

SIX PROGRAMS, SIX MODELS:

AN EVALUATION OF THE FORECLOSURE MEDIATION PROGRAMS FUNDED BY THE OFFICE OF THE ILLINOIS ATTORNEY GENERAL

EXECUTIVE SUMMARY

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RESOLUTION SYSTEMS INSTITUTE

This evaluation was conducted by Resolution Systems Institute. Formed in 1995, Chicago-based Resolution Systems Institute (RSI) is a non-profit organization whose mission is to strengthen 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 CourtADR.org, 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.

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BACKGROUND

In 2013, the Office of the Illinois Attorney General granted funds to Dispute Resolution Institute, Resolution Systems Institute¹ and the University of Illinois College of Law Community Preservation Clinic to create and implement eleven court-referred foreclosure mediation programs in ten judicial circuits throughout the state. Six of those programs were in place as of December 31, 2014.

This evaluation is funded by the same grant. It studies the programs from their start dates through the end of 2014.

PROGRAM SITES

ADMINISTERED BY DISPUTE RESOLUTION INSTITUTE

- The 20th Judicial Circuit (St. Clair County only), serving a suburban St. Louis community

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 COLLEGE OF LAW COMMUNITY PRESERVATION CLINIC

- The 6th Judicial Circuit (Champaign County only), serving a university town and a largely rural county
- The 21st Judicial Circuit (Kankakee County only), serving a semi-suburban 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, the 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 the home. Retention is typically accomplished by modifying the terms of the loan and

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¹ Because Resolution Systems Institute was in the process of obtaining its 501(c)3 status from the IRS during the grant-making process, the Northern Illinois Research Foundation received the grant and then subcontracted with Resolution Systems Institute to conduct the majority of the work, with a portion going to the NIU Law School. RSI has since become a recognized 501(c)3 organization.

establishing a new mortgage by modifying the loan to terms that are acceptable to the lender and the homeowner. 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.

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 the lender needs to make a decision about whether to offer a loan modification to the homeowners. Once the homeowners submit the packet, the lender determines whether any further documents are needed and requests that the homeowners submit them, if necessary. 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 two programs, this communication occurs in pre-mediation.

The most intense work with the homeowners and lender should happen prior to mediation, with the facilitation of the document exchange. Sometimes this process continues into mediation, but this 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 agreement 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 a fair opportunity to save their homes. 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 single point of contact with whom homeowners could speak,² the information given to homeowners by different lender representatives was inconsistent, the lenders were losing homeowner documents, and the courts thought the process was taking too long.

The courts created their programs to provide homeowners with a fair opportunity to save their homes.

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

² 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>, last accessed on June 1, 2015.

Administrative Office of the Illinois Courts. This structure has resulted in the circuits adopting different foreclosure mediation service delivery models.

Although each of the six programs employs a different service delivery model, all have a two-part process:

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

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

THE EVALUATION

This evaluation is meant to be formative. That is, the goal of evaluation is to present how the programs function, what is working well for them, and what challenges they face so that the courts and programs can make informed changes, if needed. It is not meant to determine if one particular model is better than any other or to determine whether the homeowners who participated in the programs were better served than those who did not.

The evaluation examines each program's processes, participation, outcomes and the number of days cases spent in the program. It also examines participant experience, with a focus on whether homeowners were treated fairly and with respect, and whether they gained an understanding about their situation. It then looks at how the programs' participation rates and outcomes might be affected by the service delivery model they use.

The program evaluation period was a year or more for the 16th, 19th, 20th and 21st Circuits. It was seven months for the 17th Circuit and only three months for the 6th Circuit.

OVERVIEW OF FINDINGS

Across the board, the programs are all fulfilling the goal of offering homeowners a fair opportunity to save their home. Each is also providing a process that helps homeowners to understand what their situation is and what their options are for their home. The programs are also helping homeowners to do what they need to do in order to have the lenders review their financial information, and the programs are facilitating communication between the homeowners and their lender so that they might come to an agreement that allows the homeowners to keep their home or exit it gracefully. The programs are also fulfilling 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 are doing all of this while moving the cases through the programs expeditiously – on average in about three months.

The programs are all fulfilling the goal of offering homeowners a fair opportunity to save their home.

Though each program is providing these services, they are doing so to a different degree. Some bring more homeowners into the program and thus give more of them the opportunity to save their home. Some provide homeowners with more services, helping them to better successfully navigate the document exchange process. Some seem to provide homeowners with a more satisfactory experience.

Outcomes of Closed Cases									
	Total	Retention		Relinquishment		No Agreement		Not Completed	
		#	%	#	%	#	%	#	%
6th Circuit	3	0	0%	0	0%	0	0%	3	100%
16th Circuit	256	55	21.2%	16	6.2%	39	15.0%	146	56.2%
17th Circuit	73	22	30.1%	0	0%	7	9.6%	44	60.3%
19th Circuit	133	39	28.9%	7	5.2%	21	15.6%	66	48.9%
20th Circuit	74	29	39.2%	4	5.4%	29	39.2%	12	16.2%
21st Circuit	143	30	21.0%	26	18.2%	34	23.8%	53	47.3%
TOTAL	682	175	25.8%	53	7.8%	130	19.1%	321	47.3%

MAIN FINDINGS

PROGRAM PERFORMANCE

Program impact: Programs are helping between 11% and 68% of eligible homeowners

On the high end, the 6th and 21st Circuit programs each helped more than 60% of homeowners, while on the low end, the 19th and 20th Circuit programs each helped fewer than 20%.

Saving homes: Homeowners who complete the programs are likely to keep their homes

In the 17th and 19th Circuits, 76% and 58% of homeowners who complete the respective programs reach an agreement to keep their home. Roughly half do in the 16th and 20th circuits.

Respectful treatment: Almost all homeowners report being treated fairly and with respect

In each program, the vast majority of homeowners felt they were being respected and had the chance to talk and be heard. Their comments spoke of their appreciation for those helping them and the process itself, which helped them understand their situation and how to proceed better, and allowed them to meet face-to-face with their lender. Almost all said they were satisfied with the process and the outcome.

Understanding: Homeowners leave their pre-mediation session with greater understanding

In each of the programs, homeowners indicated in post-session questionnaires that they left their pre-mediation session with a better understanding of their options for their home and how to work with their lender. In the 17th and 19th Circuits, more than 70% left with a much better understanding.

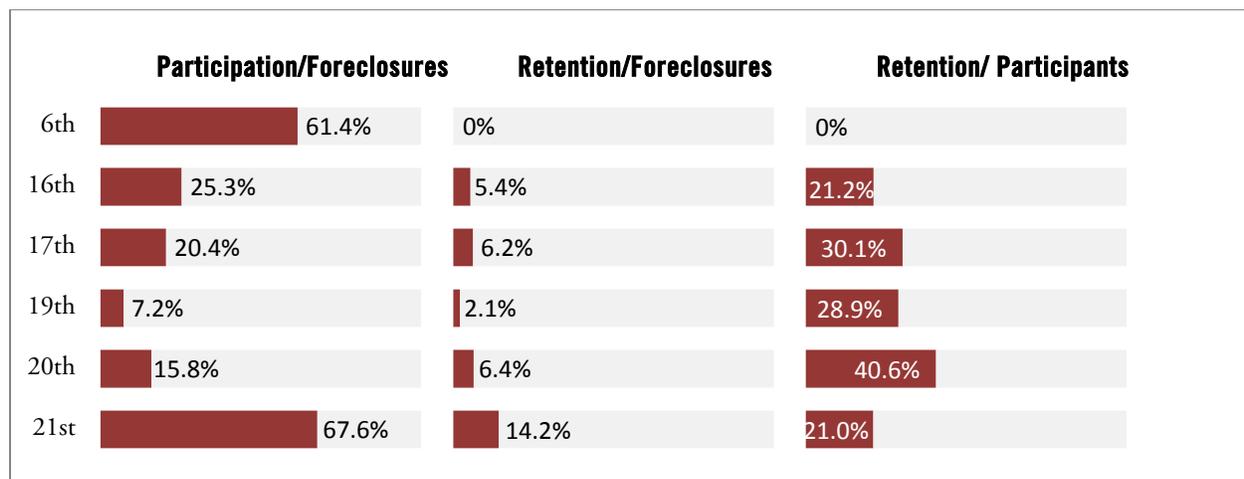
Limiting time in mediation: Cases move through the mediation process quickly

The cases average taking between 63 and 102 days to move from first entering the program to either reaching agreement or ending without an agreement. There is no evidence that the mediation programs delayed the processing of foreclosure cases through the legal system.

FACTORS THAT AFFECT PERFORMANCE

Higher participation leads to higher impact

In the 21st Circuit, 68% of homeowners participated in the program, and 14% of all homeowners facing foreclosure in the program county were able to save their homes. The other programs have participation rates of 7% to 25% and between 2% and 6% of all eligible homeowners keep their homes. The 21st Circuit's high rate of home retention for all eligible homeowners facing foreclosure relative to the other programs is due to its very high participation rate and not to proportionately better outcomes for homeowners who participate in the program. If only participating homeowners are considered, the 21st Circuit has the lowest percentage who keep their homes.



High barriers discourage participation

Programs whose required steps to participate are difficult for homeowners have the lowest participation rates. Those with the easiest steps – the one-step entry programs – have the highest participation rates.

One-step entry programs have the highest participation rates.

One-on-one orientation and assistance with entry encourage participation

Programs that orient the homeowners to the program at their first point of contact have higher rates of homeowners who complete the entry process. In the 16th Circuit, almost 90% of homeowners who contact the program coordinator for an initial conference enter the program. In the 17th Circuit, homeowners receive assistance completing their application for the program, leading to a higher rate of participation than in the 20th Circuit, where many homeowners do not have contact with the program until after they complete the steps to enter.

Homeowners who receive services other than mediation are more likely to retain their homes

In the 20th Circuit, those homeowners who received assistance from legal services were more likely to retain their homes than those who did not. While not statistically significant, this was true as well for homeowners who received housing counseling in that program. In addition, in the 17th and 19th Circuits, where all homeowners receive assistance from housing counseling, the level of understanding they gained and their satisfaction with the service were extremely high.

Homeowners benefit from a second opportunity to participate

In the 20th Circuit, more than half of participating homeowners are referred to mediation by the judge at the default judgment hearing. Those homeowners are in essence being offered a second chance to enter the mediation program. They also are at least as likely as those who enter after receiving their notification of mediation to obtain a loan modification.

CONCLUSION

The Attorney General-funded foreclosure mediation programs were created with one major goal in mind: to give homeowners facing foreclosure a fair chance to save their homes. The courts' efforts to create these programs by and large came from a shared experience of homeowners coming before them not knowing how to navigate the foreclosure process and frustrated in their attempts to communicate with the lender and to arrive at the point at which they could obtain a loan modification or other foreclosure avoidance option.

To remedy this, the courts wanted to create a process in which homeowners learned more about their situation and received the assistance they needed to move forward. They also wanted a process in which homeowners were able to communicate with their lender in a forum in which homeowners were treated fairly and with respect. They wanted to ensure that all this happened within a process that held both homeowners and lenders accountable and kept the process moving forward in a timely manner. Despite each having a different program model, the programs are all providing a

process that accomplishes these objectives. Each model has its strengths and its areas for improvement, but each performs the essential tasks well. The programs are helping participating homeowners to keep their homes. They are providing a process in which homeowners are treated fairly and with respect. They are helping homeowners to understand their options for their home and how to work with their lender. And they are doing all of this in an efficient process that is completed within just a few months.

ABOUT THE AUTHOR

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 national 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.

Ms. Shack's evaluations include a comprehensive evaluation of the Child Protection Mediation Program in Cook County, Illinois, and evaluations of the mediation programs in the U.S. District Court for the Northern District of Illinois. Ms. Shack has also written a number of articles, including "Mediation in Courts Can Bring Gains, But Under What Conditions?" in *Dispute Resolution Magazine*, Winter 2004, and the co-authored, "Judicial Settlement Databases: Development and Uses," *Judges' Journal*, Winter 2004. Most recently, she co-authored two articles on foreclosure mediation: "Foreclosure Dispute Resolution Programs: Do They Work?" in *Probate and Property*, December 2013, and "A (Mortgage) Crisis in Communication: Foreclosure Dispute Resolution as Effective Response?" in *Arkansas Law Review*, Spring 2013. Ms. Shack also discusses issues related to research on issues related to court ADR on RSI's blog, *Just Court ADR*.