

State-By-State Foreclosure Statistics From LSC-Funded Programs

Illinois

- Daniel Lindsay, Supervising Attorney for the Legal Assistance Foundation of Metropolitan Chicago's Home Ownership Preservation Project, told *USA Today* that foreclosure rescue scams, "[Have] become the No. 1 problem in terms of calls we're getting and cases we're filing."

Kentucky

- Kentucky Legal Aid reports experiencing a "major increase" in calls regarding subprime loans in the second half of 2007. The program estimates receiving a fifty percent increase in subprime mortgage related calls. They report getting about 20 calls per week. The program reports handling 88 foreclosure-related cases in 2006 and 113 in 2007, about a 30 percent increase.
- Legal Aid of the Bluegrass reports a substantial increase in foreclosure-related cases in the last few years. The program handled 68 foreclosure-related cases from 2000 to 2003 and 221 from 2004 to 2007, a 225 percent increase. The average number of hours spent per case has also doubled, from an average of 8.5 hours per case from 2000 to 2003 to 16 hours per case from 2004 to 2007.

Maine

- Nan Heald, Executive Director of Pine Tree Legal Assistance, told the *Kennebec Journal* in March 2008 that her program "received an 80 percent increase in requests for help" with foreclosures in 2007, and that requests for assistance in the first two months of 2008 have "increased substantially" above 2007. The program handled 175 foreclosure cases in 2007 and is expecting to handle as many as 300 in 2008.

Massachusetts

- Janet Merrill, an attorney with the Massachusetts Justice Project, told the *Wall Street Journal* in October 2007 that her program receives four to five calls a day from renters facing eviction due to foreclosure.

Missouri

- Janice Franklin, Managing Attorney of Legal Aid of Western Missouri, told the *Joplin Globe* that her office has been seeing an increase in foreclosure cases and that the stories are becoming more devastating. She estimates her program is getting a call per day from a client faced with foreclosure.

Nevada

- Jim Vilt, Directing Attorney for Nevada Legal Services, told Reuters in February 2008 that his program sees about 20 renters a week facing foreclosure.

New Jersey

- Northeast New Jersey Legal Services reports handling a steadily increasing number of foreclosure-related cases in the last few years. They handled 64 in 2005, 83 in 2006 (+30%), and 136 in 2007 (+64%).
- Essex-Newark Legal Services Project reports seeing two clients a week with issues stemming from a subprime mortgage loan.
- Legal Services of Northwest Jersey reports a significant increase in cases involving homeownership issues, the bulk of which involve foreclosure issues. The program handled 43 cases in 2006 and 87 cases in 2007, a more than 100 percent increase. The program opened 17 cases in the first two months of 2008, putting them on track to open more than 100 foreclosure-related cases in 2008, a 15 percent increase.

North Carolina

- Legal Aid of North Carolina reports that since launching a foreclosure prevention project in 2004, the program has saved over 400 homes with equity in excess of \$20 million.

Pennsylvania

- The Philadelphia Legal Assistance Center reports seeing an increase in foreclosure-related cases since 2006, when the program handled 879 cases. In 2007, they handled 948, an eight percent increase. In the first two and a half months of 2008, the program has handled 259 cases, putting them on track to handle more than 1,200 cases for the year, a 27 percent increase from 2007.

Rhode Island

- Rhode Island Legal Services reports a near 100 percent increase in their mortgage foreclosure or delinquency cases, from 50 in 2006 to 97 in 2007.

Tennessee

- David Tarpley, Managing Attorney for the Legal Aid Society of Middle Tennessee and the Cumberland, told *The Tennessean* in December 2007 that his program is opening foreclosure-related cases daily, as opposed to one every four or five months in the past.

Texas

- Texas RioGrande Legal Aid told the *Valley Morning Star* in October 2007 that the program was asked to review 143 foreclosure cases between April and September, a 16 percent increase over the previous six months.

Foreclosure-Related Client Success Stories from LSC-Funded Programs

California

Success Stories from the Legal Aid Foundation of Los Angeles

Pending Litigation: Mrs. E and her husband live in a modest home in Long Beach with their five children and her deaf mother. Two years ago, her husband lost his job and they had trouble paying the mortgage. Desperate and in default, they turned to someone their lender recommended – a person who could help them save their home. This individual presented himself as a mortgage broker and presented them with a plan to save the home. Mrs. E and her husband signed paperwork that they believed was a credit rehabilitation plan. The broker assured them that within a year, their credit score would be high enough to qualify them for a refinance. What they actually signed was the title of their home over to the broker, who sold the property to one of his friends. Together the broker and his friend encumbered the property with an additional \$140,000. Mrs. E came to us when she got a notice of foreclosure and an unlawful detainer. LAFLA advocates obtained a TRO to stop eviction and foreclosure and filed a quiet title action against the unlicensed broker, his company and associates, and the lender on the new loan. We are in the process of completing discovery and have an August trial date.

Challenge to Elder Abuse: LAFLA filed suit against a financial lending institution, two real estate companies, two real estate brokers, and sales staff for an unscrupulous foreclosure transaction which caused an elderly couple to lose title to their home and face eviction. The lawsuit stopped the eminent sale of the house and forced defendants to compensate clients \$150,000.00, the approximate amount of the equity they had in their home at the time of the unlawful transaction. Further, clients were given an additional 8 months to move from their residence.

Protection for Homeowners: LAFLA filed suit on behalf of two homeowners victimized by both licensed and unlicensed financial “advisors” who targeted them and others similarly facing difficulty paying their mortgages. The suit challenged illegal and fraudulent practices of six defendants who conspired to obtain both title and substantial equity from the homeowners. LAFLA negotiated a settlement which restored title to homeowners and enabled them to recover \$82,000.00 in equity after sale of the home. Clients recovered additional \$20,000 from another defendant and judgment for \$321,741.00 against 3 loan brokers.

Unfair Lending Practices: LAFLA filed a lawsuit against a lender and mortgage broker challenging the validity of an unaffordable mortgage loan to a 72 year old widow who is a limited English speaker. The loan was handled entirely in English by telephone, and though the client provided her tax returns to the lender, the lender based the loan on a substantially inflated monthly income. LAFLA negotiated a settlement which waived

\$16,000 in loan fees and penalties, restored \$82,000 in loan payments, and preserved equity in client's home worth \$250,000.

Home Equity Scam: When the homeowner had trouble paying her mortgage, she agreed to transfer title of her home to a foreclosure "consultant" who said he would qualify for a better loan then transfer the title back to her. Instead, the consultant recorded a deed of trust for \$61,000 and attempted to take the home through foreclosure. LAFLA filed suit against the consultant and his associates, first obtaining a temporary restraining order to stop the foreclosure. We settled case just before trial, cancelling the deed of trust and preserving the client's \$100,000 equity in her home.

New Jersey

Success Story from Northeast New Jersey Legal Services

Joan, not her real name, is an 82 year old widow who is taking care of her mentally challenged adult son. Joan is on Social Security but works at a local Rectory to make ends meet. She had lost her home in which she had lived for over thirty years to predatory lenders. However, we were able to get her home back for her.

Initially, Joan had lost her home in a foreclosure action. The home was sold in a Sheriff's Sale for \$350,000 of which \$150,000 went to the foreclosing bank. Joan would have been entitled to petition the court for, and would have received, the balance of \$200,000. However, after a Sheriff's Sale the homeowner has a limited period of time in which they can redeem, pay for the foreclosure, and keep the home. It was during that redemption period, that the predatory lenders descended on Joan and robbed her of her home.

The predatory lenders gave Joan \$165,000; \$150,000 of which was to redeem the home and \$15,000 to make repairs. They gave her only 90 days in which to repay them \$255,000. Having run credit checks on Joan and her family, they knew she would never be able to raise the \$255,000 in 90 days. As part of the transaction, Joan had to deed the home to them and had to pay them \$1,850 per month in Use and Occupancy fees.

At the end of the 90 day period, the predatory lenders began legal action in court to eject Joan from the home. If they had succeeded, they would have been able to sell the home for at least \$500,000 thus reaping a \$335,000 profit on their \$165,000 investment. It was at this point in time that Joan came to see Legal Services.

We immediately went to court and blocked the ejectment on procedural grounds and filed an Answer in which we asserted that the transaction violated the Consumer Fraud Act, Common Law Fraud, Misrepresentation and Unconscionability. We also began a Third-Party Complaint against the two owners of the predatory lender who had actually convinced Joan to enter into the deal. Lastly, a Lis Pendens was filed to prevent the predatory lenders from selling the home before Joan could get it back.

After months and months of court appearances, filing legal papers to block subsequent numerous attempts to force Joan from the home, a very favorable settlement was agreed to thus enabling Joan to regain ownership of her home. Under the settlement, the predatory lenders returned the home to Joan, Joan secured a Reverse Mortgage and used the proceeds to pay the predatory lenders a price which was less than the amount of money they gave her to redeem the home and make the repairs. Lastly, since Joan now has only a Reverse Mortgage and enough monthly income to make the payments under the mortgage, she is unlikely to be foreclosed on again.

Success Story from Northeast New Jersey Legal Services

Francenia Burks is an eighty four year old widow who has resided in her home located in Jersey City, New Jersey since 1976. Ms. Burk's son, Arnold became co owner in 2005. In May of 2005 the Burks were having financial difficulty and were facing a mortgage foreclosure. The Burks turned to Foreclosure Funding .Com for assistance. A representative of Foreclosure Funding .com promised to stop their foreclosure by finding an investor who would pay off the Burks Mortgage, lease the property to them for a year and then sell it back to them. The Burks believed they were receiving a loan.

The Burks executed an equity purchase agreement with Foreclosure Funding .com, received a small amount of cash (\$23,000) and had their mortgage indebtedness in the amount of \$132,692.00 paid by an investor. Months later the Burks realized that their property was conveyed to an investor for about \$350,000. Either the investor or Foreclosure Funding .Com retained the balance of the sales proceeds, effectively stripping away approximately \$195,000 in equity from the Burks while turning them into tenants. NENJLS has learned that there are cases pending throughout the United States involving Foreclosure Funding .Com

The investor later secured a mortgage for the residence and defaulted on the payments. The property is now in foreclosure with a Sheriff's sale scheduled for February 28, 2008. NENJLS filed an emergent application requesting intervention, staying the sale and commencing a third party complaint against the scammers. Due to our intervention, the sheriff sale has now been adjourned until 3/28/08 with a hearing on our application scheduled for 3/14/08.

Success Stories from Legal Services of Northwest Jersey

Theresa A. signed a predatory home improvement loan secured by a second mortgage on her home in connection with new siding and windows 7 years ago. Theresa A. did not understand that a new mortgage had been placed on her home. The family (5 children and two working parents) fell behind in payments and a foreclosure action was started. The family owed less than \$1500 and faced loss of their home and a substantial amount of equity that they had acquired over the years. APLP claims were asserted and a significant interest rate reduction was negotiated making the loan affordable (and non-predatory) and saving the client's home from a Sheriff's Sale.

Frank C. A working family with three children was victimized by particularly egregious predatory refinance loans and faced foreclosure. Frank C. has limited English proficiency and did not understand the documents he signed. LSNWJ filed a counterclaim to the foreclosure alleging predatory loan defenses. The plaintiff filed an application to dismiss Frank C's APLP claims. The court denied the application for summary judgment and the case is awaiting trial. As is often the case, plaintiff is an investment firm (securitizer) that bought the loan as part of a package. Frank C and his family have remained in their home while litigation is pending.

Success Stories from South Jersey Legal Services

1. SJLS' Senior Citizens Advocacy Project (SCAC) defended a foreclosure action against our client based solely on the deficiencies found in the notice of intention to foreclose which was provided by the mortgage company. Under the New Jersey Fair Foreclosure Act, a notice must be provided to the homeowner in writing 30 days prior to foreclosure. The notice must contain certain statutorily prescribed items of information which tell the homeowner what must be done to avoid foreclosure and how to do it, agencies which can help, etc. If the notice does not conform to statutory requirements, the foreclosure cannot continue. Whether this means that a foreclosure suit must be dismissed or that the mortgagee must give a new notice is not yet clear. What is clear is that, lacking a proper notice, the homeowner is not responsible for the foreclosure costs incurred pursuant to the faulty notice. When the Plaintiff filed a Motion to strike our Answer, and we opposed, the Court ordered a new notice be given and our client was able to cure the deficiency within the time required and thus avoided all of the foreclosure fees and costs, which she could not have afforded, and therefore also avoided the necessity of filing Chapter 13 bankruptcy proceedings.

2. The SCAC also filed a Chapter 13 Bankruptcy proceeding on the tenth day following the Sheriff's sale of another client's home. The case illustrated the split in opinion among the bankruptcy judges throughout the State of New Jersey on whether a debtor can cure mortgage arrears in Chapter 13 after the home has been sold at Sheriff's Sale. Unfortunately for our client, we drew the Judge in the Camden Vicinage who answers that question "No" and consequently, granted the mortgage company's motion for relief from the automatic stay to complete the foreclosure sale. The SCAC had ten days within which to appeal this Order and simultaneously convince the Bankruptcy Judge to stay the effect of the Order pending appeal. The SCAC filed the requisite short-notice application and formal motion papers and obtained a hearing on the stay from the Bankruptcy Judge. Prior to the hearing, however, the purchaser at the Sheriff's Sale withdrew its bid, voiding the Sheriff's Sale and removing the impediment to the continuation of the debtor's Chapter 13 Plan.

3. The SCAC reached a successful settlement in a mortgage foreclosure action which involved a home improvement retail installment contract which contained a mandatory arbitration provision, which purported to permit the lender to foreclose its mortgage in court, while forcing our client to submit all her claims to arbitration in an unknown forum at an unspecified cost. Unfortunately, the vast majority of reported

decisions supported such clauses, including a Third Circuit decision involving the same lender and the same clause. In addition, the best case for our client was a Sixth Circuit decision which had been accepted for Cert. by the U.S. Supreme Ct., again with the same lender and the same arbitration clause. Fortunately, none of the reported cases had arisen in a foreclosure context, so there was still room to distinguish the Third Circuit precedent (and now the US Supreme Ct. case which has overruled the 6th Circuit). By aggressively defending this issue and aggressively pursuing discovery, we persuaded the lender to agree to remove its lien, with our client owing nothing further, having paid only a small fraction of the purchase price of the repairs.

4. The SCAC filed a Chapter 13 bankruptcy petition virtually on the eve of the entry of the final judgment in a tax foreclosure proceeding. Unlike a mortgage foreclosure, which requires a post-judgment sheriff's sale, a tax foreclosure judgment most often vests title in the holder of the tax lien, allowing immediate eviction proceedings. The plan filed in this Chapter 13 was somewhat unusual, proposing the sale of the premises to pay off the tax lien. Nevertheless, it enabled our client both to retain possession while she searched for alternative housing and to recapture from the sale proceeds whatever equity remained after the tax lien had been satisfied.

5. In another case involving a mortgage foreclosure involving home repair fraud, the SCAC was able to obtain a very favorable settlement for our client, under the terms of which over 95% of the amount due was waived by the mortgage company, which also agreed to cancel this mortgage as soon as the remaining 5% had been paid. This is a very clear example of a case where the client would undoubtedly have lost her home if it were not for programs like the SCAC.

6. In another matter previously reported, the SCAC issued a rescission notice on behalf of a client who signed a mortgage in connection with a loan which violated the Truth In Lending Act provisions. The mortgagee voluntarily discharged the mortgage rather than face litigation.

7. SJLS' Anti-Predatory Lending Project represented a disabled elderly client who lives in a home she purchased in 1974 for \$24,000. Our client was diagnosed with paranoid schizophrenia and has been institutionalized several times against her will. She has been and is currently on medication that impairs her ability to concentrate and understand. She has been a victim of telemarketers who obtained her information fraudulently and caused her to send thousands of dollars as a winner of various international lotteries. Likewise, a mortgage lender solicited our client via the telephone, whose disability was audibly apparent on the telephone. Our client cannot speak without a panting-like sound, an uncontrollable side-effect of the anti-psychotic medication she is taking and, more significantly, she suffers from delusional thinking and verbalizes same. Having been induced into her second mortgage, it was "flipped" and refinanced home four times. In less than one year alone, various lenders flipped client into three unnecessary and exorbitantly expensive refinance loans, stripping well over \$50,000 in equity from her home in the process. All four loans increased client's debt without providing her with a reasonable tangible net benefit. The inflated and repetitive

fees, kickbacks and ever escalating interest rates were calculated to lead to foreclosure. Furthermore, the lenders based their refinancings on income and asset information that they fabricated or inflated. All of the lenders knew that their loans were unaffordable as client disclosed that she was retired and no longer working and that her sole source of income was her Social Security/SSI. All of the loan closings took place at the kitchen table of our client's tiny one bedroom home, which bore evidence of our client's mental disability. SJLS filed a complaint against all the lenders and defended the foreclosure. As a result, the lenders settled by giving our client money (approximately \$48,000) which she used to help pay off the existing mortgage and enter into a reverse mortgage. Together with a court appointed guardian ad litem and SJLS social worker, we made sure she was taking the correct medication and made sure her bills were being handled. She should be able to live out her days in her home as she desires.

8. SJLS represented a middle aged client who received a Notice of Intent to Foreclose from Wells Fargo Bank. The client had a good job in the casino industry and had gotten behind in his mortgage payments when he became disabled due to severe medical problems from AIDS. He did not want to lose his house but was almost 4 months behind when he came to the office. He recently had become eligible for Social Security Disability which would cover the current monthly mortgage. On this client's behalf, SJLS negotiated with the Bank and client was allowed to put all of his past due payments at the end of his loan. SJLS reviewed all of the documents provided by the bank with the client. The foreclosure action was stopped and client did not have to pay any additional money for the loan to be re-negotiated.

9. SJLS represented an elderly lady who had been sued for foreclosure on her home equity loan. Our client had borrowed to pay off credit cards and was then not able to make the payments on that loan. She was in good health and did not want to lose her home. We assisted the client by setting up debt counseling and making arrangements for this client to receive a reverse mortgage. We negotiated payments of the debts with the creditors. The reverse mortgage paid off the home equity loan, other creditor, and allowed our client to make some repairs on the home. She was able to continue to live in her home debt free and the foreclosure was stopped.

10. SJLS represented a family who was sued for foreclosure by USDA Rural Development (formally Farmer's Home). We filed an Answer on the grounds that the mortgage was not being properly serviced. The primary income at the time we represented them was Social Security Disability. The Mortgage amount was to be adjusted depending on the family's monthly income. The amount of income had changed frequently and the mortgage payment amount had not been properly adjusted. The trial judge adjourned the case for six months so that the calculations could be completed by the government. The case was eventually dismissed by the Court.

Ohio

Success Story from the Legal Aid Society of Cleveland
Pro Bono Attorneys Save Seniors' Home from Foreclosure

The Fall 2007 issue of the Legal Aid Society of Cleveland's (LASCLEV) Poetic Justice newsletter features a story of how two pro bono attorneys helped LASCLEV clients save their home from foreclosure. Here is their story.

From left to right: pro bono attorneys Tamara L. Karel (standing) and Jayne E. Juvan helped Mr. and Mrs. Wolf, clients of the Legal Aid Society of Cleveland, save their home from foreclosure. From left to right: pro bono attorneys Tamara L. Karel (standing) and Jayne E. Juvan helped Mr. and Mrs. Wolf, clients of the Legal Aid Society of Cleveland, save their home from foreclosure.

Despite making their mortgage payment for more than 30 years, Mr. and Mrs. Wolf received notice that their home was being foreclosed. The news came as Ms. Wolf was battling breast cancer, and Mr. Wolfe was experiencing serious medical conditions himself. The Wolf family knew something was not right prior to the foreclosure notice: they kept receiving bills for an account they believed was paid in full. Mr. Wolf had a feeling that a serious billing mistake had been made, and found the original promissory note from 1975 which confirmed the note's maturity date. The Wolf family not only fulfilled the obligations of the note and was no longer beholden to pay, but also they continued to pay even after their final payment date. Ms. Wolf, already shouldering the burden of being sick with breast cancer, now shouldered the burden of finding money to keep what she believed was rightfully theirs. She said, "I felt very uneasy and nervous. I felt we were going to lose our home." Mr. and Mrs. Wolf called Legal Aid.

The couple met with pro bono attorneys Jayne Juvan and Tamara Karel, both of Benesch Friedlander Coplan and Arnoff LLP, and Craig Moore, formally with Benesch, who took the case pro bono through Legal Aid's Volunteer Lawyers Program. Juvan, Karel and Moore learned of an accounting error on the Wolf's mortgage. Due to an oversight, the error went unnoticed. The Wolfs worked closely with the attorneys who filed the foreclosure action, and obtained the correction. Because they had strong and high quality legal representation in their corner who discovered the error, the Wolf family was able to keep their home.

The Wolf case is one that Juvan and Karel hold near and dear to their hearts. Both speak of the positive and empowering impact it had on them as people and as attorneys. "The elation that I felt when Jayne and I settled is a memory that I will never forget," says Tamara Karel.

Echoing similar sentiments, Juvan said, "I strongly believe that if I reflect back on my life that years from now, this case will be a case I always remember because of its profound impact on me." Since ending the case, Ms. Wolf is now cancer free and is doing what she loves most, teaching. In speaking about Juvan, Karel and Moore's work on the case, Ms. Wolf says, "I felt elated. I had felt like the world was on my shoulders. When I got that call [we settled the case], I felt like a new woman. It helped give me confidence and helped me to fight breast cancer."