Introduction
On August 20, 2014, the United States Department of Justice, six states and Bank of America reached an agreement to settle claims that Bank of America, Countrywide, Merrill Lynch and First Franklin violated federal and state laws in connection with the packaging, origination, marketing, sale, structuring, arrangement and issuance of residential mortgage-backed securities and collateralized debt obligations.1 Pursuant to the terms of the settlement agreement, the Pennsylvania IOLTA Board received funding from two separate and distinct distributions. The first distribution of $852,693.28 (hereinafter, the B of A Donation) was received on April 27, 2015 and allocated by the Board on May 14, 2015 to extend through June 30, 2018 the provision of specific housing related legal services funded by the Homeowner Assistance Settlement Act (Act 70 of 2012). The second distribution of $12,167,624 (hereinafter, the B of A Surplus Distribution) was received by the Board on April 26, 2016 and remains unallocated. Both distributions must be used for foreclosure prevention legal assistance and community redevelopment legal assistance.

On May 5, 2016, a subcommittee of the Board was established to study the collateral impact of the foreclosure crisis on Pennsylvania’s communities to ensure that the B of A Surplus Distribution is carefully and strategically invested in activities that will address the needs of communities most affected by the foreclosure crisis. The members of the subcommittee are Irwin Aronson, Esq., Gretchen Kelly, Esq., Forest Myers, Esq., Hon. Ourania Papademetriou, and Stella Smetanka, Esq.

Methodology
In order to understand the foreclosure crisis and its consequences in Pennsylvania, and to develop a strong foundation upon which the Board could make decisions on the best use of the B of A Surplus Distribution, the Board hired consultant Laura Otten, Ph.D. of the LaSalle University School of Business

1 http://bankofamerica.mortgagesettlementmonitor.com/about-the-settlement/
Nonprofit Center to facilitate the work of the committee. The process included:

- a questionnaire sent to all current legal aid grantees (returned by 20 respondents);
- interviews with seven “thought leaders;”
- three focus group meetings with a total of 18 participants including IOLTA grantees and non-grantees, all involved in some aspect of the foreclosure crisis and its consequences; and
- various news articles, reports and data (publicly and privately produced).

For a list of the “thought leaders” interviewed, participants in the focus groups and documents read, see Appendix I. All interviews, questionnaires, focus groups, and literature informed this report, even if not directly cited.

Findings

Finding #1

*Foreclosure filings have declined over the last few years but remain a serious problem for low-income Pennsylvania homeowners. On average, 30,000 foreclosures have been filed annually in Pennsylvania courts in each of the last five years. Additionally, experts predict the rate of foreclosures will rise again in the next few years.*

According to the US Department of Housing and Urban Development, foreclosures nationally began to climb at the end of 2006 and peaked in the middle of 2008. RealtyTrac, a leading provider of comprehensive housing data and analytics, reports the number of foreclosures filed nationally in 2014 was 61% less than the number of foreclosures filed in 2010. Some thought leaders opined that we are experiencing a false lull. With the expiration of HAMP\(^2\) at the end of 2016 and the continuation of predatory lending, the number of foreclosures is likely to rise again.

Finding #2

*Foreclosure prevention legal assistance must include defense of mortgage foreclosures, tax foreclosures, reverse mortgage foreclosures, land installment contracts, tangled title matters, and predatory lending practices that target particularly vulnerable borrowers.*

\(^2\) HAMP (Home Affordable Mortgage Program) is a federal program designed to help homeowners impacted by financial hardship pay their mortgages. HAMP reduced a person’s monthly mortgage payment to 31% of their gross monthly income, permanently changing the terms of their original mortgage.
Tax foreclosures and reverse mortgage foreclosures have the same devastating effect as traditional mortgage foreclosures. Ira Goldstein of The Reinvestment Fund reported that the number of reverse mortgage foreclosures is increasing in Philadelphia’s Mortgage Foreclosure Diversion Court. Senior citizens on fixed incomes enter into reverse mortgages not having been educated that tax bills are paid directly by the borrower, not kept in escrow and paid by the mortgage company. When the tax bill arrives, they have not planned for the expense and cannot pay the bill.

The National Consumer Law Center’s report on land installment contracts, issued in July 2016, reports the same communities that bore the brunt of the foreclosure crisis and economic meltdown are now seeing a rise in land contracts. Investors purchased foreclosed properties in bulk and are now selling these properties back to residents of the community through land contracts. As with earlier forms of predatory lending, contract sellers target low-income buyers with limited resources who do not qualify for conventional mortgages. Immigrants and limited English proficient populations are especially at risk for this type of financing as they search for affordable housing without access to conventional financing. Community Legal Services (CLS) reports a rise in land installment contract litigation in Philadelphia.

Finding #3
Community redevelopment legal assistance requires a coordinated response that goes beyond addressing the foreclosure crisis alone. Foreclosures are a symptom of systemic societal and economic problems such as lack of affordable housing, lack of public transportation, lack of affordable healthcare, business closings, the growing opioid problem, barriers to employment, underfunded schools, and poverty in general.

Several thought leaders and focus group participants concurred that community redevelopment is a big task, one that legal aid cannot address alone, even with $12 million. There are many national, state and local organizations working hard to rebuild communities. Distressed communities are in need of a variety of services. Partnerships are imperative to achieve success.

The Joint State Government Commission of the General Assembly of Pennsylvania released a report in April 2016 entitled Homelessness in Pennsylvania: Causes, Impacts and Solutions. The report identifies the lack of affordable housing and many other problems as directly impacting the rising rate of homelessness and calls for a coordinated response. The report identifies the following particularly vulnerable groups as having the most difficulty achieving permanent shelter: the mentally ill, veterans, the
formerly incarcerated, domestic violence survivors, and those living in rural areas of the state. Additionally, the report dives into the long term effects of homelessness on children.

The Economic Innovation Group, a research firm based in Washington, D.C., recently released a Distressed Communities report based on seven underlying indicators: % of Adults without a High School Degree, Poverty Rate, % of Adults Not in Work, Housing Vacancy Rate, Median Income Ratio, % Change in Employment, and % Change in Business Establishments. According to the study, the top five distressed counties in the state are Forest County, Fayette County, Philadelphia County, Potter County, and Cambria County. The data that accompanies the report is broken down even further by zip code and could be used by legal aid organizations to identify specific neighborhoods in need of specific services.

**Finding #4**

**Foreclosures have far-reaching ripple effects on families. Studies have shown that foreclosure leads to broken families, domestic violence, interrupted public benefits and services, missed school, and serious health issues including mental illness.**

The Urban Institute, a national research and policy center in Washington, D.C., issued in 2009 a report, *The Impact of Foreclosures on Families and Communities*. According to the report, the impacts on families include (1) displacement and housing instability, (2) financial insecurity, and (3) economic hardship and personal and family stress, disrupted relationships and ill health.

**Health**

A 2009 medical study published in the American Journal of Public Health evaluated the health status of 250 individuals undergoing foreclosure in Philadelphia. The report documented the following:

- 37% were suffering from clinical depression;
- almost 60% were skipping meals because they didn’t have enough money for food
- 48% didn’t have enough money for needed prescription drugs
- they were significantly more likely to have hypertension and heart disease
- almost a quarter (22%) had no health insurance (compared to the community sample of only 8.2%)
- 25% had sizeable unpaid medical bills
- 9% said it was a medical condition that was the primary cause of the foreclosure
Credit Scores
Ira Goldstein of The Reinvestment Fund and Cindy Daley of the Housing Alliance of Pennsylvania provided insight into the damage done to an individual’s credit score by foreclosure. Those who lost their homes to foreclosures now suffer from poor credit scores which keeps them from improving their situation, whether it be a new mortgage, approved for renting, getting credit to get back on their feet, or utilities at their new address. Additionally, poor credit can keep people from employment, educational opportunities, access to transportation, and more.

Cost Burdened
According to a 2016 report issued by the National Low-Income Housing Coalition, seventy-five percent of low-income renter households are severely cost burdened, spending more than half of their income on rent and utilities. This burden makes it difficult to afford other basic necessities like healthy food and medication and to save for financial emergencies. Severe cost burden is a risk factor for housing instability and homelessness, which exacerbates the financial and psychological stress within a family.

Impact on Children
According to pediatrician Nadine Burke Harris, an expert in the field of trauma-informed care, exposure to adverse childhood experiences (ACE) has serious implications for adult health, including a 20 year difference in life expectancy compared to those with no ACEs.

Finding #5
Families that lost their homes to foreclosure are now renters. As a result, the demand for rental properties outweighs the supply causing an increasing number of families living in illegal, unsafe housing conditions and under the threat of an unlawful eviction.

Sufficient availability of affordable rental housing is a real, present, and ever increasing problem. According to the Housing Alliance of Pennsylvania, the state is short 280,801 affordable rental units.

In an article published in February 2016, Mark Uh, a data scientist at Trulia, reports that, since the housing bubble burst in 2006, there has been a five percentage-point increase in the number of renters to 43.3% from 38.5%. Additionally, the average rent rose 22.3% in the 50 biggest housing markets at a time when the U.S. median household income (for the entire nation, not just the top 50 markets) fell 4.2%. According to a 2016 report issued by the National Low-Income Housing Coalition, a renter in
Pennsylvania would have to work 2.5 full-time jobs at minimum wage to afford a 2-bedroom unit at fair market rate.

Compounding the challenges are the poor conditions of the rental units which can jeopardize personal safety and lead to illness. Renters are afraid to take on the landlords for fear that they will be evicted, and when they do go to court, they rarely have legal counsel. According to CLS, there were 24,112 landlord tenant complaints filed in Philadelphia Municipal Court in 2014: 78% of landlords were represented by an attorney, as compared to only 9% of tenants.

The Housing and Community Development Act of 1992 created the HOPE VI program (Housing Opportunities for People Everywhere). HOPE VI encouraged the destruction of high-rise, public housing buildings, deemed by most to be failures, in favor of fewer mixed-type units in mixed-income communities. This approach has led to a decline in the number of public housing units available, as more have been demolished than have been built.

Finding #6

Foreclosed properties drain surrounding properties of their value, attract crime, drive business away, threaten public health, and reduce tax revenues to municipalities and school districts leading to a decline in municipal services and quality education.

The Urban Institute’s 2009 report, “The Impact of Foreclosures on Families and Communities” includes the following impacts on communities: (1) declining property values and blight, (2) financial stress for governments and declining quality of services resulting from the lost income due to a decreasing tax base and loss of business, and (3) crime, public health, quality of education, and transiency.

According to a 2011 report issued by the Federal Reserve Bank of Cleveland, a vacant or delinquent property within 500 feet of a non-vacant property lowers the non-vacant property’s value by 2.1% annually. A vacant and delinquent property within 500 feet of a non-vacant property lowers the non-vacant property’s value by 2.7% annually. A foreclosed property within 500 feet of a non-vacant property lowers the non-vacant property’s value by 3.9% annually. A foreclosed, vacant and delinquent property within 500 feet of a non-vacant property lowers the non-vacant property’s value by 9.4% annually.

Philadelphia is one place that has examined the costs of vacant properties. A 2010 study it commissioned offers some idea of the economic toll vacant and abandoned properties impose on communities. The
report estimates that 17,000 vacant properties are tax delinquent and rob the city of $2 million in tax revenue each year. Vacant properties also consume $20 million in city services a year, $8 million of which is spent on code enforcement and maintenance, such as boarding up buildings or demolishing them.

Finding #7

Investors have bought foreclosed properties in low-income neighborhoods to resell or rent at prices out of reach for low-income people. As a result, low-income families are being displaced to more distressed neighborhoods farther away from their jobs.

The reduced sale prices of foreclosed properties was a boon to investors, who bought and flipped properties, bringing up price tags in the neighborhood and/or bought and turned properties into higher priced rental units. Both situations contribute to the displacement of people into poorer, less resourced and less stable neighborhoods.

Finding #8

Homeowners at risk of foreclosure in rural Pennsylvania are harder to reach than those living within close proximity to services.

Based on 2014 American Community Survey data, the Center for Rural Pennsylvania estimates 61,327 homeowners in rural Pennsylvania are at-risk of foreclosure (defined as spending 50% or more on mortgage, tax, insurance and utility bills). They represent 10 percent of all rural homeowners with a mortgage. Rural homeowners at-risk of foreclosure have the following characteristics as compared to all rural homeowners:

- less likely to have a vehicle
- less likely to have at-home Internet access
- more likely to have income below poverty level
- less likely to be in the labor force due to age, illness, or other reasons
- more likely to live alone
- more likely to be 65 years of age or older
- more likely to have a disability
Finding #9
Although Pennsylvania has a number of high-quality legal aid providers serving residents across the state, focus group participants opined that more could be done and should be done to effectively coordinate referrals and services among them. Legal aid is operating like a legal emergency room treating only the presenting problem. Most were in agreement that a statewide centralized intake system, supported with social workers, would afford the opportunity to standardize each client’s intake experience by ensuring that all of their legal needs are identified and properly referred to the correct service provider, legal or otherwise. An important component of an ideal centralized intake system would be follow-up with every client to ensure that referrals were successful and all legal issues were addressed.

Recommendations

1. Community redevelopment legal assistance.
A comprehensive, coordinated approach to community redevelopment legal assistance led by a legal services agency having a statewide reach and expertise in affordable housing and community redevelopment. Communities (10 - 15) having the highest number of foreclosures would be targeted. The team approach will engage PHFA, Housing Alliance of PA, local community leaders, legal services providers in the targeted area, social services agencies, elected officials, housing and redevelopment authorities, workforce development agencies, schools, municipalities and other funders. Grant-funded work will include community outreach, a needs assessment, a response plan, and coordinated data collection for reporting purposes. The response plan will include primarily legal services (i.e. eliminate barriers to employment, utility shut-offs, access to public benefits, credit repair, etc.) as well as larger scale projects requiring coordination with and funding from others (i.e. creation/support of land banks, New Market Tax Credits to attract businesses/jobs, increased affordable housing, reentry programs, blight remediation, etc.) Sub-grantees, both legal services organizations and non-legal service organizations (with IOLTA approval), will be permitted. No less than 50% of funds expended in each targeted community will be spent on the provision of direct civil legal services.

Recommended Amount: $5,000,000
# of years: 5
2. **Foreclosure prevention legal assistance.**

Eligible representation under this recommendation will include foreclosure defense, tangled title matters and legal services to victims of land installment contracts and other predatory lending scams. All current IOLTA Board legal aid grantees, both PLAN and non-PLAN organizations, are eligible to apply for grants under this category.

Recommended Amount: $3,000,000  
# of years: 3  
Priority given to:  
* Proposals to provide extended representation  
* Proposals that target low-income communities having a high rate of foreclosure  
* Proposals to serve seniors, minorities, rural residents, and non-English speaking persons.

**Formula for Distribution:**  
\[
\% \text{ of Act 91 notices by county, rolling 3 year average, updated annually}
\]

3. **Landlord/Tenant cases.**

Legal services for low-income individuals and families facing eviction or denial of rental housing, warranty of habitability cases, housing discrimination, and/or displacement due to gentrification.

Recommended Amount: $2,800,000  

* $203,000 per year for 2 years for non-PLAN grantees  
  * Total $406,000 to non-PLAN (14.5%)
* $798,000 per year for 3 years for PLAN programs  
  * Total $2,394,000 to PLAN (85.5%)

# of years: 2 - 3  
Priority given to:  
* Proposals to provide extended representation  
* Proposals that target low-income communities having a high rate of foreclosure  
* Proposals to serve the mentally ill, veterans, formerly incarcerated persons, domestic violence survivors, seniors, minorities, non-English speaking persons, those living in rural areas of the state and those living with a disability.

**Formula for Distribution:**  
\[
\% \text{ of Act 91 notices by county, rolling 3 year average, updated annually}
\]
4. **Systemic advocacy/Impact work.**
   Systemic advocacy related to foreclosure prevention, predatory lending, access to healthcare, affordable housing and blight remediation to ensure low-income people have a voice in the development of policies that impact their lives.

   Recommended Amount: $367,624
   Years: 2 - 3

5. **Reserve.**
   Funds will be set aside for a period of not less than 12 months after the initial distribution for subsequent allocation by the Board consistent with the requirements imposed by the B of A settlement agreement.

   Recommended Amount: $1,000,000
   # of years: Minimum of 12 months after the initial distribution

6. **Investment Income.**
   The investment income earned on the corpus may be allocated to offset an appropriate portion of the direct expenses associated with the administration of the B of A Surplus Distribution per the expense allocation policy adopted by the Board on May 5, 2016.

This report was adopted by the subcommittee on August 25, 2016 and adopted by the Board on September 14, 2016. The Court reviewed the report and granted permission by letter dated September 30, 2016 to disseminate it.
## Appendix I

Focus Group Participants

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Organization</th>
<th>IOLTA Grantee</th>
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<tbody>
<tr>
<td>Patrick Cicero</td>
<td>Executive Director</td>
<td>PA Utility Law Project</td>
<td>x</td>
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<tr>
<td>Jennifer Clark</td>
<td>Executive Director</td>
<td>Public Interest Law Center</td>
<td>x</td>
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<tr>
<td>Larry Felzer</td>
<td>Development Director</td>
<td>Senior Law Center</td>
<td>x</td>
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<tr>
<td>Debby Freedman</td>
<td>Executive Director</td>
<td>Community Legal Services</td>
<td>x</td>
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<tr>
<td>Elizabeth Fritsch</td>
<td>Executive Director</td>
<td>Legal Aid of Southeastern PA</td>
<td>x</td>
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<tr>
<td>Brian Gorman</td>
<td>Executive Director</td>
<td>Southwestern PA Legal Services</td>
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<tr>
<td>Jonathan Johnson</td>
<td>Senior Policy Analyst</td>
<td>Center for Rural PA</td>
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<tr>
<td>Gloria Keener</td>
<td>Executive Director</td>
<td>Franklin County Legal Services</td>
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<tr>
<td>Majestic Lane</td>
<td>Director of External Relations</td>
<td>Pittsburgh Community Reinvestment Group</td>
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<tr>
<td>Bryce Maretzki</td>
<td>Director of Strategic Planning and Policy</td>
<td>PHFA</td>
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<tr>
<td>Sam Milkes</td>
<td>Executive Director</td>
<td>PA Legal Aid Network</td>
<td>x</td>
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<tr>
<td>Laval Miller-Wilson</td>
<td>Executive Director</td>
<td>PA Health Law Project</td>
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<tr>
<td>Bob Racunas</td>
<td>Executive Director</td>
<td>Neighborhood Legal Services</td>
<td>x</td>
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<tr>
<td>Mark Schwartz</td>
<td>Executive Director</td>
<td>Regional Housing Legal Services</td>
<td>x</td>
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<tr>
<td>Larry Swanson</td>
<td>Executive Director</td>
<td>Action-Housing</td>
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<tr>
<td>Rhodia Thomas</td>
<td>Executive Director</td>
<td>MidPenn Legal Services</td>
<td>x</td>
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<tr>
<td>Renee Williams</td>
<td>Executive Director</td>
<td>Laurel Legal Services</td>
<td>x</td>
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<tr>
<td>Peter Zurflieh</td>
<td>Executive Director</td>
<td>Community Justice Project</td>
<td>x</td>
</tr>
</tbody>
</table>
Thought Leader Interviewees

Cindy Witman Daley, Policy Director, Housing Alliance of Pennsylvania
Andrew Frishkoff, Executive Director, Local Initiative Support Center (Philadelphia office)
Ira Goldstein, President, Policy Solutions, Reinvestment Fund
Kim Graziani, Vice-President, Center for Community Progress (Washington, D.C.)
Brian Hudson, Executive Director, PA Housing Finance Agency
Senghor Manns, President, PA Housing and Redevelopment Association
Ross Pifer, Director, Rural and Economic Development Clinic, Penn State Law

IOLTA Board Member Attendees

Three committee members attended focus group sessions.

Irwin Aronson, Harrisburg
Ourania Papademetriou, Philadelphia
Stella Smetanka, Harrisburg and Philadelphia.
Sources


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