

Clearinghouse REVIEW

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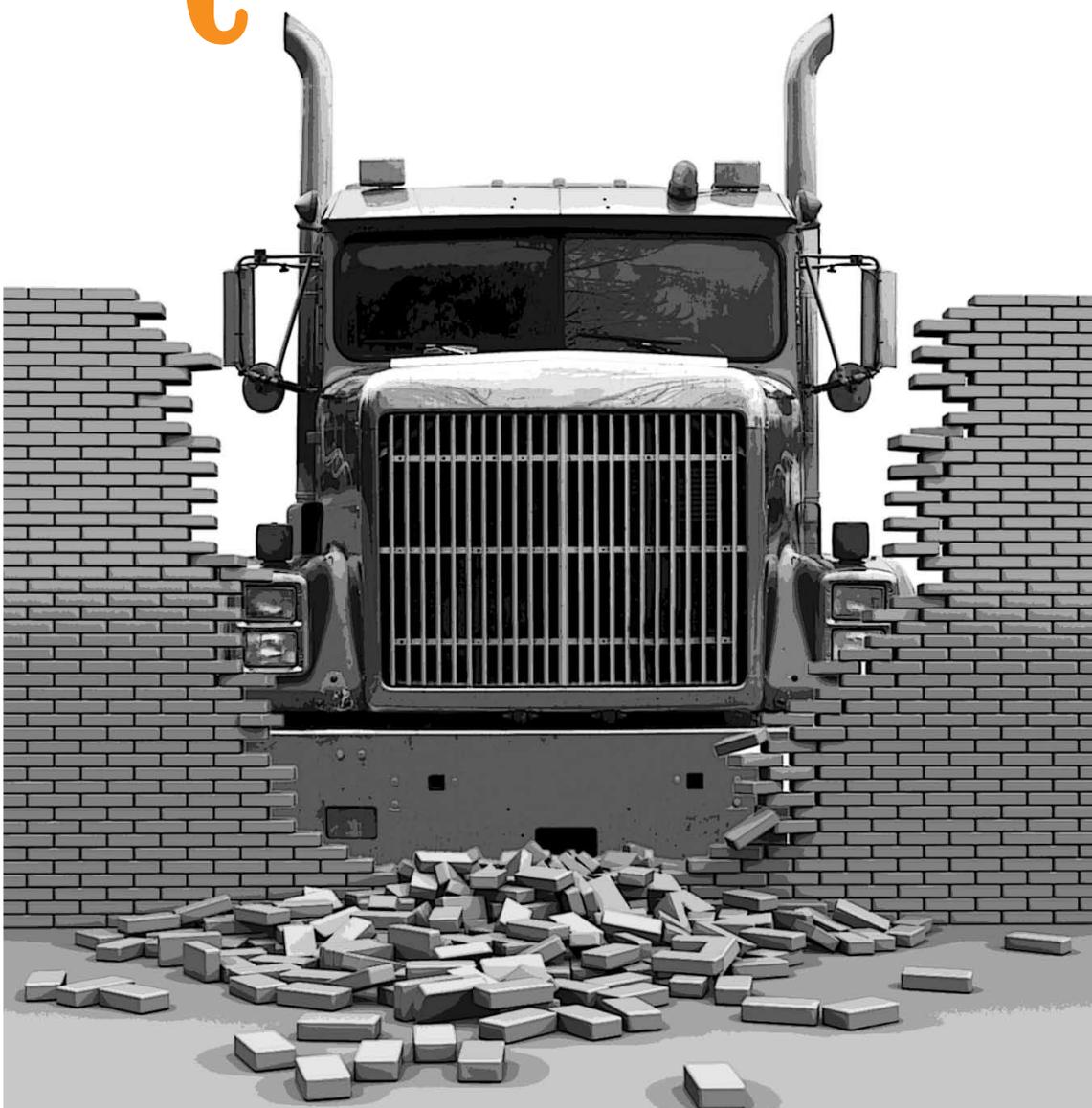
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Sargent Shriver National Center on Poverty Law

Legal Aid Attorneys and the Foreclosure Crisis

By Ira Rheingold

Over the last fifteen years a few activist legal aid attorneys have been on the frontlines in the fight against the mortgage lending practices that are destroying communities. When mortgage banks, brokers, Wall Street investment firms, and Washington regulators and legislators claimed that their innovative, complex, securitized mortgage market created new opportunities for asset building in low- and moderate-income communities, these attorneys knew better. They knew better because they worked in the communities first targeted with these mortgage products, and they saw firsthand how these loans stole wealth from struggling homeowners and distressed neighborhoods. They knew better because they were bringing complex and aggressive litigation against these products, because they designed good lending programs and banking services as an alternative to this destructive credit, and because they were collaborating with community organizations that shared their mission to serve the poor.

When the mortgage industry began migrating these “toxic” loan products to communities across the country, these legal aid attorneys cautioned that large numbers of foreclosures were sure to follow. With the attorneys’ voices limited by government indifference, intentional regulation, and the shackles we wrongly place on ourselves, no one really listened to their dire warnings.

If our nation’s leaders had been listening, they would have learned that

- as long as mortgage industry profits were tied to the number of loans produced and not the quality of those loans, the market would ultimately fail;
- as long as mortgage lenders could deny that mortgage brokers were their agents, they could deny responsibility for loans that were improperly inflated, loaded with inappropriate fees, and saddled with interest rates that reflected greed rather than actual risk;
- as long as investment banks that provided capital to make these loans and bought them once created could deny responsibility for the loans, no one cared whether the loans were in the best interest of the borrower or were sustainable in the long term;
- as long as credit-rating agencies’ livelihoods depended on fees from investment banks, mortgage-backed securities filled with loans destined to fail would get AAA ratings; and
- as long as the loan-servicing industry had economic incentives different from the homeowners and investors they were supposed to serve, foreclosures—not sustainable loan modifications—would be the overwhelming result when loans went bad.

But they did not listen, and we now face an unprecedented foreclosure crisis that is devastating our clients and their communities. The attorneys who have been on the frontlines can teach us much about bank regulation and consumer protection and a great deal about how to be enterprising advocates.

While these attorneys and the programs in which they work were living up to the historic ideals of fighting for economic justice for their clients and communities, the more common legal aid response to the gathering economic upheaval was extremely weak. The response also magnified our two greatest shortcomings: (1) failure to adapt to the changing needs of our clients and our neighborhoods and (2) failure to seek innovative ways to live up to our great early promise as attorneys dedicated to achieving fundamental change for our clients and communities.

Far too many poverty law advocates have grown comfortable in the way they do business. They do the same old cases that require the same old skill set, without examining how well they are serving their low-income clients and communities. They stay in their offices instead of becoming part of their neighborhoods. Perhaps worst of all, they use the excuse of Legal Services Corporation restrictions not only to avoid litigating cases but also to ignore the myriad other tools that we can use to lift up the lives of the people and families we serve.

My great hope is that the current crisis will not only force our government to relearn the vital role of legal advocates in developing appropriate public policy but also remind us of what our role must be. Legal aid programs and attorneys can no longer sit by passively as our clients' limited wealth is stolen and our communities are ravaged. As a few strong programs showed us over the last decade, if we become engaged in our real community and we seek creative ways to meet our clients' needs, we can once again fulfill our historic mission.

Now I challenge all of us to go do it.

Ira Rheingold
Executive Director

National Association of Consumer Advocates
1730 Rhode Island Ave. NW Suite 710
Washington, DC 20036
202.452.1989
ira@naca.net

Webinar on Fighting Foreclosure Through Partnerships Between Legal Aid and Community Organizations

Advocates across the country are working in partnership with community organizations to prevent foreclosure. CLEARINGHOUSE REVIEW editors will host, on June 23, a webinar that highlights two such recent community-based efforts in Philadelphia and Los Angeles. In Philadelphia legal advocates and community organizations have worked together to help homeowners gain maximum benefit from the city's foreclosure mediation court and stay in their homes. In Los Angeles County, California, a collective loan modification negotiation initiative has helped groups of low-income homeowners negotiate jointly with their loan servicers and has led to city council funding of a pilot foreclosure prevention project. The webinar will be recorded and posted on the Shriver Center's website. See <http://tinyurl.com/foreclosurewebinar>.

Accountability Essential in Implementing the Recovery Act

The U.S. Government Accountability Office (GAO) is examining state and local implementation of the American Recovery and Reinvestment Act (ARRA). In *Recovery Act: As Initial Implementation Unfolds in States and Localities, Continued Attention to Accountability Issues Is Essential*, the first of its ARRA-required bimonthly reviews, GAO examines accountability approaches to monitor the estimated \$280 billion in ARRA funds administered through

states and local governments. States and localities are taking various approaches to institutionalize controls and resolve potential problems. However, in the wake of budget cuts and decreased revenue, many are concerned over the lack of funding from ARRA for oversight and accountability programs.

GAO chose sixteen states and the District of Columbia for a longitudinal study to track the implementation and impact of ARRA funds. The states chosen represent 65 percent of the U.S. population and are expected to receive nearly two-thirds of ARRA funds. The three largest programs are increased Medicaid Federal Medical Assistance Percentage grants, funds for highway infrastructure, and the State Fiscal Stabilization Fund. The Office of Management and Budget (OMB) is guiding ARRA's implementation. GAO recommends building on the OMB's guidance on key accountability and transparency issues. The full report is available for free online: <http://tinyurl.com/dgpzk7>.

Disadvantaged Workers in Recovery Act Job Programs

A major priority of the American Reinvestment and Recovery Act (ARRA) is to stimulate economic growth through job creation and retention programs. However, over half of the ARRA-created jobs require education beyond high school and thus are out of reach for many disadvantaged workers. Job seekers who were the worst off before the recession have limited access to ARRA opportunities unless they receive training and placement services.

The Center for Law and Social Policy (CLASP) explores methods to promote access to ARRA-related job opportunities for disadvantaged workers. CLASP recommends standards for job creation and job quality and such strategies as community benefit agreements, job linkage, and first-source hiring programs. Community benefit agreements are legal contracts that enable community members to access benefits from development projects. Common provisions concern access to jobs, job training, living-wage requirements, and affordable housing creation. First-source hiring and job linkage programs have job opportunities for target populations. State and local officials should ensure that both low-wage and high-wage ARRA jobs offer living wages, employee-sponsored benefits, and opportunities for advancement. See “From Stimulus to System: Using the ARRA to Serve Disadvantaged Jobseekers,” <http://tinyurl.com/cbjbjpl>.

Access to Child Care for Immigrant Families

Children in immigrant families are typically underrepresented in child care programs. Their limited-English-proficient parents are unaware of available services, and children of such parents are “about half as likely to receive financial assistance for child care.” One in four children in the United States has a parent who was born outside the country, and an overwhelming majority (93 percent) of children in immigrant families are U.S.-born citizens. All this is reported by the Center for Law and Social Policy in “Ten Policies to Improve Access to Quality Child Care for Children in Immigrant Families” (see <http://tinyurl.com/cm2dse>).

Health Care Reform: Lessons from Medicare

The lessons learned from the successes and failures of the Medicare program can inform health care reform, according to the Center for American Progress Access Fund, which outlines recommendations for health care reform based on the system of universal, public health insurance—Medicare—that is already here. Medicare has been highly successful in covering some of the most vulnerable members of American society for the past forty years. Nearly all doctors, hospitals, and other health-related provid-

ers participate in the program, and Medicare beneficiaries regularly receive mainstream treatment. Medicare beneficiaries report greater satisfaction with the program than those covered by private insurance, and Medicare has been slightly more successful in controlling costs over time.

Despite the successes of Medicare, it has areas that could be improved. The program has done little to promote the dissemination of information to consumers. Help should be made readily available to beneficiaries to help them navigate a confusing and complex system. Medicare is a complicated system of disjointed parts: traditional Medicare; Medigap, a Medicare cost-sharing policy; and a drug policy. Complexity should be avoided for beneficiaries, and the system should be streamlined to make it as efficient as possible. Potential access barriers for low-income people should be removed by eliminating invasive asset tests and raising the minimum income eligibility requirement. See “Lessons from Medicare for Health Care Reform,” <http://tinyurl.com/ddqg5z>.

Improved Oversight Needed for State Children’s Health Insurance Program

The State Children’s Health Insurance Program (SCHIP) was created by Congress to minimize the number of uninsured children in low-income families that do not qualify for Medicare. The program allows for flexible structuring, and eligibility requirements are determined by the state. Some concerns have been raised over the “crowd-out” effect, or the extent to which individuals might substitute SCHIP for private health insurance. The U.S. Government Accountability Office (GAO) recommends that the Centers for Medicare and Medicaid Services do a better job of assessing the prevalence of crowd-out and of minimizing its occurrence. See GAO’s *State Children’s Health Insurance Program: CMS Should Improve Efforts to Assess Whether SCHIP Is Substituting for Private Insurance*, available for free online at <http://tinyurl.com/ckcrgb>.

“Disability Under the Social Security Act” (2008 Edition)

“Disability Under the Social Security Act: An Outline and Analysis of Case Law, with an Emphasis on the Third Circuit” has enabled advocates in both legal

aid and private practice to serve their clients better with collected case law pertaining to social security and disability rights since 1981. The 2008 edition has expanded to 71 pages and cites nearly every reported Third Circuit and Pennsylvania district court case and decisions from other jurisdictions in areas where Philadelphia courts have not ruled. Distributed through Community Legal Services of Philadelphia, the outline is free to all legal aid programs and is sold to the public at \$50. Order copies from Community Legal Services, 1424 Chestnut St., Philadelphia, PA 19102; 215.981.3726; www.clsphila.org.

Shriver Center and CLEARINGHOUSE REVIEW on Facebook and Twitter

The Sargent Shriver National Center on Poverty Law and CLEARINGHOUSE REVIEW are embracing social networking sites—Facebook and Twitter so far—to converse with people interested in advancing social and economic justice. The low-income community is better served when advocates, policymakers, ex-

perts, and members of the concerned public connect to exchange ideas, resources, and strategies. See the Shriver Center and the REVIEW on Facebook at <http://tinyurl.com/shrivercenterfacebook> and on Twitter at <http://twitter.com/shrivercenter>. The Shriver Center homepage (www.povertylaw.org) features a blog on policies and strategies to deal with problems burdening low-income individuals, families, and communities. News about the Shriver Center, REVIEW updates, and events in the legal aid community are posted on these three places.

The Facebook discussion forum connects directly with REVIEW readers to respond to inquiries and solicit feedback. The editors are interested in new and trending topics in the field as well as continuing themes on substantive issues. The discussion forum also connects with other advocates and experts in related areas. The editors encourage readers to submit ideas for articles, to post and respond to questions, or to start their own topics. To reach the discussion page, simply go to the Shriver Center's Facebook page and click on the "discussions" tab, or type in <http://tinyurl.com/facebookdiscussions>.

COMMENTS?

We invite you to fill out the comment form at <http://tinyurl.com/MayJuneSurvey>. Thank you.

—The Editors

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