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No Money, Mo' Problems: The Attitudes and Experiences of Homeowners in Default

Tracy Douglas

NO MONEY, MO' PROBLEMS: THE ATTITUDES AND EXPERIENCES OF HOMEOWNERS IN DEFAULT*

By Tracy Douglas**

I. INTRODUCTION

The prevailing narrative of mortgage default and foreclosure is that it is the act of a rational homeowner who irresponsibly took out a mortgage that they could not afford and defaulted once the property's value became less than they owed.[1] Ten years away from the financial crisis inextricably linked with the foreclosure crisis, the question must be asked whether that narrative is backed up by the lived experience of those in financial distress.[2] When that question is asked, it becomes clear that the narrative is at odds with real homeowners' experiences of foreclosure, which the Illinois Foreclosure Survey sought to analyze.[3] Previous scholarship found that since the 2008 financial crisis, Americans soured on homeownership, but there is

*This Article analyzes the Illinois Foreclosure Survey—an unpublished study on file with the author. All survey data referenced comes from this Survey unless otherwise stated. The funding for this study came from the Illinois Attorney General's office out of the Bank of America settlement. Portions of this article were previously submitted to the Illinois Attorney General's office on behalf of the Community Preservation Clinic by this author under this grant. For further inquiries on the Survey, please contact the author at douglas.tracy@gmail.com.

**Tracy Douglas is a legal services attorney and the former Interim Director of the Community Preservation Clinic at the University of Illinois College of Law. Special thanks to Reema Lateef for her research assistance and to Professors Stacey Tutt of the University of California – Irvine and Eric Sirota of the University of Michigan for their guidance and mentorship. The author would also like to thank her parents, who almost lost their farm in the 80s farm crisis but fought for their home.

[1] Brent T. White, *Underwater and Not Walking Away: Shame, Fear, and the Social Management of the Housing Crisis*, 45 WAKE FOREST L. REV. 971, 997, 998 (2010).

[2] *Id.*

[3] *Id.*

a deep-seated American belief in paying one's debts.[4] However, the perception that mortgage default is the act of someone who could pay, but chooses not to, remains. That perception is incorrect; mortgage default is the act of a financially pressured homeowner who is at their wits' end and simply out of money to make ends meet.[5]

There has been research on Americans' attitudes toward debt and mortgages, as well as the effectiveness of counseling.[6] Homeowners, especially women, may not have basic financial knowledge.[7] However, Americans are drowning in debt among all age groups.[8] Generally, having the assistance of a housing counselor has been found to be more effective in resolving foreclosure than being unrepresented.[9] The research, however, has been piecemeal and sometimes surveys those directly in foreclosure or only those at risk of default. No research has put together all of the issues to thoroughly analyze attitudes about homeownership and debtors, as well as looking at the financial literacy of those in foreclosure.

Legal scholarship, meanwhile, seemed to ignore the perspective of the homeowners. Scholars examined the underlying issue of the financial crisis—mortgage-backed securities—and issues of standing to foreclose.[10] Some looked at why homeowners did not walk away from homes that were underwater. Others looked at the emotional and psychological underpinnings of the decision to make or not make the supposedly rational choice to walk away from a home that was no

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[4] HART RESEARCH ASSOCIATES, HOW HOUSING MATTERS: AMERICANS' ATTITUDES TRANSFORMED BY THE HOUSING CRISIS & CHANGING LIFESTYLES 8 (2013), https://www.macfound.org/media/files/HHM_Hart_report_2013.pdf; White, *supra* note 1, at 992.

[5] White, *supra* note 1, at 997–98.

[6] HART RESEARCH ASSOCIATES, *supra* note 4; White, *supra* note 1, at 992.

[7] Tabea Bucher-Koene, Annamaria Lusardi, Rob Alessie & Maarten Van Rooij, *How Financially Literate Are Women? An Overview and New Insights*, 51 J. CONSUMER AFF. 255, 257 (2017).

[8] PEW RESEARCH TEAM, THE COMPLEX STORY OF AMERICAN DEBT 1 (July 2015), https://www.pewtrusts.org/-/media/assets/2015/07/reach-of-debt-report_artfinal.pdf?la=en&hash=168FE15FB45F7BEFF758E0D0F5D46786D4629E05.

[9] J. Rosie Tighe, *Responding to the Foreclosure Crisis in Appalachia: A Policy Review and Survey of Housing Counselors*, 23 HOUSING POLICY DEBATE, 111, 112 (2013); J. Michael Collins & Maximilian D. Schmeiser, *The Effects of Foreclosure Counseling for Distressed Homeowners*, 32:1 J. POL'Y ANALYSIS & MGMT. 83, 96 (2013).

[10] See, e.g. Adam Letivin, *The Paper Chase: Securitization, Foreclosure, and the Uncertainty of Mortgage Title*, 63 DUKE L.J. 637 (2013); Christopher L. Peterson, *Fannie Mae, Freddie Mac, and the Home Mortgage Foreclosure Crisis*, 10 LOY. U. NEW ORLEANS J. PUB. INT'L L. 149 (2009); Elizabeth Renuart, *Property Title Trouble in Non-Judicial Foreclosure States: The Ibanez Time Bomb?*, 4 WM. & MARY BUS. L. REV. 111 (2013); Elizabeth Renuart, *Uneasy Intersections: The Right to Foreclose and the UCC*, 48 WAKE FOREST L. REV. 1205 (2013).

longer an asset.[11] Others argued about mortgage servicing, the government's response to the foreclosure crisis, and lack of protections for death and divorce.[12] Some proposed solutions included reforming foreclosure laws, using bankruptcy to modify mortgages, designing mediation programs, or using law school clinics to address the problem.[13] The experience of those in bankruptcy has been examined, including looking at leading drivers; but the experience of borrowers in foreclosure, their background knowledge, why they default, and how they manage their finances has been lacking in exploration.[14]

This statewide study, funded by the Illinois Attorney General's office through the 2012 Bank of America settlement and conducted by the University of Illinois, appears to be the first of its kind to comprehensively examine the attitudes and beliefs of borrowers in default.[15] The Illinois Supreme Court authorized foreclosure mediation programs, and this study's goal was to study homeowners participating in those programs to see how those programs should address issues. [16] For example, if there is a strong emotional connection to homeownership, then counselors must

[11] White, *supra* note 1; Brent T. White, *Take This House and Shove It: The Emotional Drivers of Strategic Default*, 63 SMU L. REV. 1279 (2010); Tess Wilkinson-Ryan, *Breaching the Mortgage Contract: The Behavioral Economics of Strategic Default*, 64 VAND. L. REV. 1547 (2011).

[12] See, e.g., Benjamin A. Bauer, *We Don't Live Here Anymore: A Critical Analysis of Government Responses to the Foreclosure Crisis*, 37 N. KY. L. REV. 121 (2010); Jean Braucher, *Humpty Dumpty and the Foreclosure Crisis: Lessons from the Lackluster First Year of the Home Affordable Modification Program (HAMP)*, 52 ARIZ. L. REV. 727 (2010); Adam J. Levitin & Tara Twomey, *Mortgage Servicing*, 28 YALE J. ON REG. 1, 3 (2011); Sarah Mancini & Alys Cohen, *Surviving the Borrower: Assumption, Modification, and Access to Mortgage Information after a Death or Divorce*, 43 PEPP. L. REV. 345 (2016).

[13] *See*, e.g. John P. Eggum, Katherine M. Porter & Tara Twomey, *Saving Homes in Bankruptcy: Housing Affordability and Loan Modification*, 2008 UTAH L. REV. 1123 (2008); Brian D. Feinstein, *Judging Judicial Foreclosure*, 15 J. EMPIRICAL LEGAL STUD. 406 (2018); Adam J. Letivin, *Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy,* 3 WIS. L. REV. 565 (2009); Peggy Maisel & Natalie Roman, *The Consumer Indebtedness Crisis: Law School Clinics as Laboratories for Generating Effective Legal Responses*, 18 CLINICAL L. REV. 133 (2011); Nathalie Martin & Weinstein, Max, *Addressing the Foreclosure Crisis Through Law School Clinics*, 20 GEO. J. ON POVERTY L. & POL'Y 531 (2013); Elizabeth Renuart, *Toward a More Equitable Balance: Homeowner and Purchaser Tensions in Non-Judicial Foreclosure States,* 24 LOY. CONSUMER L. REV. 562 (2012); Peter W. Salsich, *Homeownership—Dream or Disaster?* (June 27, 2012); 21 J. AFFORDABLE HOUSING 17 (2012); Andrea Kupfer Schneider & Natalie C. Fleury, *There's No Place Like Home: Applying Dispute Systems Design Theory to Create a Foreclosure Mediation System*, 11 NEV. L.J. 368 (2011).

[14] *See*, e.g. Daniel A. Austin, *Medical Debt as a Cause of Consumer Bankruptcy,* 67 ME. L. REV. 2 (2014); David U. Himmelstein, Deborah Thorne, Elizabeth Warren & Steffie Woolhandler, *Medical Bankruptcy in the United States, 2007: Results of a National Study*, AM. J. MED., Vol. 122, No. 8, 741, (2009); Christopher Tarver Robertson, Richard Egelhof & Michael Hoke, *Get Sick, Get Out: The Medical Causes for Home Mortgage Foreclosures*, 18 HEALTH MATRIX 65 (2008).

[15] *Id.*

[16] Ill. Sup. Ct. R. 99.1.

address why they might make a supposedly irrational decision to keep a home that is costing them more than it is worth.[17] Therefore, the study aimed to assess the financial knowledge of borrowers in default participating in mediation programs, the effectiveness of representation, decisions by homeowners, attitudes about homeownership, and beliefs about well-being.[18]

The information sought by the study is important because it is critical that the narrative be correct, and policy be supported by empirical evidence. From a policy and legal perspective, it is crucial that we put homeowners back into the narrative and address their needs in future policy formation. While foreclosure rates are down compared to previous years, they are still at high levels and could spike again.[19] Additionally, debt and foreclosure has effects for the wider community by driving down property values, and thus property tax revenues for local taxing districts.[20] The attitudes, beliefs, and experiences of homeowners in financial distress have wide-ranging effects and must be included in the policy discussion.

The results from this study show that the public perceptions and narratives of foreclosure are, at best, inadequate and driven by the deep-seated American belief in paying one's debts.[21] The findings provide a glimpse into the financial knowledge and attitudes of homeowners in default, as well as their financial habits and decision-making. Measuring financial knowledge and attitudes toward those in default is important because previous research indicated a gender, racial, and income gap in financial knowledge and managing of debts.[22] Previous scholarship speculated on why borrowers do not strategically default despite that being the economically rational decision.[23] The knowledge that borrowers bring to the table must be a consideration for comprehensive advising, and the study aimed to show what kinds of knowledge participants have. A further consideration must be whether borrowers have an emotional and cultural connection to homeownership and whether feelings of guilt and shame, driven by societal attitudes toward those in debt, drive decision-

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[17] *See generally* Ill. Sup. Ct. R. 99.1.

[18] Himmelstein et. al., *supra* note 14.

[19] *See Foreclosure Rising in 44% of Metros*, REALTOR MAG. (Aug. 21, 2018), https://magazine.realtor/daily-news/2018/08/21/study-foreclosures-rising-in-44-of-metros?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+DailyRealEstateNews+%28Daily+Real+Estate+News%29.

[20] *See* G. Thomas Kingsley, Robin Smith & David Price, *The Impacts of Foreclosure on Families and Communities*, THE URB. INST. (May 2009), https://www.urban.org/sites/default/files/publication/30426/411909-The-Impacts-of-Foreclosures-on-Families-and-Communities.PDF.

[21] *See generally id.*

[22] Bucher-Koene et. al., *supra* note 7, at 257.

[23] *See* White, *supra* note 11; White, *supra* note 1.

making.

First, this article will discuss differences in foreclosure law, consumer protection, and mediation programs. Then, it will summarize relevant research on the topic of homeowners' attitudes, financial knowledge, economic hardships, causes of default, and effectiveness of representation. Next, this article will outline the study's design and methodology followed by the results from the data produced by the study. Then, the results will be analyzed. Finally, policy recommendations and reforms supported by the study's evidence will be discussed.

II. Foreclosure Law and Mediation Programs

At its heart, foreclosure is a remedy for breach of contract because the borrower defaults on her obligations under the note (the contract bestowing financial responsibility), while the mortgage is a security interest in the property that the lender enforces.[24] In American law, the party pursuing foreclosure must be the party who is entitled to enforce the note, which means the promissory note has supremacy over the mortgage security instrument.[25] Foreclosure method in the United States is divided between judicial and non-judicial foreclosure states with thirty jurisdictions, including D.C., using non-judicial foreclosure, while Illinois is in the minority with judicial foreclosure.[26] Non-judicial foreclosure allows the lender to sell the mortgaged property without filing a lawsuit.[27] The differences between judicial and non-judicial foreclosure are best seen by comparing two states, Missouri and Illinois, which share a border but have very different foreclosure regimes.

Illinois is a judicial foreclosure state, meaning the process is overseen by the court system.[28] The lender must name the necessary parties and file a foreclosure complaint, while serving the homeowner in order to begin the foreclosure process.[29] The note and mortgage that the lender seeks to enforce must be attached to the complaint.[30] The borrower then has thirty days to file an answer,[31] but in counties

[24] Restatement (Third) of Property (Mortgages) §5.4(c) (1997); Homeward Residential, Inc. v. Gregor, 122 A.3d 947, 949 (Maine 2015).

[25] Carpenter v. Longran, 83 U.S. 271, 275 (1872).

[26] *See* National Consumer Law Center, *Home Foreclosures* (2019), updated at www.nclc.org/library. Appendix E (Summary of State Foreclosure Laws) specifically suggests that of these thirty jurisdictions typically referred to as allowing non-judicial foreclosure procedures, four actually have "hybrid" systems that involve some limited judicial oversight before and after foreclosure sales. *Id.*

[27] *Id.*

[28] 735 Ill. Comp. Stat. 5/15-1405 (2019).

[29] 735 Ill. Comp. Stat. 5/15-1501; 735 Ill. Comp. Stat. 5/2-201 (2019).

[30] 735 Ill. Comp. Stat. 5/2-606 (2019).

with a foreclosure mediation program that deadline is stayed while the mediation process moves forward.[32] If the homeowner does not file an answer, the lender-plaintiff can proceed to a default judgment[33] after which the borrower has seven months after service or three months after judgment, whichever is longer, to redeem the note (pay it off in full).[34] The borrower also has a ninety-day reinstatement right.[35] If the note is not redeemed or reinstated by the end of this period, then the lender proceeds to a foreclosure sale and auctioning the property to the highest bidder.[36] If the property is sold for less than is owed, the borrower has another thirty day special right of redemption,[37] and if that is not met, the lender proceeds to getting an order of possession and the borrower must vacate the property within thirty days.[38] As detailed here, Illinois' judicial foreclosure process includes many safeguards for homeowners going through foreclosure.

In Missouri, however, lenders usually proceed through the cheaper non-judicial foreclosure option, acting on the "power of sale" clause in mortgage contracts and proceeding according to the terms of the deed of trust,[39] but judicial foreclosure is available.[40] A notice must be mailed to the mortgagor.[41] If it proceeds to foreclosure and the home is bought by the lender, the homeowner has a year to redeem.[42] There

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[31] Ill. Sup. Ct. R. 181(a).

[32] *See generally* Admin. Order 2014-1 ¶ 8 (Ill. 2014), accessible at http://www.co.champaign.il.us/circuitcourt/PDFS/foreclosuremediation/2014_1_foreclosure_mediation.pdf.

[33] 735 ILL. COMP. STAT. 5/2-1301(d) (2019).

[34] 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2019).

[35] 735 ILL. COMP. STAT. 5/15-1602 (2019).

[36] 735 ILL. COMP. STAT. 5/15-1507 (2019).

[37] 735 ILL. COMP. STAT. 5/15-1604 (2019).

[38] 735 ILL. COMP. STAT. 5/15-1701(c) (2019).

[39] Mildfelt v. Circuit Court of Jackson City Mo., 827 F.2d 343, 346 (8th Cir. 1987) (per curiam).

[40] MO. ANN. STAT. § 443.190 (2019).

[41] MO. ANN. STAT. § 443.325.3 (2019).

[42] MO. REV. STAT. § 443.410 (2019).

is no statutory right to reinstate the note as in Illinois, but the note and mortgage may provide for it. As can be observed by the differences between Illinois and Missouri, judicial foreclosure gives homeowners numerous protections through service of process and court oversight of the lender who is pursuing foreclosure, while non-judicial foreclosure allows the lender to proceed faster with less oversight of the process.

The 2012 state Attorneys General settlement set some standards for the loss mitigation application process.[43] In January 2014, the Consumer Financial Protection Bureau (CFPB) set final rules on loss mitigation under Regulation X.[44] Whether pursuing judicial or non-judicial foreclosure, the lender is still subject to Regulation X's 120-day stay on initiating the foreclosure process during which the borrower can engage in the loss mitigation process with the lender.[45] The loss mitigation process is governed by general CFPB rules, but is also subject to internal lender rules and rules promulgated by the investor.[46]

In the wake of the financial crisis, states were urged to turn to mediation programs to address the problems evident in loss mitigation, which was often a process of "calculated chaos" in the Home Affordable Modification Program.[47] This consisted of losing documents, failing to follow time frames, failing to notify homeowners about decisions, and giving false reasons for denials.[48] The idea was that a third-party monitor would be better equipped to ensure accountability and prevent unnecessary foreclosures and loss mitigation abuses than a homeowner going through the process alone.[49] Mediation programs could provide a source of

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[43] *See National Mortgage Settlement*, HSBC (last visited Oct. 4, 2019), http://www.nationalmortgagesettlement.com/. The full text of the standards is available here. *Id.* The standards for each servicer are in a "Settlement Term Sheet," "Exhibit A" attached to the consent decree for the servicer. *Id.*

[44] CFPB, *Help for Struggling Borrowers: A Guide to the Mortgage Servicing Rules Effective on January 10, 2014*, CFPB (Jan. 28, 2014), https://files.consumerfinance.gov/f/201402_cfpb_mortgages_help-for-struggling-borrowers.pdf.

[45] 12 CFR 1024.41(f)(1), accessible at https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1024/41/.

[46] *See generally id.; Loss Mitigation Services for FHA* Homeowners, HDU.GOV, https://www.hud.gov/program_offices/housing/sfh/nsc/lossmit (last visited Nov. 17, 2019).

[47] Geoff Walsh, *Rebuilding America: How States Can Sa6t5 ve Millions of Homes Through Foreclosure Mediation*, NAT'L CONSUMER L. CTR. (Feb. 2012), https://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/report-foreclosure-mediation.pdf.

[48] *Id.*

[49] *Id.* at 6.

accountability by setting time frames for document exchanges, staying proceedings until the loss mitigation process is concluded, and ensuring proper notices and reasons are given to borrowers.[50]

The Illinois Supreme Court authorized foreclosure mediation programs by Rule 99.1 in 2013.[51] Unfortunately, the First Circuit's program closed in August 2018.[52] Cook County's also shut down in 2017, when the county board defunded the program.[53]

There are now eleven programs throughout the state.[54] Program design varies from mandatory to opt-in, and from considering retention options only to pursuing retention and non-retention.[55] While it seems that there will likely not be any more foreclosure mediation programs launching in the future, the foreclosure survey provides important empirical evidence for any future program formation and foreclosure policy by comprehensively studying borrowers in financial distress.[56]

III. FINANCIAL KNOWLEDGE, ATTITUDES AND DEFAULT RESEARCH

There is a multitude of research and scholarship on issues related to foreclosure and debt. Previous studies and surveys can be distilled into seven main points: American attitudes toward debt and homeownership, economic and cultural differences in management of debt payments, financial knowledge among different

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[50] *Id.* at 17–19.

[51] Ill. Sup. Ct. R. 99.1.

[52] Missy Greathouse, *Update on the First Circuit Foreclosure Mediation Program*, DISP. RESOL. INST., INC. (May 10, 2018), https://www.linkedin.com/pulse/update-first-circuit-foreclosure-mediation-program-greathouse/.

[53] Bob Glaves, *A Bittersweet End, A Model for the Future*, CHI. B. FOUND. (Jan. 25, 2018), https://chicagobarfoundation.org/news_item/bittersweet-end-solid-model-future/.

[54] *Foreclosure Mediation*, RESOL. SYS. INST. (Aug. 31, 2018) https://www.aboutrsi.org/our-work/foreclosure-mediation (listing 8 programs); *Local Rule 85: Mandatory Peoria County Residential Mortgage Foreclosure Mediation Program*, 10TH CIR. CT. ILL., https://10thcircuitcourtil.org/DocumentCenter/View/32/Mortgage-Foreclosure-Mediation-Program-Rules-PDF (last visited Oct. 4, 2019); *Mortgage Foreclosure Mediation Program*, MADISON COUNTY ILL. (2015), https://www.co.madison.il.us/departments/circuit_court/mortgage_foreclosure_mediation_program.php; McLean County Government, *Foreclosure Mediation*, MCLEAN COUNTY GOV'T, https://www.mcleancountyil.gov/603/Foreclosure-Mediation-McLean (last visited Oct. 4 2019).

[55] Jennifer Shack, *Six Programs, Six Models: An Evaluation of the Foreclosure Mediation Programs Funded by the Office of the Illinois Attorney General* 1, 8 (June 15, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733619.

[56] *Id.*

groups, economic hardships, public perception of default and societal judgment, drivers of foreclosure, and effectiveness of representation.[57] This study's focus is on the analytics of survey results reflecting the social stigmas attached to borrowers in default.[58]

First, in the wake of the 2008 financial crisis, American attitudes about the desirability of debt and usefulness of mortgages and homeownership substantially changed.[59] Eighty percent of Americans have some form of debt, and the most common type is a mortgage.[60] Nearly seven in ten Americans view debt as a necessity, but not something they want to have.[61] Millennials and Gen-Xers in particular had an especially negative view of debt, and interestingly, the most financially stable among them had the most debt.[62] More than half of Gen-Xers and Millennials say they are financially insecure.[63] Eighty percent of Baby Boomers have some form of debt heading into retirement, and nearly half are still paying on their homes.[64] Gen-Xers have more mortgage debt than Boomers at the same age, but Millennials have less housing debt than Gen-Xers.[65] Americans of all generations are drowning in debt, including mortgage debt, and that debt underlies changes in attitudes and beliefs on upward mobility.[66]

As Americans' debt soared and attitudes soured on the desirability of debt, especially mortgage debt, their beliefs in what constitutes a middle-class life also changed. In 1991, seventy percent said homeownership was the essential part of being middle class.[67] However, in 2012, nearly ninety percent of American adults said a secure job is the ticket to the middle class as opposed to owning a home, and two-thirds said that health insurance is an essential part of the middle-class

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[57] *Id.*

[58] *Id.*

[59] PEW RESEARCH TEAM, *supra* note 8.

[60] *Id.* at 2.

[61] *Id.* at 8.

[62] *Id.* at 9.

[63] *Id.* at 12.

[64] *Id.*

[65] *Id.* at 7.

[66] *Id.*

[67] PABLO A. MITNIK & DAVID B. GRUSKY, ECONOMIC MOBILITY IN THE UNITED STATES (2015), https://www.pewtrusts.org/~/media/Assets/2015/07/FSM-IRS-Report_ARTFINAL.pdf.

lifestyle.[68] In 2015, only sixty-four percent of Americans believed that opportunities for upward mobility were widely available, reflecting research that those born at the top or bottom of the economic ladder are likely to stay on these rungs over their lifetimes.[69] Homeownership is no longer seen as being integral to the middle-class lifestyle.

The turn away from homeownership also makes sense as Americans changed from being against renting to seeing downsides in homeownership.[70] In 2013, fifty-four percent of Americans said that renting has become more appealing and fifty-seven percent said buying a home has become less appealing.[71] In part, this is because large majorities believe it is less likely for families to have enough for a down-payment and less likely to build wealth in property, reflecting a perception that there is more risk involved with owning a home.[72] The homeownership rate fell to 1993 levels in 2015 to sixty-three percent, showing that the financial crisis made Americans less inclined and less able to buy a home.[73] Renting is increasingly no longer seen as being at odds with achieving the American Dream, and the public supports a housing policy that focuses on renting as well as buying, in contrast with American housing policy for the last seventy years that has focused on homeownership.[74] If survey results reflect this souring on homeownership, mediation programs should include this change in counseling homeowners. Policymakers should use the souring on homeownership to change housing policy to also focus on renters.

The perception that homeownership is tied to being in the middle class may lead to homeowners having deep ties to notions of property and ownership. Emotional ties to one's home and status may cause homeowners to value their homes more than the real estate market does, resulting in many underwater properties (owing more on the mortgage than the property is worth).[75] In one study, only forty-five percent of homeowners said they would walk away even if they had $300,000 in negative

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[68] Wendy Wang, *Public Says a Secure Job Is the Ticket to the Middle Class*, PEW RESEARCH CENTER (2012), https://www.pewsocialtrends.org/2012/08/31/public-says-a-secure-job-is-the-ticket-to-the-middle-class/.

[69] *Id.*

[70] HART RESEARCH ASSOCIATES, *supra* note 4.

[71] *Id.*

[72] *Id.* at 10.

[73] Mark R. Lindblad, Siyun Yu Hye-Sung Han & William M. Rohe, *First-Time Homebuying: Attitudes and Behaviors of Low-Income Renters Through the Financial Crisis*, 32 HOUSING STUD. 1127, 1128–29 (2017).

[74] *Id.* at 1138, 1145.

[75] White, *supra* note 1, at 986.

equity.[76] Hopelessness from not getting help from their lender and anger at their treatment and perceived injustice can lead homeowners to feel justified in walking away.[77] However, most underwater homeowners may fail to understand the benefit of walking away from indebtedness, especially in states that do not allow deficiency judgments.[78] This research is important to the original research question of the Illinois Foreclosure Survey and to help advisors understand where homeowners are coming from.

Homeownership is marketed as a positive experience, and the most cited reasons are: raising children, having a place to stay and feel safe, having space, and having control over one's living space.[79] If we are to understand how homeowners think about their homes and mortgages, we must understand how they feel; convincing homeowners that getting out of their mortgage is the best option may be difficult because they cannot break the emotional connection to homeownership.[80] Homeowners may have an emotional connection to property ownership because of their positive experiences growing up derived from their parents' ownership of property, without understanding the financial side.[81] Once a person becomes a property owner, they may have strong non-financial motivations to keep the property, such as the deep American emotional connection to homeownership and property rights, even when the rational economic decision would be to walk away.[82] If the survey finds support for this belief among borrowers in default then foreclosure mediation programs need to address these attitudes upfront by discussing the borrower's motivations.

Second, there are differences in attitudes and beliefs about how debtors from diverse economic and cultural backgrounds manage their debt payments.[83] Low-income families are less likely to ask for assistance because they want to be seen as

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[76] *Id.* at 997.

[77] Brent T. White, *Take This House and Shove It: The Emotional Drivers of Strategic Default*, 63 SMU L. REV. 1308 (2010).

[78] White, *supra* note 1, at 987.

[79] Thomas W. Secrest, *Underwater Mortgages: Why Homeowners May Continue to Pay the Debt*, 14 J. ECON. & ECON. EDU. RESEARCH 101, 105 (2012).

[80] White, *supra* note 1, at 990.

[81] Secrest, *supra* note 79.

[82] *Id.* at 110.

[83] Laura M. Tach & Sara Sternberg Greene, *"Robbing Peter to Pay Paul": Economic and Cultural Explanations for How Lower-Income Families Manage Debt*, 61 SOC. PROB. 1, 1 (2014).

financially responsible and self- sufficient.[84] Welfare is stigmatized in the United States, and these families feel uncomfortable asking friends and family for help.[85] Low-income families prioritize monthly expenses like rent or mortgages partly because they affirm being self-sufficient and economically mobile, but they de-prioritize debts they see as unfair, such as misleading credit cards.[86] Bankruptcy, meanwhile, is a strategy for the middle-class, not the poor.[87]

One study of homeowners at risk of default found that homeowners used several strategies to manage their situation including negotiating with lenders, increasing work hours, strict budgeting, and seeking help from social services.[88] Homeowners described the experience of attempting to work with their lender or servicer as "dehumanizing," "deceitful," and "confusing."[89] The experience of dealing with a lender who refuses to help or only helps after default pushes some homeowners on the road to strategic default, which they justify by feelings of injustice from their lender or servicer.[90] While homeowners feel a personal responsibility to make payments, the lenders operate to maximize profit, not on terms of responsibility, and lenders use the feelings of guilt, shame, and possible credit damage to bring the homeowner back into compliance.[91] As a coping mechanism, many homeowners tried to increase their income at their job, imposed budgeting, and got rid of extra spending.[92] Participants also reported skipping medication, getting rid of insurance, selling items, shopping at thrift stores, and canceling internet and cable.[93] Homeowners at risk of default also sought help from social service agencies, but said advice was limited to budgeting skills, which they had already been doing and was of limited help.[94]

The racial gap in wealth means that working and middle-class African-

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[84] *Id.* at 2.

[85] *Id.* at 9.

[86] *Id.* at 2, 13.

[87] *Id.* at 5.

[88] Amy Castro Baker & Danya E. Keene, *"There's a Difference—I Own This": Negotiating Social and Financial Services Under Threat of Mortgage Foreclosure*, 61 SOC. WORK 321, 324 (2016).

[89] *Id.* at 324.

[90] White, *supra* note 11, at 1296, 1304.

[91] White, *supra* note 1, at 1009, 1011.

[92] Baker & Keene, *supra* note 88, at 325.

[93] *Id.*

[94] *Id.* at 326.

Americans have fewer resources in their social and family networks than their white counterparts, which means that they often cannot draw on friends and family for support in hard economic times.[95] Older women, especially women of color, disproportionately experience mortgage trouble and depleting assets, which may be a result of systemic inequalities, limited opportunities for financial equity, and a lifetime of economic insecurity.[96] Meanwhile, white Americans are more likely to make debt repayment payments on time, while Latinos are more likely to involuntarily leave debt repayment plans because they did not pay on time, reflective of a culture that does not prioritize promptly paying debts.[97] It may be that white Americans are more likely to negotiate for leniency in receiving late payments or for lower payments to start.[98] Across cultural groups, women were found to be better at compliance and achieving outcomes.[99]

Third, there are disparities in financial knowledge and literacy among Americans.[100] College students do not know "much more" about finance than high school students, which indicates a broad consumer lack of knowledge in America.[101] American women are less likely than men to answer financial literacy questions correctly and more likely to say they do not know the answer; this is true even for young women.[102] Older women may be less literate because they were less likely to be in the workforce and make financial decisions, but even when younger women are the decision maker, they know less than men.[103] If survey results confirm a lack of basic financial literacy, then mediation programs should add financial counseling to the services provided.

Fourth, there has been some research into economic hardships affecting

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95 Danya E. Keene, Julia F. Lynch & Amy Castro Baker, *Fragile Healther and Fragile Wealth: Mortgage Strain Among African American Homeowners*, 118 J. SOC. SCI. & MED. 119, 121 (2014).

96 Amy Castro Baker, Stacia West & Anna Wood, *Asset Depletion, Chronic Financial Stress, and Mortgage Trouble Among Older Female Homeowners*, 59 THE GERONTOLOGIST 230, 233, 238 (2017).

97 Stephanie Dellande, Mary C. Gilly & John L. Graham, *Managing Consumer Debt: Culture, Compliance and Completion*, 69 J. BUS. RES. 2594, 2598, 2600.

98 *Id.* at 2600.

99 *Id.*

100 Jill Norvilitis, Michelle M. Merwin, Timothy Osberg, Patricia V. Roehling, Paul Young & Michele M. Kamas, *Personality Factors, Money Attitudes, Financial Knowledge, and Credit Card Debt in College Students*, 36 J. APPLIED SOC. PSYCHOL. 1395, 1407-1408 (2006).

101 *Id.*

102 Bucher-Koene et al., *supra* note 7.

103 *Id.* at 270, 272.

Americans and how they lead to default.[104] In 2015, sixty percent of households experienced a financial shock, such as a major car repair, illness or loss of income, and nearly a third experienced two or more hardships.[105] More than fifty percent of American households, even across age groups and income categories, had a destabilizing shock, meaning they had a hard time making ends meet, which suggests that they did not have adequate resources to handle financial troubles.[106] Families with less savings are more likely to have a financial shock and have fewer resources to cover the need when they do.[107] Additionally, seventy-one percent said unexpected expenses made it hard for them to save.[108] Experiencing a destabilizing shock without sufficient savings starts homeowners on the path to mortgage default.[109]

Fifth, public perception of default is that it is immoral to not pay one's debts and homeowners are simply choosing to not pay even as default has become more acceptable.[110] Strategic default involves intentionally not paying mortgage payments and then walking away from the indebtedness.[111] A non-strategic default would be one where the homeowner simply does not have the money to pay the mortgage even if they could sacrifice to make it.[112] By 2010, more than a third of Americans said strategic default was acceptable.[113] However, there was a gap between struggling families and well-off families. Nearly twenty-five percent of those who said their families were barely able to pay bills or could not pay bills said it was okay to stop paying, but only fourteen percent of those who said they lived comfortably agreed

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[104] *See* HOW DO FAMILIES COPE WITH FINANCIAL SHOCKS? THE ROLE OF EMERGENCY SAVINGS IN FAMILY FINANCIAL SECURITY (Oct. 2015), https://www.pewtrusts.org/-/media/assets/2015/10/emergency-savings-report-1_artfinal.pdf.

[105] *Id.* at 4.

[106] *Id.* at 7.

[107] *Id.* at 8.

[108] *Barriers to Saving and Policy Opportunities*, PEW (Jan. 7, 2016), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/01/barriers-to-saving-and-policy-opportunities.

[109] *See generally id.*

[110] White, *supra* note 11, at 1310.

[111] *Id.* at 1280.

[112] *Id.* at 1284.

[113] Rich Morin, *Walking Away: A Third of Public Say It's Sometimes OK to Stop Paying a Mortgage*, PEW RESEARCH CENTER (Sept. 15, 2010), https://www.pewsocialtrends.org/2010/09/15/a-third-of-public-says-sometimes-ok-for-homeowners-to-stop-making-mortgage-payments/.

that it was okay to walk away.[114] In 2012, a Fannie Mae survey found eighty-eight percent of underwater and above water homeowners said it is not acceptable to stop making payments, and the most commonly cited reason for not defaulting was it not being "moral."[115] This interacts with the debt management strategies previously discussed; people will sacrifice to make payments.

While default may be seen as more acceptable, those at risk of default report varying levels of guilt and shame because they cannot make payments on their debt. Those who default on their mortgage payments experience guilt and shame about not being able to make the payments.[116] This reflects an underlying belief by almost eighty percent of Americans who think other people use debt irresponsibly and live beyond their means.[117] People are less likely to default if doing so will make them feel immoral or irresponsible, and are especially less likely if they think others will perceive them that way.[118] Political, social, and economic institutions drove the narrative that foreclosure should result in fear, shame, and guilt because one has a responsibility to pay one's mortgage.[119] If the survey results find support that those in default are harshly judged, then mediators and counselors must address that guilt and shame in mediation sessions.

Scholars, however, pointed out that the public perception of default is incorrect because it is the act of a financially stressed homeowner at the end of their assets, not an irresponsible one who simply does not want to pay on their mortgage any longer.[120] Giving up on a mortgage is an act of a financially pressured homeowner.[121] Homeowners with the most financial problems face the choice of defaulting on mortgages or having to use credit cards or other resources to stay afloat.[122] That homeowners face this choice and do their best to sacrifice to make their payments until they cannot reflects a deep-seated American belief that one must honor one's financial obligations.[123] The decision to default seems to come near the

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[114] *Id.*

[115] Secrest, *supra* note 79, at 103.

[116] White, *supra* note 11, at 1288.

[117] PEW RESEARCH TEAM, *supra* note 8, at 8.

[118] White, *supra* note 1, at 992.

[119] *Id.* at 997, 998.

[120] *Id.* at 992.

[121] *Id.* at 997, 998.

[122] White, *supra* note 11, at 1294.

[123] White, *supra* note 1, at 1001.

point when homeowners deplete or exhaust their reserves.[124] Mortgage default, then, is a substitute for default on other credit accounts.[125]

Sixth, while many studies focus on the *types* of homeowners—from varying cultural and age groups—who default on payments and their economic problems, relatively few studies and surveys have tried to pinpoint the underlying *causes* of foreclosure. Freddie Mac's data from 2007 showed that unemployment and loss of income were the leading causes for foreclosure with illness being a close second.[126] This hardship data helps inform why, after the recession, job security makes sense as a ticket to the middle class life because job loss created a cascade of problems from cutting back spending to not getting medical care.[127] Another study found that a medical cause (illness, medical bills, etc.) drove foreclosure for fifty-six percent of respondents.[128] Of those respondents, sixty percent said they had medical bills that were not covered by insurance, sometimes up to $3,000.[129] Sixteen percent of respondents reported going without food or other necessities to pay medical bills, which reflects that people sometimes make the decision to pay medical bills over mortgage payments, and more than half indicated they took on new debt to pay medical bills.[130] Almost sixty percent of respondents had a chronic condition needing continuing care, but more than half of those experiencing foreclosure delayed or skipped medical care. More than forty percent skipped or delayed getting prescribed medicine, and nearly sixty-six percent skipped or delayed dental care.[131] Limited personal resources and the lack of robust social safety nets lead to increasing financial difficulties for those who have poor health, illness, or disability, which are especially bad for homeowners.[132] Health and medical issues contribute to foreclosure, and the foreclosure experience often compromises access to medical

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[124] White, *supra* note 11, at 1293.

[125] Sewin Chan, Andrew Haughwout, Andrew Hayashi & Wilbert Van Der Klaauw, *Determinants of Mortgage Default and Consumer Credit Use: The Effects of Foreclosure Laws and Foreclosure Delays*, 48 J. MONEY, CREDIT & BANKING 393, 412 (2016).

[126] J. Michael Collins, *The Role of Default Counseling for Mortgage Borrowers in Financial Crisis*, 11 CONSUMER KNOWLEDGE & FIN. DECISIONS, 165, 166 (2012).

[127] Wang, *supra* note 68, at 5.

[128] Christina Cutshaw, Steffie Woolhandler, David U. Himmelstein & Christopher Robertson, *Medical Causes and Consequences of Home Foreclosures*, 46 INT'L J. HEALTH SERVS. 36, 40 (2016).

[129] *Id.*

[130] *Id.*

[131] *Id.*

[132] Keene, Lynch & Baker, *supra* note 95, at 124.

care.[133]

Seventh, the impact and effectiveness of housing counseling were examined several times. Housing counseling (both pre-purchase and default) can help homeowners get loan modifications to prevent foreclosure,[134] and counseling decreases the chances of a completed foreclosure.[135] Those who seek counseling earlier have a better chance at staying in their homes,[136] and those who do get loan modifications are less likely to re-default.[137] Clients counseled by agencies funded by the National Foreclosure mitigation counseling program who received loan modifications paid $176 less in monthly payments than non-counseled clients had better odds of preventing re-default than uncounseled borrowers, and prevented one in seven foreclosures, saving lenders, cities, and states money.[138] While housing counseling helps many homeowners, referrals to legal aid help in foreclosure because housing counselors cannot give legal advice and cannot address the consumer protection issues seen in mortgage foreclosure litigation.[139] Almost none of the participants in one study received a modification without the assistance of legal counsel.[140] Both of Resolution Systems Institute's (RSI) analyses of six Illinois foreclosure mediation programs showed that legal services and housing counseling significantly improved outcomes.[141] Housing counseling and legal aid are essential to helping defendant-borrowers.

Most borrowers who seek counseling are low-income homeowners, those with little savings, or those who have experienced a hardship, such as a divorce, that led to

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[133] Cutshaw et al., *supra* note 128, at 42.

[134] Tighe, *supra* note 9, at 112.

[135] J. Michael Collins & Maximilian D. Schmeiser, *The Effects of Foreclosure Counseling for Distressed Homeowners*, 32 J. POL'Y ANALYSIS & MGMT 83, 96 (2013).

[136] Tighe, *supra* note 9, at 113.

[137] Collins & Schmeiser, *supra* note 135, at 96.

[138] NEIL MAYER, PETER A. TATIAN, KENNETH TEMKIN & CHARLES A. CALHOUN, NATIONAL FORECLOSURE MITIGATION COUNSELING PROGRAM EVALUATION FINAL REPORT, ROUNDS 1 AND 2 ix–xiii, 14, 15, 78, 102 (Dec. 2011).

[139] Tighe, *supra* note 9, at 113.

[140] Baker and Keene, *supra* note 88, at 328.

[141] Shack, *supra* note 55, at 8; Jennifer Shack, *Saving Homes, Building Understanding: An Evaluation of the Eight Foreclosure Mediation Programs Funded by the Illinois Attorney General*, RESOL. SYS. INST. (Oct. 1, 2018), https://www.aboutrsi.org/library/saving-homes-building-understanding-an-evaluation-of-the-eight-foreclosure-mediation-programs-funded-by-the-illinois-attorney-general [hereinafter Shack, *Saving Homes*].

financial problems.[142] Agencies in Appalachia pointed to problems with communicating with servicers, the distance required to get to the agency, and lack of transportation inhibiting borrowers.[143] Illinois faces a similar problem with Hardest Hit sponsor agencies and a housing counseling desert downstate.[144] Providing services to low-income borrowers is important because they are least likely to understand their legal rights and mortgage terms, as well as more likely to be unfamiliar about public programs for assistance.[145] Counseling's greatest effects are on lower income clients, clients with larger mortgages, and those with high interest rate loans.[146] An important benefit of counseling is providing consumers with someone who will listen to them, let them vent about their problems with the mortgage servicer, and be a trusted advisor at a time when there are less than scrupulous people prying on defaulted borrowers.[147] However, homeowners did appreciate that social workers made them feel heard and appreciated referrals to legal aid and mental health support.[148] RSI also found this was true of foreclosure mediation programs: people appreciated the chance to understand and be heard.[149] In light of the earlier discussion regarding social stigma, foreclosure counselors can also aid homeowners who are unable to discuss their financial woes with their family members or others.[150]

As will be seen, the portrait of debt management and attitudes about default and homeownership is complex in America.[151] Homeowners at risk of default face

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[142] Tighe, *supra* note 9, at 113.

[143] *Id.* at 124, 126.

[144] See *HUD Approved Housing Counseling Agencies*, HUD.GOV, https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?searchstate=IL&webListAction=search (last updated Nov. 18, 2019). Not all of these are IHDA-approved Hardest Hit Sponsor Agencies. The list is not readily available online. However, downstate there is only Navicore in Peoria, MCCA in Bloomington, and Western Egyptian in Steeleville as Hardest Hit sponsor agencies. *Id.*

[145] Collins, *supra* note 126, at 168.

[146] MAYER ET AL., *supra* note 138, at 52.

[147] Collins, *supra* note 126, at 167, 170.

[148] Baker and Keene, *supra* note 88, at 327.

[149] Shack, *supra* note 55, at 7; *See* Shack, *Saving Homes*, *supra* note 141, at 88, 171.

[150] *See* Ingrid M. Paulin &Wendy De La Rosa, *Why Is It So Hard to Talk About Money?*, SCI. AM. (Mar. 22, 2018), https://blogs.scientificamerican.com/observations/why-is-it-so-hard-to-talk-about-money/ for support (showing that 44% of Americans find money the hardest thing to talk about according to WF study).

[151] *See* discussion *infra* Part VI.

various pressures and may have a deep connection to the idea of homeownership.[152] The Illinois Foreclosure Survey combined all of these areas of study to comprehensively study borrowers in default.[153]

IV. Study Design

The Illinois Attorney General's office funded the creation of foreclosure mediation programs across the state with money from the 2012 Bank of America settlement.[154] The Community Preservation Clinic at the University of Illinois College of Law received over one million dollars to create foreclosure mediation programs in central Illinois and to do a statewide foreclosure survey.[155] With this funding, the Community Preservation Clinic conducted a three-year, statewide survey of participants in foreclosure mediation.

Professor Stacey Tutt designed the Illinois Foreclosure Survey, which was approved by the University of Illinois Institutional Review Board. Forty survey questions were fully randomized with thirty-six different versions that were distributed to program coordinators of participating programs. Participants were drawn from foreclosure mediation programs in the 1st, 6th, 11th, 20th and 21st judicial circuits. When borrowers came to their first conferences in these programs, the program coordinator asked if they wanted to participate. If they did, they were given a randomized survey to fill out, and responses were recorded in Qualtrics, which was also used to analyze the results. Professor Tutt collected the data, along with the assistance of Mediation Incubation Fellows in the Clinic. Invaluable assistance was provided by Dispute Resolution Institute's program coordinators.

Defendant-borrowers in foreclosure mediation programs were asked if they wanted to complete the survey, and if they did, they were given the survey to complete. Therefore, all of the participants were in default or alleged to be in default at the time they filled out the survey. All participants gave informed consent. When they filled out the informed consent section, they were asked to provide their county and case number. With that information, researchers were able to identify the ultimate outcome in their case, and with support from program coordinators, checked outcomes and representation from an attorney or housing counselor.

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[152] *See* Garrick T. Davis, *The Undeniable Benefits of Housing Counseling Are Worth Every Cent*, HUFFPOST (May 4, 2015), https://www.huffpost.com/entry/the-undeniable-benefits-o_b_7202162 for support (showing that nine out of ten Americans strives to own a home).

[153] The Illinois Foreclosure Survey Study and its component data and parts are unpublished, but they are on file with the author. Please direct inquiries to douglas.tracy@gmail.com.

[154] Julie Wurth, *Settlement to Fund More Foreclosure Help by Legal Clinic*, THE NEWS-GAZETTE (Jun. 15, 2013), https://www.news-gazette.com/news/settlement-to-fund-more-foreclosure-help-by-legal-clinic/article_fc841be6-72da-5760-86e6-e61155863179.html

[155] *Id.*

The Illinois Foreclosure Survey wanted to measure borrowers' attitudes toward homeownership. The research question proposed that if borrowers had deep ties to property and homeownership, then mediators and representatives would need to address those emotional needs to help borrowers make the best decisions. During development, the research questions expanded to also test financial knowledge, attitudes towards those in default, personal experiences with debt and default, and attitudes about homeownership as well as upward mobility and satisfaction with life.

The participants represent the diversity of Illinois from rural to urban areas. Dispute Resolution Institute, Inc. provided invaluable support for the survey with its two programs. Regrettably, participation in northern Illinois was very low. The Mediation Fellow at the University of Illinois administered the survey in the programs that the Community Preservation Clinic ran. Foreclosure mediation participants could fill out a paper survey or go to illinoisforeclosuresurvey.com to fill it out online.

Respondents answered groups of questions that measured attitudes on homeownership, financial knowledge and abilities, judging of financial decisions, perceptions of well-being and status, budgeting experience in foreclosure, employment status, and background information. Attitudes about homeownership were based on a scale from one (strongly disagree) to five (strongly agree) with three (neutral) and answering the following questions:

1) Owning a home is basically the same as renting.
2) Owning a home is a sign that I am in the middle class.
3) Other people will respect me more if I own a home.
4) Owning a home gives me a sense of stability.
5) My feelings about myself do NOT depend on whether I own a house.

Respondents were also asked what minimum price they would accept if they were to sell their home, which was then checked against the property values researchers looked up. The study integrated people's, who were in foreclosure, judgments of other people's financial decisions into a fully randomized hypothetical with thirty-six versions. Using six different names (Jamal, Brett, Brad, Torrell, Darnell, and Todd), participants were asked how they perceived the person when they either saved to buy a TV, bought a TV with a loan but paid it off, bought a TV with a loan but defaulted, saved to have dental surgery, paid for dental surgery with a loan and paid it off, or paid for dental surgery with a loan but defaulted. Participants could choose any of the following descriptive words: capable, honest, trustworthy, considerate, impulsive, unhelpful, clever, incompetent, greedy, foolish, intelligent, and unreliable. Participants were also asked to pick the best word that described that person. These questions were designed to see if there were any racial biases in attitudes towards debtors and defaulters in addition to general attitudes and beliefs about defaulting. However, the amount of questions resulted in not having enough responses to adequately measure this.

Financial knowledge and abilities responses were recorded for several questions. One asked the respondent to place themselves on a ladder to indicate where they perceived their station in life as relative to other people in the United States. A set of three questions measured basic financial literacy:

"Suppose you had $100 in a savings account and the interest rate was 2% per year. After five years, how much do you think you would have in the account if you left the money to grow: More than $102, Exactly $102, Less than $102, Do Not Know."

"Imagine that the interest rate on your savings account was 1% per year and the inflation was 2% per year. After one year would the money in the account let you buy: More than today, exactly the same as today, less than today, do not know."

"Do you think that the following statement is true or false. 'Buying stock in a single company usually provides a safer return than a stock mutual fund.' True, False, Do Not Know."

Determining people's basic financial literacy has important implications for foreclosure programs, including program coordinators, mediators, attorneys, and housing counselors.[156] If people have basic financial literacy, they do not need to be educated further on it.[157] However, if they lack basic financial literacy, more needs to be done within the context of foreclosure mediation to educate them on their options and financial knowledge.[158]

Respondents were further asked about a man who was injured and owes money to the hospital but has very little money to pay the hospital after paying other bills and no assets. Respondents ranked his options to pay for needed repairs on his car, then to pay the hospital, then to prevent his car from being sold by the hospital to pay his bill, and finally to prevent his house from being sold to satisfy the hospital's lawsuit judgment. Respondents ranked the following options from one (best) to five (worst):

1) Save until he has the money he needs
2) Borrow the money he needs from a payday lender, a pawn shop or an auto title Lender
3) Borrow from friends or family who have the money to loan
4) Talk to the hospital and attempt to work out a realistic payment plan
5) Consult a bankruptcy attorney

These questions measure how people perceive their options and strategies people use to manage their debt payments even as debts and problems mount. Responses

[156] *See, e.g.*, *Financial Education*, HOUSING EDUC. PROGRAM, https://www.housingeducation.org/education/ (last visited Jan. 17, 2020); Kristina Zucchi, *Why Financial Literacy is so Important*, INVESTOPEDIA (Oct. 11, 2019), https://www.investopedia.com/articles/investing/100615/why-financial-literacy-and-education-so-important.asp.

[157] *See id.*

[158] *See id.*

from these questions can be important to understand how defendant-borrowers are thinking about their own options.

How respondents felt about being able to change financial habits was also measured on a scale of one (strongly disagree) to five (strongly agreed) with three (neutral). They were asked to circle how they felt in response to the following statements:

1) You have a certain way of managing and spending your money, and you can't really do much to change it.

2) No matter who you are, you can significantly change the way you manage and spend money.

3) The way you manage and spend money is something about you that you can't change very much.

4) You always can substantially change the way you manage and spend money.

These questions show whether people have beliefs that people can change financial habits, which may inform their beliefs about whether they can retain their home, and whether they can change their own habits and situation that led to default.

How respondents perceived their own lives was assessed with one group of statements. The following statements were given to participants:

1) In most ways, my life is close to ideal.
2) The conditions of my life are excellent.
3) I am satisfied with my life.
4) So far, I have gotten the important things I want in life.
5) If I could live my life over, I would change almost nothing.

Participants ranked how appropriate the statement was in stating how they felt on a scale of one (strongly disagree) to five (strongly agree) with three (neutral). Assessing respondent's satisfaction with their life helps understand their motivations in wanting to keep or get rid of their property.

Finally, participants were asked a series of questions about their background. They were asked what things they had gone without because of financial difficulties. Respondents were also asked their employment and marital status, as well as if they have any children. Their sex, age, race, and religion were also recorded. Finally, respondents were asked if their parents rented or owned, and what level education their parents had as well as their own education level. These personal background questions assist in understanding what budgeting sacrifices people in foreclosure have already made, as well as understanding what hardship they suffered to end up in foreclosure. If they are unemployed or experiencing multiple hardships, mortgage default is the action of a homeowner who is at the end of his or her assets. The final questions about their parents' background help in analyzing the deep American attachment to property, and determining if participants in foreclosure mediation are also like the rest of Americans who are born in one class and do not experience upward mobility.[159]

V. Results

In the participating programs, there was either representation by private counsel, the Community Preservation Clinic, Land of Lincoln Legal Assistance Foundation, a housing counseling agency, or no representation.[160] Researchers checked the representation and outcome of the case for homeowners participating in the survey.[161] The Community Preservation Clinic's representation secured better outcomes than other models. Specifically, the Clinic's cases had a 57% retention rate and a 23% relinquishment rate. Cases that ended in no agreement and the Clinic withdrawing amounted to 20%, and those cases often ended in judicial foreclosure.

The Central Illinois programs guaranteed representation either through the Community Preservation Clinic in McLean County or legal services and a housing counselor in Champaign and Macon. Meanwhile, in the Champaign county program, Land of Lincoln had a 28% retention rate and a 5% non-retention rate, while 61% ended in no agreement that returned to court. Homeowners who had no representation at all ended in no agreement and the case proceeding in court; however, one case was dismissed after mediation ended. Cases with a housing counselor had an 18% relinquishment rate and a 26% retention rate, while 53% ended in no agreement.[162] Cases in the Macon county program with Land of Lincoln had a 4% relinquishment rate and a 16% retention rate, while 78% ended in no agreement and proceeding with judicial foreclosure. Borrowers who had a housing counselor had a 5% relinquishment rate and a 16% retention rate, while 79% ended in no agreement and proceeding to court. Meanwhile, cases with no representation had a 75% retention rate and 25% ended in no agreement.

The St. Clair, First Circuit, and Kankakee programs did not guarantee representation in their programs.[163] Sometimes, a housing counselor attended pre-

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[159] *See* Eric Jaffe, *Americans Think Upward Mobility Is Far More Common Than It Really Is*, CITY LAB (Feb. 2, 2015), https://www.citylab.com/life/2015/02/americans-think-upward-mobility-is-far-more-common-than-it-really-is/385086/.

[160] *See, e.g.*, *Foreclosure Prevention Programs*, ILL. HOUSING DEV. AUTHORITY, https://www.ihda.org/my-community/foreclosure-programs/ (last visited Jan. 17, 2020); *Housing Law*, LAND OF LINCOLN LEGAL AID, https://lincolnlegal.org/housing-law/ (last visited Jan. 17, 2020).

[161] Shack, *supra* note 55.

[162] *But cf.* Shack, *supra* note 141.

[163] *See, e.g.*, *Foreclosure Mediation Program Rules*, CIRCUIT CLERK (Mar. 2, 2017), http://www.circuitclerk.co.st-clair.il.us/attorney/Documents/forclosure.pdf; *Rules of the Circuit Court First Judicial Circuit*, FIRST CIRCUIT IL, http://www.firstcircuitil.org/sites/default/files/RULES%20OF%20THE%20CIRCUIT%20COURT%202017%20-%20update%205-4-2017.pdf (last updated May 4, 2017); *Notice of Mandatory Mediation*, K3 COUNTY,

mediation in Kankakee county, but in St. Clair County and the First Circuit, the borrowers had to reach out for help, which was problematic because there is a dearth of housing counseling agencies in southern Illinois.[164] In St. Clair County, borrowers with a housing counselor had a 46% retention rate, while 54% ended in no agreement.[165] Borrowers who had Land of Lincoln had a 66% retention rate and a 34% relinquishment rate. Meanwhile, private counsel had a 40% retention rate and a 60% rate of ending in no agreement. Borrowers who had no representation and navigated the process on their own only had a 33% retention rate while 67% ended in no agreement, often resulting in judicial foreclosure. In the First Circuit, only one borrower had private counsel, and they paid off the mortgage.[166] All of the other borrowers had no representation, had a 31% retention rate, and a 13% relinquishment rate. Fifty-six percent of cases ended in no agreement and proceeded to judicial foreclosure. Finally, in Kankakee, no study participants had representation.[167] There was a 19% retention rate and a 7% relinquishment rate.[168] Forty-two percent of cases proceeded to judicial foreclosure, while 27% were dismissed for unknown reasons. The importance of representation and the difference in outcomes can be seen from these comparisons.

Turning to the questions in the survey itself, the questions measuring attitudes and beliefs about homeownership reveals that a solid majority (91%) disagreed that owning was the same thing as renting. Nearly all participants (89%) disagreed that owning a home is the same as renting. Most participants either disagreed (42%) or were neutral (39%) about whether owning a home meant they were in the middle class. Most participants either disagreed (37%) or were neutral (40%) about thinking other people respected them more if they owned a home. Nearly all participants (77%) agreed that owning a home gave them a sense of stability. Finally, most participants either agreed (46%) or were neutral (27%) that their feelings of self-worth do not depend on owning a home. Cross-checking with gender, education, marital status, and whether the participant had dependents revealed no differences in responses. Across the board, survey respondents seemed to know that owning a home has significant differences from renting, homeownership is no longer a sign of being in the middle class, and homeownership does not give them more respect. However, respondents did feel that owning a home gave them stability but did not

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http://www.k3county.net/files/circuitclerk/residential_foreclosuremediation_notice.pdf (last visited Jan. 17, 2020); *HUD Approved Housing Counseling Agencies*, *supra* note 144; Shack, *supra* note 55, at 164.

[164] Shack, *supra* note 55, at 164.

[165] *But cf.* Shack, *supra* note 141.

[166] This information was received from the program coordinator in the First Circuit at the time and is on file with the author.

[167] Shack, *supra* note 55, at 200.

[168] *But cf.* Shack, *supra* note 141.

give them a sense of self-worth.

The basic financial knowledge and literacy of borrowers in default questions support previous findings of a gender difference in financial knowledge and confound previous research about effects of education.[169] Looking at responses on their own, a solid majority (67%) accurately answered that they would have more than $102 in five years if they opened a savings account today with $100 and 2% interest. However, when broken down by gender, 81% of men and 71% of women answered correctly. However, 11% of women stated they did not know while only 6% of men admitted not knowing. Similarly, as the education of the respondents increased, so did the percentage of correct answers. Forty percent with less than a high school education answered correctly, compared with 78% with a high school education, 91% with a bachelor's degree, and 80% with a graduate education.

A little over two-thirds (69%) also accurately answered that they would have less than today in five years if the interest rate on the account was one percent and inflation was two percent per year. There was an even larger gender gap with this question. Seventy-nine percent of men answered correctly compared to only 58% of women. Nineteen percent of women admitted to not knowing compared with only 7% of men. As with the savings question, education made a difference as participants steadily increased answering correctly as education increased. For instance, 40% with less than high school education, 59% with a high school education, 66% with some college, 89% with a bachelor's degree, and 85% with a graduate education.

Finally, two-thirds correctly said that buying stock in a single company does not provide a safer return than a stock mutual fund. Again, there was a large gender gap as 78% of men answered correctly, while only 54% of women answered correctly. Also, education again made a difference as correct responses increased with education, (40% percent with less than high school education, 56% with high school education, 65% with some college, 83% with bachelor's degree, and 75% with graduate education). Among participants in the Illinois Foreclosure Survey, there seems to be a high rate of financial literacy and basic financial knowledge even though there is a gender gap in knowledge. Additionally, education makes a difference in financial literacy and knowledge.

Respondents thought that the best option or second-best option was attempting to negotiate a payment plan, saving to make the payment, or asking a friend for help when presented with a situation where someone needed money to pay for car repairs. Respondents thought that consulting a bankruptcy attorney or taking out a payday loan or title loan were the worst options. As the situation grew worse, participants were more willing to think that consulting a bankruptcy attorney was a better option, although they stuck with trying to negotiate a payment plan as one of the best options and taking out a payday loan as one of the worst. Crossing with education, dependents, and gender revealed no changes in responses. However, crossing with

[169] OECD, *Women and Financial Education: Evidence, Policy Responses and Guidance*, OECDPUBLISHING 16, 50 (Oct. 16, 2013), https://doi.org/10,1787/9789264202733-en.

employment status revealed that the employed, longtime unemployed, and retirees had favorable views of consulting a bankruptcy attorney as the situation worsened, while disabled respondents would borrow from friends. Checking against marital status showed that the separated would consult a bankruptcy attorney, while the divorced and widowed had less favorable views of bankruptcy and would borrow from friends until the situation resulted in the sheriff selling the house. Overall, the responses showed reluctance to consult a bankruptcy attorney until the situation ended in losing a home, while respondents consistently showed that they knew taking out a payday loan to the worst option.

Borrowers in default still believe they can change their spending and budgeting habits. A solid majority either disagreed (48%) or were neutral (33%) on the statement that you cannot change your way of managing and spending money. Most participants (75%) agreed that a person can change the way they manage and spend money, no matter who they are. Solid majorities (71%) disagreed with the belief that the way someone manages and spends money is something they cannot change very much. Most participants (68%) also agreed with the statement that a person can always substantially change the way they manage and spend money. Checking against education, employment status, marital status, dependents, and gender revealed no difference in beliefs about changing spending habits.

Respondents displayed a wide range of beliefs about their own lives. A majority of respondents (53%) disagreed that their lives were "close to ideal." Nearly two-thirds (62%) disagreed that the conditions of their lives were "excellent." They were more evenly split when asked if they were satisfied with their lives. Forty-three percent disagreed while 32% agreed. Twenty-four percent were neutral. A majority agreed (41%) or were neutral (23%) that they have gotten the important things they want in life. Finally, nearly two-thirds (64%) disagreed that they would change nothing about their life if they had a chance to live it over again. This displays an interesting divergence in opinion on not being satisfied with their lives, yet thinking they have the important things in life. Crossing with education, gender, dependents, employment status, and marital status showed that those who were employed or retired or with more education, women, and married respondents thought they had the important things in life. However, overall, respondents generally showed dissatisfaction with their lives.

Finally, the survey looked to the respondents' individual lives and experiences being in default on their mortgage and possibly other debts. Most participants were making sacrifices and going without certain things in order to get by. Mortgage default substitutes for default on other bills. Interestingly, however, participants did not go without mental health care, medications, health insurance, food, auto or home insurance, utilities, or voluntarily move out of their home. A picture does emerge for the other bills and extras that those in debt try to cut. Majorities of participants have gone without medical care, dental care, making car repairs, and contributing to retirement.

When crossed with employment status, a majority of self-employed participants went without medical care while the unemployed also went without medical care, mental health care, prescriptions, dental care, and health insurance, as well not making car repairs and retirement contributions. A majority of the long-term unemployed participants also went without medical care, mental health care, dental care, and prescriptions, in addition to foregoing car repairs and contributing to retirement accounts. A majority of the disabled participants went without mental health care, dental care, and further education, as well as not getting car repairs and making retirement contributions. A majority of retirees also reported going without medical care, dental care, and car repairs.

There is a gender gap in the budgeting questions as well as differences with dependents and marital status. There were no differences in responses among those with more education. Women went without medical care, while men did not. Participants without dependents also reported going without medical care. Majorities of those who were separated also reported going without medical care, dental care, car repairs, further education, and retirement contributions. The same was true for the divorced. Those who were widowed also reported going without medical care, prescriptions, dental care, car repairs, and further education. Employment, gender, and educational attainment revealed differences in budgeting strategies. A fuller picture emerges of the financial stressors that homeowners in default faced and budgeting choices that they made.

The demographic background of survey respondents was collected. The vast majority were employed (65%) or self-employed (10%). Most were either married (45%) or divorced (24%), and most (56%) had dependents. A majority were men (54%) and white (74%). Sixteen percent were African-American, while 4% were Hispanic and 4% were Native American. While most reported no specific religion (30%) or were atheist (20%), the majority of those identifying with one religion were Protestant (26%). Finally, most respondents had some college education (41%), while 27% had a high school education and 20% had a bachelor's degree. Two percent had less than a high school education, and 7% had a graduate degree. The majority of the participants' fathers (48%) and mothers (51%) had a high school education. The vast majority (77%) of their parents owned their homes. This background reveals a limitation of the survey that will be discussed further below.

VI. Discussion

The Illinois Foreclosure Survey confirms some previous research while defying other research.[170] First and foremost, the study gives important information about the lives of those experiencing mortgage default and corrects the narrative that has prevailed for a decade.[171] Their responses about their budgeting strategies reveal

[170] *See supra* Part V.

[171] *See supra* Part V.

how mortgage default comes as a substitute for default on other accounts because they are already budgeting.[172] They have gone without medical care, car maintenance, and retirement contributions because those are examples of things they can easily cut out of a budget.[173] Other items like food, medications, health insurance, auto or home insurance, and utilities are harder to go without.[174] Instead of defaulting on those obligations, homeowners default on mortgages when they experience unemployment, disability, separation, divorce, or being widowed.[175] Determining the underlying causes of mortgage default in more detail is one area for further study because there are relatively few studies trying to answer this.[176]

Furthermore, they know that renting is not the same as owning a home but have soured on ownership as being a sign of the middle-class life and are dissatisfied with their lives.[177] They are reluctant to speak to an attorney and want to talk to the company owning the debt to work it out, which explains their frustration when dealing with their lender or mortgage servicer who will not speak to them or misleads them.[178] It is part of the broken social contract in modern America that they cannot work out a solution easily.[179]

Second, their responses that they know renting is not the same as owning and possibly understand the legal rights of property ownership may provide some key insight for mediation programs. Mediators and advisors should be sure that defendant-borrowers understand they could be underwater and may need to get out of the property. Because they generally do not get a sense of self-worth from their home, they may be open to listening to this approach. However, they know that owning is better than renting, so they may hang on to a home longer than they should. They do not get a sense of self-worth from their homes, but they do appreciate the sense of stability that comes with homeownership. Because their parents owned homes, they may also have a deep-seated emotional connection to a home. Mediators, attorneys, and counselors must address the underlying emotional ties to homeownership in order to understand the defendant-borrowers' motivations

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[172] *See supra* Part V.

[173] *See supra* Part V.

[174] *See supra* Part V.

[175] *See supra* Part V.

[176] *See supra* Part V.

[177] *See supra* Part V.

[178] *See supra* Part V.

[179] *See, e.g.*, Amy Loftsgordon, *Abuses by the Mortgage Servicing Industry*, NOLO, https://www.nolo.com/legal-encyclopedia/abuses-the-mortgage-servicing-industry.html (last visited Jan. 20, 2020).

and address them.

Third, the Community Preservation Clinic, legal services, and housing counseling all secured better results than homeowners who were left to navigate the process on their own.[180] This replicates the findings of RSI's mediation program analysis and other studies that legal services and housing counseling improve outcomes.[181] In the future, programs should include representatives who attend intake conferences so that representation is readily available and the borrowers do not have to reach out separately. Also, the Illinois Housing Development Authority (IHDA) and other state agencies should bring more housing counseling services to rural areas because representation makes a difference in whether defendant-borrowers can work out a solution.

Fourth, respondents have soured on homeownership in general.[182] They do not think that owning a home puts them in the middle class, and they do not think that other people think better of them if they own a home.[183] This generally tracks with the rest of America souring on homeownership in the years after the financial crisis and supports adjusting housing policy to not only focus on homeownership but also address renting.[184]

Fifth, intriguingly, the vast majority of respondents had basic financial literacy and knowledge, but there was a gender gap.[185] This confirms previous research showing a gender gap in financial literacy but confounds the general wide lack of financial literacy among all American consumers because education made a difference in this study.[186] There may be a gender gap because men still handle family finances, and that gender role is passed down by parents teaching boys about finances and not girls.[187] Because education makes a difference, this survey sample may have more men with an education than women. The survey suggests there should be more financial education in our schools, especially aimed at girls and women.

There could be several explanations for the generally high correct response percentage. One is that homeowners may have benefited from housing counseling

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180 *See supra* Part V.

181 *See generally* Shack, *supra* note 55; Shack, *Saving Homes*, *supra* note 141.

182 *See supra* Part V.

183 *See supra* Part V.

184 PEW RESEARCH TEAM, *supra* note 8; Tommy Andres, *Divided Decade: How the Financial Crisis Changed Housing*, MARKETPLACE (Dec. 17, 2018), https://www.marketplace.org/2018/12/17/what-we-learned-housing/.

185 *See supra* Part V.

186 *See supra* Part V. *But see* OECD, *supra* note 165.

187 OECD, *supra* note 165.

services when they took out the loan and thus had financial knowledge from that.[188] Another is that homeowners may be generally more aware of financial issues than those in previous studies. This is an area for further research. However, it does indicate that foreclosure mediation programs likely do not need to make sure defendant-borrowers understand financial basics—except for female homeowners who may not have the same base knowledge. They do likely need to explain the complexity of mortgage servicers and the difference between the servicer and the owner of the mortgage and note.

Sixth, that participants would rather negotiate a payment plan or borrow from a friend confirms previous research that those at risk of default prefer not to discuss their debts with others or ask for help.[189] It also reinforces that borrowers are aware of budgeting and how to make sacrifices to not default. It confirms the research that Americans believe in a moral responsibility to pay debts and would rather talk about a payment plan than declare bankruptcy.[190] This may also be explained by respondents potentially being aware that with bankruptcy comes credit problems. It also confirms that those in default feel guilt and shame for not being able to pay their debts, and that other Americans judge them for their failure to repay their debts.[191] Foreclosure programs need to address this guilt and shame during mediation and counseling sessions. It shows that defendant-borrowers are likely to not want to discuss their problems and care must be taken to help them do that. It also shows they may be unwilling to talk to an attorney until things get worse depending on their background and life experiences; programs should have attorneys come to the intake sessions rather than having the borrowers call an attorney themselves.

Seventh, the problems of advising defendant-borrowers became clearer in their responses that they believe they can change their spending and money management.[192] This could reflect that they have made sacrifices while in default or at risk of default. Their reporting of missing out on healthcare, car repairs, and contributing to retirement accounts tracks with previous studies on the sacrifices that debtors make.[193] That they keep insurance and utilities shows that mortgage default

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[188] *See supra* Part V.

[189] *See supra* Part V.

[190] *See* G. Jeffrey MacDonald, *The Moral Burden of Bankruptcy*, THE CHRISTIAN SCI. MONITOR (July 3, 2006), https://www.csmonitor.com/2006/0703/p13s01-lire.html; Jackson Lears, *The American Way of Debt*, N.Y. TIMES (June 11, 2006), https://www.nytimes.com/2006/06/11/magazine/11wwln_lede.html.

[191] Karen Dsouza, *Amid Recession Fears, Almost Half of Americans Have Anxiety Over Debt*, THE ORANGE COUNTY REG. (Sept. 19, 2019), https://www.ocregister.com/2019/09/19/amid-recession-fears-almost-half-of-americans-have-anxiety-over-debt/.

[192] *See supra* Part V.

[193] *See* Liz Weston, *Free of Debt, With Regrets*, THE NEWS & ADVANCE (July 10, 2017), https://www.newsadvance.com/archives/free-of-debt-with-regrets/article_b983d9f9-8888-596d-851d-4d92e52d840d.html.

substitutes for default on other accounts and again tracks with previous studies on those subjects.[194] As other homeowners who had social work support stated, advice to budget would not be helpful to these homeowners who have already been budgeting.[195]

Lastly, the backgrounds of defendant-borrowers are important for understanding how they are approaching foreclosure mediation. Defendant-borrowers mostly report being unsatisfied with their lives but think they have the important things in life, which was especially true for women and married participants.[196] Their dissatisfaction may need to be specifically addressed because their homeowner dream has gone awry. Because many of their parents owned homes, they may have a deep-seated attachment to property ownership and property rights. Consequently, knowing how homeowners feel about their homes and lives will help coordinators and counselors to get defendant-borrowers to make the best decisions for themselves.

It is noteworthy that the study did not attempt to measure the attitudes of everyone in foreclosure.[197] Instead, the only participants were those in foreclosure mediation programs who attended their conferences.[198] As a result, the attitudes may be somewhat limited and reflective of borrowers who are more invested in their property because they responded to the summons to come to mediation in the case of mandatory programs or requested mediation in the case of optional, non-mandatory programs. The study was also limited in the sense that participants were not from Chicago or its suburbs,[199] but the results should generally apply to borrowers in those areas. Diversity is a concern here because the responses were overwhelmingly self-identified as white and male with a few respondents who identified as African American or Hispanic.[200] The data set is less diverse than Illinois as a whole, which is 50% female and 77% percent white, 14% African-American and 17% Hispanic.[201] Therefore, the results may reflect white American attitudes more than those of minorities. However, the responses are helpful for policy formation in a wide variety of areas and assist in putting homeowners back into the foreclosure

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[194] *See generally id.*

[195] *See supra* Part V.

[196] *See supra* Part V.

[197] *See generally supra* Part V.

[198] *See supra* Part V.

[199] *See supra* Part V.

[200] *See supra* Part V.

[201] *QuickFacts: Illinois*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/IL (last updated July 1, 2019).

narrative.

VII. Policy Recommendations and Reforms

These findings suggest several policy recommendations for the future. Policy should focus on the homeowner instead of lending institutions and mortgage servicers. The response to the financial crisis over the last decade centered on banks and their servicers, not on the harm to homeowners.[202] Indeed, homeowners were blamed for the crisis and for their defaults.[203] Putting the homeowner back into the narrative means focusing on policies that would help them, and by helping them, help their entire communities avoid the ruinous effects of foreclosure and blight that come as a result.

When considering what projects to fund, priority should be given to legal representation that focuses on consumer law. The Community Preservation Clinic did not have income limits, so it was able to take all of the clients who wanted its help in the Mclean County program. It also used 711 law students supervised by attorneys in the clinic and specialized in consumer law and foreclosure defense in only one county. Because it devoted all of its resources to one area, that may explain its better outcomes. If possible, other non-profits or law school clinics following the Community Preservation Clinic model should be prioritized when funding foreclosure work or consumer protection. If not, funding should be prioritized for legal services and housing counseling because borrowers with representation had a better chance of success than homeowners without representation. A different solution for addressing the systemic problems of foreclosure and housing is to create a right to counsel in housing cases, specifically eviction and foreclosure. This would ensure representation, but it is likely not feasible at this time.

Currently, there are no consumer protection clinics at Illinois law schools and very few around the country.[204] Pressure should be put on law schools to create these clinics, and funding priority should go to legal services that prioritize consumer protection. Because creating and funding these clinics is hard to achieve in legal

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[202] Philip A. Wallach, *Why America's Responses to the Financial Crisis Brought Us to the Edge of Political Crisis*, BROOKINGS: FIXGOV (Apr. 21, 2015), https://www.brookings.edu/blog/fixgov/2015/04/21/why-americas-responses-to-the-financial-crisis-brought-us-to-the-edge-of-political-crisis/.

[203] Max Ehrenfreund, *It's Time to Stop Blaming Poor People for the Financial Crisis*, WASH. POST: ECONOMIC POLICY (Jun. 15, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/06/15/its-time-to-stop-blaming-poor-people-for-the-financial-crisis/.

[204] A general search shows that Harvard, UC Irvine, and University of Arkansas at Little Rock law schools have such programs. *See Predatory Lending and Consumer Protection Clinic*, HARV. L. SCH., https://hls.harvard.edu/dept/clinical/clinics/predatory-lending-preventionconsumer-protection-clinic-lsc/ (last visited Jan. 20, 2020); *Consumer Law Clinic*, UCI LAW, https://www.law.uci.edu/academics/real-life-learning/clinics/consumer-law.html (last visited Jan. 20, 2020); *Consumer Protection Clinic*, UA LITTLE ROCK, https://ualr.edu/law/clinical-programs/consumer-protection-clinic/ (last visited Jan. 20, 2020).

services organizations that serve many legal areas, housing-specific organizations should be prioritized. Otherwise, funding should go to traditional legal services and housing counseling. In Illinois, part of the consumer settlement funded housing counseling services,[205] and the Illinois Housing Development Authority funds housing counseling out of the Foreclosure Prevention Fund.[206] Because the consumer settlement was appropriated, more funding should be sought and provided for housing counseling.

More funding can be obtained by reversing the appropriation formula for the funds from the foreclosure filing fee. Currently, funds from the fee are divided between abandoned property relief and foreclosure prevention housing counseling.[207] According to the statute, 70% goes to abandoned property relief for local governments, and 28% goes to foreclosure prevention.[208] Although blight is a problem, the more concerning problem is foreclosure because it lowers neighboring property values and can spread through a community.[209] Struggling borrowers would also benefit from access to resources given the research on the social stigma that prevents them from reaching out for help and that representation increases the likelihood of a favorable outcome. Thus, reversing the formula would allocate more resources and possibly expand housing counseling to be more accessible. In turn, this would reinforce the legislative intent, which was to increase housing counseling because it recognized there were not enough.[210]

The filing fee set forth in the statute is also concerning because it is considered a court cost that is rolled into any balance that the borrower may have to pay.[211] This is the case because it is included in the modification amount if the loan is being modified and in any reinstatement amount and it is included in any forgiven deficiency if there is a short sale, deed-in-lieu or consent foreclosure.[212] In contrast,

[205] *Madigan Issues Report Detailing $100 Million in Foreclosure Help & Rebuilding Efforts*, ILL. ATT'Y GENERAL (Jan. 11, 2019), http://illinoisattorneygeneral.gov/pressroom/2019_01/20190111b.html.

[206] 735 Ill. Comp. Stat. 5/15-1504.1 (2) (2019).

[207] 735 Ill. Comp. Stat. 5/15-1504.1. (2019).

[208] 735 Ill. Comp. Stat. 5/15-1504.1 (2) (2019).

[209] Kimberly Duncan, *How Your Neighbor's Foreclosure Hurts You*, VETERANS UNITED HOME LOANS (Aug. 1, 2017), https://www.veteransunited.com/futurehomeowners/how-your-neighbors-foreclosure-hurts-you/.

[210] H.R. 148th Legis. Day, 97th General Assembly, at 190 (Ill. 2012).

[211] 735 Ill. Comp. Stat. 5/15-1504.1. (2019).

[212] *See* U.S. DEP'T OF HOUS. & URBAN DEV., UPDATED TO HANDBOOK 4000.1, FHA SINGLE FAMILY HOUSING POLICY HANDBOOK 671, 683, 690, 836, (Dec. 30, 2016), https://www.hud.gov/sites/documents/40001HSGH.PDF.

when the legislature passed the statute, it believed the banks would be paying the fees.[213] Thus, the law should be amended to clarify that foreclosure plaintiffs cannot include it in any amount owed by the defendant.

Additionally, any effort to expand housing counseling should also consider that parts of America have trouble accessing the Internet. Therefore, Hardest Hit and similar programs relying on the Internet to apply for assistance and on email to communicate with applicants should be changed. Seeing as though the Hardest Hit program's second allocation will likely be expended by 2020,[214] the Department of Treasury should fund another round. Otherwise, states should make their own Hardest Hit programs, possibly similar to Canada's Mortgage Critical Illness insurance.[215] Canada's program pays the mortgage balance "[']in the event that the borrower becomes ill or disabled.[']"[216] A program that does this would help in cases that are driven by a medical cause. Additionally, hardships could be expanded beyond illness and disability to include unemployment because the social safety net is insufficient.

Because medical debt and unemployment are leading drivers of default, then a forward-thinking solution would address the underlying cause by regulating medical debt and costs, as well as expanding the social safety net.[217] Hospital and payment plans are not regulated, and many people are not aware that they can negotiate a payment plan.[218] Although, survey results suggest that respondents think of that as their first option when debts escalate.[219] However, payment plans with hospitals and doctors have some troubling implications that can lead homeowners on the path to

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[213] H.R. 148th Legis. Day, 97th General Assembly, at 190 (Ill. 2012).

[214] *See Hardest Hit Fund: Program Purpose and Overview*, U.S. DEP'T OF THE TREASURY, https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/hhf/Pages/default.aspx (last updated Oct. 18, 2019).

[215] *See* Jason Houle & Danya Keene, *Getting Sick and Falling Behind: Health and the Risk of Mortgage Default and Home Foreclosure*, 69 J. EPIDEMIOLOGY & COMMUNITY HEALTH 382, 386 (2015).

[216] *Id.*

[217] Lorie Konish, *This Is the Real Reason Most American Files for Bankruptcy*, CNBC (Feb. 11, 2019), https://www.cnbc.com/2019/02/11/this-is-the-real-reason-most-americans-file-for-bankruptcy.html.

[218] *See* Susannah Snider, *How to Get Help Paying Medical Bills*, U.S. NEWS & WORLD REPORT (June 18, 2019, 3:37 PM), https://money.usnews.com/money/personal-finance/debt/articles/how-to-get-help-paying-medical-bills; Jordan Rau, *Free or Discounted Care Is Available at Some Hospitals. But They Don't Make It Easy.*, THE WASH. POST (Oct. 11, 2019) https://www.washingtonpost.com/business/economy/free-or-discounted-care-is-available-at-some-hospitals-but-they-dont-make-it-easy/2019/10/10/8ad4c540-e92a-11e9-9c6d-436a0df4f31d_story.html.

[219] *See supra* Part V. *See generally* Matt Becker, *How to Get Your Hospital Reduced or Even Eliminated*, MAGNIFY MONEY (Oct. 19, 2018), https://www.magnifymoney.com/blog/pay-down-my-debt/get-hospital-bill-reduced-even-eliminated1389897953/.

mortgage default.[220] The Affordable Care Act sets a premium cap at ten percent of income,[221] and the Internal Revenue Service sets out of pocket maximums for health insurance plans, most recently at $7,900 for individuals and $15,800 for families.[222] In a country where most Americans have less than $1,000 in savings, being hit with even a $2,000 unexpected medical bill can be difficult to pay and can drive a family into foreclosure.[223] The Affordable Care Act (ACA) has not had an effect on medical bankruptcies,[224] but does seem to have had an effect on mortgage default through the subsidies for insurance.[225] One possible explanation is that the ACA simply does not go far enough because it does not regulate the underlying costs of care that patients can be hit with by instead focusing on insurance costs. Future policies to address this problem could include rate settings to control hospital and doctor fees and surprise bills.

Many social safety net programs, such as Social Security disability or other public assistance do not provide enough income for recipients to keep paying on their mortgage.[226] Unemployment insurance in Illinois only lasts for six months and is capped at $1,884 a month.[227] Social Security Disability Insurance is rife with delays that prevent individuals from being able to apply for disability to prevent default and foreclosure at the same time, especially in non-judicial foreclosure states that do not have safeguards for borrowers. [228] Private mortgage disability insurance exists but it

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[220] *See* Konish, *supra* note 217.

[221] KAISER FAMILY FOUND., EXPLAINING HEALTH CARE REFORM: QUESTIONS ABOUT HEALTH INSURANCE SUBSIDIES 1, 3 (Nov. 2018), http://files.kff.org/attachment/Issue-Brief-Explaining-Health-Care-Reform-Questions-about-Health-Insurance-Subsidies.

[222] *Out-of-Pocket Maximum/Limit*, HEALTHCARE.GOV, https://www.healthcare.gov/glossary/out-of-pocket-maximum-limit/ (last visit Jan. 20, 2020).

[223] Cameron Huddleston, *More Than Half of Americans Have Less Than $1,000 in Savings in 2017,* GOBANKINGRATES (Sep. 12, 2017), https://www.gobankingrates.com/saving-money/half-americans-less-savings-2017/.

[224] David Himmelstein, Robert Lawless, Deborah Thorne & Pamela Foohey, *Medical Bankruptcy: Still Common Despite the Affordable Care Act*, 109 AM. J. PUB. HEALTH 431, 431-33 (2019).

[225] Emily Gallagher, Radhakrishnan Gopalan & Michal Grinstein-Weiss, *The Effect of Health Insurance on Home Payment Delinquency: Evidence from ACA Marketplace Subsidies*, 172 J. PUB. ECON. 67, 77, 79, 82 (2019).

[226] Baker & Keene, *supra* note 88, at 326.

[227] Illinoi Department of Employment Security, *Illinois Department of Employment Security: Table 1 of Weekly Benefit Amounts*, IDES (Nov. 2018), http://www.ides.illinois.gov/IDES%20Forms%20and%20Publications/CLI110L.pdf.

[228] Baker & Keene, *supra* note 88, at 326.

is not clear how many homeowners take out that insurance.[229] A more effective approach would need to encompass not only disability but illness, unemployment, divorce, and eliminate bureaucratic delays. Another solution would be an automatic stay on foreclosure when the defendant can establish one of those hardships.[230] A more wide-ranging solution would involve significantly expanding the social safety net.

Additionally, bureaucratic battles with state agencies can delay benefits and put homeowners on the road to default.[231] An example of this can be seen in the Illinois Hardest Hit Program.[232] In order to become approved for Illinois Hardest Hit, an applicant's application has to undergo two reviews.[233] First, per IHHF's guidelines, the application is initially reviewed by the sponsor-level agency.[234] If at this level it is determined that the applicant meets all eligibility requirements, the application is forwarded to the Illinois Housing Development Authority for underwriting.[235] This review and approval process can take up to sixty days, but possibly longer if further information is requested.[236] The closing process for Hardest Hit then takes another thirty days.[237] Because lenders must wait 120 days to file foreclosure proceedings under the CFPB rules,[238] a homeowner who is prepared may have enough time to go through IHDA's process and avoid foreclosure proceedings. However, a homeowner who does not know about Hardest Hit might not apply until entering mediation or going to court for the first time. Bureaucratic delays can increase the stress of homeowners who are applying early by placing them into the court process. Those delays potentially prevent a homeowner who is in mediation or the court process from being able to save their home.

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229 Robertson, et. al., *supra note* 14, at 101.

230 *Id.* at 102–03.

231 Baker & Keene, *supra* note 88, at 328.

232 Illinois Housing Development Authority, *The Illinois Hardest Hit Fund Program Fact Sheet*, TREASURY, https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/hhf/Documents/Illinois%20Fact%20Sheet.pdf (last updated July 18, 2016).

233 *Id.*

234 *Id.*

235 *Id.*

236 ILLINOIS HOUSING DEVELOPMENT AUTHORITY, FREQUENTLY ASKED QUESTIONS 1, 3, https://www.illinoishardesthit.org/rfv-94.aspx (last updated April 8, 2019).

237 *Id.*

238 12 CFR § 1024.41(f)(1).

Upon review by IHDA, if it is determined that the applicant has not met the program's eligibility requirements, the application is denied with an opportunity to appeal the decision.[239] If their appeal does not work or if they do not appeal the denial, then they must wait ninety days to reapply.[240] Given the nature of foreclosure proceedings, most applicants do not have the ability to wait ninety days to reapply for benefits, then wait another ninety days for their application to be processed at both levels. The foreclosure timeline, like in many states, is very tight.[241] Once served with a foreclosure complaint, homeowners have thirty days to file an answer to this complaint and file their appearance.[242] The statutory right to reinstate expires ninety days after service.[243] A Hardest Hit process that can take 120 at best when not denied, and 180 days at best when denied, prevents homeowners from being able to avoid foreclosure proceedings and possibly from being able to resolve foreclosure proceedings, especially in non-judicial foreclosure states that lack a statutory right to reinstate.[244] Therefore, another possible fix would be to significantly expand the social safety net and reduce bureaucratic delays.

Another problem is the effects of divorce, but many family law attorneys do not understand how foreclosure interacts with divorce.[245] More outreach should be done on this. Banks and mortgage servicers often insist on having financials from both spouses when both spouses have signed the note.[246] However, this can be problematic in the case of divorce, and especially problematic in the case of domestic violence.[247] Pressure should be put on banks, mortgage servicers, and underwriters to loosen their requirements in these cases. A more wide-ranging solution would be to incorporate economic abuse in domestic violence laws. The Violence Against

[239] ILLINOIS HOUSING DEVELOPMENT AUTHORITY, *supra* note 236, at 5.

[240] *Id.*

[241] *Foreclosure Timeline*, ILL. LEGAL AID ONLINE, https://www.illinoislegalaid.org/legal-information/foreclosure-timeline (last updated May 2018).

[242] *Id.*

[243] 735 Ill. Comp. Stat. § 5/15-1602 (2019).

[244] Illinois Housing Development Authority, *supra* note 226.

[245] *See* Amy Loftsgordon, *Foreclosure & Divorce*, NOLO, https://www.nolo.com/legal-encyclopedia/foreclosure-divorce.html (last visited Jan. 20, 2020).

[246] *See id.*

[247] *See, e.g.*, National Consumer Law Center, *Special Issue: Foreclosures and Domestic Violence Survivors*, 27 BANKR. & FORECLOSURES 15 (Feb. 2009), https://www.nclc.org/images/pdf/domestic_violence/nclc-rpts-bankr-jan-feb-2009.pdf.

Women Act lapsed in 2018,[248] but the proposed reauthorization would have added economic abuse;[249] similarly, Illinois law, for example, does not include economic abuse as domestic violence.[250] Additionally, laws should adequately address economic abuse and coerced debt, making it easier to correct credit reports and get out of coerced debt.[251]

As with divorce making it more difficult to comply with lender rules, the CFPB's lack of clarity on what constitutes a packet creates a debate between the lender and the homeowner over what is a complete packet.[252] The CFPB rule states that an application packet is complete when the borrower has provided everything within his or her control.[253] The lender has five days to review a packet and say whether it is complete or needs more information.[254] If the lender may request further documentation, they can set their own timeline for submitting it, which is arbitrary but must be "reasonable."[255] The lender has thirty days to review a complete packet,[256] but getting to that complete packet determination is the source of confusion and problems. A borrower can submit a notice of error to a bank to correct a servicing error,[257] but outsourcing compliance and determinations of compliance to the lenders who caused the crisis is problematic. At a minimum, the CFPB should outline what a complete packet is, and preferably, the CFPB should take an oversight role over the loss mitigation process.

The CFPB should also regulate the loss mitigation options that lenders offer borrowers. Currently, the CFPB provides no right to a loss mitigation offer.[258] Loss

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[248] Jenny Gathright, *Violence Against Women Act Expires Because of Government Shutdown*, NAT'L PUB. RADIO (Dec. 24, 2018), https://www.npr.org/2018/12/24/679838115/violence-against-women-act-expires-because-of-government-shutdown.

[249] H.R. 6545, 115th Cong. (2018).

[250] 750 Ill. Comp. Stat. § 60/103 (2019).

[251] *See* Ariane Lange, *Till Debt Do Us Part*, BUZZFEED NEWS (Jan. 7, 2019), https://www.buzzfeednews.com/article/arianelange/coerced-debt-financial-abuse-fix-credit-score (discussing intimate partner economic abuse and coerced debt).

[252] *See* 12 C.F.R. § 1024.41(b)(1); Official Interpretation of 41(b)(1).

[253] *Id.*

[254] 12. C.F.R. § 1024.41 (b)(2)(i)(B).

[255] 12 C.F.R. § 1024.41(b)(2)(ii).

[256] 12 C.F.R. § 1024.41(c)(1).

[257] 12 C.F.R. § 1024.35(a).

[258] 12 C.F.R. § 1024.41(a).

mitigation options differ depending on whether the loan is backed by the Federal Housing Administration, Fannie Mae, Freddie Mac, United States Department of Agriculture, Veterans Administration, or a private investor.[259] This results in some loans being subject to affordability requirements and some not being subject to those requirements.[260] It is unfair to the borrower and should be subject to further regulation.

The survey supports previous findings that Americans are souring on homeownership and drowning in debt.[261] A forward-thinking solution would address the underlying causes of this debt, such as student loans and medical costs, but it would also change American housing policy, which for the last seventy years has focused solely on homeownership.[262] Housing policy should change to include renting and address the increasingly unaffordable rents in American cities. Just as the U.S. Department of Housing and Urban Development (HUD) sets mortgage affordability at thirty-one percent of income,[263] rents could be controlled by setting a maximum percentage of income that rents could occupy.

The survey also provides some key insights for policy formation in foreclosure mediation programs.[264] First, homeowners value the stability of ownership and seem to understand that owning comes with rights that renting does not.[265] This deep connection to property must be addressed in advising homeowners and in mediating their cases by asking about their motivations and beliefs. Additionally, their dissatisfaction with their lives may also have to be addressed by the people advising them.

Second, although some homeowners had high levels of basic financial literacy and knowledge,[266] female homeowners may need some financial education to overcome the gender gap in financial literacy. A forward-thinking solution would be to include financial literacy in both schools and foreclosure programs. Borrowers believe they can change their habits, and probably already are if they are sacrificing

[259] U.S. DEP'T OF HOUS. & URBAN DEV., UPDATED TO HANDBOOK 4000.1, FHA SINGLE FAMILY HOUSING POLICY HANDBOOK 118 (Dec. 30, 2016), https://www.hud.gov/sites/documents/40001HSGH.PDF.

[260] *See id.*

[261] *See supra* Part V; HART RESEARCH ASSOCIATES, *supra* note 4; Lindblad et al., *supra* note 73; Andres, *supra* note 180.

[262] *See* Lindblad et al., *supra* note 73.

[263] *See id.*

[264] *See supra* Part V.

[265] *See supra* Part V.

[266] *See supra* Part V.

to make debt payments.[267] Budget advice is not helpful because their responses show they are already making changes.[268] However, they may need the complex world of mortgages and mortgage servicers to be explained.

Third, their reluctance to talk to a bankruptcy attorney reflects the deep-seated American belief in paying one's debts.[269] Banks use this belief to coerce homeowners who are in default into complying.[270] Advisors and mediators must address the guilt and shame that come with mortgage default and not allow the plaintiff or their attorney to exacerbate this by blaming the victim during mediation conferences. Counseling must also include defendant-borrowers' backgrounds because employment status, family situation, and education may change their decision-making.[271] Finally, programs need to include attorneys and housing counselors at intake conferences given the confirmation that consulting an attorney is a last resort and the social stigma that prevents those in default from reaching out for help.[272] Attorneys and housing counselors make a difference as compared to going through the process alone.[273]

VIII. CONCLUSION

The Illinois Foreclosure Survey produced several useful findings for policymakers and foreclosure mediation programs. It confirmed previous findings that Americans have soured on homeownership in general but have an emotional attachment to property.[274] It also reinforced research that suggested there are deep-seated American beliefs in paying one's debts and reluctance to discuss problems with outsiders.[275] Furthermore, the survey confirmed that homeowners are already making sacrifices in their budgets and believe they can change their habits; advice to budget more is likely unhelpful.[276] It reinforced that housing counseling and

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[267] *See supra* Part V.

[268] *See supra* Part V.

[269] *See* White, *supra* note 1; HART RESEARCH ASSOCIATES, *supra* note 4; White, *supra* note 11, at 1310; Morin, *supra* note 113.

[270] *See*, *e.g.*, Weston, *supra* note 189.

[271] *See supra* Part V.

[272] *See supra* Part V.

[273] *See supra* Part V.

[274] White, *supra* note 1, at 986–90; Secrest, *supra* note 79.

[275] *See* sources cited *supra* note 263.

[276] *See supra* Part V.

attorneys make a difference in achieving outcomes.[277] Together, these give a more accurate portrait of struggling homeowners, and support the recommendation that foreclosure mediation programs need to address the motivations, attitudes, and beliefs of the homeowners in the programs.

The survey also confounded some research. Contrary to previous findings, the participants in the study had basic financial knowledge and literacy.[278] Mediation programs may need to explain financial basics to homeowners, depending on education and gender. However, they should definitely explain mortgage servicing. The study did not test for homeowners' underlying hardships, but their budgeting responses suggest medical debts, illness, unemployment, or divorce could be leading causes.[279] There should be more research on this area because there are relatively few studies on point.

The survey confirmed that representation via housing counseling or an attorney significantly improves outcomes.[280] There should be pressure on IHDA and other state agencies to expand housing counseling agencies and more funding to consumer law attorneys or legal aid if possible. Further research should investigate whether loan modifications and Hardest Hit funds were affordable and effective in the long run, or if homeowners returned to foreclosure.

While many believe the foreclosure crisis has passed, there are still many homeowners in America who face foreclosure, most likely due to one of the hardships previously cited. Mediation programs created after the 2008 crisis will hopefully be there for future defendant-borrowers, and may be a solution to pursue in future crises because the empirical evidence shows they are effective and help homeowners. The Illinois Foreclosure Survey provides empirical evidence for coordinators and policymakers to address the plight of homeowners in foreclosure, and also helps put homeowners back into the narrative by centering policies on what can help them and their communities.

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[277] *See supra* Part VI.

[278] *See supra* p. 33 and note 165.

[279] *See supra* pp. 48, 52.

[280] *See supra* Part V.