

# **Appendix F**

## **Survey Summary**

# **Florida Supreme Court Residential Mortgage Foreclosure Task Force**

## **Description of survey results**

This section of the report provides an overview and description of the findings of the Residential Mortgage Foreclosure Task Force, based upon the responses of participants to the surveys conducted from April through July, 2009. (Please see section 5 of this report for a description of the methods used to collect information.) Detailed survey response data is contained in Appendix F to this report, and a listing of all comments submitted is found in Appendix G.

It is important to note here that, although every effort was made to obtain input from borrowers, mortgage holders/servicers, attorneys, and judges throughout the state of Florida, those who participated in taking the surveys and submitting comments do not constitute a scientifically selected sample of individuals. Therefore, the data, comments, and findings described and discussed here cannot be generalized to the state of Florida; they represent the opinions and experiences of those who participated in taking surveys and submitting comments to the Task Force. Nevertheless, the information provided offers invaluable insights into residential mortgage foreclosure issues and processes and the experiences of those involved in this issue from a variety of perspectives.

### **Survey participants**

A total of 1,018 individuals participated in the surveys, as follows: borrowers – 510; mortgage holders/servicers – 40; attorneys – 405; and, 63 judges. Attorneys, borrowers, and judges from throughout the state of Florida participated in the survey; mortgage holders/servicers were not asked to indicate their location or the areas of Florida they serve.

A total of 405 attorneys responded to the survey, and many reported that they practice in several judicial circuits. The circuits with the highest number of attorneys participating were the Eleventh Circuit (Miami-Dade – 148), the Seventeenth Circuit (Ft. Lauderdale – 130), and the Fifteenth Circuit (West Palm Beach – 90). Those circuits with the lowest number of attorneys participating in the survey were the Third Circuit (Lake City – 44), the Fourteenth Circuit (Panama City – 44), and the Eighth Circuit (Gainesville – 44).

Five hundred and ten (510) borrowers from throughout Florida also participated in the survey; they reported their residential locations based on ZIP codes rather than judicial circuits. The areas with the most borrowers participating were Hialeah (83), Bradenton/Sarasota (51), and West Palm Beach (47). The lowest numbers of borrowers participating reported their residences as being in Ocala (3), Gainesville (4), and St. Augustine (4).

A total of 63 judges throughout the state participated in the survey, coming from all 20 judicial circuits in the state. The highest number of participants were from the Eleventh Circuit (Miami-Dade – 10), the Twentieth Circuit (Ft. Myers – 9), and the Ninth Circuit (Orlando – 5). The circuits with the lowest number of judges participating had one judge each; those circuits were the Third Circuit (Lake City), the Fifteenth Circuit (West Palm Beach), the Sixteenth Circuit (Key West), the Eighteenth Circuit (Sanford), and the Nineteenth Circuit (Port St. Lucie).

### **General case management issues**

The vast majority of borrowers (84%) participating in the survey responded that they claim homestead for property tax purposes on their residence, reflecting the importance and the pervasiveness of the current foreclosure crisis. Almost two-thirds of participating judges (64%) stated that they do not have adequate resources to manage their case loads, indicating one of the difficulties being experienced by the court system in responding to the influx of foreclosure cases. Another indicator of the mortgage foreclosure problem is the reported number of pending foreclosure cases in the state; while mortgage holders/servicers reported 7,288 cases pending, attorneys responding to the survey reported a total of 384,191 pending cases. Further, mortgage holders/servicers reported they have taken title to 2,089 homes in the state and have an additional 1,904 cases in which summary judgment has been entered but the sale date for the property has not yet been set. Attorneys, on the other hand, reported a total of 28,120 cases in which a summary judgment has been entered but the sale date for the property has not yet been set.

Regarding reliance on the advice of counsel in deciding whether to work out a foreclosure case, mortgage holders/servicers reported that nearly 42% either do not rely on the advice of legal counsel at all or rely on decisions made by their loss mitigation departments. Some 36% rely on counsel occasionally and 22% reported that they rely on counsel frequently. Attorneys, however, indicated that just over half of their clients (50.6%) frequently rely on their advice regarding whether to work out a foreclosure case, while a smaller percentage (28%) rely on their advice occasionally. In terms of making loss mitigation decisions, 85% of servicers reported having authority to make decisions on the part of the mortgage holder, while only 15% of plaintiff attorneys reported having such authority. Additionally, almost two-thirds of judges (63%) stated that plaintiff attorneys who appear in their cases have no authority to make decisions on behalf of the mortgage holder. In securitized cases, servicers reported having no authority to enter into binding loss mitigation negotiations in 57% of their cases, while attorneys reported not having such authority in 42% of their cases. As far as authority to negotiate loan terms, 66% of holders/servicers stated that none of the loans they service are subject to FNMA and FHMC guidelines for loan modifications, while 36% of plaintiff attorneys reported that that none of their cases were subject to the federal guidelines for modifications.

The majority of attorneys participating in the survey said they represent defendants (67%), while 23% represent plaintiffs and 8% represent condos, homeowner associations, and junior lien holders. Judges said they allow telephone appearances for lenders (67%) and defendants/counsel (75%).

## Case Management – financial literacy

In order to determine the extent of borrowers' knowledge regarding mortgage foreclosure, they were asked to respond to a series of true-false questions based on what they know or believe about the foreclosure process. Sixty percent or more of borrowers correctly answered the following questions.

- You will lose your home - **true** (72% answered correctly)  
*(This is a debatable point, as some borrowers may know there's a possibility that they may be able to work out a resolution other than foreclosure)*
- You have a right to work with the mortgage holder to try to resolve the problem - **true** (79% answered correctly)
- You may be subject to a money judgment against you if the money from the court-ordered sale of your home is less than your loan amount - **true** (87% answered correctly)
- You may be entitled to receive money if the money from the court-ordered sale of your home is more than your loan amount - **true** (60% answered correctly)
- You have a right to file an answer (response) with the court about the foreclosure - **true** (89% answered correctly)
- You have to move out of your home when you get court order that says you have to leave - **true** (91% answered correctly)
- When your house is in foreclosure, you don't have to pay condominium or homeowner's fees – **false** (82 % answered correctly)
- You have to move out of your home as soon as the foreclosure case is filed - **false** (85% answered correctly)

However, borrowers were generally much less knowledgeable about the following questions. The lower level of knowledge/information on these questions has serious implications for borrowers as well as for mortgage holders.

- Low-cost foreclosure counseling is available to help you try to resolve your foreclosure case – **true** (only 54% answered correctly)
- You understand what kind of work-outs might be available in your foreclosure case – **true** (only 36% answered correctly)
- Once a foreclosure judgment is filed, you no longer own your house. It is the mortgage holder's responsibility – **false** (only 53% answered correctly)

## **Barriers to efficient/effective case management**

Communication between mortgage holders/servicers and borrowers is an essential element of the mortgage foreclosure process and one that appears problematic based on survey responses. More than two-thirds of borrowers (69.6%) who were behind on their mortgage payments reported that they have been contacted by their mortgage holders/servicers; almost half (48.3%) said they were first contacted when a payment was one month past due, while 9.8% reported that they were first contacted at the time of filing the foreclosure case. According to mortgage holders/servicers, 86% reported they first contact borrowers when loans are one month delinquent, while only 2.6% said they first contact borrowers at the time of filing the foreclosure case. Fifty-seven percent of past-due borrowers said they had been contacted by their mortgage holder/servicer from one to ten times, while 22.8% said they had been contacted numerous or “hundreds” of times.

Generally, the most frequently reported ways in which borrowers were contacted by holders/servicers were the US Mail, telephone messages/voicemail, and live calls from holder/servicer employees, though each group of survey participants reported different frequencies with which these methods were used. According to borrowers, they were most frequently contacted through telephone messages/voice mail (74.5%), US Mail (62.6%), and less frequently by live calls from holder/servicer employees (30.6%). Similarly, attorneys who represent borrowers reported that holders/servicers most often communicate with their clients through the US Mail (86.4%), telephone messages/voicemail (57.9%), and live calls from holder/servicer employees (37.6%).

Mortgage holders/servicers said they most frequently contact borrowers through the US Mail (92%), live calls from holder/servicer employees (78.9%), and telephone messages/voicemail (68.4%). In answering another question about their methods for contacting borrowers, live interaction with loss mitigation staff is used by 50% of holders in 100% of their contacts; recorded messages containing information about loan status is used by 38% of holders each time they contact borrowers. A vast majority of borrowers (93.9%) indicated that they responded to the holders’ attempts to communicate; however, 78.3% stated they felt negatively about the holders/servicers communication with them, while only 2.3% reported feeling positively.

In terms of borrowers contacting their mortgage holders/servicers, 77% said they contacted or attempted to contact their mortgage holder; over two-thirds (67.3%) reported first contacting their mortgage holder when their mortgage payment was one month past due. A substantial percentage of borrowers (44.9%) contacted or attempted to contact the holders from one to ten times, while 22% reported attempting to contact holders “hundreds” of times. Three-fourths of borrowers (75%) said they were successful in reaching their mortgage holder; telephone messages/voicemail (75.2%) and live calls to holder employees (54.9%) were used most frequently to reach them. A large majority of borrowers (79.8%) felt negatively about their communication with the holder, while only 4.5% felt positively about that contact. Borrowers’ attorneys made attempts to communicate with the plaintiffs (holders), most often resulting in getting voice mail and being asked to leave a message, getting recorded messages with information about the client’s mortgage status, and speaking to the holder’s attorneys but being referred to the loss mitigation department. Regardless of who initiated the communication

between borrowers and holders/servicers, 65% of borrowers described the overall communication as negative (frustrating, intimidating, or confusing); 13.5% of borrowers reported that no communication with their holder/servicer had occurred. Virtually half of participating judges (49.2%) estimated that a large majority of borrowers (over 80%) complain about the inability to communicate with plaintiffs.

In terms of legal representation, 24.9% of borrowers reported they had an attorney representing them in the foreclosure case; 92.9% stated they hired their attorney at the time they learned of the foreclosure case. However, according to 93.5% of the judges participating in the survey, 20% or fewer defendants were represented by counsel. Based on the judges' reports, they estimated that borrowers' attorneys first appear in foreclosure cases most frequently after the summary judgment and at the start of the case. Only 30.5% of borrowers reported having been contacted by an attorney representing the mortgage holder, and only 30.2% said they had contacted or attempted to contact the mortgage holder's attorney. According to attorneys who represent holders/servicers, they most frequently communicated with borrowers via US Mail (81%), telephone messages/voicemail (61.9%), and email (44.4%).

Only 4.3% of borrowers reported that more than one foreclosure case has been filed on their property. A majority of borrowers (59%) stated they have been in contact with the mortgage holder but have been unable to get a decision about their case. According to responses from judges, 50.9% estimated that over 80% of borrowers appearing at the summary judgment hearing express difficulty contacting anyone to initiate reinstatement or engage in settlement discussions.

In terms of foreclosure cases based on mortgage loans that are securitized, almost three-fourths of holders/servicers (73.5%) reported that none of their loans are securitized, while 17.6% stated that all of their loans are securitized. However, attorneys reported that in their experience, securitized loans are more prevalent than those that are not; over half of responding attorneys (52%) indicated that more than 80% of their foreclosure cases are based on mortgage loans that are securitized.

Mortgage holders/servicers have a slightly different perspective on bankruptcy protection from that of attorneys. Forty-four percent of holders/servicers reported that in less than 21% of their foreclosure cases have borrowers sought bankruptcy protection, while 41% stated that none of their borrowers sought bankruptcy protection. Similarly, almost forty percent (39.4%) of attorneys reported that in less than 21% of their foreclosure cases have borrowers sought bankruptcy protection, while they indicated that in only 15% of their cases have none of their clients sought such protection.

When asked about their foreclosure cases in which the note has been transferred, 56.6% of attorneys reported that over 81% of their cases involved transfer of the note; only 9.9% reported that in none of their cases has the note been transferred. Similarly, 54.1% of participating judges indicated that the note has been transferred in over 81% of their foreclosure cases; only 1.6% reported that none of their cases involved a transferred note. Attorneys and judges were both asked in what percentage of their foreclosure cases is the documentation of

note, mortgage, assignments, etc, produced by or at the time of the final hearing. Thirty-five percent of attorneys reported that documentation is produced in over 80% of their cases, while 59% of judges reported production in over 80% of their cases. Further, 25.9% of judges stated that a lost note is pled at the inception of the case in over 80% of their cases.

Judges’ experiences with problems in foreclosure cases

In order to assess the issues judges experience in handling foreclosure cases, they were asked to indicate how frequently they encounter the following problems, using the following answer scale: Never; Occasionally; Regularly; Frequently; and, All the time.

To facilitate identification of which problems occur most often, the percentages of judges answering “regularly”, “frequently”, or “all the time” for each question were combined to obtain an overall ranking showing the incidence or severity of each problem. The list below displays responses to all of the problems about which judges were questioned, in decreasing order of frequency, i.e., those occurring most frequently are listed first.

<b><u>Problems in foreclosure cases</u></b>	<b><u>% of Judges answering Regularly, Frequently, or All the time</u></b>
Pro se litigants who don't know what to do	85.5%
The failure to communicate between loss mitigation departments and the plaintiff lawyer	77.6%
Loss mitigation departments who have the information but have not yet made a decision	77.0%
Loss mitigation departments not responding promptly to short sale offers, causing contracts to be lost	73.6%
Pleadings by both plaintiff and defense for which no good faith investigation has been conducted; for example, pleading lost note in every case, or pleading a TILA violation without knowing anything about the closing	73.3%
Last minute sales cancellations	71.7%
Borrowers who have repeatedly sent the same financial information to the loss mitigation department	68.8%

Repeated resets of sales with no one in the meantime paying the accruing condo or homeowner association fees	67.3%
Loss mitigation departments working with a borrower and telling the borrower the case is on hold, while at the same time the plaintiff lawyer comes to court for a summary judgment	64.0%
Emergency motions due to borrowers waiting until the last minute to take action	60.6%
Time lag from date of service to submission of default	57.7%
Incomplete default packets (missing non-military, affidavits of diligent search, proof of service, etc.)	51.6%
Summary judgment hearing cancellations by plaintiff	49.2%
Loss mitigation departments who work out a case and then fail to tell the plaintiff lawyer	48.4%
Motions to reset sales with no explanation	46.6%
Appearances at summary judgment by borrowers who do not speak English	40.4%
Motions filed but never set for hearing	38.7%
Borrowers who are victimized by foreclosure defense "specialists" who do not do anything in their case	35.5%
Missing documents at summary judgment	35.5%
Legally inadequate motions to vacate final judgment	34.4%
Items docketed but missing from court file	34.4%
Summary judgment hearing no-shows by plaintiff	32.2%
Legally inadequate motions to vacate default	31.1%

Final judgments which include language and directions extraneous to the granting of the summary judgment of Foreclosure	30.7%
Attempts to answer by defendants after defaults have been entered	27.8%
Inadequate lost note affidavit	26.2%
Discovery issues where the defense lawyer asks for discovery, no response from plaintiff, and no motion to compel	24.6%
Tenants appear at hearing with no prior notice about foreclosure	24.2%
Submission by borrowers of real estate sales contract with vague, erroneous, or missing terms	22.4%
Discovery issues where the defense lawyer asks for discovery and plaintiff never responds	21.4%
Inadequate non-military affidavit	19.7%
Mortgage fraud at the time of the inception of the loan	10.2%
Court file lost	6.6%

### **Expediting disposition of uncontested cases**

When asked whether their condominium or homeowners' association dues are currently paid up to date, 40.3% of borrowers said yes, while 18.1% said no; however, 41.7% reported that this question was not applicable to them. When asked about the time elapsed from final judgment to the actual sale of foreclosed properties, almost half of responding attorneys (48.6%) reported that their cases require a minimum of one month to elapse from final judgment to actual sale, while 60.3% stated that at least a portion of their cases take five months or longer from judgment to sale.

A number of questions were posed to judges about their dockets. When asked their opinion as to whether cancellation of sale dates caused a backlog in effective case management for the court system, including the Clerk of Court, judges' responses were almost evenly divided: 49.2% said yes, while 50.8% of judges said no. In undisputed cases with defaults, only 10.3% of judges said private judging is available, while 89.7% said it is not. Judges were evenly split on whether they hold an open docket for foreclosures; 50% reported that they do, while 50% said they do not. More than two-thirds of participating judges (67.7%) stated they cap the number of cases which may be set; of those who set case caps, the majority (55.3%) set caps from 30-60

cases, while 10.5% set caps over 125 cases. Of those judges who do not set caps, 34.4% expect fewer than 30 cases to appear, while 37.5% expect 30-60 cases to appear. When asked how many foreclosure cases they normally hear in one day, a substantial percentage (42.6%) reported hearing fewer than 30 cases, while 32.8% said they hear from 30-60 cases; 11.5% indicated they normally hear over 100 cases in one day.

Answers to questions posed to judges about court procedures highlight the important roles played by other court professionals, such as Clerk of Court staff and judicial assistants. When asked who generally reviews the file for adequacy of documentation, judges most frequently responded as follows judges (91.9%); judicial assistants (24.2%); and, Clerk of Court (17.7%) (for this question, total percentages exceed 100% because they were asked to check all that apply). Judicial orders are most frequently conformed by judicial assistants (46.8%) and Clerk of Court staff (30.6%), while final judgments are most often mailed out by Clerk of Court staff (52.5%). Entry of the sale date on the final judgment is most frequently performed by Clerk of Court staff (61.3%) and the judges themselves (29%).

### **Facilitating efficient resolution of cases**

Several questions were posed to borrowers regarding their mortgages and their mortgage holders. A large majority of borrowers (90.6%) reported that they know who their mortgage holder is, while 85.9% stated that they know who to contact about their mortgage and how to contact them. Fewer than half of borrowers (44.5%) said their loan had been sold to another mortgage company, while 18.3% didn't know if their mortgage had been sold. A substantial percentage of borrowers (42.1%) reported they are currently living in a home that is in a foreclosure case, while a large majority of borrowers (73.9%) stated they owe more on their house than it is worth in the current real estate market. Only 10.8% of borrowers said they bought this real estate as an investment property, while 89.2% indicated they did not do so.

According to 22.9% of mortgage holders/servicers, 100% of their foreclosure cases were identified as "owner occupied" at origination, while 20% of holders/servicers reported that none (0%) of their foreclosure cases were owner occupied at origination. However, only 14.3% of holders/servicers stated that 100% of their foreclosures were currently listed as "owner occupied", while 22.9% reported that none of their foreclosure cases were currently owner occupied. Attorneys participating in the survey reported that the majority of their foreclosure cases involve owner-occupied properties; 43.7% of attorneys said that from 61-99% of their cases were owner-occupied, while an additional 18.1% of attorneys said that 100% of their cases were owner occupied. When judges were asked about owner occupancy in their foreclosure cases, their most frequent response (29.5%) was "don't know"; of those who did estimate the percentages of owner occupied properties in their foreclosure cases, they most often answered (21.3%) that from 41-60% of their cases involved owner occupied properties.

Only 47 borrowers (9.2%) reported participating in court-ordered programs related to their foreclosure case. Twelve (25.5%) of those borrowers participated in meeting with the holder/servicer and neutral third-party mediator, while 35 (76.6%) participated in a conciliation conference without a neutral person to assist (percentages do not total 100%, as borrowers were

asked to check all that apply). The vast majority of all borrowers participating in the survey (94.6%) said they would be willing to directly contact their holder to work out options with no upfront expense, if the court could create such an opportunity.

Several questions were asked of judges and attorneys regarding mediation. When judges were asked if they refer parties to mediation in foreclosure cases, they responded as follows: none (0%) refer parties to mediation in all foreclosure cases; however, 44.8% refer parties to mediation in owner occupied mortgage foreclosures; 78% refer parties to mediation upon request; and 36.2% refer parties to mediation pursuant to the Administrative Order of the Chief Judge. When attorneys were asked if they have participated in foreclosure mediation as an attorney or mediator, 30.4% said yes, while 69.6% said no. Those who answered yes were asked to estimate how long a typical foreclosure mediation would take; 39.2% estimated two hours, while another 21.1 % said three hours. When all attorneys were asked their opinion of a reasonable hourly rate for a mediator to charge for conducting a typical foreclosure mediation, \$150 per hour was cited by 29.5%; another 28.4% identified \$200 per hour as a reasonable rate. A large majority of attorneys participating in the survey (84.1%) said they would be willing to receive specialized training to become eligible to mediate cases limited to foreclosure, and 78.6% said if certified as a mediator, they would be willing to mediate a limited number of cases without charge in exchange for receiving a number of paid mediation cases. Of those who said they would be willing to mediate a limited number of cases without charge, 59.9% said they would accept a ratio of one no-fee case for each paid case; 15.2 % said they would accept a ratio of two no-fee cases for each paid case.

**Obstacles to resolution in foreclosure cases**

Mortgage holders/servicers were presented with a list of obstacles they face in trying to work out a resolution to a foreclosure action; they were asked to rate the importance of each on a five point rating scale, with “1” being less important, and “5” being more important. In order to compare the relative importance of these obstacles, an average score was calculated for each obstacle based on mortgage holders’ responses. The higher the score, the more important the obstacle was rated; the lower the score, the less important the obstacle. The list below displays the average of the holders/servicers’ responses, in decreasing order of importance; i.e., those rated most important are listed first.

Borrower is non-responsive	4.2
Financial ability of borrower to modify	4.1
Borrower “underwater” – decline in property value	4.1
Real estate market conditions – excess inventory	4.1
Unrealistic expectations of the borrower in terms of compromise	3.7
Cannot communicate with the borrower	3.6

Cannot locate the borrower	3.1
Lack of adequate financial information from the borrower	3.0
Borrower's attorney delaying action	3.0
Other lien holders (second mortgages, HELOCs, condo and homeowners associations)	2.8

Attorneys participating in the survey were also presented with a list of obstacles to trying to work out a resolution to a foreclosure action. However, their list included the obstacles shown above for mortgage holders (and their attorneys) as well as those obstacles facing borrowers and their attorneys. They were asked to rate the importance of each on a five point rating scale, with "1" being less important, and "5" being more important. In order to compare the relative importance of these obstacles, an average score was calculated for each obstacle based on attorneys' responses. The higher the score, the more important the obstacle was rated; the lower the score, the less important the obstacle. The list below displays the average of the attorneys' responses, in decreasing order of importance; i.e., those rated most important are listed first.

Plaintiff's counsel refuses to discuss/has no authority	4.2
Mortgage holder refuses reasonable options to settle	4.1
Unreasonable delay in responses from mortgage holder	4.1
Cannot get through to a person (versus answering machine)	4.1
Cannot communicate with mortgage holder	4.0
Borrower "underwater" – decline in property values	3.9
Plaintiff's attorney is uninformed about status of loss mitigation efforts	3.9
Financial inability of borrower to modify	3.6
Real estate market conditions – excess inventory	3.6
Unrealistic expectations of the borrower in terms of compromise	3.1
Other lien holders (second mortgages, HELOCs, condo and homeowners associations)	3.1
Borrower is non-responsive	2.7

Lack of adequate financial information from borrower	2.7
Borrower's attorney delaying action	2.5
Cannot communicate with borrower	2.5
Cannot locate borrower	2.3

Attorneys were also asked in what percentage of their cases they conduct formal discovery. Nearly one-third (31.9%) reported conducting discovery in 20% or less of their cases, while 16.9% said they conduct discovery in all their cases, and 14.4% do not conduct discovery in any of their cases.

According to 79% of judges surveyed, discovery is conducted by the parties in 20% or fewer of their cases. More than half of the judges participating in the survey (51.7%) reported that defendants file a responsive pleading in 20% or fewer of their foreclosure cases, while 30% of judges said responsive pleadings are filed in 21-40% of their cases. A majority of judges (57.3%) responded that in over 80% of their mortgage foreclosure cases, the plaintiff requests entry of a Clerk's default when there has been no responsive pleading filed. Borrowers generally do not appear at hearings on the plaintiff's motion for final summary judgment; 69.4% of judges said in 20% or fewer of their cases do borrowers appear. Further, more than half of participating judges (55%) reported that the appearance rate of defendants has remained the same over time, while 40% said the appearance rate of defendants has gone up.

### **Borrowers' court experiences**

The survey for borrowers posed a number of questions regarding their experiences in and with the courts. Only a small minority of borrowers (11.9%) reported that any court hearings have been held regarding their loans. When asked whether the court has entered any orders in their foreclosure case, 12.9% of borrowers said yes, while 63.5% said no; however, 24.3% replied that they don't know whether any court orders have been entered. Of those borrowers who reported that court hearings have been held in their cases, 40% said they were treated fairly or very fairly by the judge during their hearings, while 25% said they were treated unfairly or very unfairly by the judge.

Despite the fact that a majority of borrowers (62.5%) reported that the judge treated them respectfully during the hearing, only 44.5% said they were given the opportunity to present or explain information regarding their case, and only 42.3% said they were given the opportunity to ask questions. Over three-fourths (77.4%) of those who reported having had court hearings said that court staff treated them with respect when they were in court or in the courthouse. Borrowers expressed less positive opinions of their treatment by their mortgage holder's lawyers during the hearing(s). Only 16.9% said they were treated fairly or very fairly by the plaintiff's lawyers, while 32.1% reported being treated unfairly or very unfairly; however, just over half (50.9%) of borrowers said the plaintiff's lawyers treated them neither fairly nor unfairly.

## Exchange of Information

Borrowers were asked if their mortgage holder has made them aware of the options available to them if they are struggling to make a mortgage payment; only 38.7% said yes, while 61.3% said no. When asked to indicate the options about which their holder/lender has informed them, borrowers most frequently reported short sale (37.3%), talking to housing counseling agency (33%), forbearance agreement (31%), adding missed payments to loan balance (30.2%), and, repayment plan (23.1%). Those options least frequently cited by borrowers were lump sum payment (8.5%), changing an ARM mortgage to a fixed rate (7.5%), reduction of the principal (2.4%), managed transition or departure with dignity (1.9%), and partial claim (1.4%).

Mortgage holders/servicers were asked in what percentage of their loans their company uses various loss mitigation strategies. Strategies used most frequently by holders/servicers were: deed-in-lieu of foreclosure (used to some extent by 88%); repayment plans (used to some extent by 87.5%); forbearance agreements (used to some extent by 76.3%); adding missed payments to the loan balance (used to some extent by 74.2%); changing the interest rate (used to some extent by 72.7%); and, managed transition or departure with dignity (used to some extent by 69.3%). Those strategies used most rarely were: partial claim (never used in 84% of cases); assumption of the mortgage (never used in 71.4% of cases); reduction of the principal (never used in 55.5% of cases); changing an ARM to a fixed rate (never used in 52.2% of cases); and, short sale (never used in 43.3% of cases).

Attorneys also were asked to report in what percentage of their cases various loss mitigation strategies were used. They reported the following strategies to be used most frequently: short sale (used to some extent in 80.2% of cases); repayment plans (used to some extent in 79.7% of cases); adding missed payments to the loan balance (used to some extent in 79.3% of cases); forbearance agreements (used to some extent in 74.8% of cases); changing the interest rate (used to some extent in 73.9% of cases); and, deed-in-lieu of foreclosure (used to some extent in 72.7% of cases). According to attorneys, those strategies used most rarely were: assumption of mortgage (never used in 74.3% of cases); partial claim (never used in 69% of cases); lump sum repayment (never used in 59.2% of cases); suggesting borrower talk to housing counseling agency (never used in 52% of cases); reduction of the principal (not used in 51.2% of cases); and, managed transition (not used in 47% of cases).

As mentioned earlier in this report, the problems in communication between borrowers and holders/servicers are reflected in responses to several additional questions posed to borrowers and judges. Borrowers were asked how long it took for the holder/servicer to make a decision and give them an answer if they sent a proposal or requested a modification or approval for short sale. Only 4.9% of borrowers reported receiving an answer in one month; 11.1% said it took two to three months to get an answer, 12.6% said it took four months or longer to get an answer, and 35% said they have never received an answer at all. (Note: 36.4% of borrowers stated that they haven't requested a loan modification or approval from a short sale.) Judges were asked to identify what percentage of defendants who attend hearings report that they have submitted paperwork requested by a loss mitigation representative and have not heard back prior

to the hearing. More than half of the judges (53.3%) said this occurs in 60% or more of their cases, with 15% (part of the 53%) stating that this occurs in more than 95% of the cases they handle.

More than half of borrowers (54.4%) stated there are no other loans or notes other than their primary mortgage also owed on their residence. Of those borrowers who did report loans or notes other than the primary mortgage being owed on their residence, 43.5% have a second mortgage, and 53.7% stated they have a home equity line of credit (HELOC). Just over 8% of borrowers reported “other” types of debt on their residences, including homeowner association dues, lender loans to get current, and credit card liens.

Another issue of interest is why borrowers default on their mortgages. Both holders/servicers and attorneys were asked, to the best of their knowledge, what percentage of borrowers default for various reasons. Holders/servicers most frequently cited a change in borrower financial condition, decline in home values, and loss of employment; less frequently cited reasons were interest rate resets and the loan was not realistically repayable from the outset. Attorneys’ most frequently cited reasons for default were a change in borrower financial condition and loss of employment; less frequently cited reasons were interest rate resets, decline in home values, and the loan was not realistically repayable from the outset.

Holders/servicers and attorneys were asked what information is needed from a borrower to evaluate a potential resolution of a foreclosure case. (Note: the following percentages total more than 100%, as they were asked to check all that apply). According to the holders/servicers, most necessary is current debt and cash flow (89%), employment pay stubs (74.3%), financial statement/affidavit (74%), and W2s/tax returns (71%); less necessary are a hardship letter (43%) and proof of credit/foreclosure counseling (9%). A large majority of attorneys reported that the most necessary information is employment pay stubs (86.9%), current debt and cash flow (84.1%), W2s/tax returns (84.1%), financial affidavit/statement (80.5%), and a hardship letter (78.7%); only 17.4% of attorneys said proof of credit/foreclosure counseling is needed.

Judges and attorneys were asked what percentage of their foreclosure cases involves tenants. The attorneys reported tenants are involved with a relatively low percentage of foreclosure cases; just over 25% said none of their cases involve tenants, while 33% say less than 20% of their cases involve tenants. Almost 25% of judges stated they don’t know how many cases involve tenants, while 36% estimate that 20% or less of their cases involve tenants.

In terms of suggesting to borrowers/defendants that they use financial or foreclosure counseling, 74% of judges do not make such suggestions. Several judges noted on their surveys that it is sometimes difficult not to offer advice from the bench, but their role requires that they remain neutral. As far as attorneys, just over 36% refer their clients for financial or foreclosure counseling, although over 53% of attorneys report they know how to find a HUD certified financial counselor or foreclosure counselor for their clients.

## **Conclusion**

It is clear from the survey data presented above that foreclosure cases in Florida pose serious problems not only for borrowers, but also for mortgage holders/servicers, judges, and attorneys as well as for the state of Florida as a whole. The surveys conducted as part of the work of the Task Force on Residential Mortgage Foreclosures provided an avenue for those most affected by mortgage foreclosure cases to convey their opinions and views of various issues to the task force. The results offer a window of understanding into the experiences and perspectives of those individuals, thereby providing crucial information to the systems working to develop effective responses to handling mortgage foreclosure cases.