

# Lessons Learned from the Circuit Court of Cook County Mortgage Foreclosure Mediation Program

---



Spencer M. Cowan, Senior Vice President  
Woodstock Institute

May 18, 2016





## INTRODUCTION

This report is not intended to be a detailed history of the Circuit Court of Cook County Mortgage Foreclosure Mediation Program (the Program). It is, rather, a look at the development, implementation, and modification of the Program as it related to the court process for handling foreclosure cases to learn lessons that may be applied to address the negative impacts of the next crisis. The lessons learned<sup>1</sup> will be framed in terms of a crisis affecting the judicial system, although many may be applicable in other contexts. In learning lessons from the Program, it is important to remember that it was one of many initiatives undertaken in response to the foreclosure crisis,<sup>2</sup> and it was focused on only a limited range of negative impacts resulting from the crisis.

## CONTEXT

A crisis, for purposes of this report, is a situation in which events overload the systems designed to handle them to such an extent that the systems are unable to perform their function, resulting in socially or systemically unacceptable or intolerable results that call for intervention. If existing systems are able to handle the events within existing resources and produce socially and systemically acceptable results, the events do not constitute a crisis. Heavy rain that is handled without significant flooding or pollution is not a crisis. Heavy rain that overwhelms the storm-water management infrastructure and produces widespread flooding, extensive property damage, and life- or health-threatening pollution from overflowing waste-water lines, is a crisis. The unacceptable results spill beyond the purview of the directly-affected stakeholders in the overwhelmed system to impose negative impacts on broader swaths of society that demand a more immediate reaction than waiting for the overload to abate to address the harm caused.

Illinois is a judicial foreclosure state, and so foreclosures have to be processed through the court system, specifically by the Chancery Division of the Circuit Court in each county. The foreclosure crisis in the court system started with a rapid increase in the number of properties entering the judicial foreclosure process. That event, which continued for a number of years, resulted in a rapid and continuing increase in the Circuit Court of Cook County's foreclosure caseload that exceeded the ability of existing court resources in Cook County to process and resolve in a satisfactory and timely manner. The number of properties subject to foreclosure filings<sup>3</sup> in the Circuit Court of Cook County Chancery Division increased from 14,506 in 2005 to 38,924 in 2008, with no signs that the upward trend would abate in the immediate future (Chart 1). Despite allocating significant additional resources to handle foreclosure cases, the backlog grew from 22,293 cases pending at the end of 2007 to 42,920 pending at the end of 2008, eventually peaking at over 81,500 pending cases in the third quarter of 2012. The rapidly

---

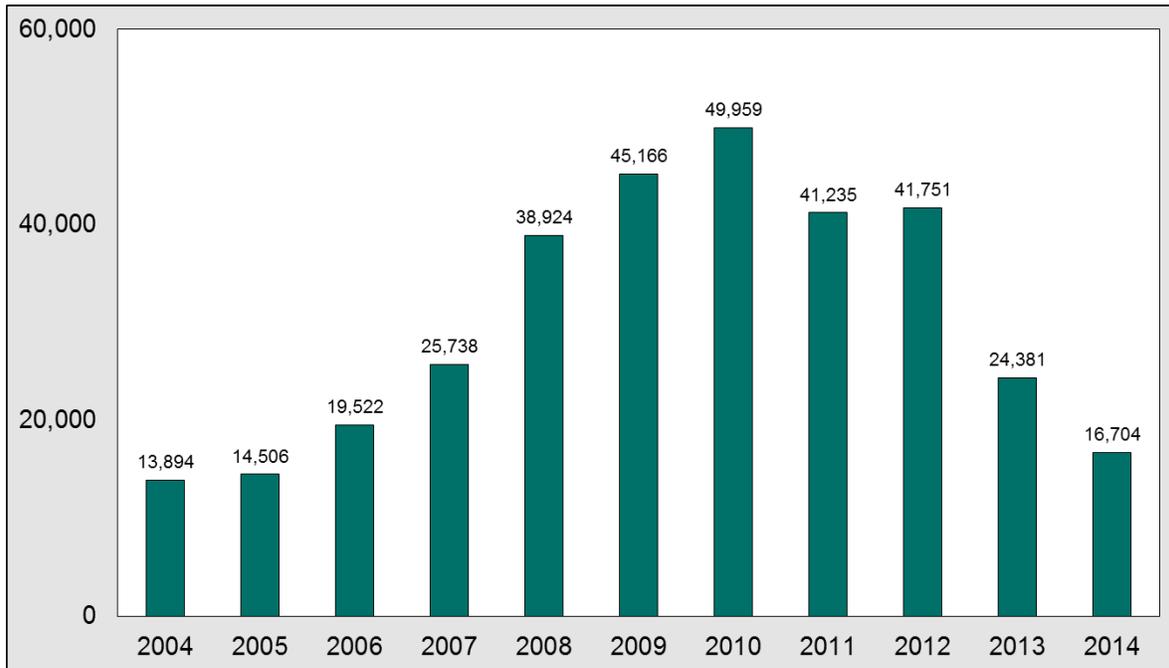
<sup>1</sup> The findings are based on interviews conducted in early 2015 with key informants who had participated in the Program. The lessons learned are based on the author's analysis of the data collected during the interviews and reflect his interpretation of the data. The author promised the key informants confidentiality, and so they are not identified in this report, but the author thanks each for his/her cooperation.

<sup>2</sup> The foreclosure crisis in this report refers to the increase in the number of foreclosure cases filed with the Circuit Court of Cook County. The broader "foreclosure crisis" nationally is beyond the scope of this report.

<sup>3</sup> The number of properties subject to foreclosure filings is smaller than the number of filings because some borrowers had multiple filings against them for the same properties.

increasing delays in bringing foreclosure cases to a final conclusion<sup>4</sup> and a growing backlog of unresolved foreclosure cases were only two of the unacceptable results that made the events a crisis within the court system.

**Chart 1: Properties Subject to Foreclosure Filings in Cook County, 2004-2014**



Source: Record Information Services, Woodstock Institute calculations.

Beyond the way the backlog affected the day-to-day operations of the court system, the impacts of the foreclosure crisis may also have been viewed as unacceptable from the perspective of a number of other stakeholders.<sup>5</sup> For example, to the extent the crisis resulted in delaying the final resolution of cases, lenders and their attorneys may have considered the increased time for them to gain control of properties and the associated costs in legal fees, carrying costs, and the increased risk that the property would deteriorate unacceptable. The fact that the overwhelming majority of cases that were resolved resulted in homeowners losing their properties with what may have been perceived as scant opportunity for alternative resolutions may have been unacceptable to homeowners, their attorneys, housing counselors, and advocates, as well as people concerned with the appearance of impartiality in the legal system. Property owners in neighborhoods with high numbers of properties stuck in foreclosure might have considered the delay in completing the process unacceptable because the longer the property was in foreclosure, the greater the potential it had to become blighted and negatively impact the value of other properties nearby and the quality of life in the neighborhood. Property owners and residents might also have been dismayed by the prospect of so many neighbors losing their homes and wanted to see more alternative resolutions to keep their neighbors in place.

<sup>4</sup> The average time to foreclose in Illinois was 815 days in 2013. Podmolik, Mary Ellen. New foreclosure filings show big decline, *Chicago Tribune*. January 16, 2014.

<sup>5</sup> In some respects, the broad and public nature of the crisis may have made it easier for disparate groups to agree that the situation was a crisis. If only one group is dissatisfied with the results, then other stakeholders needed to craft a response may not be willing to cooperate.

The unacceptable results affected many stakeholders in different ways, and they wanted different results. For example, some wanted quicker foreclosures; others wanted fewer homeowners losing their homes. They did agree on one thing: the results that the existing system was generating were unacceptable.

From the court system's perspective, the need for increased capacity to process cases to a conclusion was obvious and immediate, and it focused on mediation programs as one measure that could meet at least part of that need. In 2008, the court requested a study of mediation programs in other jurisdictions to find models that could be adapted to the situation it faced, and, in July 2009, the Chancery Division established the Mortgage Foreclosure Case Management Advisory Committee (the Committee). The Committee consisted of leading authorities on mortgage foreclosure in Cook County, including representatives of the court system, plaintiff and defense counsel, legal aid, housing counseling agencies, government, mediators, banks, and other key stakeholders.

Over the course of several months, the Committee worked to formulate goals for the Program and adapt existing models to work within the constraints of the court system and the proposed budget. The Committee agreed on the following goals for the Program:

- Encourage homeowners to come to court to resolve their cases;
- Reach mutually acceptable agreements between a homeowner and lender;
- Provide free legal advice and housing counseling;
- Provide free legal representation to homeowners during mediation itself;
- Educate homeowners;
- Assist homeowners in making informed decisions;
- Ensure equal justice under the law; and,
- Discourage abandonment of property.

The Committee structured the Program with four components: 1) community outreach; 2) housing counseling; 3) legal aid; and, 4) mediation. The community outreach component was to help inform homeowners about the foreclosure process and the resources that the Program could offer to help them attain the best possible outcome under their individual circumstances. The housing counseling component was to prepare homeowners for mediation. Legal aid was to represent the homeowners in negotiations with the lender's attorney and in mediation. Mediation was to make a final attempt at a resolution short of selling the home at auction.

The Board of Commissioners approved the Court's request for funding in late 2009 and signed contracts with three entities to oversee the Program components in early 2010. The Chicago Community Trust (CCT) oversaw the community outreach component, working with local community-based groups such as the Southwest Organizing Project, Spanish Coalition for Housing, and the Northwest Side Housing Center. The Illinois Housing Development Authority (IHDA) managed the housing counseling component of the program, working with local housing counseling agencies throughout the county. The Chicago Bar Foundation (CBF) managed the legal aid and mediation components, working with the Chicago Legal Clinic, the Legal Assistance Foundation of Metropolitan Chicago, and Chicago Volunteer Legal Services (CVLS). The Center for Conflict Resolution provided the actual mediation services. The Program officially began operating in April, 2010, with the hotline operated by IHDA to schedule appointments with housing counseling agencies and legal services attorneys for homeowners entering the foreclosure process.

Even before the Program began operating in April, 2010, members of the Committee recognized the possibility that the Program might need significant modification if it did not work as planned. They turned out to be right. Within months, fundamental flaws in the assumptions used to design the Program became apparent. For example, the number of legal aid attorneys and mediators was predicated on the assumption that it would take only one or two mediation sessions over two or three months to resolve most cases. In practice, the cases frequently took five or more sessions over a year. As a result, the mediators' workload exceeded the level of staffing and long delays between the time a case was sent to mediation and the time the mediation occurred developed. The delays exacerbated the situation because the documentation might be out-of-date by the time the mediation session took place, further delaying the resolution. In addition, some participants did not behave in the predicted ways or did not clearly understand what they had to do to make the Program work as planned, while others found that their roles expanded to include unanticipated responsibilities.

As problems with the Program became apparent even in the early months of operation, the three managing groups, CBF, CCT, and IHDA, convened a series of Community Stakeholders' Meetings, including more community-based organizations than had participated in the Committee meetings, in addition to the legal services providers and mediation partner. Neither the Court nor lenders' attorneys participated in the new round of stakeholder meetings, although they had been part of the Committee. Over a period of several months, the managing groups held three facilitated meetings of all of the stakeholders and a separate meeting with the stakeholders each was funding. The Community Stakeholders' Meetings agreed on shared goals for the Program and produced a series of recommendations to address the problems in the Program. The goals were rephrased as:

1. Strengthen and work towards a Program that helps fully informed homeowners keep their homes with sustainable, realistic modifications. When that is not possible, homeowners will go for their next best option and will be assisted in pursuing a "graceful exit." We acknowledge that communities as a whole also have an important stake in the Program's success in preventing abandoned and vacant housing.
2. Increase the use of the Program by all those eligible, reduce the number of unwanted drop outs and better understand the reasons why people fall through the cracks.
3. Make the Program more accessible and user-friendly. This includes a more consistent process for homeowners, better support of people who are in a crisis, a Program that allows homeowners to act on their own behalf, and more connections between the Program and other resources.
4. Improve data collection, tracking, and consistent communication and distribution of information about the Program's progress, outcomes, and success to all stakeholders and the broader public.
5. Increase Program resources by adding new money and partners, and by better coordinating with existing programs and other resources.
6. Improve communications among all stakeholders – the Court, Program participants, and other community stakeholders.

The changes that the Community Stakeholders recommended touched on virtually every aspect of the Program. Some were small measures, such as adding signs in the Daley Center courthouse to make it easier for homeowners to find their way around the building. Others were more significant, such as changing the requirements for a case to be referred to mediation. The Court adopted most of the recommendations, but it could not adopt all of them, mostly because of financial constraints or because the change would not work with the way the court system had to operate.

The Community Stakeholders also recommended dispersing housing counseling workshops and sessions throughout Cook County, rather than having them primarily at the Daley Center. In addition to making the services available in the neighborhoods where people lived, the Community Stakeholders recommended that the housing counseling agencies hold workshops that homeowners could attend before scheduling a one-on-one appointment with a counselor.

Several of the Community Stakeholders' recommendations reflect lessons learned from the operation of the Program over the preceding months. Those changes affected almost every stage in the process, from the time homeowners entered the Program, to getting the documentation together to submit loan modification requests, to ensuring that cases were ready for mediation when they were ordered to mediation. Some of the recommendations aimed at improving quality control and aligning incentives, while others aimed at making sure that all prerequisite steps had been completed before moving to the next stage in the process.

For example, one recommendation was to change the way that housing counseling agencies were compensated. In the initial design of the Program, housing counseling agencies were paid based on the number of homeowners counseled. That, however, was not the outcome measure that was necessary to show that the homeowner was ready for the next step in the process. The Community Stakeholders recommended a change so that the agency would be paid for either providing CVLS with a complete document package to submit to the Lender's attorney for a loan modification or for securing a permanent modification by some other means. Not only did the change align the incentive, payment, to the outcome that was necessary to move the homeowner to the next stage in the process, it also meant that the agency had an incentive to make sure its quality control was robust enough to ensure that the documentation it provided to CVLS was complete and kept up-to-date.

Another recommendation was to institute the Case Manager system. The role of the Case Managers was to keep track of cases. They made sure that the parties took the steps required within the allotted time and in the correct sequence, which provided an additional level of quality control, and kept the Courts informed of the status of cases assigned to them. The Case Managers reduced the need for the Courts to monitor the status of their cases and ensured that cases were not referred to mediation until they were fully ready.

## LESSONS

LESSON #1: Because a crisis occurs when inputs exceed the capacity of a system to handle them and produce socially and systemically acceptable results, responding to a crisis requires determining the types of capacity that need to increase, by how much, and what can be done to achieve the required capacity.

LESSON #2: Increasing capacity requires increased resources.

LESSON #3: Defining general goals is not enough; the response needs clearly articulated goals and a clear set of components or processes to reach those goals.

LESSON #4: Defining clearly the roles for participants in the response system is critically important because the definitions tell them the functions that they and the other participants can and cannot perform, even if those role definitions frustrate some participants.

LESSON #5: Establishing a comprehensive, fully-integrated quality control system is essential.

LESSON #6: Helping people who are not familiar with a large bureaucracy navigate their way through the system may be important to make sure they stay on track.

LESSON #7: Making access to services convenient for people who need them is key.

LESSON #8: Trying something, a pilot program, and being prepared to adapt if it does not work as imagined, is a good first step.

LESSON #9: Seeking additional input and changing the response is likely to be necessary.

LESSON #10: Using facilitators and intermediaries may be necessary to work around personal and institutional conflicts, but they can also interfere with direct communication that could more quickly resolve issues.

LESSON #11: Developing an effective response does not require the participation or buy-in of all potential stakeholders in every phase.

LESSON #12: Tracking progress helps keep the response functioning within the parameters necessary to be effective and to demonstrate the level of output.

**LESSON #1: Because a crisis occurs when inputs exceed the capacity of a system to handle them and produce socially and systemically acceptable results, responding to a crisis requires determining the types of capacity that need to increase, by how much, and what can be done to achieve the required capacity.**

A recurring theme raised by the people interviewed for this report is that a major contributor to the crisis was a lack of adequate systemic, institutional, and individual capacity within or among stakeholders to deal with the magnitude of the problem. The data illustrate the issue of systemic capacity with respect to the Circuit Court of Cook County. The court system is finite; it has only a certain number of Judges and the support staff and facilities they require to hear cases. That capacity is adequate<sup>6</sup> to dispose of cases under normal operating loads. When the foreclosure crisis added thousands of additional cases to the court system's overall workload, however, the existing capacity proved to be inadequate for the additional foreclosure cases on top of ongoing civil and criminal case loads.

The Program was one of a series of steps taken to address the capacity issue within the court system going back to well before the extent of the foreclosure crisis became apparent. As the number of foreclosure filings increased between 2002 and 2005, more Judges were assigned to hear those cases and the handling of cases was expedited by the creation of the Default/Case Management Call. That approach, however, runs into the zero-sum nature of the court system – shifting resources to handle one kind of case takes resources from other kinds of cases, such as criminal or civil trials, because the total level of available resources does not increase – and its highly inelastic nature that makes it very difficult to increase the overall level of court system resources and capacity. Another step was to try to increase the efficiency with which each case was handled, separating default cases from contested cases, for example. The Program was a third approach, to reduce the amount of court system resources needed to dispose of cases by creating an alternative means of disposition that used fewer court resources. In addressing the lack of institutional capacity to process an elevated level of demand, stakeholders used multiple approaches, each mitigating the problem to some extent.

Institutional capacity was also a problem that affected many of the key stakeholders, from the legal services providers to the mediation service. They simply did not have enough people to handle the work. At the institutional level, increasing capacity may require additional, professionally-qualified staff to provide services. For example, a legal services office with an adequate number of attorneys to handle 50 new clients a week would likely be overwhelmed if the incoming case load rose to 250 cases per week. As a practical and professional matter, one attorney can represent only a finite number of clients without falling below minimally acceptable professional standards. The first problem of institutional capacity was finding enough appropriately qualified professionals, attorneys to represent *pro bono* clients in foreclosure, trained mediators who were qualified to hear the mediation sessions assigned to them, and certified housing counselors who could help homeowners through the process.

Increasing institutional capacity, however, required more than just adding front-line professional staff directly involved in the operation of the Program. Professional staff at most organizations usually require support personnel, such as paralegals to help with research and document preparation, and so increasing institutional capacity may also involve finding the additional staff to support the new front-line professionals.

Another dimension of institutional capacity that needed attention was the operating systems and other infrastructure that organizations used to manage their work. Software for managing

---

<sup>6</sup> I realize that some observers might question the assumption that the capacity of the Circuit Court of Cook County to handle normal caseloads is adequate, but that discussion is beyond the scope of this report.

client contacts and files that is adequate for tracking 100 clients at a time may not have the capacity to handle 500 at a time and may need to be upgraded or replaced. Computer systems that were fast enough to process existing levels of data needed to be replaced or upgraded to have sufficient memory and processing speed to handle the larger data requirements. All of those changes place an additional burden on institutional capacity while staff members are learning new systems.

Even office space is an issue. The additional professional staff, such as attorneys, need offices in which to meet with clients. Organizations participating in a crisis response may need to move or rent additional space.

Individual capacity also came into play. An obvious example would be the attorneys representing homeowners in foreclosure. For the legal service providers involved with the Program, the new attorneys needed to know or learn Illinois foreclosure law and the practices and idiosyncrasies of the Circuit Court of Cook County Chancery Division. Similarly, housing counselors needed to become familiar with the workings of the court system and the multiple programs intended to help homeowners, including qualifying criteria and documentation requirements. Although some of the new personnel brought in to increase institutional capacity may have had the requisite knowledge and experience to immediately adapt to their roles, others may have needed training or familiarization in the new work environment.

To the extent that a “crisis” is a confluence of events that creates severe negative impacts across a variety of constituencies and that is beyond the capacity of existing systems to address, then increasing the capacity of those systems will be an essential part of the response. Increasing the capacity of the affected systems may include bringing in additional stakeholders or partners, and the response will have to make sure that they all have the institutional capacity to fulfill their roles in the response.

## **LESSON #2: Increasing capacity requires increased resources.**

In virtually every instance, increasing capacity will require money, probably a lot of money, over and above the existing level of funding. The people and organizations responding to the next crisis may need to find multiple sources for that funding, depending on the amount and nature of the harm caused.

For a crisis involving a primarily publicly-funded system, such as the courts, the increased funding will probably also need to come from the public sector. That aspect of the search for additional resources, however, is only part of the issue. The people and organizations developing the response may need to convince the funder to increase its contribution sufficiently to pay for the response and to show the funder where the resources can come from. For example, funding for the Program came from the Cook County budget, but that is a finite resource. The Cook County Board of Commissioners had to find the additional funding for the Program, some of which may have come out of other programs that the county supported. Showing the funder how it can provide adequate support for a crisis response may make it easier for the funder to agree to the request for additional money.

An alternative way to convince a political public sector body, such as the Cook County Board of Commissioners, to direct funding to a crisis response may be to apply political pressure. Instead of showing the Board where it can take money from to fund the response, political pressure might convince the Board that enough of the public wants the Board to fund a response for its

members to then examine the resources available and determine for itself where the money can come from.

**LESSON #3: Defining general goals is not enough; the response needs clearly articulated goals and a clear set of components or processes to reach those goals.**

As part of the overall response to the foreclosure crisis, mediation was seen as one way to resolve cases, reducing the burden on the courts and, possibly, producing results that were less harmful to homeowners. Mediation was the component of the response that was supposed to attain the goal to “reach mutually acceptable agreements” between a homeowner and lender.

The first version of the Program, however, did not have effective systems built in to get homeowners and their attorneys ready for mediation. For example, some cases were sent to mediation without properly prepared, up-to-date documents and without a final impasse between the parties that could be mediated. Because the first version of the Program did not incorporate the intermediate steps in the process of getting ready for mediation, the actual mediation did not function as intended.

The changes that the Community Stakeholders made to the Program addressed many of the issues created by the lack of attention to the intermediate steps. The added elements, including Case Managers and changes to the criteria for compensating housing counselors, provided a framework that increased the likelihood that documents were in order and up-to-date and that the parties were in a position that was amenable to mediation before the case was sent to mediation.

**LESSON #4: Defining clearly the roles for participants in the response system is critically important because the definitions tell them the functions that they and the other participants can and cannot perform, even if those role definitions frustrate some participants.**

The Program involved multiple participants, each performing a specified role within the overall crisis response. Because the crisis involved the judicial system and included both lawyers and non-lawyers as participants, the roles were defined, in part, by laws limiting who is legally allowed to represent individuals within the court system and give legal advice. Lawyers are allowed to represent clients in court and give legal advice; non-lawyers are not. That role definition understandably frustrated some participants in the Program, but the participants did not have authority to change the definition.

The next crisis involving the judicial system that requires professional interaction between lawyers and non-lawyers will have to address the same issues. Non-lawyers dealing repeatedly with a limited range of legal issues may acquire considerable knowledge about those issues and feel as if their experiential learning should have value. They may want to share that knowledge in ways that are not permissible under existing law. Clearly defining the limits of each role in the system may not solve the problem, but, at least, the participants will be aware of the issue before agreeing to participate.

Participants also should thoroughly understand the functions of all of the other participants, including the limitations within which they have to operate. For example, lawyers are bound by attorney-client privilege and cannot reveal what their clients have told them. They are simply not allowed to discuss confidential matters with any other participants. If all of the other

participants understand that limitation, they may be less likely to become frustrated when attorneys refuse to discuss a case with them.

Finally, some stakeholders may have role definitions that operate against the goals of the crisis response. Lenders' attorneys had a professional responsibility to represent the interests of their clients, and that responsibility did not necessarily include cooperating with the goal of the Program to help "fully informed homeowners keep their homes with sustainable, realistic modifications." The legal system defines the roles that the attorneys for each side must play, and the fact that the response to a crisis might be more effective if the roles were changed does not change the roles.

### **LESSON #5: Establishing a comprehensive, fully-integrated quality control system is essential.**

The response to a crisis creates a system or process to take the input that is overloading the existing system, in the case of the foreclosure crisis it was the homeowners entering the judicial foreclosure process, and move that input through the response system, step by step, to the final, acceptable output, with each intermediate step preparing the input for the next step in the sequence. Having a robust, internal quality control system increases the probability that each succeeding participant will receive its inputs ready for whatever that participant in the system is expected to do to the inputs.

The first version of the Program seemed to focus on getting the parties to the mediation session, but it lacked a clear plan to ensure that the parties were ready for mediation. In very simple terms, the first version of the Program consisted of getting homeowners counseling, legal representation, into court, and then into mediation. The Program did not have an adequate, built-in mechanism for quality control from one step to the next, to ensure that homeowners and cases were ready for mediation when they went to mediation.

The Case Manager component, which the Community Stakeholders added to the Program, added that quality control element. In manufacturing industry terms, part of the Case Managers' role was to track the input of raw material, homeowners entering the foreclosure process, through a series of intermediate steps, with each step preparing the homeowners and cases for the next stage in the process. The Case Manager's role, in that respect, ensures that each participating component performs its function properly, so that the inputs that the next component receives are properly configured so that it can perform its function. For example, one of the functions of the Case Manager was to ensure that the case was ready for mediation before it was referred to mediation. That meant that the housing counselor had prepared the complete set of required documents properly and provided the up-to-date documents to the homeowner's attorney, and that the attorney for the homeowner and the attorney for the lender had reached a final impasse in negotiations.

### **LESSON #6: Helping people who are not familiar with a large bureaucracy navigate their way through the system may be important to make sure they stay on track.**

The Richard J. Daley Center, home of the Circuit Court of Cook County Chancery Division, is a large and imposing building, with 30 stories and more than 120 court and hearing rooms as well as the Cook County Law Library, and multiple different offices of the Clerk of the Circuit Court. Most people coming into the building have to pass through security and a metal detector before moving beyond the entry lobby. Understandably, homeowners might have difficulty just

figuring out how to get around the building, to find the right place to go, and that is just the physical structure. The judicial foreclosure process might seem similarly bewildering and intimidating to people who do not routinely work within it.

The response to a crisis may have to take into account both the physical and bureaucratic environment and how they may be perceived by different people trying to work with it. Making it easier for people coming into the system to find little details, such as knowing where to go to file an appearance or find a legal aid attorney, can have a disproportionate impact on the overall performance of the response. Because the response to a crisis is informed by people with knowledge of the systems affected, they may start by crafting a program that assumes a level of knowledge of the systems that people unfamiliar with the systems are unlikely to have.

**LESSON #7: Making access to services convenient for people who need them is key.**

People in need of services to cope with the threat that a crisis poses may have little free time to avail themselves of centralized help, especially in a geographic area as large as Cook County. Bringing the services to where the people who need them are makes it easier for people to get the help they need than having to drive or take public transportation to get to the central location. The workshops provided a group setting where homeowners could be introduced to the foreclosure process and the services that the Program offered. Scheduling the follow-up one-on-one appointment then gave homeowners a single point of contact to go forward. The goal was to make it easy for homeowners to get into the Program.

**LESSON #8: Trying something, a pilot program, and being prepared to adapt if it does not work as imagined, is a good first step.**

The Committee took action, knew that the Program it created might be seriously flawed, and went ahead anyway. In doing so, it created a response that everybody could observe and learn from. Some parts worked reasonably well and needed only tweaking. Other parts did not and needed significant modification. The Program provided a real-world experiment that showed what more needed to be done or done differently, leading the way to changes that made the Program more effective.

The Program was a large and complex response on a scale for which there was no clear precedent or model. As with the design of most complex programs to address problems in society, Committee members had to make numerous assumptions based on their experience and expertise. For example, the Committee members had to determine the level of mediators needed to achieve the desired level of cases being resolved in mediation. They assumed, based on experience, that a certain percentage of cases would be ordered to mediation, a percentage of those would settle before reaching mediation, and that only one or two mediation sessions would be necessary for most cases that did go to mediation. In reality, more cases than anticipated were ordered to mediation, a smaller percentage of those settled before reaching mediation, and those that went to mediation frequently took five or more sessions to resolve.

As a result, the Program developed large backlogs, with homeowners having to wait many months between the time their cases were ordered to mediation and the time when the mediation sessions took place. The lag time added to the problems because documentation that the homeowners submitted at the time their cases were ordered to mediation might be out-of-date by the time the sessions started, resulting in further delays.

These examples are not the only assumptions that proved inaccurate, and the problems with the initial iteration of the Program cited are not the only ones that became obvious. The Committee, however, developed the Program and put it into operation, allowing for empirical observations that showed the extent of the disparity between the assumptions and realities. Those observations provided the evidence to support modifications to improve the program.

The next crisis will most likely require a complex response involving multiple actors operating in an environment and scale with which they are not familiar. The best that stakeholders may be able to do is develop a response based on their experience in similar situations, and estimate what will be needed to start responding to the crisis. They will need to be prepared for the fact that their best estimates are significantly off, that elements of the response do not behave as anticipated, and that significant modifications to the response are likely going to be necessary.

**LESSON #9: Seeking additional input and changing the response is likely to be necessary.**

The Community Stakeholders' Meetings took place in a radically different environment than the Committee faced when it developed the initial configuration of the Program. The Committee had to create the Program from scratch, based on models from other places with different issues and the members' educated assumptions about how what they were developing would function. The Community Stakeholders had a concrete, defined program operating in their jurisdiction. They could examine each component of the Program with a track record of performance in the exact circumstances in which it would have to work. They could talk with people who were on the front lines to find out what their experiences were. That is one of the major contributions from the Committee and the Court having implemented the Program, even one that was not working as intended, and reinforces the lesson to try something as a response.

**LESSON #10: Using facilitators and intermediaries may be necessary to work around personal and institutional conflicts, but they can also interfere with direct communication that could more quickly resolve issues.**

Some of the people and institutions involved in responding to the next crisis will likely have interacted before the onset of the crisis, and some of those interactions may have resulted in animosity or lack of trust between those participants. Some participants may have irreconcilably different interpretations or perspectives on events or people involved with the crisis based on experience, education, or political beliefs or agenda. Some people are just abrasive or hard to get along with. Those same people may also be stakeholders whose participation and buy-in are essential for the response to be effective.

One option for reducing the difficulties that can result from interpersonal or inter-organizational conflict is to use facilitators or intermediaries to avoid having the parties meet directly to work out their differences. Facilitators and intermediaries may be able to articulate and find common interests from positions that appear irreconcilable, rephrase statements in less inflammatory words, and use other techniques to reduce the frequency and intensity of conflicts. They should be people or organizations that the parties trust and respect, if possible.

The downside to using facilitators and intermediaries is that they sometimes can come between participants who could, at least for a limited range of interactions, more easily resolve issues with direct negotiation or discussions. Intermediaries, for example, could also have interests or agendas that they want to further, and those conflicts of interest could lead them to insert

themselves into interactions between participants in circumstances where the intermediaries are not needed or wanted by the participants.

**LESSON #11: Developing an effective response does not require the participation or buy-in of all potential stakeholders in every phase.**

The participation of all stakeholders may be generally desirable in developing a way to respond to a crisis, but it is not essential. The differences between the composition of the Committee that designed the first version of the Program and included lenders' attorneys, and the Community Stakeholder Meetings that produced the second version and did not include lenders' attorneys, demonstrate that lesson and a set of conditions under which omitting a potential stakeholder might be reasonable.

Neither version of the Program significantly changed how lenders' attorneys processed their side of the foreclosure cases beyond actual attendance at the mediation session. The Program allowed them to continue to represent their clients' interests exactly as they always had, with the exception of the added element of mediation. To the extent that the Program focused primarily on getting homeowners ready for mediation, the input from lenders' attorneys was not necessary because they did not play any essential part in that phase of the process.

**LESSON #12: Tracking progress helps keep the response functioning within the parameters necessary to be effective and to demonstrate the level of output.**

Integrating systems to measure inputs and outputs of the different components of a crisis response system can help those managing the response determine whether the capacity of the different components is adequate to achieve the desired level of output overall. Capacity may be inadequate or too great. The former can constrain the performance of the entire program; the latter may consume resources that could be better deployed for other purposes. Output measures also inform the funding sources what they are getting for their investment.

Output measures need to be carefully considered to ensure that they align with the measures that the response requires. For example, housing counseling agencies in the Program could measure output in a number of different ways, but not all of those would be relevant to quantifying the relevant output that the Program required.

One possible measure was the raw number of homeowners receiving counseling. That was the initial measure that was used to determine how much compensation the counseling agencies received. The problem with that measure is that the role the housing counseling needed to perform was to prepare the homeowners for mediation, including assembling all of the required documents. The raw number of homeowners counseled, therefore, was not the appropriate measure.

Another possible measure, the one that the second version of the Program used to determine the compensation that the housing counseling agencies received, was the number of homeowners successfully prepared for mediation. That was the output that the Program required to function, and the change aligned the compensation metric with the Program's needs.