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MORTGAGES AND THE MAYOR: CANDIDATES ON FORECLOSURE

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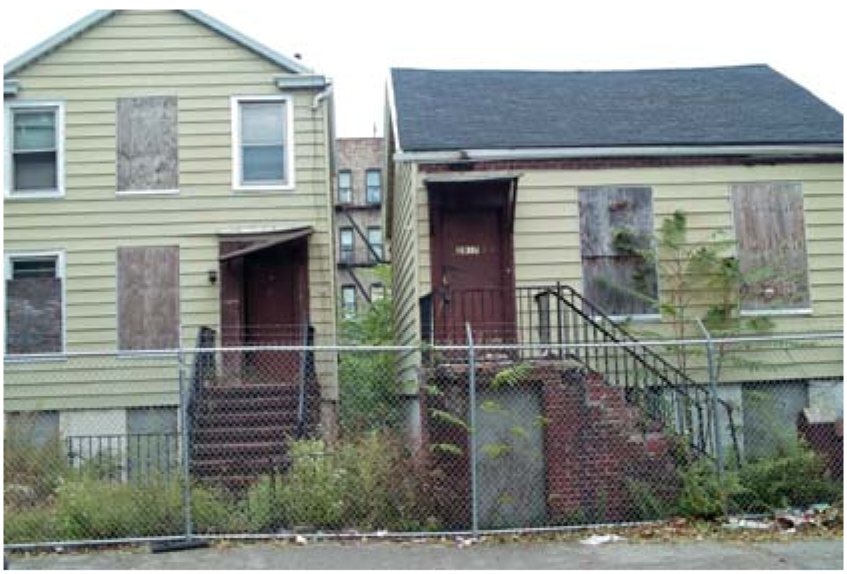
Both Mike Bloomberg and Bill Thompson responded earlier than most polls to the foreclosure crisis. But can the city's response keep up with mounting homeowner woe?



These houses have long lain fallow in Flatbush, a Brooklyn neighborhood hard-hit by the mortgage meltdown.
Photos by Aaron McElroy

More than a year after the term "foreclosure" entered everyday language, thousands of New York City property owners are still facing the loss of their homes. Mortgage holders have launched foreclosure proceedings against some 15,000 New York City homeowners this year. The number of filings in the most recent three-month period appears to be the highest in the crisis to date.

The fight against foreclosures, however, has been but a quiet presence in the mayoral campaign. Both Mayor Michael Bloomberg and Comptroller William Thompson responded to mortgage problems fairly early in the foreclosure crisis and point to those efforts in their campaign literature, but the issue hasn't garnered the attention that schools, transit, jobs and crime have received in debates, speeches and ads. And neither candidate has proposed any significant expansion of the city's response to foreclosures.

Perhaps that's because the most affected constituency – foreclosures have hit lower- and middle-income homeowners of color the hardest – isn't the candidates' top priority, suggests Dwayne Jones, director of lending at the Parodneck Foundation. "Apparently, they are not relying on votes from the foreclosure hot zones," says Jones. "It's clear to me that you don't have [candidates] with ads saying they rolled up their sleeves and fought foreclosure in the neighborhoods. Why not? Maybe it's just another hurt that they can't do much about."

Whether the candidates talk about foreclosures or not, those involved in addressing the issue insist it's not going away. "Certainly, the subprime crisis is not over," says Megan Faux, co-director of foreclosure prevention at South Brooklyn Legal Services. While many housing advocates praise the city's efforts to date, it's not clear that the scale of the response so far measures up to the accumulating impact of the mortgage mess, which will confront whoever sits in City Hall next year. "The work that they've done is good work," says James Lewis, a community organizer with Changer, a citywide advocacy group. "It's just not enough resources."

The administration confronts the crisis

Housing advocates say they observed a surge in foreclosures years before the phenomenon became national news in 2007. "We've been seeing this problem going up back to 2001," says Juan Santana, the homeownership services director for Neighborhood Housing Services, a citywide affordable housing provider. "That's when we started seeing people coming into our office trying to refinance. It was awful." Sarah Ludwig, co-director of the Neighborhood Economic Development Advocacy Project, said in a roundtable last year that her organization began detecting a rise in foreclosures more than a decade ago, in the mid-90s.

New York City responded faster than federal or state officials to the foreclosure problem. Since at least 2002, the city's Human Rights Commission has held a program of seminars and outreach intended to decrease the use of predatory lending products.

In October 2005, the Bloomberg administration launched the PACE (Preserve Assets and Community Equity) program, under which the Department of Housing Preservation and Development conducted outreach in the heavily foreclosed communities of Southeast Queens, Bedford-Stuyvesant and Bushwick to encourage troubled homeowners to seek counseling services at one of the neighborhood nonprofits funded through the program. The $1.35 million program used City Council funding, private donations and foundation support. In 18 months of work, PACE helped about 1,000 homeowners, according to City Hall.

Foreclosure counselors help homeowners navigate the often confusing task of finding out who actually holds their mortgage, what programs might be available to help them pay it and how to negotiate with lenders about the range of options for avoiding foreclosure, including loan modifications that actually alter payment terms, and "short sales" where a homeowner who can't afford his home has a chance to at least protect his credit even if the home must be sold at a loss.

In 2006, City Councilman Lewis Fidler, a Brooklyn Democrat who maintains a law practice that handles some real estate work, says he saw signs of the problem four or five years ago, when he handled a deal involving a risky mortgage (often called "exotic" because the financial products were new and unusual).

"I thought to myself, 'We've been doing this kind of stuff in real estate for years. If at any point real estate values level off—forget about falling, just level off—nobody who's gotten one of those loans is going to be able to sustain it." Fidler circulated an unusual memo to fellow councilmembers: He pasted a picture of his face onto the head of a chicken and, he says, "told my colleagues that the sky was going to fall." The Council began funding foreclosure prevention counseling at neighborhood organizations in July 2006.

As the crisis worsened, in 2007, the Bloomberg administration announced an improvement on PACE—the creation of the Center for New York City Neighborhoods to coordinate anti-foreclosure efforts in the city. Using money from the administration, the Council, foundations and banks, the independent, nonprofit center would fund and coordinate foreclosure counseling services in existing nonprofits around the city. The Center earlier this year set up its own referral hotline, which takes calls on its own as well as those transferred from 311, directing callers to its partner organizations.

“Our Center for New York City Neighborhoods is working with New York City service providers to reduce that risk and help those who need it most," Bloomberg said last year. "The threat of home foreclosure can be devastating to New York City’s families and neighborhoods, and we are absolutely committed to doing everything we can to minimize it.”

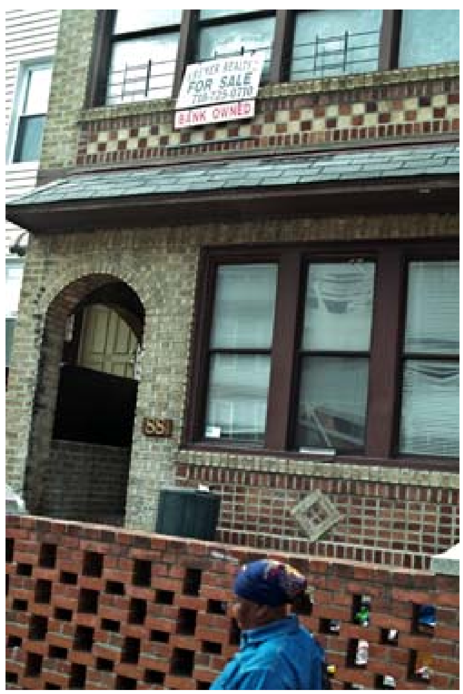
Thompson responds

As comptroller, Thompson may have had fewer policy tools than the mayor to respond to the crisis. In April 2007, his office launched a helpline for New Yorkers in danger of foreclosure. Thompson's hotline was originally just a referral service, directing callers to neighborhood organizations who could help them. But over time, aides to Thompson say, the local entities became overwhelmed with the volume of calls. So the hotline hired two full-time foreclosure counselors who mediate between borrowers and banks.

In its more than two years of operation, the hotline has fielded nearly 5,000 calls. While no solid numbers on outcomes are tracked, helpline staff estimate that around half of callers are able to modify their loans. However, Thompson aides acknowledge that some of the modified loans may still end up in foreclosure months or years later if borrowers can't keep up with payments.

Thompson's office also conducted foreclosure prevention seminars in all five boroughs, at which lender representatives met with homeowners, and produced a brochure and public service announcement encouraging homeowners to seek help. Under his direction, the city's pension funds have undertaken a $100 million anti-predatory lending investment initiative.

In a statement to City Limits, Thompson said:



"For Sale - Bank Owned" is a typical sign on East 31st Street in Flatbush.

“The outer boroughs are currently experiencing the highest foreclosure rates and many residents are struggling to make ends meet. The impact of this challenging economy has been compounded by Mike Bloomberg’s policies. When the country and the city are facing an unprecedented economic crisis—Mike Bloomberg responds by raising property taxes, hiking the sales taxes and increasing the water rates to name just a few."

In his campaign literature and latest statements, however, Thompson does not propose any new steps to prevent foreclosure that he will take if elected.

A network of helpers

Last December, Bloomberg announced that the Center for New York City Neighborhoods was distributing $2.3 million in grants to 19 neighborhood groups. To date, the Center has funded 30 organizations to the tune of about $5 million. Each year, the Center says it will devote about $5.5 million to supporting foreclosure counseling, and $600,000 for training and technical assistance.

So far, says Michael Hickey, the Center's executive director, its grants have allowed organizations around the city to add 70 staff people and directly assist just under 500 people a month, or nearly 6,000 a year. Forums and outreach events conducted by the partner organizations have reached "well over 10,000 to 15,000," Hickey reports.

The Center's own call center – which is linked to the 311 line – handles anywhere from 20 to 40 calls each day, including both incoming calls and calls staffers themselves place to homeowners who have received foreclosure notices, according to Hickey.

Advocates say the Center has been a unifying force in the fight against foreclosure. "The way foreclosure counseling was being provided by different City Council members and other entities was kind of scattered all over the place. It didn't have any structure or anybody monitoring," says Santana. "It's important that there's some coordination and some study going on with that coordination to see where the problems are. The Center brought in the centralization of the services and the funding as well as providing analysis."

Fidler, an ex officio board member of the Center, says it has helped "many hundreds if not thousands" avoid foreclosure, and points out, "When you prevent 10 foreclosures in an area, you've probably prevented 10 more. You’ve helped a community's property value to be maintained."

The Center launched a pilot project in Queens courts to develop a better system for working out problems between borrower and lender – an approach that Hickey says is now used citywide.

Faux from South Brooklyn Legal Services praises the Center's focus on training and support for local organizations, which she says has allowed those neighborhood advocates to provide help even while learning how to do it better.

Resources not equal to the task

The Center has raised more money than expected to date – $7 million instead of a predicted $5.3 million – thanks to support from foundations like Living Cities, the New York Community Trust and the Open Society Institute and financial companies including Bank of America, Capital One and Goldman Sachs.

The city has been less generous. The initial funding for the Center for New York City Neighborhoods included a modest $1 million from the administration and $1.6 million from the Council. In fiscal 2009, the Council provided $1.25 million; the administration did not contribute. For fiscal 2010, the Council offered $500,000 and the city $2 million. The state has also dedicated $20 million to foreclosure counseling statewide through the Division of Housing and Community Renewal.

Asked if the city's response to the crisis has been adequate, Lewis from Changer said, "I'm not going to say 'adequate.' I'm going to say it's been helpful. What it needs is more resources." In part, Lewis says the resource squeeze is a product of the city's success at publicizing free foreclosure counseling services; now homeowners are lining up to take advantage, forcing neighborhood organizations to perform triage. "We look at having to take a step back and prioritize: 'This person has a foreclosure proceeding in three weeks. We've got to push him to the head of the line, because this other client is not as much in jeopardy.'"

A report issued last week by NYU's Brennan Center found that in Queens County, some 84 percent of defendants in foreclosure proceedings involving high-cost or subprime loans did not have an attorney. Harvey Epstein, an attorney at the Urban Justice Center, says the increased availability of legal services thanks to the Center for New York City Neighborhoods is laudable, but says the need still dwarfs the available staff. "We're seeing the largest foreclosure crisis we've seen in 70 years. If you really want to have an impact, you have to throw a lot more money on the table," Epstein says. "Once people get to lawyers, they actually can help. The city could pony up a lot more money."

Hickey acknowledges the resource constraints. "Of course we need more. Even if we could intervene with every one of the 6,000 people that come through our doors, in effect there would still be 10,000 more that we can't serve," he says. "But if you look at how New York City compares to its peer cities around the country, I think it's got one of the strongest systems going."

Officials in some cities have been even more aggressive. In Detroit, the Wayne County sheriff imposed a moratorium on foreclosures, notes Jones from the Parodneck Foundation. But those cities are suffering a more severe crisis that New York City.

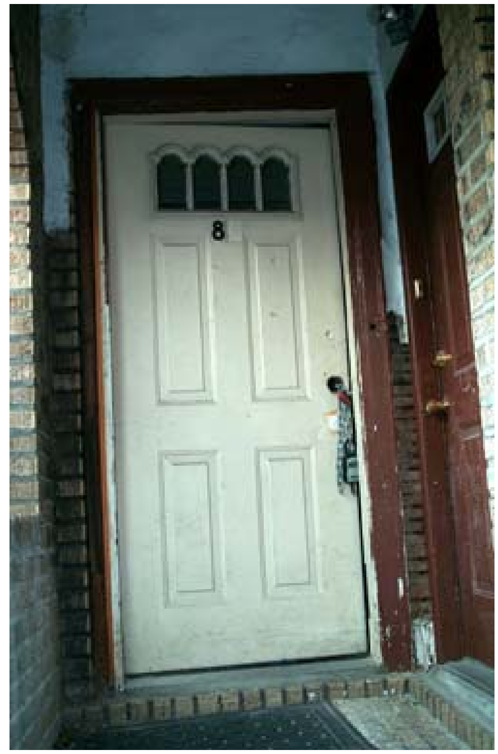
Limits to Bloomberg action

Mayor Bloomberg's campaign website says that next year, the Center will "provide housing and legal counseling to 25,000 New Yorkers." But that refers not to the number of people actually helped, but the number to be targeted by outreach efforts publicizing free foreclosure counseling services. In June, Bloomberg announced an outreach campaign to get people to call 311 if they need help avoiding a foreclosure. As of last week, the ads were just being posted.

Santana of NHS believes the city's publicity effort has fallen short. "I think that there needs to be more outreach. People are still surprised that those services are being provided for free," he says. With the proliferation of fee-for-service loan modification companies (some advocates call them "rescue scam artists"), Santana says, the public needs to know they don't have to solve their problems with money by spending more of it.

Defenders of the city's approach, like Fidler, say City Hall's authority over the real estate market is limited. "On the city level, all we really have the power to do is on a retail basis to help people one at a time," he says. Indeed, throughout the crisis, advocates have called for more action from higher levels of government. There was a plea for Congress to amend bankruptcy laws to allow judges to modify mortgages. There were calls for foreclosure moratoriums in many states, including New York, which passed such a freeze during the Great Depression.

A moratorium passed the state Assembly in 2008 but never came up for a vote in the state Senate. Instead, New York state adopted a law requiring settlement conferences in foreclosures involving high-cost or subprime loans. The idea was to get bank and borrower to the table. Advocates say the bill has helped, but needs more improvement. Homeowners are showing up for the conferences, says Faux. "But servicers are still being very slow. They aren't sending people with authority to make modifications and we don't see any consequences for their failure to follow the law," she says. Bloomberg this summer called for sharpening the law's teeth.



At some foreclosed-upon homes, doors are closed with padlocks and chains.

Bloomberg's campaign literature does not propose an expansion of the city's existing response to foreclosures. But it does say the mayor will "propose State legislation that will curtail mortgage fraud and give restitution to victims." And Bloomberg's consumer affairs commissioner, Jonathan Mintz, testified to Congress in April in favor of a federal ban on fee-based foreclosure prevention services.

In the past, the mayor has opposed some aggressive legislation aimed at the mortgage market.

When the Council in 2002 passed a law barring city agencies from working with subprime lenders, Bloomberg vetoed the measure, saying that it "would create confusion and result in a patchwork of provisions of State and local law." When the Council overrode the veto, the mayor sued both them and the comptroller, who was charged with enforcing the law, in state court. In "friend of the court" briefs, the Bond Market Association and Securities Industry Association sided with the mayor. The court did as well, throwing out the measure. (HPD contends that the law would have interfered with the city's affordable housing programs, and even its day-to-day payroll and bill collection operations, because all of those activities involve banks whose subsidiaries may have engaged in tactics the law deemed "predatory.")

Currently, the City Council is considering two measures that could help address mortgage problems. One would require the Department of Consumer Affairs to regulate for-profit foreclosure counseling services. Another would provide lawyers to senior citizens in housing court. The Bloomberg administration has not come out in support of either measure.

Of course, not everyone is calling for more aggressive action. The financial industry, for example, opposes strengthening the state's settlement conferences law. Roberta Kotkin, general counsel and chief operating officer of the New York Bankers Association, says existing law already gives judges tools to force banks to the table.

The next wave crashes...

In the foreclosure crisis, New York has not suffered as badly as other cities. According to RealtyTrac, a national foreclosure tracking firm, in the rate of foreclosure proceedings, the metro region ranked 122nd among U.S. urban areas with more than 200,000 people. Indeed, while 15,000 *lis pendens* filings have been recorded in the City so far this year – notices of pending legal action against delinquent homeowners – only 3,100 foreclosure auctions have been held.

Still, in August New York's rate of *lis pendens* was 29 percent higher than a year earlier and 11 percent higher than the month before, according to RealtyTrac. And advocates point out that even cases that don't result in foreclosure don't always have happy endings. "Homeowners do short sales. Homeowners decide to abandon the property or give the property back," says Santana. "They're not good, but it does happen."

Advocates say that while the foreclosure crisis is not abating, it is changing. The good news is that thanks to heightened awareness, some advocates say, homeowners are calling for help earlier in the foreclosure process, when more assistance can be rendered. The bad news is that while the first wave of distressed homeowners was hurt first and foremost by having high-cost or subprime loans, the current wave are suffering largely from losing jobs and income. Many of these current cases also have bad loans, but were able to stay ahead by working multiple jobs. Now, they've lost work and are falling behind – and a loan modification won't necessarily help them.

Pennsylvania, a state recognized for having a strong response to the foreclosure crisis that includes more robust settlement conferences than New York state requires, also operates a bridge loan fund for homeowners who need to borrow money to save their home after they lose their job. Advocates say New York City is thought to be exploring such a fund.

But the next wave of the foreclosure crisis, advocates and policy makers say, could affect not owner-occupied homes or small rental properties but large multiple-family dwellings. While apartment buildings were rarely bought with subprime loans, many in recent years were purchased at high prices. Now, renters are losing their jobs and falling behind on rent, hurting landlords' ability to service their own debts. And in many areas of the city, in mixed-use buildings where rents from first-floor retail helped support the residential component, businesses are closing, putting even more pressure on property owners, says Denise Scott, managing director of the Local Initiatives Support Corporation in New York City.

According to Scott, at-risk buildings could comprise 100,000 units of housing citywide – or more than all the affordable housing financed by the Bloomberg administration to date.

Some of the multiple-unit dwellings most at risk are those purchased by private equity investments, which critics say are speculative investments that depend on rising rents and quick re-sales. New York's pension funds, which the comptroller oversees, have private equity investments. Last year, Thompson agreed to insert into the pension funds' private equity contracts an "opt out" clause allowing the city to withdraw its money from any real estate deal in the five boroughs where the financing appears shaky. Thompson's office says the opt-out clause has been exercised, but confidentiality rules prevent it from discussing which deals were affected.

Whatever shape the crisis takes in coming months, there will be victims – homeowners, renters and neighborhoods. Advocates say New York must begin to grapple with what happens to homeowners hit by a foreclosure, short sale or surrender of the property. "How can the city, working with lenders, try to at least to alleviate the crisis of going from being a homeowner to being homeless?" asks Santana. "I think that's a serious problem that's hasn't really been studied."

...And new responses rise

In 2005, as the city launched PACE to help troubled homeowners, it also created Restored Homes, a nonprofit charged with buying foreclosed properties, rehabilitating them and selling them as affordable housing. First, Restored Homes began taking title to houses that had been foreclosed upon by the Federal Housing Authority. In 2008, the program was expanded to include purchases of 95 bank foreclosed homes.

"One of the main reasons that we're doing this is to stabilize these neighborhoods," says Restored Homes executive director Salvatore D'Avola. "These are neighborhoods where the city has had over 20 years of interest and investment and the foreclosure crisis was destabilizing them."

The program targets houses for homeowners making between 80 percent and 120 percent of Area Median Income, or roughly $61,000 to $92,000 a year for a family of four. To date, about 60 FHA-foreclosed homes have been purchased, and a modest 14 have been sold to owners. So far, seven of the bank-foreclosed homes have been bought.

Given the scale of the crisis – with 3,000 properties foreclosed just so far this year in the city – those numbers are low. Scott, familiar with Restored Homes because LISC is a partner in its work, attributes the modest results to a tension between the need to keep houses affordable and the prices that banks want for foreclosed property. "We're still not getting a deep enough discount," she says. "If the banks were dumping inventory more substantially at a discounted level, than I think the Restored Homes model would incorporate a bigger number." Scott also says banks have become excessively cautious about lending, sometimes failing to account for the city's subsidy in determining what a would-be buyer can afford. So even when homes are ready for sale, the program has a hard time finding buyers. "So we have to go up to a family in a completely different income bracket," Scott says.

Indeed, it's a complex crisis. Scott says the city's response to date is a strong start – "But we have a long way to go."