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Front lines of foreclosure

Response to crisis includes land banks, multi-state investigations and new aid for distressed borrowers

by Tim Anderson (tanderson@csg.org)

The problem of "problem properties" for a town like the Michigan city of Flint may appear at first blush to be too large, too insurmountable to tackle.

The city of about 100,000 people, former Genesee County treasurer Dan Kildee says, has approximately 18,000 abandoned properties. Already struggling with the chronic blight common to an economically distressed city, Flint has been hammered in recent years by the foreclosure crisis affecting communities across the country.

But Kildee says taking a micro-level look at the problem can make it more manageable: Take care of one property, and assist one group of families, at a time.

Close to a decade ago, with the help of a change in Michigan state laws, Kildee spearheaded creation of the Genesee County Land Bank, the nonprofit entity created to address Flint's problem properties that has since become a model for action in other states and communities.

"Too often, when a problem is big, there is a reluctance to do anything incremental," he says. "But over time, the incremental approach can become transformative."

And for families, the work of these land banks has immediate effects: A blighted piece of property dragging down home values and attracting criminal activity is replaced with a rehabbed home, an urban garden, new development or well-maintained open space.

"You've changed the lives of five or six families that live around that property," Kildee explains. "We've done that kind of thing about 1,500 times in the last seven or eight years through the land bank."

Unfortunately, the national housing crisis and economic downturn mean there are many more families, neighborhoods and cities looking for answers to the problem of vacant and foreclosed properties.

Flint was never alone, but it has a lot more company these days.

"A few years ago, we started hearing from communities that we never could have imagined would have interest in our work — places that seemed bulletproof," notes Kildee, who now heads up the nonprofit Center for Community Progress, which advocates for land-bank legislation and for changes in state tax foreclosure systems.

'Mess on the ground'

In addition to contributing to the recent national recession, the rise in foreclosures is widely seen both as a symptom of broader economic woes and as an impediment to recovery.

"We haven't seen anything like this since the 1930s," says Valparaiso University law professor Alan White, noting that foreclosure rates are four times higher than historic averages.

At a congressional hearing held in September, federal lawmakers were told that nearly 20 percent of homeowners were now at risk of losing their homes.

Few states are experiencing the ill effects of foreclosure more than Ohio.

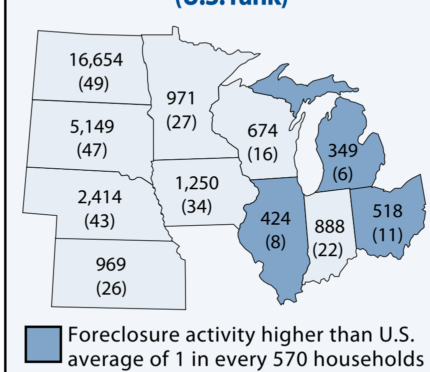
"People say jobs and economic growth are the best way out of this, and I agree," Ohio Democratic Rep. Dennis Murray says. "But in the meantime, what do you do with the mess already on the ground?"

Part of the answer in Ohio has been to replicate the land-bank idea pioneered in Michigan. Two years ago, HB 353 was signed into law, giving hard-hit Cuyahoga County the authority to establish a nonprofit entity to run a land bank. Last year, the legislature agreed to expand land-bank authority to other counties (HB 313).

"We've got a chaotic situation here for our local governments to deal with,

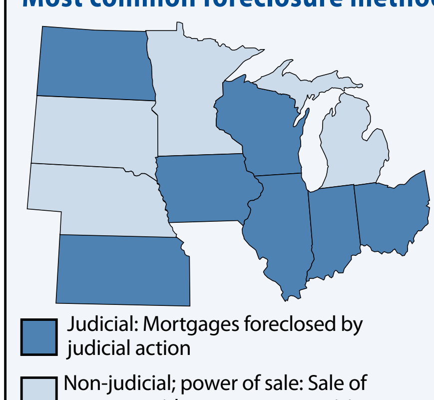
PLEASE TURN TO PAGE 6

Foreclosure rates in August: Rate is 1 foreclosure filing per # of households (U.S. rank)



Source: RealtyTrac

Most common foreclosure method



Source: National Consumer Law Center

Rates of foreclosure are at levels not seen the 1930s, and some communities in the Midwest have been particularly hard hit by a rise in the number of blighted properties. States are seeking new ways to help these communities as well as troubled homeowners.

▶ CONTINUED FROM PAGE 1

Midwestern states at forefront of national response to ongoing foreclosure crisis

so the land banks really are an essential way to help them organize and deal with all of the vacant property," explains Ohio Democratic Rep. Mike Foley, who represents part of Cuyahoga's largest city, Cleveland.

Gus Frangos, president and general counsel of the Cuyahoga County Land Reutilization Corp., points to three key components of the new land banks being established in Michigan and Ohio.

First, the authority running the land bank has the power of government to acquire delinquent, tax-foreclosed properties while also enjoying the autonomy of a corporation. Second, state tax foreclosure systems are reformed, so that properties can go straight from foreclosure to the land bank and kept out of the hands of speculators.

Third, the land bank is given a dedicated revenue source. In Cuyahoga County, the penalties and interest from delinquent property taxes and assessments are used to fund the land bank.

"The significance of the revenue stream is not the amount, but that it is reliable, so you can bond it and leverage it," Frangos explains.

The goal of the land bank is to use its power and resources to take care of blighted properties and find a productive use for them.

To that end, the Cuyahoga County Land Reutilization Corp. has entered into agreements with Fannie Mae, the U.S. Department of Housing and Urban Development, and leading banks to get these entities' vacant or low-value properties into the hands of the land bank.

Thus far, the county's land bank has taken on 1,300 properties. As a result, 450 vacant or abandoned structures have been demolished. There also have been instances of church day-care centers being built, urban gardens being established, and properties being redeveloped for residential or commercial use.

All eyes on attorney generals

The rise in the use of land banks is just one of many examples of how states have responded to the foreclosure epidemic.

The first wave of state legislative action aimed to stop predatory lending practices, a move that Professor White says did have a positive effect. Yet factors largely beyond states' control have still led to an alarming rise in foreclosures.

As a result, the focus of activity is now on helping troubled borrowers and whole communities.

States, for example, have set up hot lines to connect distressed borrowers with housing counselors. Another common approach is for states to require borrowers and mortgage servicers to take part in mediation prior to foreclosure — with the hope that some kind of alternative (a loan modification, for example) can be found.

"For mediation to work, you need to have some objective standards that determine whether it's in the best interest of the borrower and investor to have a loan modified rather than a home foreclosed," explains Uriah King, vice president of state policy for the Center for Responsible Lending. "Second, you need penalties if the servicer doesn't comply."

Both King and White note that the interests of the servicer (which often doesn't own the mortgage) don't necessarily align with those of the borrower and investor. In fact, they say, the servicers often have a financial incentive to pursue foreclosure.

Those misaligned incentives conflict with what White says should be a national priority over the next three or five years: "Maximizing loan workouts and minimizing actual foreclosure sales."

That is one reason negotiations between the 50 state attorneys general and the nation's leading mortgage servicers are being watched so closely.

Iowa Attorney General Tom Miller has been leading the investigation into alleged improper activities by leading mortgage servicers, including the practice of "robo-signing" foreclosure documents. His office is also taking the lead role in settlement negotiations.

"We're trying to substantively change the servicing practices and standards related to foreclosure, and that will be a real sea change for consumers," says Geoff Greenwood, communications director for the Iowa attorney general.

The negotiated settlement could:

- establish new standards for servicers;
- eliminate the practice of dual tracking (in which the servicer pursues foreclosure at the same it is renegotiating with the borrower); and/or
- require or provide incentives to servicers to modify loans (principal reduction, for example) in cases where modification makes sense for the borrower and investor.

State lawmakers, meanwhile, continue to pursue strategies on their own. In Ohio, Reps. Foley, Murray and others have pushed for measures that would regulate servicers, add a foreclosure-filing fee (with the money going to support loan modifications), and require lenders with a foreclosure judgment on a property to proceed to a sheriff's sale within 60 days.

Hardest Hit Funds in targeted states

Ohio is also one of four Midwestern states (along with Indiana, Illinois and Michigan) with a "Hardest Hit Fund." Created by the U.S. Department of Treasury and run through state housing finance agencies, the fund is targeted for states that have high unemployment rates and/or have had steep declines in housing values.

To date, Ohio's Hardest Hit Fund program has helped more homeowners than any other in the nation. It provides up to $15,000 in emergency assistance to a homeowner suffering from some type of financial hardship, most commonly unemployment. This money is used to get a homeowner up to date on a delinquent mortgage, to make partial mortgage payments, or to provide incentives for a servicer to modify a loan.

"People want to hold on to their homes, and in many cases, they can't sell even if they want to," says Cynthia Flaherty, director of homeownership for the Ohio Housing Finance Agency.

"This gives people the chance to take a deep breath, and to figure out a strategy. And some people have been able to return to work, transition off the assistance and stay in their home."

Should states be making this effort to keep people in their homes?

White concedes that there is an undercurrent of public opinion reluctant to provide mortgage relief. But he says allowing more foreclosed properties to flood the housing market and affect communities is not a wise policy alternative.

"If your neighbor's house is foreclosed, your property value is going down," he says. "It's not in anyone's interest to have people stuck in these bubble mortgages."

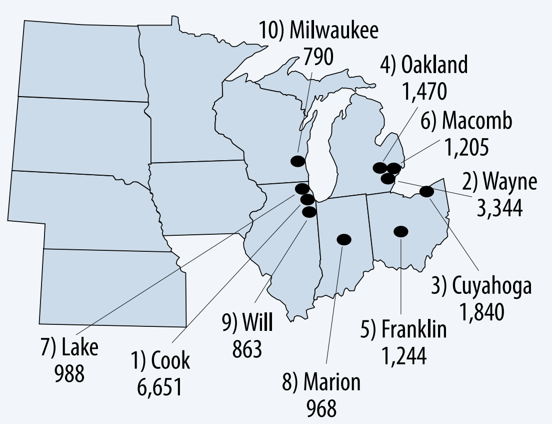
Strengths and weaknesses of foreclosure protections in state statute: Evaluations done in 2009 by National Consumer Law Center*

Type of protection	IL	IN	IA	KS	MI	MN	NE	ND	OH	SD	WI
Loss mitigation requirement[1]	Weak	Weak	Weak	Weak	Weak	Weak	Weak	Weak	Mixed	Weak	Weak
Right to cure before acceleration[2]	Weak	Weak	Mixed	Weak	Weak	Weak	Weak	Mixed	Weak	Weak	Weak
Right to reinstate before sale[3]	Mixed	Mixed	Weak	Weak	Weak	Mixed	Mixed	Weak	Weak	Weak	Strong
Personal service requirement for complaint/ sales notice[4]	Strong	Weak	Strong	Weak	Weak	Strong	Weak	Strong	Weak	Strong	Strong
Housing emergency assistance fund[5]	Weak	Weak	Weak	Weak	Mixed	Strong	Weak	Weak	Weak	Weak	Weak
Right to redeem[6]	Mixed	Weak	Strong	Mixed	Mixed	Strong	Weak	Mixed	Mixed	Strong	Mixed
Deficiency judgments[7]	Weak	Weak	Mixed	Mixed	Mixed	Strong	Strong	Strong	Mixed	Mixed	Mixed
Accounting of sale proceeds[8]	Strong	Mixed	Mixed	Mixed	Mixed	Mixed	Mixed	Mixed	Strong	Strong	Strong
Prompt return of surplus[8]	Strong	Weak	Weak	Weak	Weak	Weak	Weak	Weak	Strong	Weak	Mixed

** Evaluations based on laws in effect as of late 2008; changes made after that date are not accounted for in the center's survey and evaluations.*

[1] Require evaluation of whether there is an alternative to foreclosure that will reduce losses to investor from homeowner's default
[2] Require giving homeowner a notice of default before accelerating the loan and charging default fees
[3] Guarantee homeowners the right to reinstate mortgage by paying arrearage and costs up to the time of a foreclosure sale
[4] Require that homeowners be personally served with the notice of sale or foreclosure complaint
[5] Programs that provide emergency financial assistance to homeowners facing foreclosure
[6] Provide homeowners with a statutory right to redeem and reacquire title to home, for a fixed period of time, after a foreclosure sale
[7] Prohibit mortgage holders from pursuing homeowners for deficiency judgments after foreclosures
[8] Require judicial supervision over accounting of foreclosure sale proceeds and prompt release of any surplus to borrowers

Foreclosure 'hot spots' in Midwest: 10 counties with highest number of filings in August*



* A foreclosure filing is a default notice, scheduled auction or bank repossession.

Source: RealtyTrac