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The North Carolina Banking Institute Symposium on the Foreclosure Crisis: Municipalities Fight Effects of Foreclosure with Litigation and Neighborhood Stabilization Program Grants

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I. INTRODUCTION

As foreclosure forces millions of Americans to leave their homes, their abandoned properties become the new homes to crime, toxic waste, vermin and insects, and an increased risk of fire. Along with such blight, abandoned homes negatively impact surrounding homes’ values. This combination of decreased home ownership, home occupation, and property values significantly reduces tax revenues to cash-strapped state and local governments. Experts predict that foreclosure blight could ultimately cost governments hundreds of billions of dollars. Some
cities have sought to address the cost of foreclosures by seeking to hold mortgage lenders accountable in court for the maintenance costs and lost tax revenue associated with foreclosure blight.\textsuperscript{5} Litigation, however, has been relatively unsuccessful to date.\textsuperscript{6} Furthermore, even when cities prevail against lenders in court, the time and cost associated with litigation makes it an inefficient means of addressing foreclosure blight.\textsuperscript{7} The Neighborhood Stabilization Program (NSP), however, has shown promising signs of providing cities a way to address foreclosure blight.\textsuperscript{8}

Part II of this Note will describe the various litigation approaches that cities have used to address foreclosure blight.\textsuperscript{9} Part II will also explain the shortcomings of such approaches and conclude that litigation is ineffective as a primary strategy to address foreclosure blight.\textsuperscript{10} Part III will explain why the NSP is a novel and innovative solution for cities facing increasing numbers of abandoned homes in the wake of the foreclosure crisis.\textsuperscript{11} The Note concludes in Part IV that while the NSP has shortcomings in its current form, Congress should improve the program and fund it on a recurring basis to provide cities with a sustainable way to address foreclosure blight.\textsuperscript{12}

II. LITIGATION TO FIGHT IMPACT OF FORECLOSURES

Cities have used a variety of legal theories to sue banks to recoup lost tax revenues and to allay increased maintenance costs
associated with foreclosed and abandoned properties. They involve both civil and criminal proceedings regarding individual properties and mass litigation suits seeking to hold property owner(s) responsible for multiple properties in a single action. While litigation may compensate cities and states for lost tax revenue and maintenance costs, these methods are an inefficient and ineffective means of providing relief to blighted cities.

A. Individual Proceedings

Civil suits by cities against individual properties often involve nuisance abatement actions. Cities may have standing to pursue public nuisance claims under statutory or common law.

13. Johnson, supra note 1, at 1187; Brescia, Tainted Loans, supra note 4, at 47-48; see, e.g., City of Cleveland v. Ameriquest Mortg. Sec., Inc., 621 F. Supp.2d 513 (N.D. Ohio 2009) (attempting to hold twenty investment banks for public nuisance created by foreclosed homes); Complaint, Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A., 631 F. Supp.2d 702 (D. Md. 2008) (No. L08CV 062), available at 2008 WL 117894 (alleging that lenders had engaged in reverse redlining giving rise to increased foreclosures and causing harm to the City).

14. Johnson, supra note 1, at 1195-98; see also infra Part II.A-B.

15. See generally Johnson, supra note 1, at 1198 (arguing that individual proceedings are too costly and time consuming to adequately address problems caused by foreclosed and abandoned properties).

16. Johnson, supra note 1, at 1187; see also Katherine C. Engel, Do Cities Have Standing? Redressing the Externalities of Predatory Lending, 38 CONN. L. REV. 355, 382 (2006) (“Public nuisance claims are an age-old tool used by government entities to pursue lenders who engage in unlawful and unsavory lending practices.”). Often, city officials have difficulty finding a party responsible for the foreclosed or abandoned property because “the complexities of the foreclosure process and the national and global nature of the lending industry.” Schilling, supra note 3, at 124-25.

17. Engel, supra note 16, at 384-85. See e.g., N.C. GEN. STAT. § 19-2.1 (2009) (stating that parties with standing include a “county [or] municipality”); OHIO REV. CODE ANN. § 3767.41 (2009) (indicating that parties with standing include a “municipal corporation [or] township”); Camden County Bd. of Chosen Freeholders v. Beretta U.S.A. Corp., 123 F. Supp.2d 245, 265 (D.N.J. 2000) (holding that “municipalities such as Camden County have general statutory and constitutional standing to sue in order to abate public nuisances”). In some jurisdictions, other parties, including nearby property owners, may also bring an action for nuisance abatement; see, e.g., N.C. GEN. STAT. § 19-2.1 (stating that parties with standing include “the Attorney General, the district attorney, county, municipality, or any private citizen of the county”); OHIO REV. CODE ANN. § 3767.41 (indicating that parties with standing to bring abatement actions include a “municipal corporation, township, neighbor, tenant, or nonprofit corporation”). See also Johnson, supra note 1, at 1189 (discussing standing in public nuisance claims).
These suits often arise in connection with receivership proceedings and tax foreclosure actions.\textsuperscript{18} Receiverships do not result in a transfer of legal title, but allow for the appointment of a receiver to supervise rehabilitation of the property.\textsuperscript{19} A receiver is only appointed when neither the owner of the property nor other interested parties have rectified the nuisance following a judicial order.\textsuperscript{20} To some degree, this combination of nuisance abatement and receivership is effective because the property owner(s), rather than the community, will bear the financial burden of maintenance and rehabilitation costs.\textsuperscript{21}

By contrast, cities may initiate foreclosure proceedings when other efforts to collect property taxes or nuisance code violation fines have failed.\textsuperscript{22} Foreclosure proceedings allow cities to acquire title to the abandoned properties.\textsuperscript{23} Problematically, some of these foreclosure actions may last more than three years.\textsuperscript{24} When compared to receiverships, foreclosure proceedings are an ineffective solution because they leave the city, rather than the owner, with the financial burden of maintaining an abandoned property.\textsuperscript{25} Furthermore, while individual civil proceedings and the acquisition of vacant homes are useful in combating the effects of foreclosure, the relative cost and time required for individual proceedings outweigh their benefits.\textsuperscript{26}

\textsuperscript{18} Johnson, \textit{supra} note 1, at 1187.
\textsuperscript{19} \textit{Id.} at 1188-89.
\textsuperscript{20} \textit{Id.} at 1191 (discussing receivership under Ohio state law); see generally James J. Kelly, Jr., \textit{Refreshing the Heart of the City: Vacant Building Receivership As a Tool for Neighborhood Revitalization and Community Empowerment}, 13 \textit{J. AFFORDABLE HOUSING} 210, 218 (Winter 2004) (noting that receiverships are only allowed where the petitioning party can establish that the nuisance has gone unabated).
\textsuperscript{21} Johnson, \textit{supra} note 1, at 1193-94.
\textsuperscript{22} \textit{Id.} at 1192-93 (explaining foreclosure proceedings under Ohio state law).
\textsuperscript{23} \textit{Id.} at 1188-89.
\textsuperscript{24} See \textit{id.} at 1194.
\textsuperscript{25} See \textit{id.} at 1192; Kelly, \textit{supra} note 20, at 211 (arguing that placing blighted properties in receivership is critical to rehabilitating neighborhoods negatively affected by the mortgage crisis). In some states, local governments can recover costs associated with nuisance abatement via an abatement lien; however, "abatement's upfront costs act as a disincentive for code enforcement to use against foreclosed homes as they have limited budgets and the increasing uncertainty of recovering those costs against insolvent lending institutions." Schilling, \textit{supra} note 3, at 122.
\textsuperscript{26} Johnson, \textit{supra} note 1, at 1198. See also ALAN MALLACH, \textit{RESTORING PROBLEM PROPERTIES: A GUIDE TO NEW JERSEY'S ABANDONED PROPERTY TOOLS} 68 (2005), \textit{available at} http://www.hcdnnj.org/mc/page.do?sitePageId=81510&orgId=
Individual criminal nuisance actions against lenders are also used in limited circumstances to mitigate expenses associated with abandoned properties.\textsuperscript{27} For example, housing court judges in both Cleveland, Ohio and Buffalo, New York have ordered lenders to pay fines for code violations.\textsuperscript{28} In Cleveland, these fines have been as high as $50,000 per property; in Buffalo the fines have been as much as $15,000.\textsuperscript{29} Banks that do not pay the fines may be restricted by a lien from buying or selling properties in the future.\textsuperscript{30} In Cleveland, public nuisance actions have been tried \textit{in absentia} when the lenders fail to appear and the court has entered default judgments against them.\textsuperscript{31} The Ohio Court of Appeals, however, held that a corporate defendant could not be tried \textit{in absentia} where the defendant had not authorized the proceeding and had never appeared before the court.\textsuperscript{32} Although, in \textit{Cleveland v. Destiny Ventures, L.L.C.},\textsuperscript{33} decided just three months earlier, the court held that a corporate defendant could be tried \textit{in absentia} even though the defendant did not appear for either the plea or the trial following notice that the trial would proceed if an agent

\textsuperscript{27} Johnson, \textit{supra} note 1, at 1195-97.
\textsuperscript{28} \textit{Id.} In addition to imposing fines, Judge Nowak of Cleveland has declined to evict some homeowners in eviction actions brought by the lenders who failed to comply with the default judgments entered against them. Michael Orey, \textit{Dirty Deeds}, Bus. Wk., Jan. 3, 2008, \textit{available at} \url{http://www.businessweek.com/magazine/content/08_02/b4066046083770.htm}. This action provides an incentive for lenders to ensure that foreclosed properties do not become nuisances and that they are kept “in good condition until a buyer can be found.” \textit{Id.}; Johnson, \textit{supra} note 1, at 1196.
\textsuperscript{29} Johnson, \textit{supra} note 1, at 1196.
\textsuperscript{30} Orey, \textit{supra} note 28.
\textsuperscript{32} \textit{Wash. Mut. Bank}, 179 Ohio App.3d at 694-95.
\textsuperscript{33} \textit{Destiny Ventures}, No. 91018, slip op. at 3.
failed to appear. The Ohio Supreme Court has granted appeals in both cases to resolve the split.

While the cities of Buffalo and Cleveland have seen some benefits from these criminal actions, other cities should consider the costs and benefits of such an approach. Individual criminal nuisance actions are time consuming and costly because they require an independent lawsuit for each property. Furthermore, there is no indication that courts in other jurisdictions will follow Buffalo and Cleveland's lead. The costs and uncertainty associated with individual actions suggest that cities should explore other avenues to deal with substantial foreclosure blight.

B. Mass Litigation

Cities have also employed various legal theories in mass-litigation suits against lenders and servicers with the goal of recovering lost tax revenue and maintenance costs to minimize the financial strain arising from the rehabilitation of abandoned homes and decreasing property tax revenue. Proponents of a

34. Id.
37. Johnson, supra note 1, at 1195-97.
39. Julie Kay, Empty Homes Spur Cities' Suits, 30 Nat'l. L. J. 1 (2008), available at 5/5/2008 Nat'l L.J. 1, (Col. 1). States are also trying to combat foreclosure costs via mass litigation. See generally David Streitfeld & John Collins Rudolf, States are Pondering Fraud Suits Against Banks, N. Y. TIMES, Nov. 3, 2009 at B1, available at 2009 WLNR 21915697. Some Attorneys General have alleged that lenders committed fraud by marketing and selling loans that could not be repaid. Id. Illinois Attorney General, Lisa Madigan, filed a suit against Wells Fargo alleging predatory lending in violation of Illinois civil rights laws. Id. Meanwhile, Attorney General of Arizona, Terry Goddard, remarked that he would prefer a better solution to the foreclosure crisis than a victory in the courtroom, but he believes that litigation is the only viable solution at this point. Id. Goddard said that at first, the states tried to use the threat of Cuomo v. Clearing House as a "tool to be persuasive with the banks, . . .
mass-litigation approach to addressing foreclosure blight argue that consolidating actions is cost-saving. While mass litigation may be more economical than individual suits, municipalities have had little success in these matters.

The City of Cleveland sought to hold more than twenty notable investment banks liable by classifying foreclosure blight as a public nuisance. In this case, City of Cleveland v. Ameriquest Mortgage Securities, Inc., the City alleged that the defendant banks encouraged irresponsible subprime lending through securitization, which inevitably increased foreclosures. The court found that because the plaintiff alleged that the defendants were maintaining a qualified public nuisance, the plaintiff must...
establish the traditional elements of a negligence claim.\textsuperscript{46} The case was dismissed in part because the court found that the defendants did not create a public nuisance because subprime lending is a regulated activity and the defendants had complied with those regulations.\textsuperscript{47} Furthermore, the court held that the defendants' encouragement of securitization was too attenuated to the alleged damages to have proximately caused injury to the City.\textsuperscript{48} The allegations in Cleveland's case were so unique that the dismissal sheds little insight into courts' treatment of other municipal claims against lenders and property owners.\textsuperscript{49}

Adopting a similar strategy, the City of Buffalo filed suit against thirty-six lenders in \textit{City of Buffalo v. ABN Amro Mortgage Group, Inc.}\textsuperscript{50} The plaintiffs alleged that the banks’

\begin{itemize}
  \item[\textsuperscript{46}] \textit{Id.} The elements of a negligence claim are: duty, breach, proximate causation, and damages. \textit{Id.}
  \item[\textsuperscript{47}] \textit{Id.} at 526-27.
  \item[\textsuperscript{48}] \textit{Id.} at 533-34. The case was also dismissed because state law forbids municipalities from regulating mortgages and because the claim was barred by the economic loss doctrine. \textit{Id.} at 517-18, 526. \textit{See also OHIO REV. CODE ANN. § 1.63 (2009)} ("The state solely shall regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in the state and the manner in which any such business is conducted, and this regulation shall be in lieu of all other regulation of such activities by any municipal corporation or other political subdivision. Any ordinance resolution, regulation, or other action by a municipal corporation or other political subdivision to regulate, directly or indirectly, the origination, granting, servicing, or collection of loans or other forms of credit constitutes a conflict with the Revised Code . . . is preempted."). The Ohio Supreme Court announced the economic loss rule as follows: "[I]n the absence of injury to persons or damage to their property, economic losses may not be recovered in the tort theories of strict liability or negligence." \textit{Queen City Terminals v. Gen. Am. Transp. Corp.}, 73 Ohio St. 3d 609, 614 (1995) (citing \textit{Chemtrol Adhesives, Inc. v. Am. Mfrs. Mut. Ins. Co.}, 42 Ohio St. 3d 40, 44-45 (1989)).
  \item[\textsuperscript{49}] \textit{Brescia, Tainted Loans, supra} note 4, at 48 n.142.
  \item[\textsuperscript{50}] \textit{Complaint, City of Buffalo v. ABN Amro Mortgage Group, Inc., (N.Y. Sup. Ct. 2008) (No. 2008002200). The other defendants in the action are: Alden State Bank; American Business Credit, Inc.; Ameriquest Mortgage Company; Bank of America, NA; Bank of New York Trust Company NA; Bankers Trust Company of California, NA N/K/A Deutsche Bank National Trust Company; Beal Bank SSB; Centex Home Equity Company LLC n/k/a Nationstar Mortgage LLC; The Chase Manhattan Bank; The Chase Manhattan Bank, n/k/a/ JP Morgan Chase Bank, National Association; Citibank N.A.; Citifinancial Inc.; Citifinancial Mortgage Company, Inc.; Citimortgage, Inc.; The Cit Group/Consumer Finance, Inc.; Cityscape Corp; Credit-Based Asset Servicing & Securitization, LLC; Deutsche Bank National Trust Company; Empire Development LLC; EMC Mortgage Corporation; FCI National Fund II, LLC; First Union National Bank n/k/a Wachovia Bank of Delaware; GE Capital Mortgage Services, Inc.; IMC Mortgage Company; JP Morgan Chase Bank, n/k/a JP Morgan Chase Bank, National Association; Keybank National
failure to maintain fifty-seven newly-acquired foreclosed homes created a public nuisance and alternatively that these lenders violated local ordinances pertaining to the maintenance of homes. The City estimated that the properties cost Buffalo approximately $2 million in maintenance costs and demolition costs.

Buffalo has two main problems in pursuing this action. First, abandoned properties are often still in the borrower's name when the suit is filed because the bank never foreclosed on the property. Second, because mortgages were often securitized, it is difficult to ascertain who currently owns the mortgage. This case is still pending.

The City of Baltimore used a different strategy by accusing Wells Fargo of reverse redlining, a practice of targeting a specific community with abusive lending practices. The City alleged that Wells Fargo disproportionately marketed and sold subprime loans...
in African-American and Latino communities with terms that compared unfavorably to loans marketed to white communities. The City argued that not only would such acts constitute a violation of the Fair Housing Act, but also that such practices lead to increased foreclosures in minority communities, causing blight and financial harm to the City. The court dismissed the case in January 2010, stating that Wells Fargo was only responsible for a "negligible portion" of the vacant homes in Baltimore. The court noted that "the alleged connection [between Wells Fargo's lending practices and inner city blight] is even more implausible when considered against the background of other factors leading to the deterioration of the inner city, such as extensive unemployment, lack of educational opportunity and choice, irresponsible parenting, disrespect for the law, widespread drug use, and violence."

One case, *City of Minneapolis v. T.J. Waconia*, is an exception to the general trend of cities' unsuccessful suits to address foreclosure blight. In this case, Minneapolis sued a developer for an illegal scheme to increase the prices of more than 140 homes that it had purchased and flipped. The city alleged that by increasing prices in this manner, T.J. Waconia caused the substantial foreclosures and resulting blight in the neighborhood. Within two weeks of filing suit, the court granted a stipulated agreement to award damages and to appoint a receiver to manage and clean up the properties.

58. Complaint, Mayor and City Council of Baltimore, supra note 56.
59. *Id.* Baltimore claims that Wells Fargo violated sections 3604 and 3605 of the Fair Housing Act. *Id.* at 13.
61. Order Granting Motion to Dismiss, *supra* note 60.
62. *City of Minneapolis v. T.J. Waconia* No. 27CV0887880 (Hennepin Co., Minn., Dist. Ct. 2008); see *supra* note 41.
64. *Id.*
65. Press Release, City of Minneapolis, Minneapolis Gets Court Order Appointing a Receiver for 141 Homes in North Minneapolis (Apr. 16, 2008),
Generally, however, municipalities have had little success actually recovering damages via mass litigation; thus, these suits have not produced the funds needed to address foreclosures and blight. Furthermore, these actions may diminish the banks’ willingness to lend in certain areas. John Mechem of the Mortgage Bankers Association cautions that these lawsuits are not the best way to improve cities’ housing markets because “[l]enders simply won’t make loans in areas where they perceive a risk of a lawsuit,” and may be uncooperative regarding maintenance of vacant homes. Given the lack of success cities have had to date and the potential negative consequences of pursuing lenders in this manner, other municipalities should consider non-litigation alternatives to deal with foreclosures.

III. NEIGHBORHOOD STABILIZATION PROGRAM AS A SOLUTION

The NSP provides state and local governments with an alternative source of funding to address foreclosure blight. State and local governments, nonprofit organizations, and “technical assistance providers” have access to NSP funds as part of a comprehensive plan and collective effort to stabilize communities. States and municipalities that received NSP funds


66. See supra notes pp. 264-66 and notes 47-61.
67. Leinwand, supra note 38.
68. Id.
70. Those eligible for technical assistance grants include a state, a local government, a nonprofit organization that implements neighborhood stabilization or community development programs, a professional and technical organization that has knowledge of the NSP and Community Development Block Grants that will provide technical assistance services, or any organization including “educational services and area-wide planning organizations qualified to provide technical assistance to NSP grantees and others to carry out NSP programs.” U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, NOTICE OF FUNDING AVAILABILITY FOR 2009, Docket No. FR-5313-N-01, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/NSP_TA_NOFA.pdf.
71. See NSP Grants, supra note 69.
have had some success mobilizing the community around efforts to mitigate the effects of foreclosures and abandoned properties, but no further NSP funds will be awarded unless Congress authorizes additional funding. Despite its shortcomings, the NSP should be part of a long-term federal effort aimed at rebuilding communities.

A. Implementation of NSP Funds

Beginning in September 2008, NSP-1 funds were allocated to state and local governments to address foreclosure blight. In late 2009, NSP-2 and NSP-TA funding allocations commenced, allocating NSP-2 funds to state and local governments as well as non-profits and NSP-TA funds to technical assistance providers. For example, the U.S. Department of Housing and Urban Development (HUD) allocated more than $48.85 million of NSP 1 funds to the State of North Carolina. The Department of Community Assistance of North Carolina (DCA) distributed those funds to more than 20 local governments, non-profits and other organizations in early 2009. The funding will be used in variety of ways. For example, the City of Charlotte will use its $2.5 million grant to promote homeownership by providing down payment assistance and housing rehabilitation in neighborhoods substantially affected by foreclosures. The Greensboro Housing

72. See supra Part II.A.
74. NSP Grants, supra note 69.
75. NSP Grants, supra note 69.
76. The state received a total of $52.1 million. Five percent of the funding was allocated to the North Carolina Department of Community Assistance to administer and monitor the program. Press Release, N.C. Dept. of Commerce, Neighborhood Stabilization Program (March 18, 2009), http://www.nccommerce.com/en/Community Services/CommunityDevelopmentGrants/CommunityDevelopmentBlockGrants/Nei ghborhood+Stabilization+Program.htm.
77. Id.
78. Id.
79. Id. Charlotte received an additional $5.4 million directly from HUD. U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, HOMES AND COMMUNITIES, STATE AND LOCAL NSP ALLOCATIONS (current as of August 27, 2009), available at
Authority, a non-profit organization, will use its $2 million grant to purchase and rehabilitate thirty foreclosed properties to make them available as affordable rental housing. North Carolina governments, however, did not receive any portion of the $2 billion of NSP 2 funds in January 2010 because such funding was largely focused on those states hardest hit by the mortgage crisis, including California, Florida, and Michigan. While it is too soon to declare the program a total success, officials have high hopes for the initiatives made possible through NSP funds.

Municipalities also received direct NSP funding. In January 2009, Mayor Michael Bloomberg and HUD Secretary Steve Preston announced that New York City received $24 million of NSP 1 funding. The City embarked on a collaborative effort, partnering with community organizations to combine NSP funds with private financing and to jointly administer rehabilitative


80. Press Release N.C. Dept. of Commerce, supra note 76.


83. See infra pp. 269 and 271 and notes 84 and 95.

84. U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, supra note 81. See generally Press Release 020-09, supra note 82 (announcing receipt of NSP funds, implementation of housing programs, and uses of funds).
programs. In addition to the $24 million of NSP funds, the City expected to raise $32 million in private financing to repay lenders once rehabilitated homes are sold. The Battery Park City Authority Housing Trust Fund gave $6 million to the City to secure financing.

The money will be allocated to areas of the City most affected by foreclosures. The City hopes to renovate 115 buildings and provide 250 to 300 families with homes. NSP funds will also augment the Mayor’s New Housing Marketplace Plan, a ten-year plan to create affordable housing units in the city. In January 2010, the City received more than $20 million in additional NSP 2 funds.

New York City’s Department of Housing Preservation and Development, the Center for NYC Neighborhoods, and Restored Homes will jointly administer the City’s NSP funds. The National Community Stabilization Trust will help to identify bank-owned properties that failed to sell at foreclosure auctions to determine if they should be purchased with NSP funds. New York City’s program exemplifies some of the potential strengths of this federally funded program because it puts local governments in control. Local governments are more capable of effectively responding to foreclosures on a city-specific or even a

85. Press Release 020-09, supra note 82.
86. Press Release 020-09, supra note 82.
87. Id.
88. Id.
89. Id.
92. Press Release 020-09, supra note 82.
93. Id.
94. See generally KINGSLEY ET AL., supra note 2, at 23-24 (suggesting that local governments that focus on the foreclosure blight on a local level will be more successful in addressing problems created by the mortgage crisis).
neighborhood-specific level than state government officials because state officials "are too far removed from the local scene." Prior to HUD's allocation of NSP 1 funds, critics suggested that state and local governments were ill-suited to use funds effectively. The American Recovery and Reinvestment Act of 2009, however, may have addressed concerns about effective use of funds because it implemented a competitive bidding process for NSP 2 where awards were based in part on "project quality." Furthermore, organizing a community-wide initiative to address foreclosure blight, partially funded by the NSP, gives local governments the ability to address these problems efficiently and comprehensively.

B. Limitations of NSP

While the NSP could potentially provide significant assistance to cities facing substantial foreclosure blight, the program's prospects for success are limited by the funding previously allocated to the program. By fall 2008, there were approximately 1.35 million foreclosed homes nationwide. Assuming the median price of a home is $200,000, the program could only fund the purchase of 30,000 foreclosed homes, or two percent of the total, given the $5.9 billion allocated in NSP 1 and

95. Id. at 24.
98. EUGENE BOYD & OSCAR R. GONZALES, CONGRESSIONAL RESEARCH SERVICE, COMMUNITY DEVELOPMENT BLOCK GRANTS: NEIGHBORHOOD STABILIZATION PROGRAM; ASSISTANCE TO COMMUNITIES AFFECTED BY FORECLOSURES 8 (Mar. 13, 2009).
99. KINGSLEY ET AL., supra note 2, at 23.
101. BOYD & GONZALES, supra note 98, at 11.
NSP 2. Funding must also be provided to rehabilitate purchased homes. While cities and states can provide extra funding, the NSP program is still insufficient to fully address the effects of the mortgage crisis. The program is a short-term solution to a long-term problem. Baltimore, for example, received only $4.1 million in funding from NSP 1 and no funding, despite its application, from NSP 2. The NSP funds will hopefully enable Baltimore to accomplish the first phase of its neighborhood stabilization project: purchasing, rehabilitating, and selling eighty-eight foreclosed homes in eleven stable, middle-class neighborhoods that are at risk of declining property values due to foreclosures. Following the rehabilitation process, the city planned to sell abandoned or foreclosed homes that have been vacant for fewer than 200 days to low and moderate income buyers and non-profit organizations. But because the city’s application for $5 million of NSP 2 funds was rejected, it seems unlikely that Baltimore will be able to complete its planned projects. While Baltimore’s need for government funding is less significant than

102. Id.
103. Id.
106. Whelan, Baltimore to Spend $4.1M in Federal Money to Fight Foreclosures, supra note 104.
107. U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, supra note 79.
108. Whelan, Baltimore to Spend $4.1M in Federal Money to Fight Foreclosures, supra note 104. Baltimore will have $46,500 in NSP funds per property. Id.
109. Id.
110. Whelan, Lull in Baltimore-Towson Metropolitan Area Foreclosures May be Temporary, supra note 100; U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, supra note 79.
other large cities, $4.1 million is still insufficient to accomplish the city’s goals with respect to its foreclosure problem. A New York real estate attorney remarked that the funding “is a drop in the bucket . . . nationwide, the numbers are so astronomical that there’s no way to stabilize any area with the amount of funds that are being offered.”

NSP’s success may also be somewhat hindered because HUD, which oversees the program, is overburdened in its administrative capacity. HUD oversees both NSP 1 and NSP 2 in addition to the standard Community Development Block Grant program and disaster recovery grants. Furthermore, HUD may only use $10 million, or one percent of NSP 2 funds, to supervise the program. Finally, the required distribution and use schedules for NSP funds, as prescribed by the Housing and Economic Recovery Act of 2008, have been criticized as overly ambitious and “hasty.”

For example, all NSP allocations had to be distributed by the first quarter of 2009. Once distributed, the recipients have only eighteen months to make use of the funds. Thus, some experts are doubtful that many local governments will have enough time to draft economical and efficient community stabilization plans.

IV. CONCLUSION

Litigation aimed at recovering maintenance costs and lost tax revenue is an indirect and inefficient way to address foreclosure blight. The NSP provided communities with a
comprehensive and more efficient alternative to litigation. Nevertheless, because it is too soon to speculate about the overall success of NSP plans, and given the shortcomings of the existing government program, it may be premature to advocate for further funding of the NSP in its current form. Neighborhood stabilization should be a long term goal, and, therefore, hasty short-term capital injections are insufficient to address the problem. Congress should authorize recurring funding to the NSP but only after amending the requirements for awarding and using funds.

S. Adeline McKinney