

LEGAL REMEDIES:

LOCAL GOVERNMENT STRATEGIES TO MITIGATE NEGATIVE EFFECTS OF FORECLOSURES ON COMMUNITIES

Mark Ireland

Supervising Attorney

Foreclosure Relief Law Project,

a program of the Housing Preservation Project

September 24, 2008

Disclaimer



- There isn't one remedy. There isn't one solution. There are many remedies and many solutions that all have to be marshaled to address the biggest economic crisis since the Great Depression.
- It should also be noted that housing is just one piece of a larger problem with unsustainable spending and debt in United States of America.



A New way of Thinking

A new way of thinking...



- Traditionally we think of a problem property (singular), and our ordinances and related legal and administrative responses are designed to only deal with one property at a time.
- The traditional system is inadequate in our current housing market. It is inefficient and often ineffective.

Don't just think of one...



2700 Penn Ave. N.



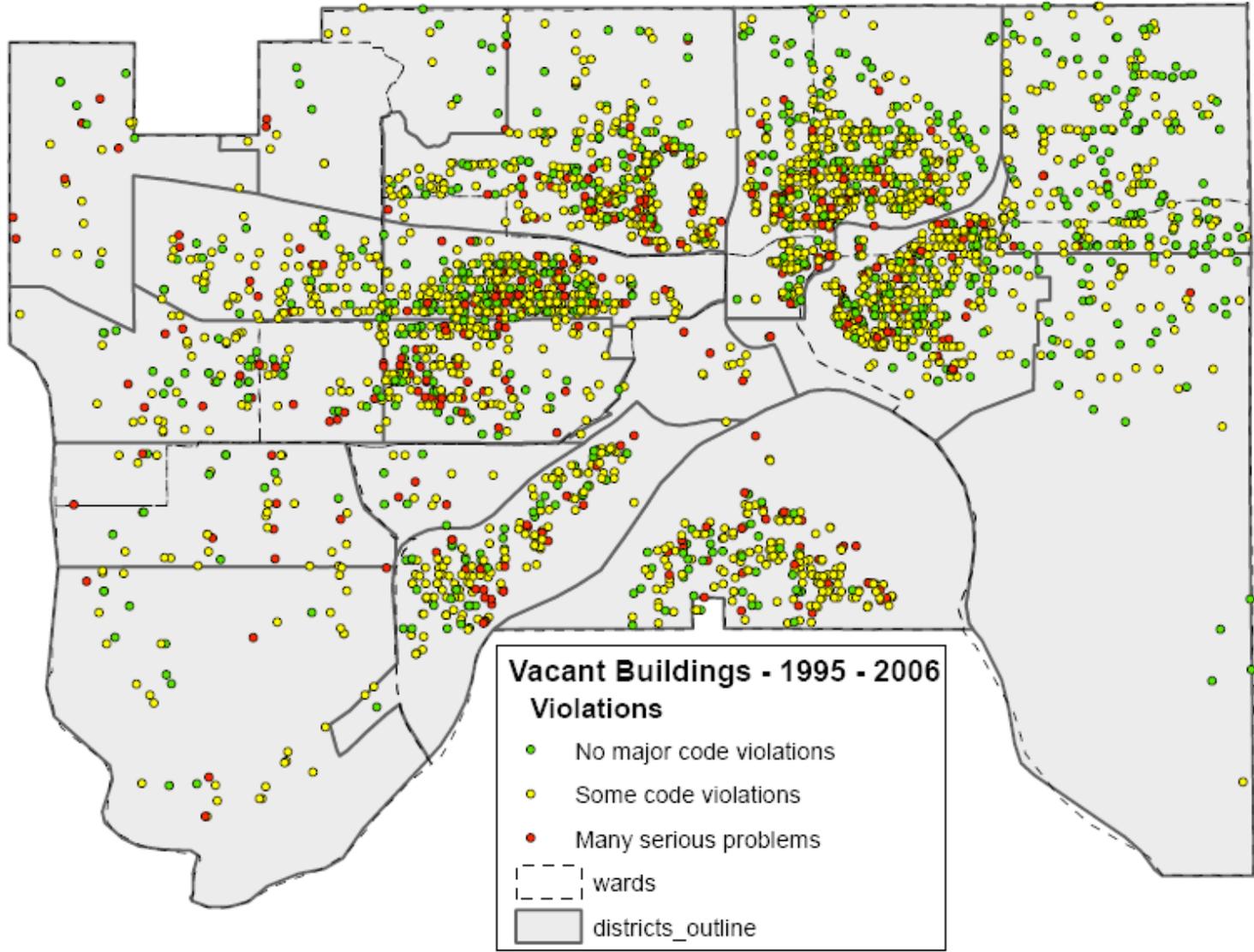
2717 Penn Ave. N.



2720 Penn Ave. N.



2724 Penn Ave. N.



Concentration of Ownership and Responsibility



If a property search is done related to neighborhoods or communities that have been hard hit by the foreclosure crisis, it is likely the first time in history that approximately six to twelve people (corporations) control such a high percentage and amount of real estate in such neighborhoods.

Why legal remedies?

Why?

- Order
- Pro-Active
- Leverage



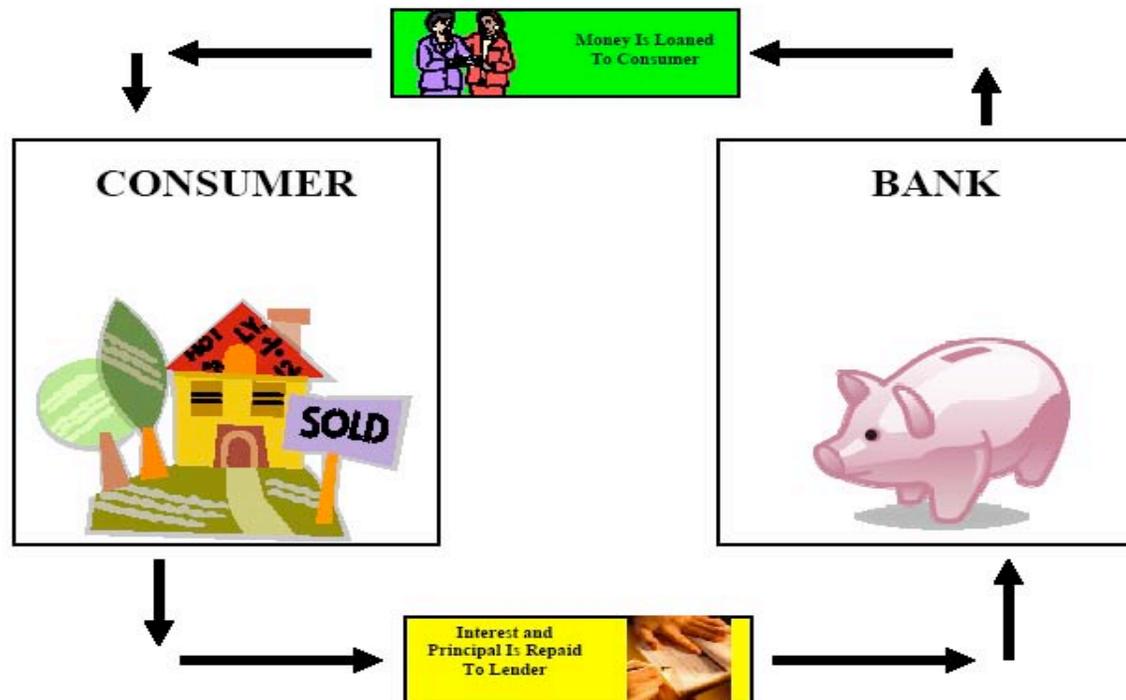
ORDER

ORDER



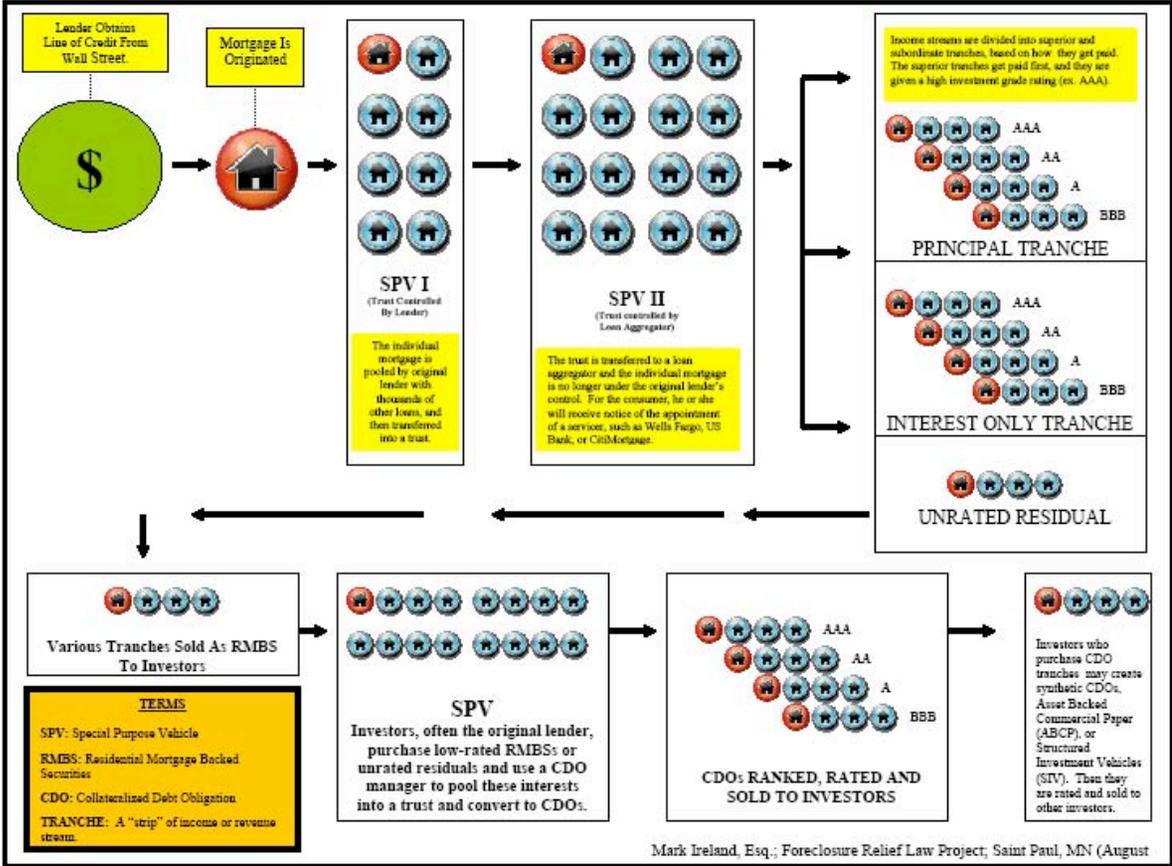
- Public Interest, Impact Litigation Often Brings Structure and Order To Complex Situations.

Traditional Banking Model



The New Model

MORTGAGE SECURITIZATION FLOW CHART





PRO-ACTIVE

PRO-ACTIVE



- Re-Active Policies and Apathy Are The Enemies.
 - Every day a property sits vacant it makes it more difficult to turn it around and make it a community asset again.

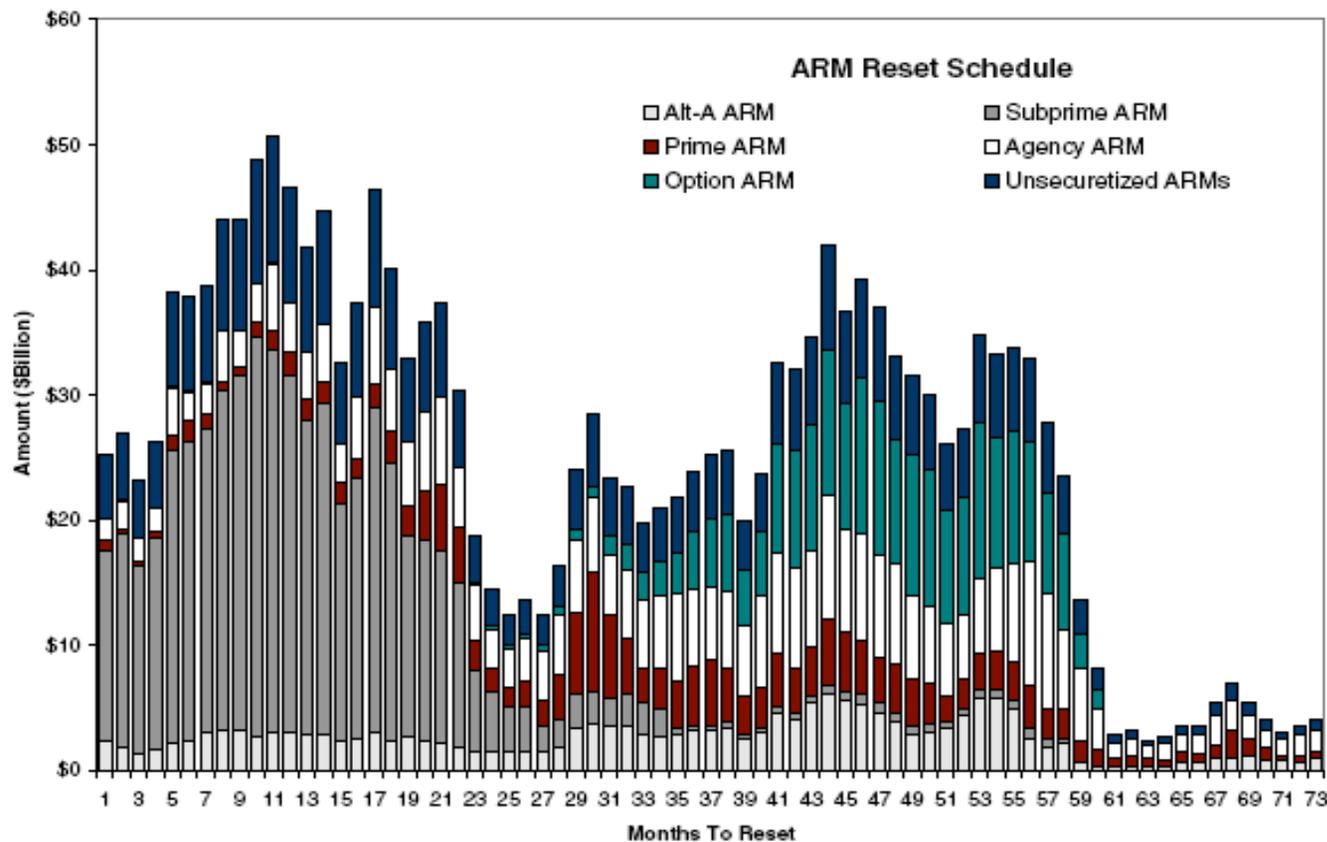
The need for us to be pro-active...



- We are the community experts. We know the areas that have been affected, have relationships with non-profit and community organizations, and will best be able to craft the right solutions.
- The free-market, for all its benefits, does not consider community or public needs.
- We don't have two years or five years.

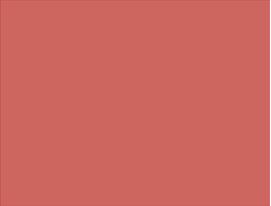
Foreclosures will continue for foreseeable future...

Exhibit 42: Adjustable Rate Mortgage Reset Schedule



Note: Data as of January 2007.

Source: Credit Suisse Fixed Income U.S. Mortgage Strategy



LEVERAGE

Communities and neighborhoods need leverage to address these common problems...



- ❑ A systemic approach to quickly evaluate and sell REO property;
- ❑ Accountability for the care and maintenance of property;
- ❑ Swift payment of assessments, fees, and property taxes; and
- ❑ Responsiveness to our foreclosure prevention efforts to avoid the vacant houses in the first instance.

Litigation Approaches



Front End

Back End

(And somewhere in between)

Front End Litigation



- Front End Litigation focuses on the practices immediately prior to and at the origination of the loans that ultimately resulted in foreclosure.
- Potential legal claims, include, but are not limited to allegations of discrimination or disparate impact under the Fair Housing Act or state law, as well as negligent or improvident lending and nuisance.

Examples of front-end litigation...

- **The City of Baltimore v. Wells Fargo**, an example of a case alleging violations of the federal Fair Housing Act
- **The City of Cleveland v. 21 lenders and issuers of Mortgage Backed Securities**, an example of a case alleging nuisance due to the financial institutions failure to abide by prudent underwriting standards.
- **Hawthorne Area Community Council v. CitiMortgage**, an example of a case alleging “negligent lending” that damaged the neighborhood

Back End Litigation



- Back End Litigation relates to the conduct after the Sheriff's Sale and Foreclosure, relating the maintenance of the property and the effect that the vacant property is having on the city.

Examples of back-end litigation...

- **City of Minneapolis v. TJ Waconia**, an example of a lawsuit alleging a private nuisance and seeking relief under the Tenant Remedies Act or civil receivership statute
- **Hawthorne Area Community Council v. CitiMortgage**, an example of a lawsuit alleging common-law and public nuisance.
- **Buffalo**, an example of a lawsuit alleging public nuisance related to 57 vacant properties.
- **City of Saint Paul Initiative**, an example of pre-litigation attempt to address boarded and vacant property in the city related to the top six major lenders.

Somewhere in-between...



- Litigation efforts to stop or slow the process of foreclosure, and force servicers to behave rationally in an irrational environment.

Examples of “somewhere in-between” ...



- The City of Philadelphia, through its court system, forces all foreclosure actions related to owner-occupied properties into mediation---prior to the foreclosure being finalized.

Five Things You Need To Do Right Now

- ❑ Read and revise your ordinances.
 - ❑ Make sure there is a vacant property registration and fee requirement, as well as regulations related to how a vacant property will look and be maintained.
- ❑ Prioritize Code Enforcement To Facilitate Home Ownership
- ❑ Create Financial Products For Homeowners With Damaged Credit
- ❑ Create or Bond For a Scattered Site Rental Program
- ❑ Think About Alternative Uses For Vacant Properties

If you have questions in the
meantime, contact me...



Mark Ireland

Supervising Attorney

The Foreclosure Relief Law Project

A Program of the Housing Preservation Project

(651) 642-0102

mireland@hppinc.org