

Statement of
The Honorable Sheldon Whitehouse

United States Senator
Rhode Island
October 28, 2010

Committee on the Judiciary
Subcommittee on Administrative Oversight and the Courts
Hearing on "Mandatory Mediation Programs: Can Bankruptcy Courts Help End the Foreclosure Crisis?"
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The hearing will come to order. Before we begin, I would like to thank Rhode Island Housing for hosting this official field hearing of the United States Senate Judiciary Subcommittee on Administrative Oversight and the Courts, a panel which I am privileged to chair. I'd also like to welcome the Rhode Island Housing staffers and other housing advocates who are in attendance today.

Last summer, I convened a hearing in this room to examine the foreclosure crisis in Rhode Island and to discuss a proposal to give bankruptcy court judges the power to reduce the principal on primary residence mortgages, the same way they can for most other loans including those on vacation homes, cars, and boats. This has long appeared to be the most efficient and least costly way to keep families in their homes, but the large banks have fought against it with their full lobbying might and we have been unable to overcome filibusters in the Senate.

Over the year since our hearing on bankruptcy modifications, the foreclosure crisis has not relented in Rhode Island or across the nation. The Administration's Home Affordable Modification Program, while well-intentioned, has not succeeded in producing enough modifications to stem the tide of foreclosures. We've known for some time that the large loan servicers play all sorts of games to slow down and derail the modification process and earlier this month learned that they are playing fast and loose with the foreclosure process itself.

A process that may leave a family homeless has been relegated to "foreclosure mills" and "robot-signers." Forget a modification, many of these servicers aren't even providing a human being to confirm that the foreclosure is warranted and the documents are in order.

As a result of the securitization of home mortgages, the relationship between homeowner and lender was fractured and the foreclosure system became dysfunctional. Decisions that make no economic sense overall get made, because the fracturing has created perverse incentives within the system, because it's virtually impossible for a homeowner to find a human with authority to resolve their problem, and from sheer remorseless bureaucratic inertia.

Ann Sabbagh is here, a realtor who shared the suffering of numerous clients, and she memorably put the question this way: "why is it that the bank wants to foreclose on my home, throw me out, and sell it to someone who will pay LESS than I'm willing and able to pay right now?"

I have called on Fannie Mae, Freddie Mac, and the Federal Reserve to use their powers to institute a national foreclosure moratorium. I believe we should freeze foreclosures until the loan servicers can demonstrate that they have new systems in place to properly evaluate homeowners for modifications and, if modification is not financially possible, to provide homeowners with an orderly, humane, and logical foreclosure process. I hope that my colleagues in Washington will consider this when we return after the midterm elections.

This subcommittee has jurisdiction over the courts, and today we will examine whether court-supervised mediations can add common sense to an out-of-control foreclosure process and perhaps help families stay in their homes. The Bankruptcy Court in Rhode Island is one of only a handful of bankruptcy courts nationwide that offers pre-trial foreclosure mediation. Today we will hear from Judge Martin Glenn of the Bankruptcy Court in the Southern District of New York, one of the creators of the first such mediation program, and John Rao and Chris Lefebvre, two attorneys familiar with the Rhode Island program.

For families in Rhode Island and across the country snarled in the foreclosure nightmare, it is vital that we find a way to address the growing crisis. Today's hearing will help us determine whether bankruptcy mediation programs can serve that purpose, and whether federal legislation might be useful in replicating the Rhode Island and New York programs nationwide.

Before I conclude my opening remarks, I want to acknowledge the hard work of my senior Senator, Jack Reed, in preserving and creating affordable housing in Rhode Island and across the country. It is a privilege to work alongside such a champion of accessible housing and fair mortgage practices. Senator Reed plans to make a statement later in the hearing, and when he arrives, we'll pause the testimony to hear from him.

I will now introduce our distinguished panel of witnesses.

Robert Cardullo is the father of three young children and a homeowner from Johnston, Rhode Island. Mr. Cardullo will tell the story of his efforts to receive a mortgage modification, an ongoing process which began back in February of 2009.

Larry Britt, a teacher and homeowner from Riverside, Rhode Island, will discuss his struggles over the past 19 months in getting a mortgage modification from his loan servicer.

Judge Martin Glenn has been a Bankruptcy Judge in the Southern District of New York since 2006. Prior to his appointment to the bench, Judge Glenn practiced law at O'Melveny & Myers in Los Angeles and New York. He has a B.S. from Cornell University and a J.D. from Rutgers Law School.

John Rao of Newport is an attorney with the National Consumer Law Center in Boston, where he focuses on consumer credit and bankruptcy issues. The National Consumer Law Center performs research and trains attorneys who serve low income consumers. Mr. Rao was appointed by Chief

Justice Roberts to serve on the Federal Judicial Conference Advisory Committee on Bankruptcy Rules. Mr. Rao earned his degrees from Boston University and the University of California Hastings College of Law.

Chris Lefebvre practices family, bankruptcy and consumer protection law in Pawtucket, Rhode Island and is a member of the debtor/creditor committee of the Rhode Island Bar Association. Mr. Lefebvre has a B.S. from Boston College and a J.D. from Suffolk University Law School.