

OHIO OFFERS COMPREHENSIVE RESPONSE TO FORECLOSURE PROBLEM

Chief Justice Thomas J. Moyer

Supreme Court of Ohio

Courts across many states are grappling with an explosion of foreclosure cases, and Ohio is no different. Ohio's courts and legal system play a major role in a statewide effort aimed at helping Ohioans remain in their homes.

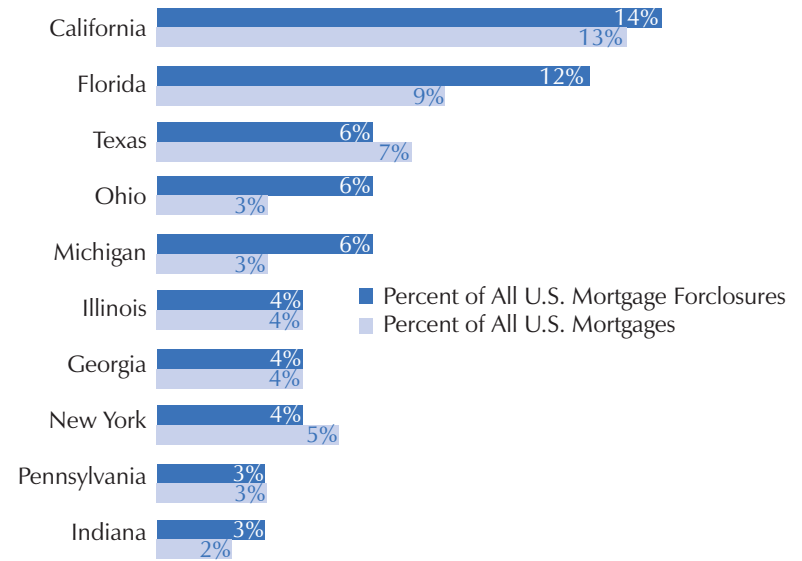
The numbers speak for themselves. Last year, more than 83,000 new foreclosure court filings occurred in Ohio. The number of foreclosure cases reported by Ohio courts in 2007 marked at least the tenth straight annual increase. And while statistics tracked by the Supreme Court of Ohio show that the number of foreclosures in the first quarter of 2008 has decreased slightly versus the same time period in 2007, Ohioans need our help more than ever.

Fortunately for Ohio homeowners faced with the prospect of losing their homes, state agencies, legal-assistance organizations, and grassroots groups have formed an initiative to stem the tide. Led by the Ohio Department of Commerce, the Save the Dream foreclosure-assistance program began as a public-awareness effort with radio and TV advertisements, a Web site, and hotline number and quickly morphed into an extraordinary, multiagency-coordinated, integrated, and comprehensive statewide response.

As one of the specific recommendations of the Ohio Foreclosure Prevention Task Force, which issued a report in September 2007 recommending ways to deal with the growing foreclosure problem in the state, the public-awareness campaign was directed toward advising homeowners to seek help early to increase the chances of avoiding foreclosure.

Save the Dream also includes a legal-assistance component that focuses on two other specific recommendations from the foreclosure task force, both of which heavily involved the Ohio Supreme Court: using court-based mediation programs to resolve foreclosure cases and recruiting and training pro bono attorneys to represent homeowners faced with foreclosure.

States With the Most Housing Mortgage Foreclosures, January 1, 2008



Source: Pew Charitable Trusts

In February, the Ohio Supreme Court announced the creation of a Foreclosure Mediation Program Model designed to provide all common-pleas courts with “best practices” and support for local foreclosure-mediation programs. This 11-step model was designed to allow local courts to modify the mediation program based on their own needs, resources, and communities. With support from the Supreme Court’s Dispute Resolution Section, some courts mediated foreclosure cases as part of a general mediation program, and other courts developed specific mediation programs focused on resolving foreclosure cases. Local courts also worked with the Save Our Homes task forces created by the state treasurer to strengthen and expand mediation programs.

More than 200 pro bono attorneys signed up to serve as mediators in court-based mediation programs, and CLE mediation trainings have been held throughout Ohio.

I joined other state leaders in February in sending a letter to more than 34,000 licensed Ohio attorneys urging them to volunteer their time to this important pro bono initiative to assist low-income homeowners threatened with foreclosure. The Ohio State Bar Association continues to lead the attorney-recruitment effort and developed a volunteer registration process that is maintained on its Web site.

Initially named the Foreclosure Legal Assistance Group, or “FLAG Ohio,” the pro bono initiative has been integrated into Save the Dream as part of the statewide partnership to create one unified program to assist citizens in connecting to available resources.

As one of the first statewide pro bono programs of its kind in the country, the Save the Dream Legal Assistance Initiative is limited to foreclosure cases that have been filed on “owner-occupied” homes, e.g., the homeowner wants to stay in the home. In addition to income eligibility, homeowners also must demonstrate sufficient income is available to sustain payments based upon a new loan workout. Malpractice insurance is provided to all pro bono attorneys through the regional legal-aid programs.

In addition, a new Ohio Rule of Professional Conduct 1.2(c), which was effective February 1, 2007, expressly permits lawyers to limit the scope of representation provided the limitation is reasonable under the circumstances and is communicated to the client. The foreclosure pro bono initiative was designed so volunteer lawyers may choose the extent of representation that best fits their needs and time commitments. Using limited-representation agreements, the foreclosure pro bono initiative provides attorneys with a number of ways to assist homeowners facing foreclosure, including evaluating cases, negotiating mortgage workouts, or acting as trial lawyers.

Lawyers with expertise in foreclosure and consumer law volunteered to assist pro bono lawyers by serving as mentors, providing technical support, and, as necessary, serving as cocounsel. Lawyers who signed up to volunteer participated in free CLE programs focused on foreclosure law and predatory lending practices.

The Ohio State Bar Association also led the initial training effort for more than 350 pro bono attorneys and coordinated the free CLE programs at eight locations throughout the state. Additional support for the CLE training was provided by the Ohio Legal Assistance Foundation, the Attorney General’s Office, and Supreme Court. The two-day comprehensive CLE training included presentations by national foreclosure-law experts from the National Consumer Law Center and was approved for up to 13.5 hours of CLE credit.

A one-day CLE program, specifically designed for Ohio’s foreclosure pro bono initiative, was created by the legal-aid delivery system and members of the private bar. The program was offered free of charge to all volunteers in the foreclosure pro bono program at 17 sites across Ohio throughout May and June. Additional programs were also held later in the year.

As the program developed and included more partners, Ohio’s Save the Dream program gained recognition as a national model, and its pro bono initiative was replicated in states across the country.

An April 2008 report by the Pew Charitable Trusts ranked Ohio’s foreclosure response as one of the three best in the country. *U.S. News and World Report*, in an April 21 story, labeled Ohio’s foreclosure-prevention program as one the country’s most “ambitious,” and other states incorporated many of the elements of Ohio’s comprehensive approach. Mississippi developed a foreclosure-defense project and reviewed Ohio’s Save the Dream legal-assistance initiative as part of the project development.

In the first quarter of 2008, Save the Dream partners received numerous inquiries from out-of-state organizations and programs interested in following Ohio’s model, which is unique in its approach of consolidating all foreclosure-prevention resources into one unified, statewide program.

We in Ohio believe we have a nationally leading program for a fundamentally social problem with a distinctly legal dimension. More important, however, is the help we are providing for Ohioans who are struggling to stay in their homes. Ultimately, we will be judged on how many Ohioans continue to live the American dream. Those are the only numbers that count.

RESOURCES

Ohio State Bar Association. Save the Dream . . . Ohio's Response to the Mortgage Foreclosure Crisis. Web site. <http://www.ohiobar.org/pubs/insideosba/index.asp?articleid=1096>

The PEW Charitable Trusts (2008). *Defaulting on the Dream: States Respond to America's Foreclosure Crisis*. Washington: The PEW Charitable Trusts. http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Subprime_mortgages/defaulting_on_the_dream.pdf

Save the Dream. Web site. <http://www.savethedream.ohio.gov>

Strickland, T., and K. A. Zurz (2007). "Ohio Foreclosure Prevention Task Force, Final Report," September 10. <http://www.com.state.oh.us/admn/pub/FinalReport.pdf>

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