

BEST PRACTICES



A FULL
RESPONSE
TO AN EMPTY
HOUSE

Public Safety Strategies for Addressing Mortgage Fraud and the Foreclosure Crisis



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author

Robert V. Wolf
Director of Communications
Center for Court Innovation

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about this report

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A FULL RESPONSE TO AN EMPTY HOUSE: PUBLIC SAFETY STRATEGIES FOR ADDRESSING MORTGAGE FRAUD AND THE FORECLOSURE CRISIS

The news from the real estate sector has been grim for months: both foreclosures and mortgage fraud are at all-time highs.¹ Because these intertwined problems have reached crisis proportions they are threatening the stability of entire neighborhoods, making the search for effective responses a priority not only for bankers and real estate brokers but also local governments, police departments, prosecutors' offices, and community groups.

The problem on the ground for the hardest hit communities is that foreclosures and mortgage fraud are fueling a dramatic rise in the number of vacant and abandoned properties. These properties can generate a host of interrelated problems: crime, homelessness, and strains on municipal services, as well as safety hazards and lower property values.

In many jurisdictions, the number and location of foreclosed and vacant properties is changing so rapidly that officials have trouble counting them, let alone formulating a meaningful response. The city of Cleveland, for example, estimated in early 2009 that at least 10,000 (or one in 13) of its houses were vacant while the county treasurer estimated that the number was 15,000—50 percent higher.²

Recognizing that recent economic trends have fueled mortgage fraud, foreclosures, and neighborhood instability, the Bureau of Justice Assistance (BJA) in January 2009 brought together experts from around the country to examine solutions. As James H. Burch, II, Acting Director of the Bureau of Justice Assistance, explained at the outset of the two-day meeting: “We don’t believe that the answers to these problems come ... from Washington. We believe the answers to these problems, the solutions, the strategies that can be effective to address these issues, come from local communities around the country.”

On the first day, representatives from the following jurisdictions shared their experiences developing comprehensive, collaborative responses: Indio, California, a fast-growing suburb that underwent rapid population growth followed by a just-as-rapid collapse in its housing market; Dallas, Texas, which experienced both high

rates of real estate speculation and sub-prime lending; and the urban centers of Indianapolis, Indiana, and Baltimore, Maryland, which have dealt with housing blight for decades.

On the second day, experts from Miami-Dade County in Florida, Wayne County in Michigan, and Fulton County in Georgia focused on how to identify and respond to mortgage fraud.

Additional participants, who joined the conversation on both days, included researchers, policymakers, and representatives from financial, legal, housing, and law enforcement advocacy groups. (For the names of participants, see the list starting on page 30.)

What emerged from the series of presentations and facilitated discussions, which were moderated by Christopher Watler of the Center for Court Innovation, was a detailed snapshot of mortgage fraud and foreclosures, including their causes, their impacts on neighborhoods, and jurisdictions' responses. As a document of the conversation, this report is intended to serve as a guide to government and law enforcement officials across the U.S. seeking to address these challenges in their own communities.

MORTGAGE FRAUD

While it is difficult to identify exactly what percentage of vacant and abandoned properties can be blamed on mortgage fraud, one fact is clear: the incidence of mortgage fraud has reached epidemic proportions.³

The Mortgage Asset Research Institute calls mortgage fraud “one of the fastest growing financial crimes in the history of the United States.”⁴ In May 2009 the Treasury Department was referring more than 5,000 mortgage fraud allegations every month to the Federal Bureau of Investigation (FBI), which reported that financial institutions filed 36 percent more “suspicious activity reports” about alleged mortgage fraud in 2008 than they did in 2007.⁵

Sen. Patrick Leahy, a co-sponsor of the Fraud Enforcement and Recovery Act, noted that in 2009 reports of mortgage fraud were up 682 percent over the past five years, and more than 2,800 percent over the past decade.⁶ The upswing in mortgage fraud has overwhelmed government resources, leaving “thousands of fraud allegations ... unexamined each month,” Leahy said.⁷

The losses to financial institutions directly attributable to mortgage fraud in 2008 were \$15 to \$25 billion, according to industry estimates.⁸ And prosecutors consider mortgage fraud to be “among the most economically destructive crimes prosecuted by their offices,” according to the *New York Times*: while “bank robbers average less than \$2,000 and face a 75 percent chance of being caught, a mortgage fraud ring walks away with hundreds of thousands of dollars per house, prosecutors say, and runs little risk of arrest.”⁹

The factors fueling mortgage fraud are many. They include the diversion of law enforcement resources from white collar crime to the fight against terrorism, the loosening of lending standards, and the increased use of the internet and other technologies that make the loan application process “faceless.”¹⁰ The issuance of sub-prime mortgages—essentially loans to riskier borrowers (such as those who have lower credit bureau risk scores)—expanded dramatically from the mid-1990s onward, accounting for about one percent of the mortgage market share in 1996 but nearly 23 percent 10 years later.¹¹ Often sub-prime mortgages were offered through nontradi-

tional products, including loans that required no down payment or income documentation as well as loans that deferred payment of principal and sometimes interest.¹² Despite attractive initial terms, however, sub-prime loans resulted in higher charges to the consumer, ostensibly to compensate the lender for the increased chance of default.¹³

Some have argued that the entire sub-prime market constitutes predatory lending, but others argue that whether a loan is predatory “depends on its context.”¹⁴ The bottom line is that while most agree sub-prime lending and nontraditional mortgage products don’t themselves constitute fraud, many experts feel that the expansion in the availability of mortgages over the past decade has been, in the words of Ben S. Bernanke, chairman of the Federal Reserve Bank, “poorly done.”¹⁵ Bernanke has speculated that:

Lenders may have become careless because they, like many people at the time, expected that house prices would continue to rise—thereby allowing borrowers to build up equity in their homes—and that credit would remain easily available, so that borrowers would be able to refinance if necessary. Regulators did not do enough to prevent poor lending, in part because many of the worst loans were made by firms subject to little or no federal regulation.¹⁶

Compounding lenders’ carelessness were a large and expanding cadre of lawbreakers who saw easy money in the freewheeling mortgage market. An article in the *American Bar Association Journal* in July 2007 noted that “consumer advocates view sub-prime mortgages as a primary breeding ground for fraud because of increased opportunities for market-savvy flim-flam artists to take advantage of relatively unsophisticated borrowers.”¹⁷ Among those disproportionately affected by the sub-prime lending crisis have been minorities, especially black and Hispanic borrowers.¹⁸

Unfortunately, as more and more players—everyone from unscrupulous mortgage brokers and appraisers to reportedly members of organized crime and terrorist organizations—found ways to line their pockets, ever-rising property values helped disguise their frauds by allowing banks to easily recoup potential losses when a property owner defaulted.¹⁹ But the system, predicated largely on loose regulations and rising property values, came crashing down in 2006. That was when housing prices began to fall, and the number of mortgage defaults began to rise.²⁰ By August 2007, the rate of serious delinquencies for sub-prime mortgages with adjustable rates reached nearly 16 percent, approximately triple the rate in mid-2005.²¹

According to the FBI, the numerous forms of mortgage fraud fall into two categories: fraud for housing and fraud for profit.

Fraud for housing involves a borrower (and sometimes an industry professional) who makes misrepresentations (for instance, regarding income or personal debt) in order to obtain a home loan that he or she fully intends to repay. This approach accounts for 20 percent of all mortgage fraud, according to the FBI.²²

Fraud for profit, on the other hand, usually involves industry professionals whose goal is not to provide a borrower with a roof over his or her head but to generate as much money as possible for the perpetrators.

A particularly nefarious type of mortgage fraud is “foreclosure rescue,” which targets financially distressed homeowners. In a foreclosure rescue scam, a perpetrator (who is sometimes part of a ring that includes lenders, brokers, appraisers, lawyers, and other real estate professionals) offers to “help” a homeowner who is in difficult financial straits. The homeowner might be someone who took advantage of a teaser rate, but who, as his interest rate adjusts upward, can no longer keep up with payments, or she can be a long-term owner who has actually paid off her mortgage but is having trouble keeping up with other bills.

In either case, the so-called rescuer provides a loan to the homeowner while taking possession of the property. The loan might be structured as a sale with a lease-back agreement (transforming the victim from an owner to a tenant) or it could be achieved through a bait-and-switch, in which the homeowner unwittingly signs documents transferring ownership to the rescuer. However it’s carried out, the “rescue” usually produces the same result: the homeowner is saddled with even more debt while the rescuer takes possession of the house and its equity.

Scam artists, who often find their victims by monitoring recorded notices of default (available through government web sites or private services), inundate their targets with offers of help, promising “a chance to start over but warn[ing] the homeowner that he or she must act quickly to save his or her home and must not contact a lawyer or the mortgage lender.”²³

In the mid-2000s, the Legal Assistance Foundation of Metropolitan Chicago began seeing an increasing number of mortgage rescue schemes. “What they’re doing, by hook or crook, is getting the homeowner’s title. In reality, very few people get their homes back and they lose the equity in them, because that’s what it’s all about—sucking the equity out,” Daniel P. Lindsey, supervisory attorney for the foundation’s Home Ownership Preservation Project, told the *American Bar Association Journal* in 2007.²⁴

The permutations of mortgage fraud are many. One or more of the following elements typically play a role in a mortgage scam. This list is drawn from numerous sources, including the BJA discussion, the FBI, and articles by attorneys Howard J. Lax and Charles J. Jacobus:²⁵

Recognizing Mortgage Fraud: Common Ingredients

- *Inflated income or assets*, involving a borrower who overstates his income or borrows the down payment without revealing the obligation to repay it.
- *Identity theft*, involving, for example, a false Social Security number stolen from a person with good credit to verify that the person has authority to sell the home or borrow money.
- *Altered documents*, including W-2 forms, bank statements, title commitments, leases, tax returns, or employment verification forms.
- *Multiple loans* obtained during what is known as the “gap period” when new deeds and missed loan payments aren’t publicly available for inspection. During the gap, borrowers can close two or three

loans with different lenders—who, because of the gap, are ignorant of the other transactions—on the very same property.²⁶

- *Air loans*, involving property that doesn't exist. A broker, for example, might invent borrowers and properties, establish accounts for payment, and maintain custodial accounts for escrows. To support the fraud, the broker might staff various phone numbers to simulate an employer, appraiser, credit agency, etc., to verify the creditworthiness of the fabricated borrower.
- *Inflated deposits and soft second mortgages*, involving a buyer who gives a false purchase agreement to the lender, showing a false money deposit and an inflated purchase price, or a buyer and seller who inflate the purchase price and “offer seller financing in lieu of a down payment so that the buyer can obtain a larger loan than would be permitted by the lender’s underwriting standards. The seller’s note and mortgage are torn up after the closing,” according to Howard A. Lax, a Michigan lawyer and publisher of the *The Mortgage News*, a bimonthly mortgage banking compliance newsletter.²⁷
- *Straw buyer*, in which a perpetrator uses a second person to front for the purchase—relying on the second person’s good credit or perhaps a stolen identity—and then, after giving the second person a cut, takes the rest of the loan proceeds with no intention of ever paying it back. If the straw buyer uses her own true identity, her credit rating is ruined when the initial perpetrator fails to making payments.
- *Equity skimming*, in which an investor may obtain a mortgage through a straw buyer. The investor does not make any mortgage payments and rents the property until foreclosure takes place several months later.
- *Inflated appraisal*, in which an appraiser inflates the value of a property to generate a loan that exceeds the home’s true market value. Inflated appraisals frequently play a role in flipping schemes (see next item).
- *Flipping*, in which a newly purchased property is immediately re-sold for an unjustifiably high price. Typically, the buyer and seller have a hidden relationship. Flips often rely on the assistance of a complicit appraiser, who issues an inflated appraisal, or a false title insurance commitment. During the BJA discussion, Ann Fulmer, a lawyer and mortgage fraud expert, described a property that had changed hands 12 times in eight years, its sale price rising from \$50,000 to \$350,000 even though the current average asking price of other houses on the block is only \$48,000.
- *Money laundering*, in which a straw buyer uses illegally obtained money to buy property from the fake seller. “The title agency unknowingly takes the illegally obtained funds, and issues its own check to the fake seller with good funds. The object of the transaction is to exchange the seller’s funds to hide the trail of money to its illegal source,” Lax wrote.²⁸
- *Servicing transfers*, whereby a thief forges what is called a “notice of transfer of service,” instructing a borrower to send payments to a new loan servicer. In reality, the “new” loan servicer is actually the thief.

Even when an instance of mortgage fraud involves the loss of \$1 million or more, the crime can be hard to detect;²⁹ this is at least partly because mortgage fraud usually involves industry insiders who know how to structure the deal to avoid discovery. “Fraud is like a cancer because it is always spreading, and it’s always mutating,” said Ann Fulmer.

In addition, the complexity of mortgage transactions makes it easier to mask fraud. A typical sub-prime transaction, for example, involves 12 or more players, including “ ‘a borrower, a broker, an originator, a seller, an underwriter, a trust, a trustee, multiple servicers, a document custodian, . . . an external credit enhancer, a securities placement agent, and investors.’ ”³⁰

Another boon to perpetrators has been technology that makes it easier to forge documents. Fulmer said that 83 percent of underwriters “have been hired so recently that they’ve never actually seen a fully documented loan,” and their lack of experience, combined with state-of-the-art forgeries, means perpetrators can “create a loan file out of whole cloth.” Another participant in the BJA discussion, Abed Hammoud, an assistant prosecuting attorney in Wayne County, Michigan, prosecuted a man now serving three to 20 years for running what Hammoud called “a forgery factory.”

The bottom line is that mortgage fraud correlates directly with foreclosure. “If a loan is originated fraudulently, it is eight times more likely to default ... and it’s 20 times more likely to go into the foreclosure process within the first year after origination,” Fulmer said.³¹

Because of mortgage fraud’s connection to both foreclosures and the economic crisis in general, the federal government has made fighting mortgage fraud a priority. In the first few months of 2009, barely a day went by without an arrest or indictment somewhere in the U.S. of a mortgage broker, real estate agent, bank official, or other participant in an alleged mortgage scam. And more investigations and indictments are likely to be generated by the Fraud Enforcement and Recovery Act, passed by Congress and signed by President Barack Obama in May 2009, which allocates \$490 million over two years to increase the number of Justice Department prosecutors and investigators handling mortgage fraud cases; enlarge the department’s criminal, civil and tax divisions; and enlarge the FBI mortgage-fraud task forces.³²

OTHER CAUSES OF FORECLOSURE AND PROPERTY ABANDONMENT

While mortgage fraud has played a significant role in the housing and foreclosure crisis, there have been other causes as well. They include:

Recession

With unemployment rising dramatically in late 2008 and early 2009, many homeowners simply couldn’t keep up with home payments. In Indio, housing counselors found that 75 percent of homeowners facing foreclosure were grappling with a job loss or change in income.³³ “Some folks may have had two jobs, and now they just have one, or they’ve been laid off,” said Jesus Gomez, housing programs manager for the city of Indio, who noted that employment in the region had been heavily reliant on the hard-hit housing

and construction industries. “When the home-building slowed drastically, many employees of housing construction-related companies lost their jobs; hence, the defaults and foreclosures.” Many homeowners also had unwieldy loans—ones that were either too big to begin with or poorly structured, such as interest-only loans with ballooning payments, Gomez said.

Economists have described three waves of foreclosures,³⁴ all of which have been underpinned by economic circumstances: the first wave involved speculators, who abandoned property when housing prices plunged; the second involved homeowners who couldn’t keep up with payments when their adjustable rate mortgages reset (the average sub-prime borrower faces a \$400 per month increase in mortgage payments, and some may see an increase of as much as \$ 1,500);³⁵ and the third involved middle-class homeowners with good credit who, because of the economic downturn, could no longer pay their bills.

Said Assistant Prosecuting Attorney Abed Hammoud: “It is becoming more socially acceptable to be foreclosed out of your home.”

Domino effect

Often when one house on a block becomes vacant, others follow. Or as Brad Ramos, chief of the Indio Police Department said, “As one home goes, so goes the neighborhood.”

Empty houses—often overgrown and boarded—are unsightly; worse, they attract crime. This not only makes neighborhoods more dangerous but lowers property values, giving the remaining homeowners multiple reasons to flee. Under normal circumstances, it can take “15-plus” years for a neighborhood to transform—either from a stable one into an undesirable one, or vice versa, said Ron Wilson, an analyst with the National Institute of Justice. But concentrated foreclosures can “accelerate that process and lead to the creation of bad neighborhoods” more quickly, Wilson explained.

Once a neighborhood reaches a tipping point, it’s difficult to reverse. Businesses close or leave, and new people moving in “don’t necessarily want to live there, but that’s all they can afford,” Wilson said. “A bad neighborhood ... is next-to-near impossible to try to undo... So, it’s ever more important to try to make sure that these properties don’t slide into blighted properties, rundown properties, and become bad neighborhoods.”

Poor communication

Because many banks sell their mortgages in bundles to third parties whose identity is often difficult to trace, the responsibility for collecting mortgage payments and issuing foreclosure notices often falls on an independent company, which acts as a “servicer” and generally doesn’t have the authority to negotiate a solution that allows an owner to stay in his or her home. In such situations, the servicers are “caught in the middle” between investors who own the mortgage and are seeking a maximum return on their investment and homeowners who are either unwilling or unable to pay for a mortgage they can’t afford or that

no longer reflects the true value of their property, said Anthony DiMarco, executive vice president of the Florida Bankers Association.

In another example of muddled communication, mortgage holders have been known to send foreclosure notices but then never actually foreclose. According to Jennifer R. Leonard, director of the National Vacant Property Campaign, banks in Wayne County, Michigan, were sending homeowners first and second foreclosure notices; many homeowners, who were scared and didn't know their rights, moved out and yet the banks, largely because property values had declined so dramatically, never intended to follow through on their foreclosure threats. There are similar reports from cities around the U.S., including Buffalo, N.Y., Kansas City, Mo., Jacksonville, Fla., and South Bend, Ind.³⁶ The end result is that often no one claims responsibility for the properties, and their abandonment, which often occurs in the hardest hit neighborhoods, fuels the cycle of decline.

IMPACTS

Whether caused by mortgage fraud or another factor, a foreclosed property—especially when clustered with other foreclosed properties—has the potential to destroy a neighborhood. Wilson pointed out that a typical neighborhood is a complex system on which much depends: housing, schools, jobs, businesses, services, and public health. Foreclosures—by removing a “family/neighbor/customer/worker” from the neighborhood—can disrupt that complex system, Wilson said. “If neighborhoods deteriorate, then lives will likely deteriorate with them.”

One area where foreclosures can have an immediate impact is crime:

- A study using data from Chicago found that for every one percent increase in the rate of foreclosures, violent crime increases by 2.33 percent.³⁷
- Another study linked rising crime in parts of New York to foreclosures.³⁸
- Nearly 40 percent of law enforcement agencies surveyed in 2008 said that home foreclosures had either fueled a rise in crime around abandoned houses in their jurisdictions or had hurt law enforcement budgets (through a loss in tax revenue).³⁹
- A study in Austin, Texas, concluded that crime rates on blocks with open abandoned buildings were twice as high as rates on similar blocks without open buildings.⁴⁰
- A study in Charlotte, North Carolina, found that there were increases in both property and violent crime in neighborhoods that had high rates of foreclosure.⁴¹

Participants in the BJA discussion shared anecdotes that supported these studies' conclusions. Sherron Franklin, a police officer, former city councilwoman, and director of abandoned properties in the Indianapolis Mayor's Office, said dealers have been known to hide drugs in abandoned properties, and homeless people sometimes move in. Abandoned houses in Indianapolis have also been used to grow marijuana and store firearms, including AK-47s, said Lt. Marshall DePew, of the Indianapolis Metropolitan Police.

In Baltimore, abandoned properties are associated with a wide array of worrisome social indicators, including “STDs [sexually transmitted diseases], dropouts, crime,” said Michael Braverman, deputy commissioner for Baltimore’s Department of Housing and Community Development. “Having a lot of vacant buildings is really helpful to the drug trade, minimally from just being able to run down the street and run into one ... in addition to just setting up shop.” He also said abandoned houses serve as sources of bootleg electricity for neighboring homes, posing a fire threat.

Roxann Pais, who at the time of the BJA discussion was an executive assistant city attorney in the Dallas City Attorney’s Office, cited a study that said there were about 12,000 fires annually in vacant or abandoned properties, resulting in approximately 6,000 injuries to responders.⁴² Steven Jansen, the then-director of community prosecution at the National District Attorneys Association, said that when he had been a prosecutor in Detroit, there had been a series of incidents in which girls had been dragged into abandoned houses and raped. Participants said that vacant houses have also been linked to illegal dumping, pet abandonment, dog fighting, graffiti, and health contamination in the form of open sewage lines and human waste.

Some of the potential negative consequences of foreclosure—such as domestic violence and adverse impacts on children’s health, education, and behavior—surface even before occupants leave.⁴³ “The pressures in a family, as you start going into foreclosure [are tremendous],” said Denise Viera, deputy director of the Community Capacity Development Office at the U.S. Department of Justice.

Louis Tuthill, an analyst with the National Institute of Justice, said that if children are exposed to “disorder in the home or in the neighborhood that can affect them through their life course.” Police Chief Ramos, of Indio, said he knows children whose behavior changed dramatically after their families were forced into shelters. “They might have been A and B students; all of a sudden they’re D and F students and disruptive students because of the change. And we see they graduate from being a good kid into being a criminal within 18 months or so,” he said. Other discussion participants noted that abandoned houses attract mischievous children, both those engaged in innocent games and those involved in criminal activities; in either case, unsafe conditions pose the risk of injury.

Aesthetics also start to decline even before a property becomes vacant, according to Wilson:

When somebody’s going into foreclosure, they don’t have money to spend on keeping that house maintained. So, already the ... deterioration of the property starts to set in.... If they go into foreclosure, then the property has nobody taking care of it whatsoever. And ... the immediate impacts of this are copper thefts, just straight-out vandalism; and all of a sudden the house degrades really fast, and suddenly property values start going down.

Vacant houses and declining property values have a negative impact on services. Sometimes schools are forced to close while others, as families double up, become overcrowded. “If they’re doubling up with family in subsidized housing, they may be hiding and don’t get counted and the kids don’t even go to school for fear their

relative will lose their housing,” Viera said. Added Ramos: “Those kids that might be eligible for reduced [cost] meals and other things, they can’t even get that now, because they’re living underground in this black-market existence.” In addition, overcrowding fuels zoning violations, such as illegal conversions of garages and other parts of houses into bedrooms, said Gomez, the housing programs manager in Indio.

Money that could be spent elsewhere gets channeled into budgets to clean and maintain vacant properties. Dallas, for instance, spends at least \$1 million a year to demolish abandoned structures, Pais said. And Baltimore spends about \$2.5 million to board and secure vacant property, according to Braverman.

In addition, cities and towns must pay police, fire fighters, code inspectors, and others to patrol, inspect, and respond to problems at vacant and abandoned properties. Baltimore estimates that it spends \$1,400 a year per vacant structure in public-safety costs, Braverman said. Citing a study from the National Association of Counties, Wilson said that in Chicago the average cost to deal with an individual vacant and unsecured property is \$5,358; for a vacant, unsecured property tagged for demolition the price tag rose to \$13,452; and for a vacant property damaged by fire, the cost was \$34,199.⁴⁴

Owners of vacant houses often fail to pay property taxes. While not all vacant properties in Indianapolis are tax delinquent, the approximately 7,000 that are translate annually into \$19 million in lost tax revenue, DePew said.

Newer neighborhoods are often more vulnerable to the deleterious effects of vacancy and abandonment than older ones. Wilson said that in Charlotte, North Carolina, 47 percent of the houses that went into foreclosure were built after 1994, and these foreclosures were statistically linked to an increase in crime.⁴⁵ Researchers concluded from their analysis of Charlotte that “as the age of the neighborhood goes up, crime goes down,” Wilson explained, adding that this result underscores the importance of “collective efficacy”—the idea that cohesion among a neighborhood’s residents helps maintain social control and reduce crime and disorder.⁴⁶ “New neighborhoods haven’t had that opportunity to [establish collective efficacy] yet because they’re just so new,” Wilson said.

FIVE JURISDICTIONS

Foreclosures, vacant properties, and mortgage fraud may be national phenomena, but they are nonetheless, as Wilson put it, “local-level problem[s] to solve.” Braverman repeated this point when he said: “Something that is lost in the national discussion is [that] the vacant problem is different in different jurisdictions. And the remedies that you apply might be different.”

In developing solutions that address local conditions, participants in the BJA discussion agreed that jurisdictions need to develop comprehensive action plans, ones that arise through collaborations across government agencies and among public and private sectors. In cities, towns, and counties across the U.S., police, city attorneys, district attorneys, U.S. attorneys, housing and building departments, health departments, community development organizations, landlords, private developers, banks, mortgage lenders, legislators, and regulators

are finding ways to work together to slow or halt foreclosures, stem the decline of neighborhoods, prosecute wrongdoers, and plan for new growth.

Reflecting the need for a comprehensive approach, Pais, with the Dallas City Attorney's Office, developed a rubric—see “Addressing Foreclosed and Abandoned Properties” at http://courtinnovation.org/_uploads/documents/abandoned_property.pdf—that tackles foreclosure and mortgage fraud simultaneously from three key angles:

- Prevention: Develop strategies that seek to help property owners avoid foreclosure, prevent vacant properties from falling into disrepair, and discourage mortgage fraud.
- Enforcement: Pursue lawbreakers, including those engaged in mortgage fraud as well as those who fail to abide by local health, housing, and building regulations.
- Reuse: Facilitate thoughtful redevelopment of vacant and abandoned properties.

Collaboration and cooperation were highlighted again and again as participants in the BJA discussion devoted several hours to examining the responses of Indio, Dallas, Indianapolis, Baltimore, and Miami-Dade County.

Indio, California

Indio went from boom to near bust in just a few short years. From 2002 to 2007, the middle-class community, which is located about 20 miles east of Palm Springs, absorbed 10,000 new homes, a phenomenal increase representing 40 percent of its housing stock. The town's population has likewise exploded: from 50,000 in 2002 to 81,000 in 2009.

But when the housing market soured, Indio's foreclosure rate went from an already high four percent of properties in January 2008 to 10 percent just nine months later, said Brad Ramos, the chief of police. And as Indio went, so went California, which leads the nation in foreclosures.⁴⁷

The challenges generated by such a rapid collapse of the housing market, especially one driven by foreclosures, are many: a dramatic drop in housing values, plummeting tax base, proliferation of neglected properties, rising crime, and declining public confidence in Indio as a safe and satisfying place to live.

Many of the hardest hit neighborhoods were gated communities brimming with amenities, including country clubs. “You would have 16 homes on a cul-de-sac street. Of those 16 homes, you would have maybe 10 of them in foreclosure. ... Think of the visual as you're driving through: a community ... of new housing tracts, gated communities with lakes and amenities and country clubs, and all of a sudden ... half of the houses are in foreclosure,” Ramos said. “We ended up having blighted and vacant homes that led to an increase in crime ... Copper theft, air-conditioning—we were seeing whole homes being basically stripped down to the drywall, carpeting ripped out, cabinets ripped out. Anything that could be taken was taken.” In many cases the thieves were found to be the foreclosed homeowners themselves who were attempting to salvage anything of value, Ramos said.

The Police Department—which is responsible for housing code enforcement—found that it was harder to identify the owners of foreclosed properties than they had initially anticipated. The challenge: mortgages had been bundled into complex financial instruments that were difficult to unravel. These esoteric financial packages proved not only to be at the root of the nation’s current housing and financial crisis but a headache for the Indio Police Department’s 12-person code enforcement team. And even when they eventually identified the bank that owned a house, the bank had little incentive to maintain the property. The challenge then became: how can Indio hold banks—many of which are located out of state—accountable?

Ramos found the best way to get the attention of some banks was by threatening to bring criminal charges. “As chief, I’d call and say, ‘Can I speak to your chief executive?’ And then, when he got on the phone, I’d say, ‘Thank you for taking my call. I’d like to keep you from being arrested in California and extradited.’ Then they’d listen. A lot was fear factor,” Ramos said.

Foreclosure Ordinance

The Indio government decided it needed more leverage. The result was a new municipal law, adopted in April 2008, that requires banks and lenders to register properties with the Indio Police Department when a notice of default is issued and when a property becomes vacant. More importantly, the ordinance requires banks to inspect their properties weekly and fully maintain them.

“We’re seeing banks, especially one national lender, starting to come around and proactively maintain these properties,” said Jason Anderson, a community improvement officer with the Indio Police Department.

By January 2009, the Police Department had collected \$41,000 in registration fees under the new law and issued \$30,000 in fines. Ramos, the chief of police, and Anderson reported that 50 percent of all identified vacant homes were in compliance and that foreclosures had become less apparent as more properties were being properly maintained.

“In particular neighborhoods, we had 50-percent foreclosure rates; 50 percent of the homes had dead grass, had broken windows. You don’t see that anymore. That’s a direct result of this ordinance and partnering with the real estate agents and the lenders and the banks and making this work,” Anderson said.

Anderson explained the importance of registering the properties as early as possible:

What we’ve found a lot of times is, homeowners will get the notice of default, know they’re going to go into foreclosure, and then walk away from the property. And in California, the foreclosure process is almost a year long; it’s more than 300 days. So, the problem we had was, in that 300-day period, the house would be sitting vacant, and no one would claim responsibility. So, our local law places that responsibility on the bank.

The local law also has teeth. “It’s a misdemeanor, so it’s an arrestable offense, and that sets us apart ... from a lot of cities that don’t go that far,” Anderson said, explaining that it would be the chief executive officer of the

bank—rather than a local representative of the bank—who could theoretically end up in jail. The ordinance also provides for fines up to \$25,000 for noncompliance. “When we first adopted this ordinance, [a major national mortgage company] called me, and their bottom line was, ‘How much is the fine?’ ... That’s the only question they had,” Anderson said.

Real estate agents, who are usually tapped by the banks to perform the mandated weekly inspections, have proven important partners in the effort to maintain vacant properties. “We’ve had the most success working with them. They’re [telling] us when it’s in foreclosure or in short sell, and they’re putting pressure on the banks to keep the landscape up and the property maintained,” Anderson said. But he noted that not everyone is cooperative. “There are a lot of old-school real estate agents who don’t think that it is their responsibility, they’re not responsible for the conditions of the properties. And we’re saying they are. And it’s in their best interest to ... make the houses look nicer, because they’re selling faster. We’ve found, in the last part of 2008, homes are selling a lot faster if they’re in the program,” Anderson said.

The code enforcement team (which operates on a \$1.5 million budget) consists of a supervising sergeant, six officers, an administrative secretary, and four neighborhood improvement technicians, who “drive around and pick up trash all day long,” Anderson said.

“It’s a very labor intensive program,” Ramos added, “but the benefits are unbelievable: reduction in crime, vandalism, [and] in [stolen] wiring [and] air conditioning units.”

Housing Resource Center

Indio has also taken the lead in foreclosure prevention through the creation in August 2008 of the Housing Resource Center. The center is run by the Inland Fair Housing and Mediation Board, a non-profit Department of Housing and Urban Development-approved counseling agency, and staffed with two housing counselors, whose primary goal is to prevent foreclosures. They do this by facilitating discussions between homeowners and banks and encouraging foreclosure alternatives, such as loan modifications, strategies for at least partially repaying overdue debts, or temporary suspension of payment until a homeowner is able to pay.

“We’ve got a lot of people who are in trouble, a lot of regular folks... If we can keep someone in [his home] for another six months, it’s better than vacant,” Ramos said.

In its first four months, the center—located in a storefront across the street from a police substation—chalked up 467 phone calls, 218 walk-ins, and 140 counseling sessions, ultimately helping 139 people stay longer in their homes, Gomez said. The center has proven so successful that the city is exploring how to expand it by not only adding more counselors but also more services, such as credit counseling, mediation, and special programs for first-time homebuyers.

Dallas, Texas

Even as some in 2005 were touting that real estate prospects for Dallas were “among the best in the country,” others were predicting that the housing industry in North Texas was heading for a fall.⁴⁸ That was because,

despite a decline in the local telecom, technology, and aviation industries, developers continued to build new homes at a breakneck pace.⁴⁹

Danielle DiMartino, a columnist at the time for *The Dallas Morning News*, noted that loose lending standards were helping “buyers purchase more home than they could otherwise afford.... Newfangled products are bringing back negative amortization, in which the loan balance grows as a factor of time. Add to this runaway home-equity borrowing, which is also infecting the local market. ... There’s no doubt that loans gone bad will harm communities, and we’re just talking about the credit that’s been extended according to the rules.”⁵⁰

Home prices didn’t rise as dramatically in Dallas as they did elsewhere, partly due to the rapid development of new housing.⁵¹ And yet sales remained brisk at least in part due to speculation. “Speculative fever has spread here,” DiMartino declared in 2005. “It’s becoming more common to see a single buyer gobble up a dozen homes at a time at new developments.”⁵²

By 2008, with home prices dropping, foreclosure postings in North Texas reached a record high of more than 50,000.⁵³ By April 2009, the number of homes facing foreclosure in Dallas-Forth Worth reached a new record—up almost 30 percent from a year earlier.⁵⁴ The losses were fueled by Dallas’ having the highest unemployment and sub-prime lending rates in Texas; particularly hard hit were low- and moderate-income neighborhoods like South Dallas.⁵⁵

Given the devastating impact that the high rate of foreclosures can have on hard-hit neighborhoods, Dallas developed a comprehensive response that relies on a range of tools.

“It takes everything working together in a neighborhood to try to bring the neighborhood out of the problems that they have,” said Terry Williams, assistant director of the Dallas Housing Department. “And so, we’re using all the resources of different departments—code enforcement, police department, housing department, everything. And that’s the key point, I think, is that you have to all work together, be on the same page.”

Dallas Urban Land Bank

Dallas is the first city in Texas to take advantage of a state law—the Texas Urban Land Bank Demonstration Program Act⁵⁶—that allows municipalities to create land banks. The act streamlines the foreclosure of tax delinquent properties and allows the Dallas Urban Land Bank to sell lots at below-market prices to nonprofit and for-profit affordable housing developers.

The basic idea is to ensure that property that might otherwise have remained abandoned or been bought by a speculator is re-developed. The specific goals of the land bank, which hopes eventually to buy and sell 300 lots a year, are multiple: create more affordable housing, stabilize at-risk communities, reduce criminal activity, and increase the local tax base.

From 2005 through the end of 2008, the land bank bought 311 lots and sold 59 of them to developers, including community housing development organizations, which, under the law, have the right of first refusal.

Progress has been slow, partly due to the downturn in the economy and lack of qualified affordable homebuyers, Williams said. The result so far: by early 2009, developers had built and sold 25 affordable single-family houses.

Though the impact of the program has so far been small, it's important to remember that the land bank "is just one tool" of many in Dallas' "box of tools to handle vacant or abandoned properties," Williams said.

It's also worth noting that there are land banks throughout the United States, including in Flint, Michigan, Cuyahoga County, Ohio, the Kansas City suburb of Overland Park, Kansas, and Richmond, California.⁵⁷ These land banks have adopted a variety of approaches in order to strengthen and improve neighborhoods, including assuming the responsibility themselves of rehabbing and selling homes, or demolishing homes and selling the land to adjacent homeowners or to developers. A Michigan State University study estimated that the Flint land bank had boosted property values countywide by more than \$100 million. In many jurisdictions, the money from the land sale and the collection of delinquent taxes allows land banks to pay for rehabilitation.

In Dallas, crucial assistance is provided by a tax law firm and title companies, which work pro bono. Their contributions make a "huge difference in the financing and the funding of the land bank," Williams said. "Without those, it would be very difficult to make it work." According to Williams, a key to the land bank's success is that "we ... have great cooperation with all our taxing units.... The city, the county, and the school district all work hand in hand."

Neighborhood Investment Program

Established in 2003, the Neighborhood Investment Program funnels city resources to neighborhoods with high concentrations of vacant, tax-delinquent residential lots, structural violations, and streets needing repair. To qualify, neighborhoods need a strong foundation on which to build—specifically, at least 50 percent of residences must be owner occupied. That's because experience has shown that owners who live in their properties tend to take better care of them and are more interested in their neighborhood's long-term health than an absentee landlord.

From 2003 to 2005, five Dallas neighborhoods received increased police patrols and code enforcement, a full-time community prosecutor, and street, sidewalk, and park improvements. In addition, the Dallas Housing Department targeted two streets within the Neighborhood Investment Program for massive redevelopment. For both streets, the city has designed a master plan that includes new sidewalks, pedestrian lighting, and landscaping as well as new housing and mixed-use development.

Neighborhood Stabilization Program

Dallas received \$8 million of the U.S. Department of Housing and Urban Development's \$3.92 billion Neighborhood Stabilization Program. The city will use the money in three ways: to buy and raze abandoned and vacant homes; to rehabilitate foreclosed homes; and to cover administrative costs, including hiring a manager to run the program.

The program will work in coordination with Dallas' other initiatives. For instance, land bought under the program, which can include already developed tracts of land—such as foreclosed subdivisions—will be managed by the Dallas Urban Land Bank. In addition, some targeted properties will be in Neighborhood Investment Program areas.

Ultimately, the Neighborhood Stabilization Program shares the same primary goals as the city's other initiatives: to help stabilize depressed neighborhoods and encourage private investment opportunities.

Community Prosecution Program

Dallas's community prosecution program serves 14 neighborhoods, including three in the Neighborhood Investment Program. Each area is assigned a part-time code inspector and a full-time community prosecutor, who, in addition to increasing building code compliance, develops problem-solving strategies tailored to the neighborhood. The prosecutors' priorities include:

- increasing community involvement via crime watch groups and other initiatives;
- reducing the number of drug houses;
- reducing street-level prostitution;
- cleaning up dilapidated structures; and
- improving safety and the economic strength of business corridors.

Weed and Seed

The U.S. Department of Justice-sponsored Weed and Seed program promotes a multi-agency strategy (including partnerships between police and prosecutors) to reduce crime and promote social and economic revitalization. Dallas has four Weed and Seed sites, including one launched in 2003 in West Dallas, where 40 to 50 percent of the lots are vacant.

A multi-agency enforcement effort in West Dallas in October 2008 began with city workers surveying residents about their safety concerns, learning that they wanted more police patrols as well as visits from Dallas animal services and code compliance officers. Then, over 10 days, city animal and code inspectors picked up 159 stray dogs and issued violations of city property codes on 157 structures while police made 223 misdemeanor arrests. The Dallas Health and Human Services staff also connected residents to crisis outreach workers and referred some people to mental health services. "We are talking about transforming neighborhoods; talking about transforming communities and transforming individuals," Melva Franklin, director of West Dallas Weed and Seed, told *The Dallas Morning News*. "It is a process of teaching and learning."⁵⁸

Indianapolis, Indiana

Indianapolis' problems with vacant houses started in the 1960s when highway construction and population shifts fueled widespread building abandonment. The government's primary response through the early 1980s

was demolition.⁵⁹ Then, in response to neighborhood organizations that felt that many structures could be rehabilitated, the city in the mid-1980s began to emphasize preservation. In 1987, the city razed 228 buildings, boarded up 569, and ordered owners to repair 214.⁶⁰

However, the problem of abandoned properties persisted, gaining momentum in the early 2000s. In launching what he called a “war on abandoned houses” in 2003, then-Indianapolis Mayor Bart Peterson noted that vacant properties contributed to a host of serious problems—crime, lowered property values, and fire hazards, to name just a few. They also fueled despair. “There is probably nothing more demoralizing for a neighborhood than to see vacant and abandoned houses,” the mayor said.⁶¹

The mayor established an inter-agency Abandoned Houses Work Group to propose strategies for dealing with the 7,913 vacant residential structures in Marion County—a number so high that it meant one in every 30 homes was empty.⁶²

The work group highlighted existing tools that it felt were underutilized, such as laws that allowed city agencies to order property owners to repair their properties and, failing that, allowed the city to issue fines to cover the cost of demolition or repairs. The group also proposed new laws and administrative procedures, such as a system to inspect, mow, clean, and board up vacant and abandoned buildings. In addition, the work group took a big-picture look at entire neighborhoods, recommending strategies for incorporating abandoned properties into on-going community development initiatives.

Meanwhile, the U.S. Attorney’s Office in Indianapolis established its own law enforcement task force to target real estate fraud. From 2002 to 2008, federal prosecutors convicted 59 defendants for defrauding lenders of more than \$40 million.⁶³ Fraud was blamed as a major engine of foreclosures, which, in September 2007 affected one in every 109 houses in Marion County, making its foreclosure rate 24th in the U.S.⁶⁴ By 2009, foreclosure was responsible for 10,116 vacant properties—1.8 percent of properties in Marion County. Of those properties, about 7,000 owed back taxes, depriving the county of \$19 million in revenue, according to Lt. Marshall DePew, of the Indianapolis Metropolitan Police.

A couple months after taking office in January 2008, Mayor Greg Ballard appointed police officer and former Councilwoman Sherron Franklin to focus full time on the city’s abandoned properties. Although an employee of the Police Department, Ballard gave her an office at City Hall both to facilitate inter-agency collaboration and underscore the importance of her work. A key component of Franklin’s mission is to implement strategies that help prevent future abandonment rather than merely react to problems that have already occurred.

Franklin’s first task was to map the extent of the problem. To make sure the data gathered from real estate, postal, and other government sources was up to date, police officers reported the addresses of vacant properties in their districts. “Once we put the dots on the map, we could see they were mostly investor properties and only a small percentage of people living beyond their means,” Franklin said. With data in hand, the city developed a plan to address the problem from several angles.

In an effort to prevent foreclosures, the city helped pull together a coalition of community organizations, housing groups, government agencies, lenders, and banks to sponsor foreclosure prevention workshops and provide counseling or referrals to certified foreclosure intervention specialists.

For properties that are already vacant, the city pursues both enforcement and redevelopment strategies. Examples of those strategies include:

Mayor's Top 25

The Mayor's Top 25 list, modeled after a criminal most wanted list, targets the worst properties in the city for rapid and comprehensive remediation. "The mayor recognized the magnitude of the problem, and realized that, given limits on funding, there was only so much we can do," Franklin said. "He said, 'Public safety is my number-one priority,'" so he had agencies identify the city's 25 most dangerous properties.

The list, which is continually updated as properties are ameliorated, is based on recommendations submitted by Indianapolis Metropolitan Police Department commanders who identify properties that are attracting the most criminal activity. The commanders' recommendations are vetted by a team composed of representatives from the police, Department of Metropolitan Development, Indianapolis Fire Department, and city prosecutors. In their review, the team focuses on "issues such as health code violations, nuisance actions, zoning, fire hazards, criminal activities, [and] redevelopment potential," Franklin said.

The properties are then graded on a housing scoring sheet, and the worst 25 offenders undergo what Franklin calls "an aggressive nuisance abatement process" that can include repair orders, receivership, land banking, and demolition. "The goal is to get the property back up to code as quickly as possible so at the very least it looks nice and is safe for the people still living in the neighborhood," Franklin said.

Triage

Indianapolis has also developed a rapid triage process by which police officers and Fire Department personnel enter information about problem properties into portable laptop computers, and the data is transmitted to the Marion County Health and Hospital Corporation, which is responsible for building code enforcement. The Health and Hospital Corporation then prioritizes each complaint; for example, a property that had experienced a fire receives top priority, which means that the Health and Hospital Corporation will send an investigator within 24 hours; the presence of high weeds or people loitering on a vacant property generates an inspection within 48 hours. The lowest priorities receive on-site inspection within 72 hours.

"The Health and Hospital Corporation has agreed to use the priority system for anything that comes from the police or the firemen, and they will respond right away. Then we will start the process of code enforcement, going after the owner, getting into court, and so on," Franklin said. The city generates a monthly spreadsheet tracking the status of each investigation, making it easier to measure outcomes.

Land Bank

To foster redevelopment, the city created the Indy Land Bank, whose slogan is “Battling Blight Block by Block.”⁶⁵ The land bank takes possession of property that fails to receive successful bids at the county treasurer’s annual sale of tax-delinquent and abandoned lots. The land bank then makes the lots available to both non-profit and for-profit developers as long as the developers’ plans support neighborhood revitalization, encourage homeownership, and return property to the tax base.

Blight Penalties

The city issues fines for code violations. When property owners fail to take corrective action, the city can issue “blight penalties,” which are typically \$2,500 per violation but can go as high as \$7,500. The higher penalties not only offer landowners a stronger incentive to meet code requirements but also generate significant income. In 2008, 750 penalties of \$2,500 each generated over \$1.8 million.

Neighborhood Stabilization Program

The federal Neighborhood Stabilization Program, funded by the U.S. Department of Housing and Urban Development, provided Indianapolis with \$29 million in 2008. The funds are provided to state and local governments to acquire and redevelop foreclosed properties. Franklin said the money will support the redevelopment of 200 to 300 houses.

Baltimore, Maryland

Baltimore had about 16,400 vacant structures in early 2009, but foreclosures aren’t the primary engine behind the vacancies. “Every vacancy is different. It’s got a different story [and] a different remedy applies,” Braverman said, adding that Baltimore’s concern is not vacant buildings in and of themselves; they need to be vacant and unsafe. “It’s not a crime in Baltimore or a problem ... to have an unoccupied, otherwise safe, structure,” Braverman said.

A key feature of the city’s response to unsafe properties is a property database. “Who owns the property? [Answering that question] used to be the biggest impediment we had in Baltimore to doing anything,” Braverman said. In 1979, the city passed a property registration ordinance, creating a database that included 39,000 properties by early 2009. Not only does the registration system provide law and code enforcement officials with ready access to owner contact information but it also generates revenue—\$1.5 million in 2008, for example.

Because not everyone registers, Baltimore Housing created a special investigations unit to track down delinquent owners. “We set out and built a unit of first-class investigators. While they do other code enforcement investigations, their principal duty is to investigate property ownership,” Braverman said. In 2008, the team conducted 4,500 investigations, which took an average of 1.2 hours each.

Because the causes of vacancy in Baltimore vary widely, the city takes a team approach, bringing together an array of tools from a broad spectrum of agencies, including the departments responsible for housing, police, health, and fire. Everyone is responsible for “a different piece of the puzzle,” while attorneys with Baltimore Housing’s Code Enforcement Legal Section “are in a unique position to see across the toolkit,” said Jason Hessler, the director of the legal section. “When they go do a neighborhood walk through, they’re looking from the mountaintop at all the remedies, figuring out which piece of the toolkit works We’ve found that to be a very successful way to go about it. As opposed to having different drivers, [we have a lawyer from our unit] in the catbird seat pulling the strings across demolition, acquisition, receivership to litigation, criminal or civil.”

In general, Baltimore has found that deploying a code enforcement attorney to work side by side with private or non-profit developers and using the full array of tools produces the best outcomes.

Baltimore’s strategies include:

Cleanup Crews

The problem of dangerous, vacant buildings is so large that Baltimore created dedicated teams to clean and secure vacant properties. These teams remove trash and debris and board the buildings. Although the teams have been in place for decades, management reforms in 2006 reduced the average cleaning and boarding response time from 245 days to 12 days while at the same time increasing the number of buildings cleaned and boarded from 13,000 in fiscal year 2004 to 42,000 in 2008. Property owners are billed for the cost of the cleanup, allowing Baltimore to collect \$2.3 million in revenue in fiscal year 2008 from the resulting liens, which the city recoups either through its billing and tax sale processes or at the time of a subsequent transfer.

Legal Remedies

A housing coordinator and eight attorneys in the Code Enforcement Legal Section annually file 1,500 to 2,000 cases, including criminal and civil prosecutions, receiverships, and demolitions. They have found that while civil and criminal litigation are important components of a code enforcement toolkit, pre-payable civil citations are the most efficient enforcement action. These citations, which are returnable to an administrative court, can result in liens against the property if the owner fails to pay. “One of our lessons we learned is that for much of what needs enforcement, litigation is an extremely inefficient approach... we need another path,” Braverman said. “We’re going to be working on legislation that permits enforcement through civil citations, which is essentially very low on cost, very good at leveraging outcomes, and a great revenue generator.”

Inspections

In the past, individual housing inspectors decided when and where to issue violations and which cases to file. As Braverman described it, we had “the lowest-level actor driving the litigation resources.” In addition, inspections were either complaint driven or largely determined by inspectors with insufficient guidance from management. Those processes proved to be inefficient. In response, Baltimore Housing established new business rules, in

essence requiring inspectors to “own their territory,” affirmatively inspect areas with high concentrations of vacant properties (rather than wait for a complaint to be filed), and identify which properties need to be cleaned, boarded up, and cited. To hold the inspectors accountable, Baltimore Housing regularly audits their work.

In areas with fewer vacancies, inspections continue to be complaint driven. Citywide, new business rules permit inspectors to issue violation notices proactively for only health and safety issues. In the past, inspectors attempted to fulfill daily inspection quotas by filing notices for minor violations, which generated unnecessary paperwork and follow-up inspections.

Internet

Baltimore Housing posts information about vacant properties, including Housing Court calendars, on the internet. Officials have found that neighborhood stakeholders actively track cases and report non-compliance with court orders. “If [by] day three, the owner was supposed to do X, we know that [a] community member is going to call us on day four if it’s not done. That keeps us honest, and it gives us extra eyes and ears,” Braverman said.

Miami-Dade County, Florida

Florida had the nation’s highest rate of mortgage fraud in 2006 and 2007.⁶⁶ In 2008, Florida dropped to second place (behind Rhode Island) but was nonetheless generating fraudulent loans at nearly three times the national average.⁶⁷ And within Florida, the Miami area ranked first among metropolitan areas.⁶⁸

The rise in the number of cases was so precipitous—rising from only 16 cases in 2005 to over nearly 1,000 in 2008—that local law enforcement was overwhelmed. “Mortgage fraud was traditionally handled by the FBI,” explained Glenn Theobald, chief legal counsel for the Miami-Dade County Police Department. But since the vast majority of new cases fell below the \$1 million threshold established by the local office of the Federal Bureau of Investigation, prosecutors and police had to handle most of the cases themselves.

“It was hard to even get anyone to listen to us because everyone said ‘What the heck is mortgage fraud?’” Theobald said. In addition, local laws were inadequate. In the absence of a specific law prohibiting the varied forms of mortgage fraud, prosecutors sometimes charged fraudsters with grand theft under the logic that they were “stealing equity from a home,” Theobald said; but “the judges ... laughed at them. They said ‘The house is still there. The equity is still in the house. How are you saying that it’s been stolen [just] because the appraisal went up?’”

Fortunately, the police department had two investigators that had once worked as mortgage brokers who were “able to help train the rest of our investigators,” Theobald said. Today the Miami-Dade County Police Department has a staff of 19 who focus full-time on mortgage fraud.

Police investigators work closely with the Miami-Dade County Mortgage Fraud Task Force, established in 2007 by Mayor Carlos Alvarez. The Task Force, which Theobald heads, consists of representatives from various public and private agencies, including law enforcement, state regulating agencies, banks, title companies, and realty businesses. You need to get “the business community, the regulators, and law enforcement all in the room

and working together ... to make [the fight against mortgage fraud] a success [and] have buy-in from everybody,” said Anthony DiMarco, executive vice president of the Florida Bankers Association.

The task force leads a multi-pronged effort organized around five subcommittees: education, legislation, regulations, law enforcement, and prosecution. The task force’s activities include:

Advocating for New Legislation

Task force members worked with legislators to pass several state statutes, including one that defines mortgage fraud as a crime and makes any participant in the fraud liable.⁶⁹ The law also allows prosecutors to file a case in any county where any portion of the fraud occurred. “We might have a property in Dade County, ... a closing in Broward, ... and the funding might come from Orange County,” Theobald said. “With the statute, anywhere that the fraud takes place ... is where we can actually charge.” Significantly, the task force worked closely with the Florida Bankers Association to draft the law and lobby for its passage.

The task force advocated successfully for the passage of two other laws: one that enhances penalties for mortgage fraud, making it a second-degree felony if the fraud value is \$100,000 or more;⁷⁰ and another that allows property appraisers the ability to remove artificially inflated valuations due to mortgage fraud.⁷¹ The latter legislation was intended to reverse the higher taxes that mortgage fraud imposes on homeowners. “Because of mortgage fraud and ... the artificially inflated valuations, everyone’s taxes went up,” which placed further pressure on already overstretched homeowners and further fueled the state’s already high foreclosure rate, Theobald said. The task force is also exploring regulatory changes that would suspend the license of a broker charged with mortgage fraud and facilitate notification of other states to prevent a convicted broker from obtaining a license elsewhere.

Pursuing More Aggressive Prosecutions

When the State Attorney’s Office began to settle mortgage fraud cases with fines, restitution, and probation, the task force successfully argued that most cases should be handled by the Office of the Attorney General, which established a special prosecutor to seek larger penalties. The U.S. Attorney’s Office also handles some mortgage fraud cases.

Training Investigators

The task force has helped train over 400 investigators from local law enforcement agencies throughout Florida. According to Theobald, the trainings have “increased the amount of prosecutions, the amount of arrests for mortgage fraud in Florida.... If we don’t handle it at a local level ... then we’re never going to get a handle on this, and it’s going to continue to hurt our country.”

Cultivating New Tools and Resources

The task force has sought to create new resources to help prevent mortgage fraud. Those resources include the creation of a code of conduct for all real estate professionals involved in a transaction. The task force has asked statewide groups representing realtors, mortgage brokers, and others to adopt the code of conduct and promote it among their members. The task force has also created a public complaint form available on <http://miami-dade.gov> that allows the public to anonymously report suspected instances of mortgage fraud.⁷² Another new resource that the task force created is a database of experts who are available to speak about mortgage fraud at conferences, workshops, and other meetings.

LESSONS LEARNED

There are a number of lessons to be learned from the collective experiences of the participants in the Bureau of Justice Assistance discussion.

Collaborate

A theme running through all of the innovative responses to mortgage fraud, foreclosures, and vacant properties is collaboration. Task forces, inspection teams, training initiatives: all require collaboration among different agencies, public and private entities, and even different industries.

In Dallas, community prosecutors have encouraged real estate agents to maintain vacant properties and even helped agents sponsor bus tours of foreclosed houses for potential investors.

In Indio, the police department works closely with real estate and homeowner associations to identify properties that are in foreclosure and reach out to families to help them stay in their homes. And the police department collaborates with a non-profit housing advocacy group to staff its Housing Resource Center.

In Florida, the Miami-Dade County Mortgage Fraud Task Force brings together law enforcement partners like the police department with private industry partners like the Florida Bankers Association. Together, they've successfully developed new resources and encouraged the state legislature to pass new anti-mortgage fraud laws.

Bankers are not only effective advocates for new legislation but also, as they gain responsibility over homes, necessary partners in keeping neighborhoods safe and properties secure. "We stress it: banks are responsible for these properties, period, in our city. There's no question about it. Everyone knows it. All the real estate agents, all of the lenders down there, all the brokers, they know they have to maintain properties in our community," Anderson, of Indio, said.

The challenges for a neighborhood burdened with too many vacant properties are many, making it imperative that agencies coordinate their activities. Police and fire departments, housing and health agencies, economic and community development corporations—all have a potential role.

Invest in Prevention

Although participants agreed that prosecution was a viable and necessary tool, they also agreed that it isn't the only answer, particularly when it comes to cases as complex and widespread as mortgage fraud.

"We will never prosecute our way out of this ... because there are more [mortgage fraud] cases out there than we have prosecutors," Fulmer said. Not only that, successful prosecutions require time and expertise. "A typical investigation from time received to the time we get all the evidence, the documents involved, serve whatever subpoenas we need to is normally anywhere from three to six months," said Glenn Theobald, chief legal counsel for the Miami-Dade Police Department. "And then by the time we actually deliver it to the Attorney General's Office or the State Attorney's Office, we're looking at another three to six months. So you're talking about pretty much a year in duration from start to finish."

Given this, "We've got to stop [mortgage fraud] before the loans are funded," Fulmer said. Among the suggestions participants proffered for doing this was education. In Miami-Dade County, Mayor Carlos Alvarez created a Mortgage Fraud Task Force, which, in turn, established an education committee to work with the media to create public awareness about mortgage fraud.

In Baltimore, Hessler and a private real estate attorney regularly speak before property owner association meetings to educate potential investors about the laws and regulations pertaining to property ownership. "I say ... 'If I do my job tonight correctly, some of you will never invest in properties. And I don't want you to. Others will do it smart, and we will never meet again.' And that's [why the information sessions are] worth my time," Hessler said.

Theobald, who chairs the Miami-Dade County Mortgage Fraud Task Force, pointed out that many industry professionals could also benefit from training. He singled out appraisers in particular, calling for both licensing requirements and better promotion and enforcement of best practices. The Mortgage Fraud Task Force helped train over 400 members of law enforcement and prosecutors from across Florida, created a real estate professionals' code of conduct, and established a database of speakers qualified to talk about mortgage fraud and the work of the task force.

Average homeowners can also benefit from education. For instance, it has been suggested that homeowners facing the threat of foreclosure "need timely warnings regarding the existence and prevalence of the [foreclosure rescue scams] before the onslaught of ... solicitations [from scammers] begins."⁷³

Focus group participants also mentioned another moment when prevention is paramount: after a house is vacated but before it falls prey to neglect, vandalism, and opportunistic criminals. The idea is that, even if a house is vacant, it doesn't have to appear vacant and untended. This will not only prevent crime and maintain a better quality of life for those still living nearby, but also help sustain property values.

"Focus on the crimes that deteriorate that property because what's going to matter is, when you go to sell that piece of property, what it is worth will determine who moves in there and what kind of social connections they have, and what gets brought into that neighborhood," said Wilson, the National Institute of Justice researcher.

The challenge is to first identify houses as soon as their occupants leave—or even before they leave. Ramos suggested that police monitor precursors to foreclosure, just as his officers do in Indio: by tracking utility shut-offs. “The minute you get a notice of a turnoff on your water and power, that’s your precursor, that’s when you need to take immediate action.... That’s how we’re staying ahead,” he said.

Enforcement officials also need to determine ownership and then, if the owner doesn’t secure and maintain the property, enforce all applicable laws and regulations. “That’s a crime-reduction strategy: to get the owner information out to the police and code enforcement people as quickly as possible,” Braverman said. “We have to close that window down to prevent criminal activity from occurring, to prevent the situation that fosters criminal activity.”

Collect Data

In order to formulate a response to vacant and abandoned properties, towns, cities, and counties need good local data.

Data—which can identify both where problems are and what problems might emerge in the near future—can be collected from numerous sources, including government agencies, such as the tax assessor’s office, the U.S. Department of Housing and Urban Development, and the U.S. Postal Service, as well as private organizations, like RealtyTrac.⁷⁴ Other data sources, especially for local numbers, include housing authorities and court records. Several participants said that utility disconnection notices provide a good indication both of houses that are vacant and those that are not yet vacant but heading toward trouble.

DePew, of Indianapolis, pointed out that many systems currently collecting data use different definitions. “What does ‘vacant’ mean? What does ‘abandoned’ mean?” DePew asked. “We have found that there’s lots of disconnects between our various data systems, and we’re trying to get everybody on the same page.”

Officials in Indianapolis are also trying to collect new data, but because the data collection process can be time consuming, the police and Mayor’s Office in Indianapolis decided to collect data first in the “12 most violent, most high-crime beats of [the 101 beats in] the city,” DePew said.

Once law enforcement and housing officials have data in hand, they can make better, more informed decisions. In Baltimore, for example, housing data is available through a Web-based program accessible to all city agencies. “It tells you where all the vacants are in this area, where the condemned properties are, where the homeowners are, where the renters are, where we’ve brought litigation, where the city is moving to acquire property. In two seconds, you can find out information to inform a decision that used to be impossible,” said Braverman, the deputy commissioner for the city’s Department of Housing and Community Development.

Prosecute Strategically

While participants underscored the value of prevention, they didn’t rule out prosecution. Criminal activity requires a firm response, both to punish offenders who through their lawbreaking contributed to property abandonment, and also to make them examples. “I still believe we have to prosecute a lot of them ... for the others to

know that this is a crime, this is a serious crime,” said Hammoud, the prosecutor from Wayne County, Michigan, who has made a specialty of prosecuting mortgage fraud cases.

For prosecutors to succeed, however, they need to understand the ins and outs of mortgage fraud. One participant said it can be difficult interesting a local prosecutor’s office in mortgage fraud because staff members don’t always “understand the crime. They don’t understand the intricacies. They don’t know the HUD forms and all the paperwork that’s involved.”

Hammoud offered several suggestions for prosecutors tackling mortgage fraud, among them:

Have dedicated investigators

Because mortgage fraud is so complex, prosecutors and investigators need a thorough understanding of its intricacies. After months of investigation, “there will come a time when you can look at the mortgage package and say it’s fraud,” Hammoud said. “I see this with our deputies. The change in two years is unbelievable. We can spot it a mile away.”

Create a team that shares information

The members of Hammoud’s team sit together, fostering a synergy that helps them build better cases. “Sitting together made a huge impact because we listen to each other and we share scenarios. ... A guy who was a notary public on a deed yesterday is the guy who is making a loan today. So we talk about the names. We talk loudly. We sit in an open space.”

Choose defendants carefully

“We have a very high standard before we charge,” Hammoud said. “We don’t charge on simple probable cause in these cases. We use a much higher standard. We don’t want to lose the case at trial because it sends the wrong message to the defendant and the community. So we spend our time to bring the right case against the right defendant.”

Vigorously Enforce the Housing Code

A central pillar of Indio’s response to vacant properties is code enforcement. “We’re using it as the precursor to crime in our community. That’s what our goal is with our code enforcement,” Ramos said. “That’s the directive I’ve given [code enforcement officers]: they’re the precursor, and they work hand in hand with the beat officers.”

While code enforcement in many jurisdictions is often carried out by non-law enforcement agencies, such as a housing department, in Indio code enforcement is supervised by the police. Indio officials find this efficient “because you have all the structure and the command” already in place, Anderson said. Specifically, enforcement officers report to police lieutenants, and their efforts are analyzed beat by beat, just like any other crime-fighting effort. “It’s beat accountability, district command accountability,” Ramos said. “Those of you that have accounta-

bility-based policing [know that you have to] break it down to that district commander, that precinct commander, hold him or her accountable ... That is what you pay them for.”

Advocate for New Legislation

Successful code enforcement starts with successful code. Miami-Dade County, Indio, and others found that local and state ordinances governing property can, in the wake of the foreclosure crisis, benefit from some fine-tuning.

Indianapolis is implementing a new no-trespass law to empower police officers to act in an absent owner’s stead. In the past, officers’ hands were tied when confronted with someone who claimed to have an owner’s permission to occupy an otherwise vacant house. The best an officer could do was track down the owner—a time-consuming and difficult task—to verify the claim. But under the new state statute, which took effect in July 2009, an officer has the authority to charge an occupant with trespass even if the owner isn’t present.

In an effort to specifically target foreclosure rescue scams, several states have adopted statutes regulating foreclosure “consultants” and “purchasers,” who have been linked to mortgage rescue scams.⁷⁵

Several participants cited the need for legislation on a national level, including laws allowing the sharing of information that, under current law, is deemed confidential. “A real serious problem is that a lot of the laws that were designed to protect consumer privacy give cover to the bad guys because they know banks can’t talk to each other,” said Fulmer, the mortgage fraud expert. “We need to figure out a way to let banks talk to each other about bad actors.... They need to have an explicit protection for doing that.”

Others have also called for federal legislation to help improve the timeliness of information reported to the three national consumer reporting agencies to prevent scammers, like those involved in mortgage fraud, from exploiting “the gap in time that occurs between when a loan is made and when it appears on a credit report.”⁷⁶

Redevelop Vacant Properties

Securing and maintaining abandoned houses is the baseline. The next step is returning the property to productive use. The jurisdictions represented at the BJA discussion have developed a number of successful strategies for doing this. All the approaches had one thing in common: careful planning and coordination among several partners.

Demolition

Demolition is a common tool for managing properties that are so dilapidated or unsafe that they don’t attract viable investors. Braverman and Hessler displayed several before-and-after photos from Baltimore where demolition was used to clear whole blocks of vacant, dangerous, and overgrown structures.

Pais cited efforts around the country, including one in Buffalo, New York, called the “5 in 5” Demolition Plan.⁷⁷ The initiative, launched in August 2007, calls for bringing the vacancy rate in Buffalo down to five percent by demolishing over 5,000 properties in five years.

The key to successful demolition is coordinating it with economic redevelopment, which means not only tearing down dangerous structures, but doing so in a way that makes the property suitable for reinvestment. Unfortunately, Pais said, most cities rarely coordinate with their “economic development teams to make sure that the millions of dollars we’re spending on demolition coincide with the economic goals of the city.”

Receivership

Redevelopment is usually spearheaded by private investors. Receivership is one tool that allows private investors to bear the cost of renovating a property while also reaping a financial benefit.

Through receivership, a municipality helps a third party—typically a non-profit organization but sometimes an individual experienced in rehabilitating houses—obtain a court order that gives it control over a property. The third party brings the property up to code and then sells it, recouping its investment plus profit based on a pre-determined percentage of the sales price.

In Indianapolis, Franklin’s office created a list of potential receivers, all of whom have been vetted to ensure that they have the experience and financial wherewithal to carry out successful property rehabilitations.

Land Banks

Many cities, including Indianapolis and Dallas, have created land banks through which local governments acquire property and then map strategies for reuse—typically either selling the land to private developers or deploying it for a public purpose.

In Dallas, the Urban Land Bank Demonstration Program seeks to foster the creation of affordable single-family homes on vacant tax-delinquent land. “Putting these [properties] to productive use will address the shortage of affordable workforce housing in Dallas, stabilize at-risk communities, and reduce criminal activity, stimulate community, income, and growth, and increase the local government property tax, sales tax, and fee revenues,” Williams said.

CONCLUSION

There was no shortage of ideas or enthusiasm during the presentations and discussions hosted by the Bureau of Justice Assistance in Washington, D.C., over two days in January 2009. With foreclosures, housing vacancies, and mortgage fraud at all-time highs, the clear consensus among participants was that the time was ripe for just such a discussion.

Participants agreed that the effects of mortgage fraud and foreclosure are devastating to communities, creating dangerous conditions that fuel crime, lower property values, and foster despair among residents who watch their neighborhoods deteriorate around them. There was also consensus over the importance of action: if problems aren’t addressed swiftly, they can take years to solve.

In addition to outlining strategies, participants also highlighted challenges. One challenge everyone shared was the difficulty of identifying property owners. This was due to the circuitous path mortgages have taken in recent years, morphing from loans generated and retained by local banks to financial instruments that are bundled and sold to investors around the world. Some suggested creating a single, national database to better track mortgages, making it easier for jurisdictions to identify owners of vacant properties and hold them accountable for securing and maintaining them.

Another shared challenge was the cost of doing business. The recession that launched the housing crisis has also pinched law enforcement budgets. Thus, just as governments are called upon to respond to a rising number of vacant properties, they are less equipped to do so. Given that, collaboration becomes even more important. By sharing the burden—for instance, by partnering with a non-profit organization as the city of Indio did to create its Housing Resource Center—government can avoid higher costs while, at the same time, producing better outcomes.

Participants agreed that addressing vacant and abandoned properties was a worthwhile investment. Lt. DePew, of the Indianapolis Metropolitan Police, pointed out that when police in Indianapolis focused on the two most violent beats, they ultimately saw violent crime drop 23 percent, freeing up police resources for other parts of the city. And he said the same is true if law enforcement focuses on abandoned housing: “It’s the idea of community-oriented government. We can’t not do it because, when we do it, we take the pressure off ... other areas.”

In the final analysis, participants shared a sense of the possible, concluding that with creativity, knowledge, and determination law enforcement agencies can respond effectively to mortgage fraud and the foreclosure crisis, helping their neighborhoods weather the storm by adapting the strategies that best suit their resources and local needs.

ATTENDEES

Discussion Group: Addressing Mortgage Fraud, Foreclosure, and Vacant Property
Bureau of Justice Assistance
Washington D.C.
January 15 -16, 2009

JASON ANDERSON
Community Improvement Officer
Indio Police Department

MARSHALL DePEW
Lieutenant, Office of the Chief
Indianapolis Metropolitan Police

FAITH BAKER
Division Director
Community Capacity Development Office

ANTHONY DiMARCO
Executive Vice President
Florida Bankers Association

MICHAEL BRAVERMAN
Deputy Commissioner
Housing and Community Development,
Code Enforcement Division, Baltimore

SHERRON FRANKLIN
Director, Abandoned Properties
Office of the Mayor, Indianapolis

THURSTON BRYANT
Policy Advisor
Bureau of Justice Assistance

ANN FULMER
Vice President Business Relations
Interthinx

JIM H. BURCH II
Acting Director
Bureau of Justice Assistance

JESUS GOMEZ
Housing Programs Manager
City of Indio

PAM CAMMARATA
Associate Deputy Director
Bureau of Justice Assistance

BEN GORBAN
Program Assistant
Bureau of Justice Assistance

JOHN COLLIER
Chief Deputy
Prince William County Sheriff's Office, Virginia

ABED HAMMOUD
Lead Attorney
Wayne County, Michigan

PATRICK HARRIS

Director

National Crime Prevention Association

JASON HESSLER

Deputy Director

Code Enforcement Legal Section, Baltimore

GLENDELL HILL

Sheriff

Prince William County, Virginia

STEVE JANSEN

Director

National Center for Community Prosecution
and Anti-Gang Violence Initiative

JENNIFER R. LEONARD

Director

National Vacant Property Campaign

TENZIN LAHDON

Technical Assistance Specialist

Justice Programs Office, School of Public Affairs
American University

DREW MALLOY

Associate Deputy Director

Bureau of Justice Assistance

PREETI MENON

Policy Advisor

Bureau of Justice Assistance

ZOE MENDEL

Policy Analyst

Office of Community Oriented Policing Services

ROXANN PAIS

Executive Assistant City Attorney

Dallas City Attorney's Office

RUBY QAZILBASH

Senior Policy Advisor

Bureau of Justice Assistance

BRAD RAMOS

Chief

Indio Police Department

JOE SCHILLING

Research and Policy Director

National Vacant Property Campaign

CORNELIA SIGWORTH

Policy Advisor

Bureau of Justice Assistance

DEBORAH L. SPENCE

Senior Social Science Analyst

Office of Community Oriented Policing Services

PAUL STEINER

Senior Policy Advisor

Bureau of Justice Assistance

DANICA SVARZAS-KIDD

Policy Advisor

Bureau of Justice Assistance

GLENN THEOBALD

Chief Legal Counsel

Miami-Dade Police Department

CHARLES W. THOMPSON JR.

Executive Director, General Counsel

International Municipal Lawyers Association

LOUIS TUTHILL

Social Science Analyst

National Institute of Justice

DENISE VIERA

Deputy Director

Community Capacity Development Office

Office of Justice Programs

CHRIS WATLER

Project Director

Harlem Community Justice Center

Center for Court Innovation

TERRY WILLIAMS

Interim Assistant Director

Housing Department, Dallas

RON WILSON

Social Science Analyst

National Institute of Justice

ROBERT V. WOLF

Director of Communications

Center for Court Innovation

ENDNOTES

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Center for Court Innovation

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Center for Court Innovation

520 Eighth Avenue, 18th Floor
New York, New York 10018
212 397 3050 Fax 212 397 0985
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Bureau of Justice Assistance
810 Seventh Street N.W.
Washington, D.C. 20531
202 616 6500 Fax 202 305 1367
www.ojp.usdoj.gov/BJA