State Foreclosure Prevention Efforts in New England:

Mediation and Assistance

Citizens' Housing and Planning Association

Foreclosure Committee

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Introduction

- Nearly five years into the housing downturn foreclosures continue to weigh heavily on the housing market.

- Federal, state, and local governments have attempted numerous policies to prevent foreclosures.

- My research reviews two major foreclosure prevention programs pursued in the New England states in recent years:
  - Foreclosure Mediation
  - Financial Assistance

Why is foreclosure prevention good public policy?

The impact of foreclosures is much broader than the direct effects on borrowers and lenders.

- **Homeowners and families:** Lose largest financial asset, impaired credit, housing displacement, impact health and family relationships.

- **Lenders:** Forgone mortgage payments, cost of property maintenance, legal costs, and depressed resale value.

- **Neighborhoods and communities:** Increases factors that can lead to foreclosures, such as abandoned and unkempt properties; elevated crime rates; and downward pressure on property values.

- **State and local governments:** Shrinking property tax base, increased demand for services for displaced families and increased police and fire services for abandoned properties, and can result in significant pressures on courts.

Given the steep financial and social costs of foreclosures there is a case for policy intervention.

- Early in the housing downturn policymakers at the federal, state, and local level have tried various foreclosure prevention methods, including:
  - Loan modification and refinancing programs
  - Outreach and resource awareness campaigns
  - Providing financial education, housing counseling, and legal assistance services

- Thus far foreclosure prevention programs have had mixed results and faced poor public perceptions.

- In recent years two major foreclosure prevention policies have emerged at the state and local level in New England:
  - Foreclosure mediation
  - Financial assistance

How do mediation programs prevent foreclosures?

Mediation attempts to find mutually beneficial alternatives to foreclosure.

- Provides a channel of communication between borrowers and lenders that is typically difficult to establish.
- Intervenes at the beginning of the foreclosure process.
- Often provides legal and counseling assistance to help homeowners through the foreclosure process.
- Can play a role in nearly all residential foreclosures, as the qualifications for mediation are broad.
- Five of the six New England states have mediation programs at the beginning of 2011—all except Massachusetts.

Mediation programs in New England

	Judicial Foreclosure States			Non-judicial Foreclosure State	
	Connecticut Foreclosure Mediation Program	Maine Foreclosure Diversion Program	Vermont Foreclosure Mediation Program	New Hampshire Foreclosure Mediation Program	Providence Foreclosure Ordinance
Program administrator	Judicial Branch	Judicial Branch	Judicial Branch	Office of Mediation and Arbitration	Rhode Island Housing
Date program took effect	July 1, 2008	January 1, 2010	July 1, 2010	August 25, 2009	July 1, 2009
Homeowner enrollment	Automatic if homeowner returns form	Automatic if homeowner returns form; can opt out	Borrower Opt-in	Voluntary	Automatic
Funding	$5 million from State Banking Fund	Administrative filing fee, paid in all foreclosures	Lender pays mediation fee	Grant Money ($60,000)	Lender pays mediation fee
Length of Mediation	60 days	90 Days	180 days	No time limit	60 days
Reporting of Results	Periodic report on outcomes	Annual report to legislature	Surveying participants	No	No

Source: Administrators of state foreclosure mediation programs.

Getting lenders to participate: Court oversight, penalties, and fees

- Judicial states have the ability to impose penalties on lenders or even stop the foreclosure.
  - If a judge finds that a lender did not participate in good faith, they can impose sanctions ranging from fines and penalties to the dismissal of the foreclosure action.

- Non-judicial states have limited recourse if lenders are uncooperative.
  - For example, Providence imposes a $2,000 fine if a lender does not participate.

- However, non-judicial states can use threat of judicial oversight to incentivize lender participation.
  - In Nevada, lenders can face judicial sanctions if they fail to comply with mediation requirements.

- To get lenders to participate in mediation there needs to be some form of sanction or penalty for failing to cooperate.

Homeowner participation: Voluntary, opt-in, and opt-out programs

- There are generally three types of homeowner enrollment requirements for mediation
  - Voluntary, opt-in, or opt-out/automatic
- Opt-out versus opt-in: IRAs, Newsletters, or Organ Donors
  - Opt-out participation well over 50%
  - Opt-in participation well below 50%
- Research by the Center for American Progress found:
  - Participation in opt-in mediation program tops out around 21% (Nevada)
  - Participation in automatic mediation ranges from 60 to 70% (Philadelphia and Connecticut)
- Automatic or opt-out mediation for all foreclosures could greatly increase participation and improve chances of finding a greater number of alternatives.

Striking a balance: Length of mediation

- A major concern about foreclosure mediation is that it will unnecessarily extend the foreclosures process.

- Fitzpatrick and Ott (2010) review of a county level mediation program in Ohio found the process actually halved the length of the foreclosure process from 12 months to six months.

- Most mediation programs mandate completion within a state's foreclosure processes, but allow for extensions when necessary.
  - For example: In Connecticut, mediation must be completed within 60 days of the filing of the foreclosure action, but can be extended if further mediation is found necessary.

- Allowing for adequate time to purse alternatives while eliminating any unnecessary delays in the foreclosure process is paramount to a program's goals and success.

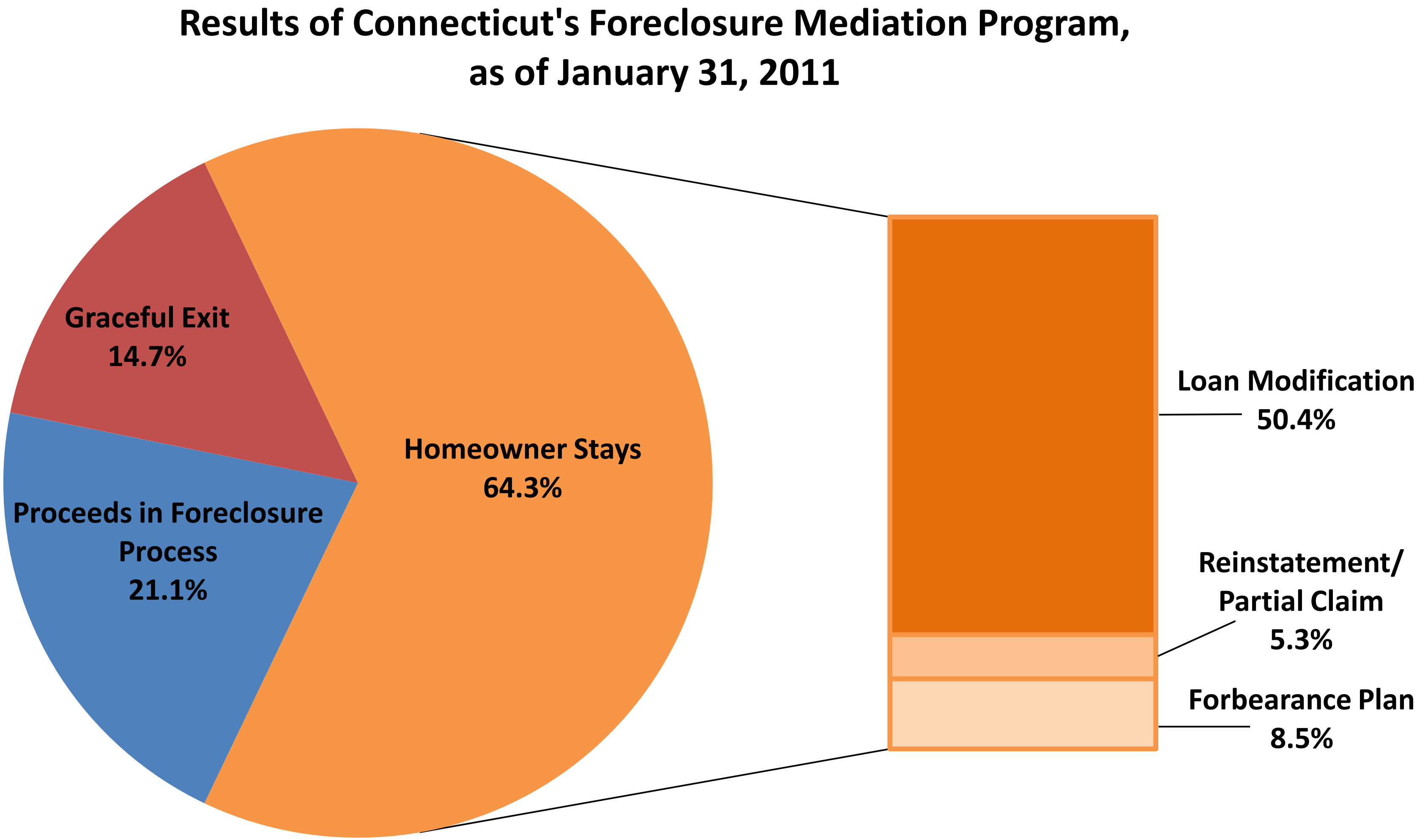
Funding versus incentives: How to fund mediation programs?

- Fees are the most common form of funding.
  - Maine uses a foreclosure filing fee paid in all foreclosures.
  - Lenders pay the cost of mediation in both Rhode Island and Vermont.
  - Fees provide adequate funding to meet the demand for mediation but can provide disincentives for borrower and lender participation.

- Special funds and grants:
  - Connecticut is funded through the State Banking Fund.
  - New Hampshire is funded by a $60,000 grant.
  - Minimizes disincentives but limits the number of mediation sessions a program can support.

- Funding sources and incentive structures need to be correctly aligned to encourage participation while providing adequate resources to sufficiently meet the demand for mediation.

Mediation can be successful at finding alternatives to foreclosure: Connecticut's results



Source: Connecticut Judicial Branch of Statistics

Note:
These results are for the 9,472 cases that completed mediation between July 1, 2008 and January 31, 2011.

Such results help to better understand mediation, but further information is needed.

- Connecticut's results have:
  - Extended the mediation program through 2014.
  - Led other states to develop programs based on successes.
  - Provided researchers with data to develop policy recommendations.

- A number of questions remain, such as:
  - Whom do these programs help and how?
  - What is the default rate of outcomes reached in mediation?
  - What alternatives work best in the long-term?
  - Do these program rely heavily on federal prevention efforts such as HAMP?

- Programs need to develop clear metrics to answer these questions and truly understand how foreclosure mediation helps in preventing foreclosures.

The keys to a successful foreclosure mediation program are…

- **Intervene early in the foreclosure process and complete mediation within a state’s legal framework.**

- **Maximize lender and borrower participation.**

- **Rely on judicial branch, or existing legal infrastructure, when possible to efficiently capitalize on available resources and expertise.**

- **Weigh funding options for mediation programs against incentive structures.**

- **Collect and publicly report results on participation rates and outcomes.**

How do financial assistance programs target troubled homeowners?

Financial assistance programs provide aid directly to borrowers likely to avoid foreclosure.

- These are narrowly focused programs that target a specific group of borrowers who are deemed likely to avoid foreclosure with direct financial assistance.
  - Deal directly with borrowers
  - Target “root causes” of recent foreclosures
    - Negative equity
    - Temporary financial hardships such as unemployment
  - Capitalize on local expertise of state housing finance authorities (HFAs) for administering the programs

- Massachusetts had a program focused on assisting subprime borrowers in 2007 called “HomeSaver.”

- Two types of financial assistance programs have emerged in recent years in New England:
  - Refinancing with bridge loans (Connecticut)
  - Assistance with mortgage payments (Connecticut and Maine)

Connecticut’s Financial Assistance Programs: CT FAMLIES and EMAP

- In 2008 Connecticut passed “An Act Concerning Responsible Lending and Economic Security” which contained:
  - Connecticut Fair Alternative Mortgage Lending Initiative and Education Service (CT FAMLIES)
    - Refinances mortgages to 30-year fixed rate loan.
    - Provides a second mortgage to pay arrearages or reduce principal on underwater mortgages.
    - Homeowners qualify by being, or anticipate becoming, delinquent due to financial hardship and meeting certain income limits.
  - Emergency Mortgage Assistance Program (EMAP)
    - Provides mortgage payment assistance for up to 60 months in form of a 30-year fixed rate mortgage.
    - Pays arrearages to bring borrowers current on their mortgage.
    - Recipients of financial assistance go through an annual recertification process that determines if assistance is still needed.
    - Homeowners qualify by being, or anticipate becoming, delinquent due to financial hardship.
    - Must have a good credit history and the ability to repay loan.

Large amounts of funding are required to target and assist troubled homeowners.

- Funding and results for CT FAMLIES:
  - $50 million in tax exempt bonds from 1980's
    - Allows for looser qualifications relative to current HFA tax exempt bonds.
    - Not restricted to first-time homebuyers, and allows refinance and purchasing of mortgages.
  - Results from July 1, 2008 to January 31, 2011:
    - 114 loans purchased averaging $200,900 , totaling $22.9 million.
    - 30 second mortgages averaging $12,800, totaling $384,000.
    - With 112 loan reservations totaling $22.6 million the program is likely to exhaust its funding in the next year.

- Funding and results for EMAP:
  - Allocated $5 million to start the EMAP program and $2.5 million for debt services on up to $50 million in state bonds
  - Results from July 1, 2008 to January 31, 2011:
    - Assisted 183 homeowners with an average monthly mortgage payments of $940 and an average arrearage of $20,200.
    - An additional 41 homeowners did not require monthly assistance but received funds to bring mortgage current averaging $28,400.

MaineHousing Home Ownership Protection for unEmployment (HOPE)

- **Maine HOPE**
  - Developed by MaineHousing in 2008 to respond to the rise in foreclosures associated with unemployment.
  - Provides mortgage payment assistance for involuntarily unemployed MaineHousing borrowers.
  - Assistance is provided in the form of interest-free loan that is paid back when the home is no longer used as a primary residence.
  - Qualifications:
    - Borrower has a mortgage through MaineHousing programs.
    - Has been approved for state unemployment benefits.
    - Has no more than three late mortgage payments in a twelve month period in past two years.
    - Delinquency is the direct result of involuntary unemployment.
    - Loan-to-value (LTV) <= 100%
    - Exhausted all other homeowner assistance options.

MaineHousing Home Ownership Protection for unEmployment (HOPE)

- Funded through the Housing Opportunities for Maine (HOME) Fund
  - Special fund established 1983 to provide flexible source of funding for housing issues through the real estate transfer tax.
  - Funding levels for HOPE determined year-to-year based upon state and county employment situations.

- The narrower focus of Maine HOPE requires less funding and yields high foreclosure prevention rates:
  - Through 2010 the program has assisted 257 homeowners with average payout $3,150, totaling $809,000 in assistance.
  - Of those homeowners, 232 (90 percent) resumed mortgage payments after assistance.

The keys to a successful financial assistance program are…

- **Intervene prior to delinquency to work with borrowers in better financial situations and to preserve funding.**

- **Design programs to be flexible in responding to the causes of foreclosures.**

- **Capitalize on state housing finance authorities' expertise and resources to administer programs.**

- **Acquire adequate funding to provide the needed assistance.**

Lessons from mediation and assistance programs for effective foreclosure prevention policy:

- **Intervene as early as possible.**
- **Maximize participation and minimize barriers to entry.**
- **Tap existing expertise.**
- **Carefully weigh funding strategies and their shortcomings.**
- **Collect and report clear metrics to accurately gauge a program's performance.**

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