

**Statement of
The Honorable Sheldon Whitehouse**

**United States Senator
Rhode Island
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Last October, I convened a subcommittee hearing in Providence to examine a novel approach to reducing foreclosures that has been adopted by the Bankruptcy Court for the District of Rhode Island. Under the foreclosure loss mitigation program, the court, at the petition of the homeowner or loan servicer, will order the parties to see if settlement would be mutually beneficial. While the settlement must be consensual and none is required, the mere act of sitting the homeowner down with someone who has the authority to modify the mortgage or agree to another commonsense settlement often is enough to avoid a costly and painful foreclosure. It is often the first time the homeowner gets that chance. The Rhode Island program is modest, but I believe that it has the potential to help many thousands of homeowners, and help is definitely needed.

As the foreclosure crisis continues in Rhode Island and across the nation, the Administration's Home Affordable Modification Program, while well-intentioned, has not succeeded in producing anywhere near enough modifications to stem the tide of foreclosures. The Congressional Oversight Panel recently estimated that the HAMP is on pace to modify 700,000 to 800,000 mortgages - far short of the three to four million that was the original goal of the program and nowhere near the eight to thirteen million foreclosures expected through 2012. Even the relatively few homeowners that manage to get HAMP modifications must endure a disorganized and often harrowing process.

Members of Congress hear frequently from our constituents being ignored and abused throughout the modification process: documents repeatedly lost, inconsistent advice, hours trapped on the phone, common sense turned on its head to reject fair modifications or even short sale requests in favor of foreclosure. We have likely heard from our mayors about the terrible collateral cost to communities from foreclosure. We have seen the big loan servicers drag their feet in the HAMP. And, we have learned that these companies were playing fast and loose in the foreclosure process, carrying out foreclosures in the cheapest manner possible, often outsourcing the process to "foreclosure mill" document processing companies. Tragically, these foreclosures are often unnecessary, indeed often not even in the mortgage holder's best interests, but they are driven forward by conflict-ridden bureaucratic machinery that lacks the most basic American failsafe: the chance to talk to a responsible human being who can make an actual decision.

The bankruptcy court loss mitigation programs won't save every home, but they can help countless frustrated homeowners cut through the bureaucratic nightmare and get answers to their modification

requests. Because foreclosures can trash the value of a house, loss mitigation programs can save investors money too. Servicers too often act in their own fee-driven interests and not in the interests of the investors who actually hold the mortgages. A court-supervised negotiation can ensure that servicers don't reject reasonable settlements that would benefit the investors.

Loss mitigation programs have important benefits even for servicers. Bankruptcy courts have the power to clear title questions with respect to mortgages. Court approved settlements can protect servicers against future investor litigation. Pooling and servicing agreements often leave servicers unsure if they should modify mortgages or foreclose. A court can help to alleviate this uncertainty by signing off on the reasonableness of a settlement.

Ultimately, giving bankruptcy court judges the power to reduce the principal on primary residence mortgages would be the most efficient and least costly way to keep families in their homes, but that is not the topic of today's hearing. This morning we will focus on far more modest loss mitigation programs, which, without conferring any new substantive powers on bankruptcy courts, have proven effective in avoiding unnecessary foreclosures.