THE FUTURE OF FORECLOSURE MEDIATION

The Nevada Foreclosure Mediation Program, established by law in 2009, is a proven success and is still needed. Efforts should, and will, be made to extend the program.

BY SENATOR BECKY HARRIS AND BARBARA BUCKLEY

Do You Know What the 2015 Legislature Did?

Recently, headlines have claimed the recession is over. The housing market is stable, and the cash investors who bought up foreclosed homes are nearly gone. New home construction is on the rise. There is a feeling that the 2008 recession is behind us and the foreclosure crisis is over. It's time to look forward—and why not? For years, Nevada was number one in the nation for foreclosures and unemployment. We've come a long way since then. The 2015 Nevada Legislature passed Senate Bill 512 (SB 512) based on the belief that the housing crisis has passed; SB 512 abolishes the Nevada Foreclosure Mediation Program on June 30, 2017. Additionally, funding for the program was based on default notices at a time when the number of default notices was at its highest, so that when the number of notice filings declined, the program was left with insufficient operating revenue. The law allows election into the program through the end of 2016, and a program wrap-up during the 2017 Legislative Session. Initially, the bill draft abolished the program in 2015, but during the SB 512 hearings, it was still unclear whether or not the foreclosure crisis had ended. Nevada was second in the nation in foreclosures *during* the 2015 Legislative Session. In a committee hearing, Assemblyman Tyrone Thompson, whose district is in hard-hit North Las Vegas, asked if the committee was "potentially jumping the gun by putting a sunset on this" program.

A Real World Story

Rhonda Johnson* is a 79-year-old widow living on social security. Ten years ago, Rhonda and her husband took out a reverse mortgage. Johnson contacted the mortgage company when her husband passed away, and continued paying property taxes and home insurance, believing she would remain in her home for the rest of her life. Johnson remembers signing a lot of papers 10 years ago, but she didn't learn she had signed a Quit Claim Deed to the property until the servicer told her the property was going into foreclosure. Her name was not on the reverse mortgage. As a result, her home would be foreclosed and sold. Johnson applied to the mortgage servicer to have her mortgage assigned to HUD, so she could remain in her

home. She sent dozens of documents. The servicer responded with offers for a Deed in Lieu, or a short sale, and then a Notice of Default and Election to Sell. Although Johnson was told repeatedly by the servicer that her file was "under review," she feared her home would be sold, so she turned to the Nevada Foreclosure Mediation Program. Four months later, at her foreclosure mediation, the mortgage servicer was still telling Johnson her file was under review and that more documents were needed. However, due to a lack of lender documents, no foreclosure certificate was issued as a result of the mediation. This allowed Johnson to continue living in her home. One year after receiving the Notice of Default, Johnson was informed her mortgage had been assigned to HUD and that she could remain in her home for the rest of her life. Had she not participated in the Foreclosure Mediation Program, Johnson would have lost her property and become homeless at the age of 79.

Statistics Show Nevada's Need Remains High

Nevada began 2016 in second place for the highest foreclosure rate, up from number 17 in 2015.[1] The Las Vegas valley still has the highest rate of underwater borrowers in the country, at 22 percent.[2] It is better than the 71 percent we hit during the crisis' peak in 2012, but for nearly a quarter of southern Nevada's homeowners, the crisis doesn't feel over. "A lot of people you might talk to on the street will probably tell you we're still in a recession," said Stephen Miller, director of the Center for Business and Economic Research at the University of Nevada Las Vegas. "We're still not quite back to where we were."[3] So far this year, foreclosures in Clark County have remained steady, at about 500 a month.[4] As of February 2016, one in every 635 homes in Clark County is in foreclosure: a rate higher than it was four months ago.[5] The number is even higher in North Las Vegas (one in every 447). Another complication hitting the housing market is the number of existing Home Equity Lines of Credit (HELOCs). During the housing boom, HELOCs proliferated in Nevada. Many of these HELOCs are slated to reset during the next four years; this will result in hundreds of homeowners facing large jumps in their payments. Logically, the result will be more defaults for homeowners who are already underwater. Nevada has the highest percentage of HELOC resets: 84 percent of underwater Nevada homes face HELOC resets in the next four years.[6]

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Evolving Developments Require Ongoing Focus

For several years now, big banks and mortgage lenders have been entering into settlements with government entities or states, resulting in waves of mortgage relief for homeowners. In 2012, the big five mortgage lenders (Bank of America, CitiMortgage, JPMorgan Chase, Wells Fargo and GMAC/Ally) entered into the National Mortgage Settlement over shoddy foreclosure practices. It was the largest consumer financial protection settlement in U.S. history.[7] The settlement provided homeowners with billions of dollars in relief, including $17 billion in principal reduction, with $1.5 billion of the settlement just for Nevada. Since the National Mortgage Settlement in 2012, lenders/servicers and government agencies have announced a continuous stream of settlements. Banks and servicers settled with agencies and states for wrongful foreclosures, predatory mortgages, servicing failures and robo-signing. Even non-bank servicers, like Ocwen Loans Servicing, entered into settlement agreements; this money is still working its way through the system, providing some relief to homeowners, along with the ability to restructure their mortgages and remain in their homes.

In many cases, the settlements provided aid for a slew of homeowners, but only those whose mortgages were owned or serviced by the entities involved in the settlements. If a mortgage isn't owned or serviced by a settlement party, no such relief is possible. During the foreclosure crisis, Ed DeMarco, then acting-director of Federal Housing Finance Agency, refused to consider principal reductions on Freddie Mac or Fannie Mae loans. Even after Bank of America settled with Fannie Mae in 2013, paying $10 billion, DeMarco refused to consider principal reductions. HARP (Home Affordable Refinance Program) was the only program for homeowners with Freddie/Fannie mortgages. HARP allows refinancing at lower interest rates, but refinancing a mortgage does not solve the underwater problem so many Nevadans face. Now, however, Freddie Mac and Fannie Mae plan to provide principal reduction relief.[8] It is not clear who will be eligible yet, but during the height of the crisis, two-thirds of Nevada mortgages were Freddie Mac or Fannie Mae.

With settlements still occurring, Freddie Mac and Fannie Mae promising principal reductions, HELOC's resettings pending and the continued high rate of

foreclosures, the Nevada Foreclosure Mediation Program has not outlived its usefulness. It is still a viable tool Nevada homeowners may use to resolve foreclosure issues. It is the only program that encompasses all mortgages, allowing all homeowners to participate. There is no guarantee that homeowners will retain their homes through foreclosure mediation, but the opportunity to sit at a table and work out terms for staying in a home—or even for leaving a home—is a valuable option for financially struggling homeowners.

The Future

Measures to save the Foreclosure Mediation Program during the 2017 Legislative Session are currently under consideration. Options include increasing funding for the program's operation or placing the program's administration with another entity that can share those costs. Operational efficiencies and reduction of administrative costs, such as the implementation and use of a portal for document submission are other options. (The United States Bankruptcy Court uses such a portal in its Mortgage Modification Mediation program). Cost is not an insurmountable barrier to extending the use of a successful, vital and important program. **NL**

*The names of the homeowners have been changed.

1. Nevada Housing Market starts Year as a National Foreclosure Leader, VEGASINC., February 19, 2016: http://vegasinc.com/business/2016/feb/19/nevada-housing-market-starts-year-as-a-foreclosure/?_ga=1.190097963.1624567055.1445544810.
2. *Q+A: Zillow economist explains why L.V. housing market hasn't fully rebounded*, VEGASINC, January 7, 2016: http://vegasinc.com/business/real-estate/2016/jan/07/qa-zillow-economist-explains-why-las-vegas-housing/.
3. Mergerian, Chris, *In Nevada, The Great Recession Still Casts A Long Shadow Over Political Campaigns*, Los Angeles Times, February 19, 2016: http://www.latimes.com/politics/la-na-politics-economic-anxiety-20160219-story.html.
4. There were 527 notices of default in Clark County in January of this year, 500 in February and 343 during the first three weeks of March.
5. http://www.realtytrac.com/statsandtrends/foreclosuretrends/nv/clark-county.
6. http://www.realtytrac.com/news/mortgage-and-finance/heloc-resets-report; See also: http://reversemortgagedaily.com/2015/03/11/realtytrac-heloc-risk-worse-than-anticipated/.
7. http://www.nationalmortgagesettlement.com/about.
8. *Fannie Mae, Freddie Mac finally set to reduce mortgage balances*, March 22, 2016 : http://www.housingwire.com/articles/36565-fannie-mae-freddie-mac-will-finally-reduce-mortgage-balances.

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