SAVING HOMES, BUILDING UNDERSTANDING:

An Evaluation of the Eight Foreclosure Mediation Programs Funded by the Illinois Attorney General

Executive Summary
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This evaluation was conducted by Resolution Systems Institute (RSI). Funding for the evaluation and the mediation programs it studied was provided by the Office of Illinois Attorney General Lisa M. Madigan with funds received through the National Mortgage Settlement.

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ACKNOWLEDGEMENTS

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I would be remiss if I didn’t acknowledge the judges, who used the early data collected across the state and the recommendations from the 2015 evaluation to improve their foreclosure mediation programs.

Deep thanks go to the program coordinators – current and past – for each program involved in the study. This study would not have been possible without their efforts to collect comprehensive data. I am grateful to them for walking me through their program processes and answering all my questions.

I would also like to thank Susan Yates and Shawn Davis, my colleague and former colleague at RSI, as well as program administrators at RSI’s partner grantees, Stacey Tutt at the University of Illinois College of Law Community Preservation Clinic and Missy Greathouse at the Dispute Resolution Institute, Inc., for their cooperation and collaboration in developing the evaluation plan. I could not have designed the evaluation without their expertise. Shawn Davis’ knowledge of the intricacies of foreclosure and the mediation programs was particularly valuable. Thanks go to RSI Associate Director Eric Slepak-Cherney for his suggested improvements. Finally, thank you to RSI Administrator Bridget Crawford for her patient and excellent copyediting.

RESOLUTION SYSTEMS INSTITUTE

Formed in 1995, Chicago-based Resolution Systems Institute is a non-profit organization whose mission is to strengthen access to justice by enhancing court alternative dispute resolution systems through expertise in program development, research, resources, program administration and training.

Founded on the premise that collecting and disseminating reliable information about court ADR can raise the quality of court ADR, RSI has assisted state and federal courts with the design, administration, monitoring, and evaluation of mediation programs, as well as training ADR neutrals. Courts and individuals across the country call on RSI for advice and make use of RSI’s Court ADR Resource Center.

With a multi-year grant from the Office of Illinois Attorney General Lisa M. Madigan, RSI has fully implemented the advice we have offered for two decades: Seek stakeholder input. Set goals. Design clear systems. Train skilled neutrals. Collect uniform data. Share information with stakeholders. Assess programs with an expert eye. Never stop working to improve court ADR programs.

For more information about RSI, see AboutRSI.org.
EXECUTIVE SUMMARY

In 2013, the Office of the Illinois Attorney General granted funds to Dispute Resolution Institute, Inc., Resolution Systems Institute and the University of Illinois School of Law to create and implement eleven court-referred foreclosure mediation programs in ten judicial circuits throughout the state. Eight of those programs were put in place between 2013 and 2016. Grant funding ended for all programs by August 31, 2018.

This evaluation is funded by the same grant. It studies the programs from their start dates through the end of 2017.

PROGRAM SITES

Administered by Resolution Systems Institute:
- The 16th Judicial Circuit (Kane County), serving a large suburban Chicago community
- The 17th Judicial Circuit (Winnebago and Boone counties), serving Rockford, Illinois’ third largest city
- The 19th Judicial Circuit (Lake County), serving a large suburban Chicago community

Administered by University of Illinois School of Law:
- The 6th Judicial Circuit (Champaign County), serving a university town and a largely rural county
- The 6th Judicial Circuit (Macon County), serving a largely rural county
- The 21st Judicial Circuit (Kankakee County), serving a semi-suburban community

Administered by Dispute Resolution Institute:
- The 1st Judicial Circuit, serving nine largely rural counties in far-southern Illinois
- The 20th Judicial Circuit (St. Clair County only), serving a suburban St. Louis community

FORECLOSURE MEDIATION PROCESS

The details of the process vary from program to program, but the essentials are the same. Homeowners must have a foreclosure case filed against them in order to participate in the foreclosure mediation programs. If the homeowners enter the program, their lender must participate as long as the homeowners stay in the program. The main task of the mediation program is to determine whether the homeowners can retain their home. Retention is typically accomplished by establishing a new mortgage by modifying the loan in terms that are acceptable to both the lender and the homeowners and that will permit the homeowners to remain in their home. If this is not possible, the parties can discuss graceful exit options, such as a deed in lieu of foreclosure or financial assistance with a move out of the home, which allow the homeowners to transition out of their home while avoiding a foreclosure ruling against them.
The first step after entering the program is for the homeowners to put together a loan modification packet and submit it to their lender. This packet contains the financial information and documents that their lender needs to make a decision about whether to offer a loan modification to the homeowners. Once the homeowners submit the packet, their lender determines whether any further documents are needed and requests that the homeowners submit them. Once the lender has all the documents, it determines whether the homeowners qualify for a loan modification. Then, the lender is ready to communicate its decision to the homeowners. Generally, this is when mediation takes place; although in three programs, this communication occurs in pre-mediation, and mediation is seldom used; though, the discussion is generally the same.

The most intense work with the homeowners and their lender should happen prior to mediation, with the facilitation of the document exchange. Sometimes this process continues into mediation, but that is not as effective as completing the exchange prior to mediation. This need for intensive work prior to mediation is one way in which foreclosure mediation programs differ from other types of mediation. Another difference is the constraints placed on what agreements the parties can reach. Unlike mediation for other case types, in which the parties can develop a wide range of terms on which they can agree, the possible outcomes of foreclosure mediation are limited by the homeowners’ financial situation and the investor guidelines placed on lenders regarding what they can offer the homeowners.

**Purpose of Foreclosure Mediation**

While each of the circuits had subtly different rationales for creating their programs, the judges in each felt they needed to provide homeowners with the opportunity to save their home that they did not appear to have with the normal process. They saw a large number of unrepresented homeowners coming before the bench saying they had been trying to get a loan modification, but could not communicate effectively with their lender. The judges whom the evaluator interviewed shared similar stories of homeowner struggles. Commonly, lenders did not have a designated person with whom the homeowners could speak, the information given to the homeowners by different lender representatives was contradictory and inconsistent, lenders were losing homeowner documents, and courts thought the process was taking too long.

**PROGRAM MODELS**

The Illinois courts have a semi-autonomous structure, meaning that the individual circuits have latitude in how they design and administer their programs, but their local court rules for mediation programs must comport with Illinois Supreme Court Rule 99.1 and be approved by the Administrative Office of the Illinois Courts. This structure has resulted in the circuits adopting different foreclosure mediation service delivery models.

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1 The National Mortgage Settlement with the five largest lenders requires that the lenders supply a single point of contact to homeowners as well. See: [http://www.nationalmortgagesettlement.com/about](http://www.nationalmortgagesettlement.com/about), last accessed on October 31, 2018.
The programs used different methods to recruit homeowners and had different requirements for participation. Based on these differences, they can be categorized into three program types:

- **One-Step Entry:** The 1st Circuit, 6th Circuit (Champaign), 6th Circuit (Macon), 20th Circuit (current) and 21st Circuit programs require the lender to schedule a pre-mediation session before filing the foreclosure. The homeowners are then instructed that they must appear for the scheduled session date, as they would be for any court hearing. Once they appear, they have entered the program.

- **Multi-Step Entry:** The 17th Circuit, 19th Circuit (current) and 20th Circuit (through September 2017) programs tell the homeowners that they have the opportunity to participate in mediation. The notification of mediation also includes the two or more steps they need to take in order to do so. For purposes of this evaluation, the 20th Circuit program is considered to be a multi-step entry program because its move to a one-step entry program type occurred only three months before the end of the evaluation period (January 2014 – December 2017).

- **Hybrid:** The 16th Circuit and 19th Circuit (through February 2016) programs instruct the homeowners in their notification of mediation that they must contact the program coordinator for an initial conference. It also tells them what else they have to do in order to participate.

Although the programs employ different service delivery models, all consist of two different phases:

1. A pre-mediation phase that focuses on helping the homeowners submit a loan modification packet and facilitating the exchange of documents necessary for their lender to complete its review of the packet
2. A mediation phase in which a neutral helps the homeowners and their lender to discuss, and possibly agree to, options that allow the homeowners to avoid foreclosure. (In three programs, this phase is not considered to be mediation, although the process is similar. They, instead, see this phase as facilitated negotiation.)

The two-phase process is meant to provide the most effective means for helping the homeowners and their lender to successfully conclude their case. The first phase helps the homeowners understand what they need to do and what is possible, then works with them until their lender reviews the packet. The second is designed to make communication between the lender and the homeowners most effective.

**FINDINGS & RECOMMENDATIONS**

Across the board, the programs successfully fulfilled the grant’s goal of offering homeowners the opportunity to save their home. Each program also provided a process that helped homeowners to...

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2 These programs call themselves mandatory; however, they are voluntary because homeowners can decide not to participate without suffering any negative consequences for that decision.

3 Because the 19th Circuit program switched program type mid-way through the evaluation period, when comparison was made by program type, its pre-February 2016 performance was included with the multi-step entry programs and its post-switch performance included with the hybrid programs.
understand what their situation was and what their options were for their home. They helped homeowners to do what they needed to do in order to have their lender review their financial information, and the programs facilitated communication between the homeowners and their lender so that they might come to an agreement that allowed the homeowners to keep their home or to exit it gracefully. The programs even more successfully achieved the courts’ goal of changing the homeowners’ experience with the foreclosure process to one in which they have some control and are treated fairly and with respect. They did all of this while moving the cases through the programs, on average, in about four months.

Though each program provided these services, they did so to a different degree. Some brought more homeowners into the program, thus giving more of them the opportunity to save their home. Some provided homeowners with more services, helping them to understand their situation better and to more successfully navigate the document exchange process. Some programs were more time-efficient than others. Their differences and the reasons for them point to ways in which programs can be designed to be most effective.

**Program Performance**

**The programs helped almost 5,000 homeowners**

From 2014 through 2017, the combined programs helped 4,766 homeowners facing foreclosure. This is 23% of homeowners facing foreclosure in the counties the programs served.

<table>
<thead>
<tr>
<th>Program</th>
<th>Homeowners Helped</th>
<th>Foreclosures Avoided</th>
<th>Homes Saved</th>
<th>Graceful Exits</th>
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<td>66</td>
<td>55</td>
<td>11</td>
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<tr>
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<td>269</td>
<td>99</td>
<td>73</td>
<td>26</td>
</tr>
<tr>
<td>6th (Macon)</td>
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<tr>
<td>21st</td>
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<td>163</td>
<td>51</td>
</tr>
<tr>
<td>TOTAL</td>
<td>4,766</td>
<td>1,271</td>
<td>1,100</td>
<td>171</td>
</tr>
</tbody>
</table>

**The programs saved 1,100 homes**

The programs helped 1,271 homeowners to avoid foreclosure, with 1,100 of those saving their homes. The saved homes represent 5% of those facing foreclosure in the program counties.

**Most homeowners left their first session with a better understanding**

All programs provided most homeowners with the information they needed in order to navigate the foreclosure process. This included understanding their options and how to work with their lenders. Because they gained this understanding in their first sessions, all homeowners who entered the programs received this benefit.
Almost every homeowner felt they were treated very fairly and with respect
Almost every homeowner who completed pre-mediation and mediation surveys said they were treated very fairly and very much with respect by the person who facilitated the process – a housing counselor, program administrator or mediator.

Programs made significant changes, which made them more effective
Since the 2015 evaluation, the 16th Circuit, 19th Circuit and 20th Circuit programs all made changes to how they operated, with significant success. In the 16th Circuit program, changes led to a better program completion rate. In the 20th Circuit program, they led to a much higher participation rate. In the 19th Circuit program, multiple changes led to a significant increase in the percentage of homeowners facing foreclosure who contacted the program, the percentage who then completed the steps to enter the program and the percentage who completed the program.

The programs had efficient timelines
Homeowners moved through the programs within a few months, with a range of 77 days to 142 days, indicating that the programs are successfully addressing concerns from judges and lenders that mediation would unreasonably delay the foreclosure process.

7 of 8 programs were sustained after the grant funding ended
All of the circuits, with the exception of the 1st Circuit, successfully worked with their associated county governments, administrative organizations and stakeholders to develop and implement a plan to become self-sustaining.

Factors that Affect Performance
Program type had the largest impact on proportion of homeowners helped
The one variable that had a significant impact on homeowner contact and participation rates was the program type. One-step entry programs (in blue below) had significantly higher rates than either the multi-step entry or hybrid programs, and hybrid programs had significantly higher rates than multi-step programs.
**EXECUTIVE SUMMARY**

**RECOMMENDATION: Make barriers to entry low**
Programs that made entry as simple as possible had the highest participation rates. Courts interested in having a high participation rate should devise entry requirements that are easy to complete.

**A mandatory message with a deadline improves contact rates**
One-step entry and hybrid models send the homeowners a “mandatory” message telling them they must appear for their first session or contact the program. The one-step entry programs include a date and time for their appearance. Hybrid programs provide a deadline by which they should call and follow up with reminders. One-step entry and hybrid programs each exceeded multi-step programs in percentage of homeowners facing foreclosure who contacted the program.

**RECOMMENDATION: Draft the right message**
Those programs with a more directive message had the highest contact rates. Programs should use mandatory messaging and provide a deadline for contacting the program.

**An orientation at first contact improves participation**
Those programs in which the homeowners receive information about their options and how the program can help them had a higher percentage of homeowners who contacted them take the steps to enter it.

**RECOMMENDATION: Explain the program at the first contact**
To encourage a higher percentage of homeowners who contact the program to participate, make the first point of contact a person who can explain the program and how it can benefit the homeowners.

**Judicial referral increases participation and home retention rates**
Many homeowners ignore their summons and don’t take action to participate in mediation programs. Judicial referral offered these homeowners a second chance to participate and led many of them to save their homes.

**RECOMMENDATION: Offer motivated homeowners a second chance to use the program**
To benefit the most homeowners, judges should order appropriate cases into the program. These should be homeowners with sufficient incomes who have demonstrated that they have previously tried to work with their lenders.

**Legal representation had the largest impact on program completion**
Whether the homeowners had attorney representation was the single largest factor influencing whether the homeowners would complete the program. This is significant because so few homeowners had access to an attorney.
Housing counselors also affected probability of program completion
Within the 6th Circuit (Champaign) and 20th Circuit programs, the homeowners were also more likely to get to the point at which they could discuss their options with their lender if they had the help of a housing counselor.

RECOMMENDATION: Partner with housing counseling and legal services
Legal services and housing counseling maximize the probability that homeowners will obtain all the benefits that courts want for homeowners: respectful treatment, understanding and a fair shot at saving their home. Courts should, whenever possible, partner with agencies that can provide these services.
Jennifer Shack has been Director of Research at Resolution Systems Institute since 2000. In this role, she conducts complex evaluations of court-based mediation programs and researches the effectiveness of mediation in court settings. As part of RSI’s efforts to help courts to monitor the functioning of their mediation programs, she has designed data collection systems that are in use around Illinois. This includes the cloud-based case management and monitoring system used by the Attorney General-funded foreclosure mediation programs.

Nationally, Ms. Shack has led a committee to develop model evaluation forms for civil case mediation programs and serves on the American Bar Association Section of Dispute Resolution Research Task Force. Over the past decade, she has presented on program monitoring and evaluation at numerous conferences.