## *FORECLOSURE PROCESS TASK FORCE*

***RECOMMENDATIONS***

PURSUANT TO SENATE MEMORIAL 11 AND HOUSE MEMORIAL 15:

2014 REGULAR SESSION OF THE NEW MEXICO LEGISLATURE

Sponsored by New Mexico Senator Michael Padilla (District 14)

*Submitted by*

*United South Broadway Corporation*

*Task Force Convener*

*November 13, 2014*

**BACKGROUND:**  During the 2014 regular session of the New Mexico Legislature, both chambers passed identical Memorials establishing the Foreclosure Process Task Force (See Appendix). In light of the mortgage meltdown devastating New Mexican families and neighborhoods, the legislature requested that United South Broadway Corporation convene a Task Force to recommend 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 foreclosures.

The Task Force is composed of diverse stakeholders representing a range of interests and experiences. Task Force members represent homeowners, community banks, housing counselors who assist families struggling to keep their homes, local mortgage lenders and trade associations, mortgage loan servicers, NM Land Title Association, NM Mortgage Finance Authority and local government representatives. Task Force membership also includes attorneys who represent homeowners and one who represents large national banks, a settlement facilitator for the 2nd Judicial District, and a recently retired District Court Chief Justice.

The Task Force met every three weeks for six months in Albuquerque. Members traveled from Las Cruces, Alamogordo, Raton, Santa Fe, and Belen to participate, dedicating time and resources to improve the foreclosure process for the state's homeowners who hit a financial bump in the road.

The report reflects general consensus reached over months of deliberation that at times included vigorous debate. Small community lenders and servicers are exempt from the state mortgage servicing standards recommended in this report. The Task Force found that New Mexico-based lenders are not the problem because they are rooted in their communities and they communicate directly with their customers. State standards are necessary because large out-of-state national banks own the majority of loans in our state. However, they have no personnel or decision-makers in New Mexico who handle loss mitigation and are accessible to homeowners trying to save their homes. Homeowners are rarely able to talk to anyone with authority to help them within these large out-of-state institutions.

A major focus of the Task Force 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. Taken as a whole, these recommendations offer a significant step toward improving communication between homeowners and servicers, while at the same time leveling the playing field for homeowners trying to negotiate with large out-of-state financial institutions.

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

The right to a “day in court” before losing one’s home to foreclosure is a longstanding right of New Mexicans. A “day in court” increases the likelihood that homeowners can save their homes, gives them a chance to find assistance from a housing counselor and obtain a loan modification, and reduces occurrences of the type of unfair practices that resulted in multi-billion settlements between the states’ Attorneys General and large national banks.

Recommendation: A substantial majority of the Task Force recommends that the New Mexico Legislature impose a mandate for judicial oversight of foreclosure with due process protections for individual homeowners, whether their home loan is a traditional mortgage or a deed of trust.

II. REDUCE THE TIME OF ENFORCEABILITY OF DEFICIENCY JUDGMENTS TO FOUR YEARS

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 for up to 14 years. These 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. Deficiency judgments attach to any real estate transaction which might occur as long as they are outstanding, and must be paid before a consumer can purchase a home in the future. Reducing the effective time of deficiency judgments to four years will encourage both individual and real estate market recovery. Four years mirrors industry timelines for credit restoration.

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.

III. ENACT NEW MEXICO MORTGAGE SERVCING STANDARDS

Barriers for homeowners trying to save their homes continue to plague the mortgage servicing process. Despite federal standards aimed at eliminating unfair servicing practices, families continue to lose their homes due to the same improprieties that led to multi-billion dollar settlements between the states and major banks. The Task Force recommends state standards to fill gaps in federal protections and provide local oversight. State standards will increase the likelihood that homeowners get a fair chance to avoid foreclosure. New Mexico-based small servicers should be exempt from these standards.

Recommendation: The Task force recommends that the Legislature impose mortgage servicing standards in order to improve borrower-lender communication and provide homeowners with better information about options to foreclosure. Proposed state standards include the following requirements: (1) servicers must offer eligible borrowers loss mitigation if the servicer has a loss mitigation program, and must provide a knowledgeable person for the homeowner to speak with about loss mitigation options; (2) dual tracking and robo-signing are prohibited; (3) local governments should be notified when foreclosures occur and informed who owns the property in order to eliminate vacant houses that are not maintained and become eyesores; (5) require standardized notice and outreach to borrowers regarding status of delinquent loans, loss mitigation options, and available housing and foreclosure counseling resources; (6) require services to respond to homeowner applications for loan modifications within 30 days; (7) if a court finds that there has been a material violation of the servicing standards by the servicer, the court may in its discretion halt the foreclosure process until the servicer complies with the requirements of the law.

IV. EXTEND MEDIATION PROGRAM CURRENTLY OPERATING IN JUDICIAL DISTRICTS 2 AND 13.

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 to work out an alternative to foreclosure. Settlement facilitation is designed to assist homeowners to retain the home when possible, or to facilitate and expedite loss mitigation options such as cash for keys, deed in lieu of foreclosure, short sale, or an extended occupancy option. In light of communication barriers facing homeowners trying to negotiate with large out-of-state financial institutions, mediation provides a unique forum to shorten the time to resolution with in-person meetings on relatively neutral ground.

The Task Force recommends that the mediation program includes two additional pre-foreclosure options, contingent upon agreement by the parties. These options would reduce the number of homes that become vacant or abandoned: (1) fast track judicial foreclosure process for properties that are vacant and abandoned with proof that owner has no intent to return; and (2) extended occupancy program allowing homeowners to "stay and pay" through a deed-for-lease that could also pay down the mortgage loan.

 Recommendation: Mandate a face-to-face settlement facilitation conference for all new residential foreclosure actions involving owner-occupants based on models currently operating in 2nd and 13th Judicial Districts. Owner-occupants are notified of the mediation opportunity 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. The settlement facilitation is scheduled at the orientation and takes place within 60 days of the initial court order. If the matter is settled at facilitation, the case is dismissed. If not, it goes directly to litigation. During the conference, owner occupants and their housing counselors and legal representatives meet with lenders/servicers to explore alternatives to foreclosure, including an extended occupancy program wherein the homeowner and lender agree to a “deed for lease” for a specified period of time (similar to a program in US Representative Michelle Lujan Grisham’s proposed Keeping Families Home Act of 2014, HB5396), and a “fast track” expedited judicial foreclosure process where a property is determined vacant and there is proof the homeowner does not intend to return.

*Funding*: Current funding for the 18 month pilot programs based in the 2nd and 13th Judicial Districts is a joint project of the Administrative Office of the Courts and the Office of the New Mexico Attorney General. Funds were generated by the national mortgage settlement. New funding will be necessary to expand to a statewide program. Over 30 states have court run mediation programs, with most requiring a lender to pay a small fee when filing the litigation. Others provide a fee-sharing model; some are funded through a combination of state and federal funds. The Task Force recommends maintaining program resources in the 1st, 2nd, 3rd and 13th Judicial Districts, while extending the resources statewide via video links and/or a circuit-riding provision.

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

Pre-purchase counseling significantly lowers delinquency and foreclosure rates.[[1]](#footnote-1) Homebuyers often do not understand the legal rights and responsibilities to which they are bound by a mortgage, and are unprepared for a financial crisis that affects their ability to keep up with payments. An effective homebuyer education program will provide knowledge and tools that support successful homeownership. The New Mexico Mortgage Finance Authority could be the fiscal agent for the program and HUD-certified housing counseling agencies could develop and deliver the program.

Recommendation: The Task Force recommends funding 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.)

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

Vacant homes blight neighborhoods, drag down neighboring home values, and slow New Mexico's economic recovery. Homeowners who could have qualified for loan modifications or short sales frequently are denied and forced out, while properties sit vacant, sometimes for years. Poor communication from lenders is a leading reason for homeowners to vacate their homes before foreclosure. Some national lenders or their attorneys advise homeowners to vacate their properties if they are merely behind on payments; others send delinquency notices threatening speedy eviction. Borrowers often don't know about alternatives to foreclosure, such as loan modifications or short sales. In some cases, lenders initiate foreclosure but then fail to pursue the process and walk away.

This is a multifaceted problem calling for multi-faceted solutions. The recommendations in this report work together to reduce the number of vacant properties resulting from foreclosure, primarily by making it more likely homeowners have the information they need to keep their homes when feasible. In addition, the following reforms recommended in previous sections of this document would ameliorate the vacancy problem:

* Notice of date of foreclosure sale to homeowners when the initial sale date is postponed or rescheduled.
* State mortgage servicing standards that specify the responsibilities of a "single point of contact" to assist the homeowner with loss mitigation.
* Notice to local governments when a foreclosure has occurred, informing them who owns the vacant property.
* Mediation options: extended occupancy to avoid vacancy and an expedited judicial foreclosure process when property is abandoned with proof the homeowner does not intend to return.

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

Thus far, the Task Force has been funded entirely by United South Broadway with a grant from the Marguerite Casey Foundation. In order to continue the work, state support is needed. The Task Force has spent six months tackling the complex issues surrounding foreclosure, but there is still much to be done in order to create a fair and accessible foreclosure process. To that end, the Task Force and its sponsor, Senator Michael Padilla, would like to hold meetings around the state to collect input from geographically diverse homeowners and mortgage lenders.

***APPENDIX***

SENATE MEMORIAL 11

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY Michael Padilla

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.

WHEREAS, many New Mexico families and communities are still reeling from the foreclosure crisis that began in 2007 with the nation's worst financial crisis since the Great Depression; and

WHEREAS, eleven thousand seven hundred forty-seven home loans in New Mexico, which constitute four and one-half percent of total home loans in the state, were delinquent sixty days or more at the end of September 2013; and

WHEREAS, during the first three quarters of 2013, five thousand eight hundred ninety-eight New Mexico homeowners faced foreclosure, and this foreclosure activity 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

WHEREAS, when family homes go into foreclosure, the negative effects extend beyond individual families to the economic vitality of New Mexico because foreclosures decrease the value of surrounding properties; and

WHEREAS, statewide lost home equity due to foreclosures in 2009 through 2012 was two billion one hundred million dollars ($2,100,000,000); and

WHEREAS, this estimate does not account for the direct costs to taxpayers, which the United States congress joint economic committee estimated to be nineteen thousand two hundred twenty-nine dollars ($19,229) per abandoned foreclosed property; and

WHEREAS, children are the invisible victims of the foreclosure crisis, as they face family instability and the loss of their homes, as well as the risk of falling behind academically when they are forced to switch neighborhoods and schools; and

WHEREAS, between 2004 and 2007, seventeen thousand New Mexico children lived in homes that were either foreclosed or seriously delinquent; and

WHEREAS, lax underwriting and abusive lending practices in parts of the subprime mortgage market, hand-in-hand with a federal regulatory system that lagged behind structural changes

in the industry, contributed to the housing crisis the nation is facing; and

WHEREAS, as Ben Bernanke, chairman of the board of governors of the federal reserve system, wrote on July 14, 2008, "Although the high rate of delinquency has a number of causes, it seems clear that unfair or deceptive acts and practices by lenders resulted in the extension of many loans, particularly high-cost loans, that were inappropriate or misled the borrower"; and

WHEREAS, Brian Moynihan, chief executive officer of Bank of America, testified before the congressional financial crisis inquiry commission that, "Over the course of this crisis, we as

an industry caused a lot of damage. Never has it been clearer how mistakes made by financial companies can affect Main street, and we need to learn the lessons of the past few years"; and

WHEREAS, New Mexicans continue to lose their homes needlessly because of improper foreclosures, and New Mexico is part of a multibillion dollar agreement with several of the nation's largest banks to settle claims that the banks improperly foreclosed on homeowners with 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 loan servicer; robo-signing documents without reviewing them; 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; and

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 Home Loan Protection Act provides critical due process rights for a borrower with either a traditional mortgage or a deed of trust, including the right to a day in court before losing one's home; and

WHEREAS, the Home Loan Protection Act protects all homeowners from losing their homes to sale by a trustee or lender before the adjudication of a default or based on fraudulent or inaccurate documents or subject to other pervasive abuses as described in this memorial;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE 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; and

BE IT FURTHER RESOLVED that the United South Broadway corporation be requested to convene a task force to study the foreclosure process in New Mexico and that includes itself and representatives from at least the following organizations:

A. Tierra del Sol Housing Corporation, with offices in Anthony and Las Cruces;

B. the independent living resource center, serving the housing needs of people with disabilities;

C. the senior citizens law office;

D. the New Mexico mortgage finance authority;

E. representatives of veterans' organizations;

F. either the New Mexico municipal league or the New Mexico association of counties;

G. the independent community bankers association of New Mexico or the New Mexico mortgage lenders association;

H. the New Mexico land title association; and

I. the consumer protection division of the office of the attorney general; and

BE IT FURTHER RESOLVED that the memberships include:

A. a housing counselor with a minimum of ten years' experience counseling homeowners in person;

B. a homeowner;

C. a member of the New Mexico bar from the New Mexico foreclosure defense group; and

D. a retired member of the judiciary; and

BE IT FURTHER RESOLVED that the task force:

A. recommend 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 threatened with foreclosure; and

B. develop 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; and

BE IT FURTHER RESOLVED that the United South Broadway BE IT FURTHER RESOLVED that the United South Broadway corporation's fair lending center coordinate and staff the task force; and

BE IT FURTHER RESOLVED that the task force report its findings and recommendations to the appropriate interim committees by November 1, 2014 and to the house and senate judiciary committees by January 21, 2015; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the United South Broadway corporation November 1, 2014 and to the house and senate judiciary committees by January 21, 2015; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the United South Broadway corporation.

1. 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-develoopment/publications/special-reports. [↑](#footnote-ref-1)