avoidance and assistance programs.
- [FDIC/Sheila Bair](#) (proposed) – FDIC loss sharing proposal to promote affordable loan modifications includes \$1,000 payment to servicers for each sustainable loan modification, as well as shared losses for re-default.