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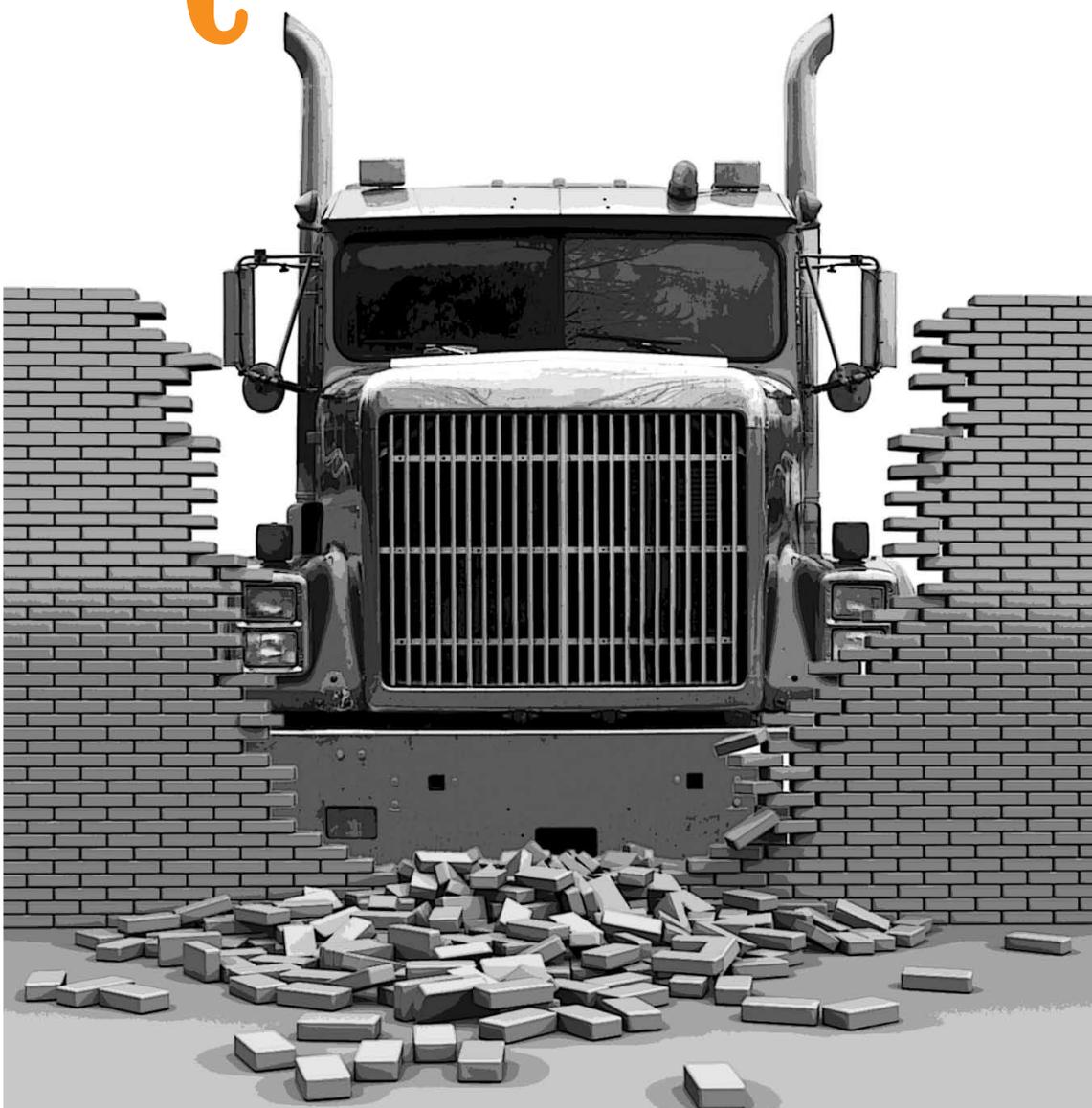
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EMPLOYMENT

ONE MODEL FOR BREAKING DOWN BARRIERS



Sargent Shriver National Center on Poverty Law

Strength in NUMBERS



Legal Advocates and Community Organizers Partner to Fight Foreclosures

By Antonio Hicks

Antonio Hicks
Staff Attorney

Neighborhood Legal Services of
Los Angeles County
13327 Van Nuys Blvd.
Pacoima, CA 91331
800.433.6251
AntonioHicks@nls-la.org

Do communities have any real power over loan servicers and banks? Will banks and loan servicers respond to communitywide concerns? What if homeowners who face foreclosure were able to negotiate collectively with their loan servicers to achieve loan modification? Would they be more likely to obtain favorable new loan terms that would allow them to remain in their homes? Is there a better framework for loan modification negotiations that is more likely to allow low-income families to stay in their homes with fixed-rate mortgages they can afford?

Neighborhood Legal Services of Los Angeles County, in partnership with One LA-IAF, is working with hundreds of potential foreclosure victims in the San Fernando Valley to answer these questions. One LA-IAF is part of Industrial Areas Foundation, a national community-organizing network.¹

The foreclosure crisis presents enormous challenges for legal aid advocates especially in areas where numbers of foreclosures are large and home values plummeted suddenly by up to 50 percent.² A simple referral to the homeowner's HOPE (Homeownership and Opportunity for People Everywhere) hotline, while efficient, takes legal aid providers out of the picture and has not led to overwhelming success for homeowners.³ Litigation can help some clients avoid foreclosure, but litigation requires a great

¹The Industrial Areas Foundation is a national social change-organizing network of local affiliates; its work is inspired by Saul Alinsky (see www.industrialareasfoundation.org).

²Nine hundred foreclosures were completed in 2007 in Los Angeles City Council Districts 6 and 7, which cover the San Fernando Valley. This compares with the 1,301 foreclosures completed in the same area in just the first six months of 2008 (see Los Angeles Housing Department Policy and Planning Unit, Single Family Home Foreclosures January-December 2007 City of Los Angeles: By Address and [Council District]; Single Family Home Foreclosures January-March 2008 City of Los Angeles: By Address and [Council District]; and Single Family Home Foreclosures April-June 2008 City of Los Angeles: By Address and [Council District] (Aug. 12, 2008) (in my files).

³The hotline, 888.995.HOPE, is operated by the Homeownership Preservation Foundation and links callers to counselors who are certified by the U.S. Department of Housing and Urban Development (HUD) and who give foreclosure prevention counseling for free. For an analysis of its effectiveness, see the California Reinvestment Coalition's "Chasm Between Words and Deeds" series of articles reporting a mortgage counselor's experiences, www.calreinvest.org/publications.

investment of attorney time. Especially in nonjudicial foreclosure states such as California, where litigation means filing affirmative cases rather than defending foreclosure actions, the impact of litigation is limited.⁴ The impact of loan modifications pursued on a case-by-case basis is similarly limited. Few individual homeowners are able to navigate loan servicers' bureaucracies successfully; even those who do are often unable to obtain lower monthly payments.⁵ The result is high default and redefault rates.⁶

For all these reasons and more, we turned to a comprehensive collective negotiation strategy. We are helping families avert foreclosure by empowering large numbers of homeowners to negotiate with loan servicers to stay in their homes—leveraging and building momentum to change lending practices.

The Partnership's Evolution

Neighborhood Legal Services of Los Angeles County has a long-standing relationship with One LA-IAF, an institution-based community organization to which most members belong through their religious congregations. One LA-IAF members identified foreclosure as a significant issue affecting their community, and a partnership emerged between our two organizations with the goal of stemming the tide of foreclosures. Neighborhood Legal Services would provide technical assistance, while One LA-IAF would organize homeowners and volunteers.

Our first step was to set up a large foreclosure prevention workshop to educate homeowners on the foreclosure process and link them on-site to a counseling agency certified by the U.S. Department of Housing and Urban Development (HUD).⁷ While helpful for some participants, this strategy met with limited success. Managing the large number of homeowners who came to each workshop was difficult, and getting completed intake applications required for referral to the HUD-certified counselors proved nearly impossible.⁸ And the lack of feedback once the homeowners were linked to the HUD-certified counseling agency made it difficult to monitor outcomes.

To reduce the likelihood of foreclosure, borrowers needed both to act collectively and to approach loan servicers in an organized manner. We decided to group homeowners into cohorts according to loan servicer and engage in what might be termed "collective negotiation." We focused on four servicers, based on both the number of borrowers whose loans the servicers handled and their perceived willingness to modify loans.⁹ Next we identified a HUD-certified counseling agency willing to work with us: New Economics for Women.¹⁰ Neighborhood Legal Services and One LA-IAF first trained cohort participants in the basics of mortgage foreclosure, loan terms (e.g., the differences among fully amortized, interest-only, and negative amortization loans), and the conversion of loans into

⁴Although judicial foreclosure is an available remedy in California, it is rarely used.

⁵In 2008 only about 40 percent of loan modifications reduced payments; when borrowers were already delinquent, loan modification resulted in the same or greater payments in nearly 60 percent of cases (see Office of the Comptroller of the Currency & Office of Thrift Supervision, U.S. Department of the Treasury, OCC and OTS Mortgage Metrics Report: Disclosure of National Bank and Federal Thrift Mortgage Loan Data 26–28 (2009), www.occ.treas.gov/ftp/release/2009-37a.pdf).

⁶*Id.* at 29.

⁷One LA-IAF reached out to homeowners primarily through the organization's member churches; most homeowners were Spanish-speaking families with very low to moderate incomes and were either in foreclosure or very concerned about the possibility of foreclosure.

⁸HUD-certified counseling agencies are paid per completed intake forms of four to six pages. The forms ask for very detailed information about the mortgage loan terms and the family's budget.

⁹The four were JP Morgan Chase and Wells Fargo Bank, which had made public statements regarding loan modification efforts; Countrywide, which had reached a settlement with the California attorney general requiring it to modify loans; and Indymac Bank, which had been taken over by the Federal Deposit Insurance Corporation and had begun implementing a systematized loan modification program.

¹⁰New Economics for Women is a nonprofit agency dedicated to creating educational and economic opportunities for single parents, families, and disinvested communities (see www.neweconomicsforwomen.org).

mortgage-backed securities. Cohort participants then met individually with New Economics for Women counselors at our office, where the participants reviewed loan documents, created household budgets, determined their mortgage affordability level, and discussed possible loan modification options and other alternatives to present to their servicers.

We at Neighborhood Legal Services and One LA-IAF used our connections to federal and state legislators to set up meetings with top executives from the loan servicers, who agreed to send representatives with decision-making authority to Neighborhood Legal Services to meet cohort participants in person.¹¹ They also agreed to confer with us periodically and to give detailed feedback regarding outcomes. We wanted to know what, if any, loan modification terms the servicers offered, what guidelines they used to determine eligibility for loan modifications, and their rationale for denying loan modifications. These for us would be empirical data about loan modification, which could serve as a platform for One LA-IAF to seek affirmative remedies.

Foreclosure Prevention Clinics and Their Impact

Neighborhood Legal Services, One LA-IAF, and New Economics for Women have been involved in every phase of the four cohort foreclosure prevention clinics that have taken place thus far. After participants check in, representatives from either One LA-IAF or Neighborhood Legal Services or both orient small groups on what to expect and what to ask from servicers. Participants then meet individually with a servicer representative; a Neighborhood Legal Services, One LA-IAF, or New Economics for Women representative sits in to observe and to

clear up any confusion but not to advocate or negotiate on behalf of the homeowner. After these individual meetings with servicers, small groups of participants meet to debrief about what happened during the negotiations. Neighborhood Legal Services, One LA-IAF, and New Economics for Women then follow up with the servicers regarding the progress of negotiations for all members of the cohort.

This cohort strategy has empowered homeowners to advocate on their own behalf, and being part of a larger, organized group has increased their power. From our Neighborhood Legal Services' standpoint, we have been able to assist relatively large numbers of homeowners with a fairly limited staffing commitment and to monitor outcomes for the group rather than case by case.¹² The experience of Juan, a cohort participant, illustrates the model's effectiveness. Juan met with a representative from Chase at one of our clinics and was told that the bank would assess his situation and get back to him with options. The Chase representative assured Juan that foreclosure would be on hold in the meantime. About a month later, a Chase representative phoned Juan and demanded \$6,000 within two days to avoid a trustee sale of his house.¹³ When Juan told the caller that he was waiting for Chase to offer options and that he had been assured that the foreclosure was on hold, the caller contended that there was no record that Chase had ever met with him. We brought this matter to the attention of our Chase contact, who immediately postponed the trustee sale. Juan was later offered a modification agreement that he found acceptable.

Given the evidence of high default rates on modified loans, we anticipated that the loan modifications offered would be of limited value.¹⁴ Based on the hard data

¹¹Most recent mortgages are part of a mortgage-backed security instrument and managed by a loan servicer. While loan servicers have authority under their contracts with the owners of the loans to modify the loans, the same contract limits the terms that the loan officers may offer.

¹²More than one hundred cohort participants have gone through the process.

¹³California is a nonjudicial foreclosure state.

¹⁴Press Release, Office of the Comptroller of the Currency, U.S. Department of the Treasury, Comptroller Dugan Highlights Re-default Rates on Modified Loans (Dec. 8, 2008), www.occ.treas.gov/ftp/release/2008-142.htm; see also Press Release, Office of the Comptroller of the Currency & Office of Thrift Supervision, U.S. Department of the Treasury, OCC and OTS Release Mortgage Metrics Report for Fourth Quarter 2008 (April 3, 2009), www.occ.treas.gov/ftp/release/2009-37.htm.

we acquired from the cohort participants (principal balance, loan terms, estimated current home value, and household income), we proposed better ways to keep homeowners in their homes:

- Neither lowering the interest rate nor extending loan terms will help most lower-income borrowers.¹⁵
- Reducing loan principal to current market value is essential to make payments affordable. With few exceptions, servicers and investors continue to refuse to reduce principal.¹⁶
- Even reducing principal to current market value, with modification of loan terms to current market rates, would help only about a quarter of the affected borrowers. For another quarter, however, a small “silent second” mortgage could make their payments affordable.¹⁷ We have labeled this an “equity participation silent second mortgage,” and we are working with the City of Los Angeles to implement a pilot project using city funds.
- For the remaining half of borrowers, we are discussing a potential community land trust; one idea is for the trust to buy a large number of homes from a single lender-investor at a discounted price and make the homes available to the former homeowners for repurchase.

At a community assembly afterward One LA-IAF introduced our proposed solutions to elected officials from all levels of government and requested their pub-

lic support. Some fifteen hundred attended the assembly, and television and print media—the *Los Angeles Times*, CNN, National Public Radio’s *Marketplace*, and local television and radio—further spread news of our efforts.¹⁸ By the next day, nearly four hundred homeowners had called One LA-IAF for help. Many of these callers will participate in additional cohort events.

The cohort strategy is very much a work in progress. Chase and Wells Fargo have been slow to offer modifications, but we are applying steady pressure. Countrywide, by contrast, has agreed to modifications that result in affordable loans.¹⁹ We have concluded that the highly publicized lawsuit (and settlement) by several state attorneys general has made Countrywide more amenable to working with borrowers.²⁰

Collective negotiation can assist large numbers of distressed homeowners, but organizing and running the cohort clinics require tremendous effort and many volunteers. Legal aid programs are generally not well suited to undertake such organizing. The success of the strategy we have followed depends heavily on a competent, quality community organization as a partner and the support and involvement of top legal aid program leadership. Yvonne Maria Jimenez, the Neighborhood Legal Services deputy director, was instrumental in developing the cohort strategy and has been involved in every phase; moreover, program management vetted the decision to embark on this strategy.

¹⁵We have seen interest rates on cohort participants’ loans between 5.5 percent and over 10 percent modified temporarily to as low as 3 percent.

¹⁶We contend that the net present value of a modified loan that incorporates principal reduction could, in many instances, exceed the net present value of the proceeds from foreclosure.

¹⁷A “silent second” mortgage would further reduce the monthly payment and would not have to be paid back until the property is sold or refinanced (see the sidebar for more details).

¹⁸See, e.g., <http://abclocal.go.com/kabc/video?id=6623909>; www.cnn.com/video/?/video/us/2009/04/22/gutierrez.crusading.priest.cnn.

¹⁹We define “affordability” as payments for principal, interest, taxes, and insurance totaling between 31 percent and 38 percent of household income or a level with which the homeowner subjectively feels comfortable.

²⁰Countrywide entered into settlements with eleven states: Arizona, California, Connecticut, Florida, Illinois, Iowa, Michigan, North Carolina, Ohio, Texas, and Washington. Countrywide agreed, in California, to modify various subprime loans as part of a settlement with the attorney general (see www.ag.ca.gov/newsalerts/release.php?id=1618). We were surprised to learn that most of the Countrywide cohort participants did not have loans covered by this settlement. Even for those borrowers, however, Countrywide has offered far more aggressive loan modifications than has Wells Fargo, J.P. Morgan Chase, or Indymac Bank.

The synergy that results from collaboration between legal advocacy and community organizing surpasses what either could achieve alone. Community organizers have access to constituents and policymakers. By tapping into an already organized group, we were able to educate large groups of people on the intricacies of mortgages and foreclosure law in a relatively short time. Since the people

were already part of an organization, we were able to keep them engaged throughout the cohort strategy. We hope that the combined efforts of our program and the organizers, with the support the organizers are building among their low-income members and the attention they are receiving from policymakers, will sustain solutions to the foreclosure crisis.

COMMENTS?

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

—The Editors

Los Angeles City Council Votes to Support Foreclosure Prevention

The Los Angeles City Council unanimously approved, on May 13, a program that would use up to \$1.5 million in redevelopment funds for a foreclosure prevention program that One LA-IAF (a community-organizing member of the Industrial Areas Foundation) proposed as a result of its collaboration with Neighborhood Legal Services of Los Angeles County. The City of Los Angeles will institute a “silent second” mortgage program for foreclosure prevention, using public funds to help a borrower get to an affordable payment in exchange for the lender’s modifying the loan by drastically reducing the principal and offering a long-term, fixed-interest-rate loan. A silent second mortgage reduces the borrower’s payments because it is not repaid until the loan is refinanced or the property transferred. If the property value goes up, the bank or the investor, the City, and the borrower would share the increased equity on transfer or refinance. The source of funds is connected with a redevelopment project area that is heavily affected by foreclosures.

To arrive at this proposal, our Neighborhood Legal Services and One LA-IAF examined the financial circumstances—income, mortgage debt, and current estimated property value, among others—of each borrower with whom we have had contact. Because most of the borrowers received loans at greatly inflated property values, the “real” property values have since plummeted by up to half. As a result, the average mortgage debt of borrowers in our cohort is about \$450,000. Their average current property value is about \$300,000, and their average household income is about \$50,000.

Antonio Hicks

For each borrower, we estimated the loan and payment amounts that would enable the borrower to retain the property. About 25 percent could afford a thirty-year fixed-rate mortgage at market rates (approximately 5 percent) if the principal balance were lowered to the property’s current value. Another 25 percent could afford their homes if the principal balance were further reduced by up to \$75,000. City of Los Angeles first-time home-buyer programs provide for silent second mortgages of up to \$75,000 to facilitate homeownership. The program approved on May 13 uses a structure similar to those programs.

The council also voted to invite One LA-IAF to be part of the planning group that will implement the program. Hundreds of homeowners from the areas most affected by foreclosures attended the meeting at which the council voted, and council members credited One LA-IAF’s work to establish the program. The Los Angeles Housing Department also praised One LA-IAF’s work on the program, especially the usefulness of the data gathered on participating homeowners.

Richard Alarcon, a council member who sponsored the measure, noted two main purposes of the demonstration project: to stimulate negotiations on principal reduction (city money would be available only to banks or investors willing to reduce principal steeply) and to demonstrate the effectiveness of this approach as future foreclosure prevention funding becomes available.

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