

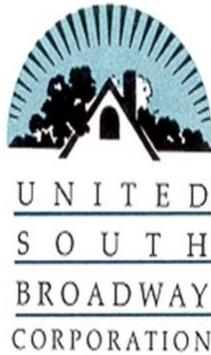
FORECLOSURE PROCESS TASK FORCE

FINAL REPORT AND RECOMMENDATIONS

**PURSUANT TO SENATE MEMORIAL 11 AND HOUSE MEMORIAL 15:
2014 REGULAR SESSION OF THE NEW MEXICO LEGISLATURE
Sponsored by New Mexico State Senator Michael Padilla, District 14**

*Submitted by
United South Broadway Corporation
Task Force Convener
November 13, 2014*





FOREWORD FROM THE TASK FORCE CHAIRPERSON

In response to the mortgage meltdown emanating from Wall St. and raining down on our neighborhoods, the 2013 New Mexico legislature passed with bipartisan support two identical memorials, Senate Memorial 11 and House Memorial 15. The Memorials established the Foreclosure Process Task Force and asked United South Broadway Corporation to act as convener. The Legislature charged the Task Force with recommending improvements to the foreclosure process, including preservation of the due process right of homeowners to judicial oversight before losing their homes to foreclosure; removal of barriers to loss mitigation and loan modifications for eligible homeowners; and prevention of improper or avoidable foreclosures. (Appendix A: Senate Memorial 11).

The Task Force is comprised of twenty-two diverse stakeholders, from housing advocates and homeowners to a recently retired member of the New Mexico judiciary to a wide range of mortgage lending industry representatives (Appendix B: Task Force Roster).

This report is the result of six months of work by the Task Force, which met every three weeks from May to October of 2014. In addition, at the request of Senator Padilla, I have reported on Task Force progress to the Economic and Rural Development and MFA Act Oversight interim committees.

The report reflects general consensus reached over months of deliberation that at times included vigorous debate. When a minority does not support a recommendation, it is noted in the discussion section following the recommendation. The format for each recommendation is: (A) relevant Memorial charge; (B) problem; (C) recommendation; and (D) discussion section for clarification when appropriate.

Small community banks are exempt from the state mortgage servicing standards recommended in this report. Community banks are not the problem --- they are rooted in their communities and know their customers. State standards are necessary because large national banks own the vast majority of mortgage loans in our state (at least 70% according to HOPE NOW). However, they have no personnel or decision-makers who

handle loss mitigation located in New Mexico. Homeowners rarely are able to talk to anyone with knowledge or authority within these large national institutions when trying to save their homes.

A major focus of Task Force discussions was how to address this lack of borrower-lender communication that costs families their homes. Poor communication undermines the ability of homeowners to understand their rights and manage the foreclosure process. It also blocks loss mitigation opportunities for eligible homeowners. Taken as a whole, we believe these recommendations offer a significant step toward fixing broken parts of the New Mexico foreclosure process, while at the same time leveling the playing field for homeowners negotiating with large, out-of-state financial institutions.

Diana Dorn-Jones, Executive Director
United South Broadway Corporation
Task Force Chairperson.

RECOMMENDATIONS:

1. REAFFIRM THAT NEW MEXICO IS A JUDICIAL FORECLOSURE STATE WITH FILING AND NOTICE OF SALE REQUIREMENTS

- A. **Memorial Charge**: “BE IT FURTHER RESOLVED that the Task Force recommends the means and methods to improve the foreclosure process in order to prevent unnecessary and improper foreclosures . . . and protect the due process rights of financially strapped families threatened with foreclosure.

WHEREAS, the constitution of New Mexico provides that “No person shall be deprived of life, liberty, or property without due process of law” and the NM Home Loan Protection Act provides due process rights for a borrower with either a traditional mortgage or deed of trust, including the right to have a day in court before losing one’s home; and . . .

NOW THEREFORE, BE IT RESOLVED BY THE SENATE [AND THE HOUSE OF REPRESENTATIVES] OF THE STATE OF NEW MEXICO that it affirms its commitment to preserving due process rights guaranteed under the Home Loan Protection Act for all New Mexicans threatened with the loss of their homes through foreclosure;”

B. Problem: The legislature needs to reaffirm that the law of New Mexico mandates court oversight of all residential foreclosures. The right to a “day in court” before losing one’s home to foreclosure is a longstanding right of New Mexican homeowners. Court oversight is necessary in order for homebuyers to properly understand and pursue their options in managing the most valuable investment most New Mexicans will ever make. Court supervision helps protect homeowners from the misconduct that led to multi-billion dollar national mortgage settlements because banks improperly foreclosed on homeowners. Middle and low-income New Mexicans lost home equity accumulated over lifetimes when the mortgage meltdown was ignited by large national banks selling toxic assets to Wall St. and misrepresenting their worth. At the very least, New Mexican homeowners should be able to hold on to their legal rights and utilize them, knowing the Court is involved to ensure that the process is proper.

C. Recommendation:

- I. The legislature should affirm that New Mexico is a judicial foreclosure state with enhanced filing and notice requirements providing due process protections to individual homeowners.

- a. When the foreclosure complaint is filed, lenders should be required to:
 - File as a condition precedent to the filing of the complaint a uniform Certification of the Absence of Loss Mitigation (CALM) that is current as of 30 days prior to the filing of the complaint. When Plaintiff moves for judgment, they are required to provide a second CALM that is current as of 30 days prior to the filing of the motion.
 - File notice of right to cure the default with proof that the notice has been sent to the homeowner and such notice must include all information required by HLP, NMSA 58-21-A.
 - Deposit the original Note and any allonges, indorsements, or other indicia of transfer of ownership to the Plaintiff or prior owners in the chain of ownership associated with the Note into the court registry.
- b. Notice of sale: Written notice to the homeowner or the attorney of record, whichever is appropriate, should be provided and filed with the court at least 21 days prior to the original or any subsequent sale dates.

D. Discussion: The Task Force considered whether it is preferable to enact a standalone statute affirming the right to a day in court before foreclosure, or to amend the NM Home Loan Protection Act to remove any perceived ambiguity and strengthen its judicial foreclosure mandate (see § 58-21A-6B: delete “or otherwise”).

In the majority view, court supervision is necessary to protect homeowners. The judicial process gives homeowners time and information so they can:

- find help from a certified housing counselor
- increase the likelihood of remaining in the home, and
- seek an affordable loan modification or other form of loss mitigation.

The substantial majority of the Task Force supports legislation affirming the longstanding right of all homeowners to judicial process before losing their home to foreclosure, regardless of the instrument used for their home loan. Stripping homeowners of their legal rights, and/or utilizing a process that precludes notice and hearing before an independent judge, will not solve the multi-faceted foreclosure problem. The Task Force recommends these improvements to improve the efficacy, consistency, and transparency of the foreclosure process.

A minority of the Task Force opposes the recommendation that the legislature should reaffirm the right of all New Mexican homeowners to court supervision before losing their homes to foreclosure whether they have a traditional mortgage or a deed of trust. It is the view of a minority that lenders should have the choice to foreclosure without judicial oversight.

2. REDUCE THE TIME OF ENFORCEABILITY OF DEFICIENCY JUDGMENTS

A. Memorial Charge: “BE IT FURTHER RESOLVED that the Task Force recommends the means and methods to improve the foreclosure process in order to prevent unnecessary and improper foreclosures, promote community stability, and protect the due process rights of financially strapped families.”

B. Problem: Deficiency judgments result from a home sale following foreclosure at a price less than the amount of the judgment debt. The lender can seek a personal judgment against the former homeowner for the difference. These judgments have substantial negative consequences for businesses and individuals and are disallowed in some states. They are currently enforceable in New Mexico up to 14 years, remaining on court records and credit reports, and accruing interest. Deficiency judgments prevent New Mexicans who have lost their homes to foreclosure from getting back on their feet by threatening collection efforts as well as liens on real estate. These judgments attach to any real estate transaction which occurs as long as they are outstanding, and must be paid before a consumer can purchase a home in the future.

Deficiency judgments include lender’s attorney and litigation fees, which recently have been in the news because large foreclosure law firms in the southwest have been the subject of law enforcement investigation and in some cases fined for illegally inflating fees. Lenders and federal guarantee programs reportedly are freezing bank accounts and garnishing wages to recover deficiency judgments from those who have already lost their homes. When these government guarantee programs pay lenders for inflated deficiency judgments, taxpayers foot the bill.

Reducing the effective time of deficiency judgments will reduce the amount and complexity of litigation in foreclosure suits. A homeowner may agree to relinquish his or her home thinking they are free and clear, and then be sued many years later. To avoid the consequences of these judgments, homeowners are routinely forced to file bankruptcy, substantially damaging their credit for years. In New Mexico, home equity is the primary source of savings for middle and low-income families. Reducing the effective time of deficiency judgments would encourage both individual and real estate market recovery.

C. Recommendation: Deficiency judgments should be enforceable for no more than 4 years after entry of the judgment by a District Court and determination of the deficiency consistent with the due process rights of the consumer and lender.

D. Discussion: A substantial number of Task Force members support eliminating deficiency judgments completely, as other states such as Arizona have done. A smaller number of Task Force members support leaving these judgments in effect for 21 years.

Four years mirrors industry timelines for credit restoration and is a compromise with general consensus of the Task Force.

4. ENACT NEW MEXICO MORTGAGE SERVICING STANDARDS

A. Memorial Charge:

‘WHEREAS New Mexicans continue to lose their homes needlessly because of improper foreclosures . . . [caused by] violations such as failing to process people for loan modifications in time to avoid foreclosure; proceeding with foreclosures while homeowners were still working on payment plans with the servicer; improper or repeatedly lost paperwork; denying borrowers the opportunity to obtain accurate information about their loans; understaffing loan servicing personnel making it difficult for homeowners to negotiate reasonable loan terms to prevent foreclosure in a timely fashion; and selling and reselling loans to new loan servicers without transferring paperwork with the sale and then requiring homeowners to go through the time-consuming process of filing new applications with each resale of the loan; and

“WHEREAS, homeowners still face time-consuming delays imposed by these servicing practices, leading to unnecessary foreclosures.”

B. Problem: Despite federal standards aimed at eliminating the servicing violations described in section A above in the Memorial charge, errors and failings continue to plague the foreclosure process, warranting additional action by states. The standards recommended herein are basic protections for the purpose of improving borrower-lender communication and timelines for homeowners in distress, and eliminating abusive and unfair mortgage servicing practices.

While financial institutions are occasionally fined by government agencies for servicing abuses, these actions do not help individual homeowners trying to save their homes while the government goes through its administrative process of proving a pattern and practice of violations. Given that the administrative process has no relationship with a foreclosure proceeding, the federal administrative process provides homeowners virtually no substantive remedy. In fact, the administrative process typically takes place after homeowners have lost their homes due to improper loan servicing practices.

There is a need to close the gaps for individual New Mexico homeowners before they lose their homes as a result of improper or illegal foreclosures. Federal servicing standards do not provide such relief, but the federal Dodd-Frank Act does make changes to preemption that enhance the role of states and their ability to enact and enforce state laws.

States have a crucial role to play in protecting homeowners against unfair servicing practices. New Mexico standards will fill gaps in federal protections and help ensure compliance. Similar state adoption of federal standards, especially in mortgage lending, has proven effective for local application of national standards.

C. Recommendation:

The Task Force recommends the following standards be imposed by the Legislature:

1. If a loan servicer has a loss mitigation program, it must be offered to all eligible borrowers.
2. Servicers must provide a single point of contact (SPOC) for the borrower within 45 days of delinquency. A SPOC is a person who:
 - homeowners can reach by phone;
 - has knowledge of the homeowner's loan and its status;
 - can respond to consumer inquiries within a reasonable time period;
 - as applicable, can help homeowners pursue loss mitigation options;
 - advises homeowners about the status of any loss mitigation application and applicable timelines.
3. Prohibit dual tracking of foreclosure loans in default, thereby precluding foreclosure while the homeowner is working with the servicer on loss mitigation.
4. Require promulgated standards for key consumer notice/disclosure content pertinent to various stages of delinquency, including the following:
 - a. notice of acceleration/right to cure as required by the NM Home Loan Protection Act, §58-21A-6A;
 - b. notice to borrower of available loss mitigation and current, accurate housing counseling resources;
 - c. notice to homeowner of how partial payments have been applied, including date check received, date transacted, concise explanation of whether payment was applied to account or held in suspense, and action servicer will take in the event of another partial payment;
 - d. notice to local government when a foreclosure has occurred, notifying them of entity that owns home.
5. Require referrals to promulgated multilingual versions of notice/disclosure to be provided by a state resource.
6. Require loss mitigation outreach by servicers to homeowners in distress, including descriptions of loss mitigation options available and counseling contacts within 36 days of delinquency.
7. Ban robo-signing.
8. Require servicers to register and reference consumer communication and documentation via the Hope Loan Portal or other neutral data base accessible to authorized third parties.
9. Impose statutory maximum limit to the timeline for servicer responses to either financial analysis of eligibility for loss mitigation, or initial requests or appeals, to 30 days from date of posting in the HOPE LOAN PORTAL or other neutral data base accessible to authorized third parties, or verified lender receipt.
10. Require servicers to file an affidavit of loss mitigation performance no less than 30 days prior to the foreclosure sale date.

Remedy: If a court finds that there has been a material violation of any provision of the New Mexico Mortgage Servicing Standards Act by the servicer, the court may halt the foreclosure process until the servicer complies with the requirements of the law, dismiss the action, impose sanctions, attorney fees and costs and order any other relief provided by law.

The Task Force recommends that both the New Mexico Attorney General and the Financial Institutions Division of the Regulation and Licensing Department should enforce the provisions of the New Mexico Mortgage Servicing Standards Act and that they jointly shall adopt rules required to implement the act fully.

Small loan servicer exemption: Small loan servicers are exempt from the provisions of the NM Mortgage Servicing Standards Act. A small loan servicer is one that services 5,000 loans or less nationally during the calendar year. The intent of this section is to exempt small New Mexico based servicers who regularly provide customers with in-state and face-to-face loss mitigation assistance.

D. Discussion:

1. New Mexico small servicer exemption: Community banks and local servicers identify personally with customers and typically don't resort to "foreclosure mill" level servicing standards when homeowners are navigating hardships and need to work out loan modifications, or other loss mitigation solutions. This exemption is intended to provide public policy that motivates and reassures community lenders/servicers who identify with "Main Street," and wish to remain in the business of providing residential real estate loan servicing to New Mexicans.
2. Servicers must provide a "single point of contact" (SPOC) within 45 days of delinquency: The federal SPOC requirement has been in large part a failure, leaving homeowners with no assistance with the complex process of loss mitigation. State law should specifically define the responsibility of servicers to provide: (1) continuity and (2) ensure proficiency of staff that assists homeowners with loss mitigation and foreclosure processes. Currently, SPOCS are insufficiently trained and have such high turnover that homeowners remain unable to contact any person who has knowledge of his or her application. Moreover, SPOCS in large national out-of-state servicers are often located in different states than the institution's underwriters, resulting in a lack of communication between the person designated to speak with the homeowner and the person who makes the actual decisions.
3. Remedy for violations: There was discussion of the most appropriate and effective remedy for violations of the state standards. The overwhelming majority of the Task Force agreed there should be some remedy for individual homeowners for violations of the New Mexico servicing standards. The following options were discussed:

Option 1 is recommended and had general consensus: If a court finds that there has been a material violation of any provision of the New Mexico Mortgage Servicing Standards Act by the servicer, the court may in its discretion:

- halt the foreclosure process until the servicer complies with the requirements of the law
- dismiss the action
- impose sanctions, attorney fees and costs, and
- order any other relief provided by law

Each of the following options had some support from a minority of Task Force members:

Option 2: If a court finds that there has been a material violation of any provision of the New Mexico Mortgage Servicing Standards Act by the servicer, the court may in its discretion halt the foreclosure process until the servicer complies with the requirements of the law

Option 3: A violation of the New Mexico Mortgage Servicing Standards Act constitutes a violation of the New Mexico Unfair Practices Act.

Option 4:

- A. If a court finds that there has been a material violation of any provisions of the NM Mortgage Servicing Standards Act by the creditor/servicer, the court may in its discretion:
- Grant an injunction under the principles of equity and on terms the court considers reasonable.
 - Award actual damages or the sum of five-hundred dollars (\$500), whichever is greater.
 - Upon a finding that the violation of the Act was willful, award up to three times actual damages (\$1,500) in treble damages.
 - Award attorney fees and costs to the homeowner;
 - Dismiss any pending foreclosure action; and,
 - Order any other relief provided by law.
- B. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the this state. Violations of this act are cumulative.
- C. In any class action filed under this section, the court may award damages to the named plaintiffs as provided in Subsection A of this section and may award members of the class such actual damages as were suffered by each member of the class as a result of the violation.

A minority of the Task Force opposes any option that provides individual homeowners with a private right of action when there are material violations of the standards (options 3, 4, and 5 above). In the minority view, it is sufficient to rely for enforcement on the federal consumer financial protection bureau, notwithstanding the CFPB's inability to provide any substantive relief. The federal agency can penalize servicers for a pattern and practice of servicing abuses, but does not allow for action by the individual homeowner. Some in the minority expressed concern regarding the possible impact of unfounded law suits if New Mexico homeowners can sue lenders or servicers under the New Mexico Unfair Practices Act. In the majority view, there is no evidence of a rash of unfounded law suits in states that have adopted a private right of action for similar servicing violations. Additionally, fee shifting as required by the New Mexico Unfair Trade Practices Act protects lenders from frivolous lawsuits.

4. ESTABLISH A MORTGAGE MEDIATION PROGRAM TO PROVIDE EARLY COURT INTERVENTION IN RESIDENTIAL OWNER OCCUPIED MORTGAGE FORECLOSURE CASES.

A. **Memorial Charge:** "BE IT FURTHER RESOLVED that the Task Force recommends the means and methods to improve the foreclosure process in order to prevent unnecessary and improper foreclosures . . . and protect the due process rights of financially strapped families threatened with foreclosure."

B. **Problem:**

Mediation shortens the time to resolution to as little as 90 days from the date of filing by providing a window of opportunity for all parties to meet face to face in one room to work out an alternative to foreclosure. Settlement facilitation is designed to assist the homeowner to retain the home, and when this is not possible, to facilitate a dignified exit through loss mitigation options such as "cash for keys," "deed in lieu of foreclosure," or "short sales"; or through an extended occupancy agreement.

Large out-of-state lenders that hold the majority of loans in the state do not have decision-makers in New Mexico with whom borrower-defendants can communicate face to face about alternatives to foreclosure such as loan modifications, forbearance plans, and "graceful exits," including short sales, deeds-in-lieu of foreclosure, and cash for keys. The problem is aggravated by continuing abuses in mortgage loan servicing that cause unnecessary and improper foreclosures. Many alternatives to foreclosure, including the Home Affordable Mortgage Program, remain out of reach for the majority of consumers because they cannot navigate the system and lack knowledge about options available to them.

C. **Recommendation:** Mandate a face-to-face Settlement Facilitation Conference for all new residential foreclosure actions involving owner-occupants. Owner-occupant defendants are notified of the mediation option by court order. The case is stayed for 90

days from the time the court order is issued. The homeowner has 30 days from the date of the order to participate in an orientation session. The settlement facilitation is scheduled at the session, and takes place within 60 days of the initial court order [see Appendix C for guidelines and funding information].

If the matter is settled at facilitation, the case is dismissed. If not, it returns to litigation. During the conference, owner-occupants and their counselors and legal representatives meet with lenders/servicers to explore alternatives to foreclosure. Participants in the program are required to act in good faith. The failure to exchange documents and participate in good faith can result in sanctions, fees and dismissal. Current pilot mediation programs in the 2nd and 13th Judicial Districts provide a model. Those programs are based on the successful Philadelphia Residential Mortgage Foreclosure Diversion Program.

The Mediation Program seeks to reduce abandoned properties and neighborhood blight through a fast-track option for abandoned properties, and an extended occupancy option for qualified, former owner-occupants:

- **Fast Track Foreclosure:**

- Lenders/servicers must report to local authorities on the property's vacant status.
- Fast track foreclosures may never be used with occupied properties. Borrowers who reside in their homes must have simple and effective means to declare occupancy and stop an attempted fast track foreclosure of an occupied dwelling.
- Once a property has been determined abandoned through a judicial proceeding, the plaintiff must not have the option of indefinitely delaying foreclosure.
- A fast track foreclosure must not be determined through presumptions or a "prima facie" standard. A court must make findings of abandonment based on clear and convincing evidence, such as a written statement from the owner/borrower.
- When a property has been determined to be abandoned with clear and convincing evidence, the lender/servicer must bear the cost of maintenance. A borrower must not be charged for maintenance after the abandonment determination, and must not be assessed the cost of a bond that a lender/servicer posts under any registration law requirement

- **Extended Occupancy Program:**

- Owner-occupants facing foreclosure due to a demonstrated financial hardship would have the option in mediation to apply for a "deed for lease" for a specified period of time. Upon approval by the lender, the homeowner would relinquish title in exchange for either an affordable (31% or less of borrower income is the standard for affordability used by HUD) month-to-month rental agreement with first right of refusal to purchase; or an affordable "lease to own" contract. (A model of such a program is outlined in NM Rep. Michelle Lujan Grisham's Keeping Families Home Act of 2014, HB5396). If the parties agree, the lender could obtain the funds for rent or lease and apply such funds towards the existing outstanding balance on the principal of the loan.

D. Discussion: A mediation program serves a substantial public interest in fostering alternatives to foreclosure, and in preserving the value of the properties at risk of foreclosure. The mediation program increases fairness by creating a forum in which borrower and creditor can meet on roughly equal terms.

Mediation is the only opportunity homeowners in foreclosure have to communicate face to face with lender decision-makers, especially early on. It is essential to have all parties with authority in the matter present in the room, including attorneys, defendants, bank or servicer representatives with authority to settle the case, and housing counselors. Housing counselors provide a crucial link by identifying available loss mitigation options and assisting homeowners in navigating the system. The face-to-face interaction is one of the most effective elements of the program, and is what shortens the time to resolution, including deeds in lieu and loan modifications.

Funding: The current funding for the 18 month pilot programs based in the 2nd and 13th Judicial District is a joint project of the Administrative Office of the Courts and the Office of the New Mexico Attorney General. Funds were generated from the national mortgage settlement. New funding will be necessary going forward to expand to a statewide program. Over 30 states have court run mediation programs and funding differs from state to state. Most states require a lender to pay a small fee when filing the litigation, others provide a fee-sharing model, and some are funded through a combination of state and federal funds.

In order to fund a statewide expansion, the Task Force suggests maintaining program resources in the 2nd, 3rd, and 13th Judicial Districts, where most foreclosures take place, and making the program resources available statewide via video links and/or a circuit-riding provision.

Appropriation: Based on Administrative Office of the Courts estimates, an appropriation of \$1, 575, 00.00 is needed to maintain programs in the 13th, 2nd and 3rd Judicial Districts, with four additional programs serving multiple districts as a coordinated program with circuit riding and video links to cover the state.

5. APPROPRIATION FOR A STATEWIDE PRE-PURCHASE HOMEBUYER EDUCATION PROGRAM

- A. **Memorial Charge:** “BE IT FURTHER RESOLVED that the Task Force develops a plan for the education and training of homeowners, lenders, loan servicers and the judiciary on methods of removing impediments to meaningful loss mitigation and preventing improper or unnecessary foreclosures.”
- B. **Problem:** Homebuyers often do not understand the legal rights and responsibilities to which they are bound by a mortgage, and are unprepared for the consequences of a financial crisis that affects their ability to keep up with payments. An effective homebuyer

education program will empower NM homebuyers with knowledge and tools to support successful homeownership, which results in preservation of family and community stability. It will also assist lenders/servicers by providing a platform to communicate successfully with homebuyers.

Pre-purchase counseling significantly lowers the rate of delinquencies and foreclosures and is therefore an effective tool to promote neighborhood and community stability. [Smith, Marvin, et.al. *The Effectiveness of Pre-Purchase Homeownership Counseling and Financial Management Skills*. Federal Reserve Bank of Philadelphia, April 2014. www.philadelphiafed.org/community-development/publications/special-reports]

- C. **Recommendation**: APPROPRIATION. -- [\$500,000] of dollars is appropriated from the general fund to the [insert department] for annual expenditure by the [insert entity] to create, implement and advertise to lenders and the public a statewide pre-purchase homebuyer education program. The program shall be made available statewide in both English and Spanish, with interpreters made available to provide culturally relevant content; provide a certification upon successful completion, and include in its curriculum education on the closing process, money management, borrowers' rights in the event of default, and financial recovery information for borrowers who have gone through foreclosure or short sale. All lenders in the state of New Mexico shall be encouraged to promote the program to first-time homebuyers. (FHA definition of a first-time homebuyer is a person who has not owned his or her primary residence for at least three years leading up to purchase.)
- D. **Discussion**: The education program can be a tool available to all entities, including lenders, servicers, and homeowner advocates, who have a reason to educate homeowners on their rights and responsibilities before purchasing a home. The New Mexico Mortgage Finance Authority (MFA) could be the fiscal agent for such a program, and HUD-certified housing counseling agencies could develop and deliver the curriculum, with the assistance of interpreters where needed.

This report addresses homeowner education as a first step. In Recommendation 6 (below) the Task Force recommends continuation of its work to complete the legislative charge of educating the other stakeholders.

6. REDUCE THE NUMBER OF HOMES THAT BECOME VACANT AND ABANDONED BECAUSE OF FORECLOSURE

- A. **Memorial Charge**: "WHEREAS . . . foreclosure activity [in New Mexico] has dislocated families, destabilized communities, increased vandalism and crime in those neighborhoods with abandoned properties; increased homelessness; lowered property values; and resulted in a decreased tax base leading to loss of funding for vital public services; . . . and children are the invisible victims of the foreclosure crisis as they face family instability and loss of their homes. . . ."

B. **Problem:** Vacant homes blight neighborhoods, drag down neighboring home values, and slow New Mexico's economic recovery. The economic effect of vacant foreclosures for municipalities is in the millions, due to direct costs of public safety, demolition, and lower tax revenues. In contrast, the economic benefit of each home sale in New Mexico is \$58,000¹. However, homeowners who could have qualified for reduced payments or short sales are denied and forced out, and the properties sit vacant, sometimes for years. "Bank walkaways" are a significant contributor as well. In these cases, lenders initiate the foreclosure, but then fail to pursue the process. Out-of-state banks acquire large inventories of foreclosed homes and then allow them to deteriorate, while refusing reasonable offers to purchase and rehabilitate them.²

Task force members with experience in housing counseling and real estate report that poor communication from lenders is a leading reason for homeowners to vacate. Some national lenders advise homeowners to vacate their properties if they are merely behind on payments; others send delinquency notices threatening speedy eviction if the delinquency is not cured, while withholding information to homeowners about alternatives to foreclosure that will prevent vacancy, such as a loan modification or short sale. Shame and fear motivate these vacancies, known as "zombie foreclosures."

C. **Recommendations:** This is a multi-faceted problem calling for multi-faceted solutions. The recommendations in this report work together to address the problem of vacant homes, primarily by helping homeowners remain in their homes for as long as feasible. In addition, the Task Force recommends the following reforms throughout the report that would ameliorate the vacancy problem:

- **Notice of Foreclosure Sale to the Homeowner:** Recommendation 1, page 2.
In some instances homeowners vacate according to a foreclosure sale date that is subsequently postponed, sometimes indefinitely. This requirement would enable the homeowner to keep the home occupied until the date of the actual sale.
- **State mortgage servicing standards:** Recommendation 3, page 5, #2.
Servicers must provide a single point of contact for the borrower within 45 days of delinquency who homeowners can reach by phone and has knowledge of the homeowner's loan. The federal requirement for a "single point of contact" has been in large part a failure on the part of the large out-of-state institutions. This

¹ *Vacant Properties: Growing Number Increases Communities' Costs and Challenges.* GAO-12-34: Published: Nov 4, 2011. Publicly Released: Dec 6, 2011. <http://www.gao.gov/products/GAO-12-34>

² National Association of Realtors Research. *Economic Impact of Real Estate Activity: New Mexico.* April, 2014

³ Greater Albuquerque Association of REALTORS®. *Short Sale Impact in New Mexico.* May, 2013. Saulny, Susan. *Banks Starting to Walk Away on Foreclosures.* The New York Times, March 29, 2009. http://www.nytimes.com/2009/03/30/us/30walkaway.html?pagewanted=all&_r=0

state provision would more specifically define the responsibility of the servicer to provide consistent and proficient assistance with loss mitigation for homeowners.

Recommendation 3, page 5, #2d: requires notice to local government when a foreclosure has occurred, notifying them of the entity that owns the home. This requirement for notification to local government will make code enforcement and nuisance abatement more effective because local governments will know who owns the property and where to send code violations and lien notices. (This policy could be implemented by municipalities for properties that have been foreclosed and are vacant prior to the enactment of this recommendation by the Legislature.)

- **Options in Mediation to Prevent Vacancies**: Recommendation 4, page 9. Mediation encourages out of state lenders to put a decision-maker on the ground in New Mexico, shortening the time of resolution to as little as 90 days from date of filing. Mediation opens a window of opportunity for all parties to meet in one room to work on alternatives to foreclosure, including short sales, deeds in lieu, cash for keys, and loan modifications. An extended occupancy option for mediation recommended in this report would prevent post-foreclosure vacancies by allowing homeowner to “stay and pay” through a deed-for-lease that could also pay down the mortgage loan. Another option recommended for mediation is an expedited judicial foreclosure process with guidelines to ensure the homeowner does not intend to return to the home. This option requires lenders to proceed with the foreclosure expeditiously once the property has been determined to be abandoned, and to report to local authorities on the property’s vacant status. Additionally, the lender/servicer must maintain the property once it has been determined to be abandoned by the courts. Both options encourage lenders to accept reasonable short sale offers from homeowners working with experienced realtors.

7. PROVIDE STATE SUPPORT FOR THE TASK FORCE TO CONTINUE ITS WORK

The Task Force has spent six months tackling the complex issues surrounding foreclosure with a group of diverse stakeholders who often have divergent interests. The group has developed general consensus on several significant improvements in the foreclosure process. However, there is much still to be accomplished in order to create a fair and accessible foreclosure process for our state. To that end, the Task Force would like to hold its meetings around the state to hear from homeowners and lenders in all regions.

Thus far, the Task Force has been funded entirely by the United South Broadway Corporation with a grant from the Marguerite Casey Foundation. In order to continue the Task Force work, state support is needed.

APPENDIX A

A MEMORIAL

REQUESTING THE UNITED SOUTH BROADWAY CORPORATION , A NONPROFIT COMMUNITY DEVELOPMENT CORPORATION THAT PROVIDES HOUSING COUNSELING AND FORECLOSURE LEGAL DEFENSE STATEWIDE, TO CONVENE A TASK FORCE TO STUDY THE FORECLOSURE PROCESS IN NEW MEXICO AND MAKE RECOMMENDATIONS THAT WILL PROTECT NEIGHBORHOOD AND COMMUNITY STABILITY, PREVENT UNNECESSARY AND IMPROPER FORECLOSURES AND PRESERVE THE DUE PROCESS RIGHTS OF FINANCIALLY STRAPPED FAMILIES.

APPENDIX B

FORECLOSURE PROCESS TASK FORCE ROSTER

Ruben J. Acuña, Homeowner
Santa Fe, New Mexico

Erin Anderson, Settlement Facilitator
2nd Judicial District Mortgage Alternative Program

Honorable Ted Baca, Retired
Chief Justice, 2nd Judicial District

Scott Cameron, Attorney
USBC Fair Lending Center
Alternate: Angelica Anaya Allen, Director and Managing
Attorney, USBC Fair Lending Center

Elaine Candelaria, Housing Counselor
United South Broadway Corporation
Alternate: Evan Overton, USBC Housing Counselor
Manager

Diana Dorn-Jones, Executive Director
Task Force Chairperson
United South Broadway Corporation

Brian A. Eagan, Attorney
Albuquerque Housing Authority
Alternate: Nataley Quintana, Attorney
City of Albuquerque

Bill Elliott, President
New Mexico Mortgage Lenders Association

John Fox, President
Southwestern Title & Escrow, Inc.
Representing the NM Land Title Association

Theresa Laredo-Garcia, Special Projects Director
New Mexico Mortgage Finance Authority

Elena Gonzales, Housing Division Coordinator
Independent Living Resource Center

Wendy Griffin, VP Real Estate Loans
International Bank, Raton
Representing the NM Bankers Association

Kathy Guerrero, Senior Vice President
WestStar Mortgage Corporation

Dion Kidd-Johnson, President and COO
Western Bank Alamogordo

Elizabeth Mason, Creditor Attorney
Weinstein, Pinson, & Riley, LS
Alternate: Paul Kienzle, Creditor Attorney
Scott & Kienzle, P.A.

Karen Meyers, Director
Consumer Protection Division
Office of the New Mexico Attorney General
Alternate: David Kramer, Asst. Attorney General

Olga Pedroza, City Councilor
Las Cruces City Council – District 3
Representing the Mayor
Alternate: Rose Ann Vasquez, Homeowner

Matt Teskey, Executive Vice President
WestStar Mortgage Corporation

Brian Thomas, Attorney
Law Offices of Brian A. Thomas, PC

Steven P. Tomita, Director
Planning and Economic Development Dept.
City of Belen

Ruben Trujillo, Foreclosure Intervention Program Manager
Tierra Del Sol Housing, Las Cruces
Alternate: Isabel Dominguez, Foreclosure Counselor
Tierra Del Sol Housing

Paul Wilson, Realtor
Home Team Realty

APPENDIX C

Mortgage Mediation Program Guidelines

Settlement facilitation is designed to assist the homeowner to retain the home, and when this is not possible, to facilitate a dignified exit through loss mitigation options such as “cash for keys,” “deed in lieu of foreclosure,” or “short sales”; or through an extended occupancy option.

A. Program Criteria:

- A mediation program for all non-excluded foreclosure cases shall be available in all judicial districts in the state
- District based programs will be established or maintained in each judicial district with a high volume of foreclosures, including the 2nd, 13th, 1st, and 3rd.
- Regional programs with circuit riding settlement facilitators will be established in all other judicial districts
- Each mediation program will be staffed by a full-time Settlement Facilitator and a full-time court administrator
- The Settlement Facilitator shall have at least three (3) years' experience in handling mortgage foreclosure matters and demonstrated familiarity with loss mitigation options and programs
- All residential foreclosures for owner-occupied residences containing 1 -4 residential units shall be referred to the Mediation program
- A court approved resource information sheet must be served upon the defendant(s) with the Complaint, outlining the settlement facilitation program and resources available to assist homeowners, including housing counseling and legal assistance resources
- If the loan is subject to the Mediation Program, the case is automatically referred for participation in the program through issuance of a court order of referral. A program brochure explaining the program will be sent with the order to all parties
- Each District-based program must include a weekly, regularly-scheduled information or orientation session for participating homeowners. The sessions shall be in-person, online or in some other format that allows homeowners to engage in a real-time dialogue with a facilitator. Each regional program must include a homeowner information/orientation session at least twice a month. Attendance or participation is mandatory and must take place within 30 days of the Court ordered referral, unless for good cause the homeowner cannot attend within 30 days
- An automatic stay of not more than 90 days of the foreclosure proceedings is put in place immediately upon the homeowner's participation in the information/orientation process. If a homeowner fails to participate without good cause, there is no stay and the case proceeds
- Where applicable, a settlement facilitation should be scheduled within a specified time (typically within 60 days of the orientation session), depending on district caseloads or facilitator availability
- A standard list of documents and information should be exchanged by the parties in a time period to be determined by the settlement facilitator before the mediation session. All documents should be submitted to the facilitator
- Use of housing counselors in program:
 - Local housing counseling agencies appear in person at the orientation workshop to answer questions from homeowners and begin to help homeowners gather necessary documents

- At the mediation, housing counselors play a helpful role by identifying available loss mitigation options. Many alternatives to foreclosure, including the Home Affordable Modification Program, remain out of reach for the majority of consumers because they do not meet qualifications, cannot navigate the system, and/or lack knowledge about the options available to them
- In order to shorten the time to resolution, as proven by existing programs such as the Philadelphia Residential Mortgage Foreclosure Diversion Program (Initial Report of Findings, June 2011), all parties must be present in the room, including attorneys, defendants, bank or servicer representatives with authority to settle the case; and housing counselors whenever available
- Once settlement facilitation takes place, a report of the outcome is filed with the Judge assigned to the case. If the matter is settled, whether by entering into a loan modification or other loss mitigation; or extended occupancy; the 90 day stay is extended. If the matter is not resolved, the stay is lifted (after expiration of the initial 90 days, if that has not yet occurred) and the case returns to litigation
- Standard data should be recorded regarding cases and outcomes and reported through the Odyssey online database used for e-filing to the Administrative Office of the Courts