

Testimony of

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Testimony of George D. Gould, Esq. Before the United States Senate Judiciary Committee on "Keeping Families In Their Homes: How To Prevent Foreclosures - Part II" Thank you for inviting me to testify on this extremely important issue - the mortgage foreclosure crisis facing our city, our state and our country. I am pleased to speak today on the success of the Residential Mortgage Foreclosure Diversion Pilot Program in Philadelphia. I am the Managing Attorney of the Housing and Energy Units at Community Legal Services in Philadelphia. Our office has been substantially involved in the problems of mortgage foreclosures for many years. In addition to having represented thousands of individuals in mortgage foreclosure cases, our office has also been involved in numerous broader issues to try to confront the serious problems that foreclosure cause in this county. In the 1970's and early 80's, we were instrumental through litigation to ensure that the HUD Assignment Program properly functioned and were able to save thousands of FHA homeowners from foreclosure. In 1983 working with the Philadelphia Unemployment Project (PUP) and the local sheriff, we were able to obtain through the Common Pleas Court, a postponement of sheriff sales on owner occupied properties for almost a year until our state legislature passed the Homeowner's Emergency Mortgage

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Assistance Program (HEMAP), a program which provided substantial foreclosure relief to homeowners facing financial problems because of the country's economic recession. In 2004 we again petitioned the Common Pleas Court to postpone foreclosure sales which led to the resolution of hundreds of cases. Out of that case the Honorable Annette Rizzo, Judge of the Common Pleas Court instituted the Mortgage Foreclosure Steering Committee which created a court supervised dialogue between foreclosure attorneys and consumer attorneys and advocates. In March of this year, President Judge Jones and Judge Rizzo convened an emergency meeting of the Committee and informed the Committee of the framework of the proposed Residential Mortgage Foreclosure Diversion Pilot Program. The Committee has since had substantial input into the formulation and implementation of the Mortgage Foreclosure Diversion Program. Our office along with Philadelphia Legal Assistance (PLA - our sister agency, which also provides legal service to low income persons) have continued to play an important role in the Foreclosure Diversion Program. We have been actively involved in the training of counseling agencies, private attorneys (recruited by the Volunteers For the Indigent Program (VIP) to represent homeowners in the negotiation and conciliation conferences) and jpts (judge pro tempore) who preside over the conciliation conferences. Our office also represent individual homeowners involved in the process and

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continue to play an active role in the Mortgage Foreclosure Steering Committee's involvement in the implementation of the program. The Residential Mortgage Foreclosure Diversion Pilot Program is a bold and creative measure taken by our local Common Pleas Court under the strong leadership of Judge Jones and Judge Rizzo to address the problems of foreclosures in this city. There are numerous problems in communication between lenders and homeowners. Homeowners have often had great difficulty in trying to communicate with the lenders or mortgage loan servicers regarding their mortgage problems. Understaffed servicers of mortgage loans have also had difficulty in trying to communicate with the homeowner who is often overwhelmed by their circumstances and sometimes not able to adequately deal with the problem on their own. The process created by our court helps to resolve many of these issues. It brings together both parties in a structured and organized way to help bring about a resolution of the issues. By postponing the sheriff's sale and setting up conciliation conferences presided over by judge pro tems it gives the homeowner an opportunity with the help of professional counselors and attorneys to try to resolve the mortgage problems. However, unlike the past where many of the problems were solely related to the financial circumstances of the homeowners, today we are faced with situations where the mortgage itself is often predatory and unaffordable, one that must be modified to become an affordable and performing loan.

The process created by the Mortgage Foreclosure Diversion Program is a major step forward. However, it is not one without monetary costs. Monies are needed to fund the counselors, the foreclosure hotline (operated by PLA, it takes calls from homeowners and connects them with counseling agencies to help them prepare a financial analysis and suggested modification or workouts of their mortgage problems), VIP and our office and PLA to help provide individual representation and implementation of the diversion program. While the Housing and Economic Recovery Act of 2008 provided 30 million dollars for legal assistance to homeowners facing foreclosure, the law has been interpreted to preclude any funding for legal assistance after a foreclosure action has been filed in court. This must be changed. In addition to these resources, what has also proved to be very important is outreach to the homeowners. At the time a homeowner is faced with foreclosure they are often in a confused and overwhelming situation. They receive numerous mailing, from the servicer of the mortgage, bankruptcy attorneys and rescue "scams" which purport to help them save their homes. The letters from the court about the Diversion Program can often get "lost" in the avalanche of other mailings that the homeowner receives. We have found that personal outreach to the homeowner with face to face contact with an explanation of the Diversion Program can be an extremely effective way to involve homeowners in the process.

The Diversion Program has been successful because it brings together the parties, the homeowners and lender, who would have difficulty or even not communicate with each other. But, the program has its limits. For example, while clearly it is in the lenders interest to modify the loan so as to create a performing loan, situations occur because of the mortgage servicer's contract where resolutions are not achieved even though it would be in the financial interest of the lender or investor to do so. This is so because some of the servicer's contracts create incentives for servicers to foreclose (they will be reimbursed their fees) rather than to modify the mortgage which will create no additional compensation for them.

The recently passed "financial rescue plan" provides the federal government with the tools to make major inroads in the foreclosure problem. The federal government must take aggressive steps to obtain some of these troubled mortgages and modify them to become affordable. By obtaining these mortgages the government has the ability to make the loans affordable by reducing principal and interest rates and turn them into performing loans. Another alternative would be for the federal government to take over the servicing of these loans so they can be appropriately modified. In addition the federal government should require that any bank it invests in adopt procedures that systematically modify the mortgages of families facing foreclosure. The FDIC has recently instituted such a program. These steps should be done immediately. They can

work in tandem with a program such as established in Philadelphia to prevent any unnecessary mortgage foreclosures. In addition we would strongly urge the passage of legislation allowing the modification of mortgages within the bankruptcy process. If this happened it would create clear incentives for lenders to negotiate and agree to modify the mortgage loan. Finally, I would like to add a note about tenants who are often the innocent victims in the foreclosure process. If tenants are required to leave after a foreclosure and sheriff sale, steps must be taken at the federal level to ensure they are given adequate notice and time to leave their units. All efforts however, should be made to allow the tenants to remain in their homes and continue paying rent.

Thank you.