

University of Miami School of Law Foreclosure Fellowships 2009-2010

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Year One Final Report
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Introduction

The foreclosure crisis hit South Florida particularly hard, with 56,656 filings in 2008 -- 550% higher than the number filed in 2002. The bottom line: In 2008, one in 28 homes was in foreclosure.

Although firm statistics are not available, a very large fraction of those facing foreclosure of owner-occupied homestead property lacked legal representation. The number of new foreclosures filed went down in 2009, but experts say this was more because banks are choosing not to add profitless cases in which homes must be sold at a loss to a slow and already overburdened legal system rather than because homeowners are out of trouble. And, indeed, foreclosures in the first half of 2010 are up 10% over last year, with one in 30 homes in foreclosure. Combining initial foreclosure filings, auction notices, and bank repossessions, brought the total number of homes in South Florida affected in the first six months of 2010 to almost 100,000.

To help members of the community caught up in this unprecedented legal and economic disaster, the University of Miami School of Law created a Foreclosure Defense Fellowship program through which new graduates would be paid to provide pro bono representation to South Florida residents in danger of losing their homes. The School of Law thus became one of the first schools in the nation to set up a program to respond to the foreclosure crisis. Although the pay was low, the program allowed the Fellows to get experience in a difficult job market.

The Law School selected eleven Fellows from a pool of about 50 applicants from the J.D. class of 2009 based on relevant experience, grades, and a short essay explaining why applicants were interested in the program. Initial screening was done by the law school, but the partner organizations were offered the option of interviewing candidates before the final selection.

The J.D. '09 Fellows received a \$10,000 grant to work at least three days a week for 27 weeks; Fellows who enrolled in the new clinical track in the LL.M. in Real Property Development received up to 50% tuition remission for 15 hours per week of service for the entire academic year.

Six Fellows were placed at Legal Services of Greater Miami, Inc., two Fellows at Legal Aid Service of Broward, and three at The Foreclosure Project, a private non-profit organization started by leaders of the Miami Bar. All offers were conditional on Fellows taking and passing the Florida Bar immediately after graduation.

The Fellowships began with a two-day training program in foreclosure defense sponsored by the Law School. The program, which was also offered as CLE to more than 150 local lawyers, featured April Charney, J.D. '80, a consumer lawyer and nationally recognized foreclosure defense expert. Ms. Charney's training covered federal and state laws that govern mortgage origination, common law/state law causes of action and affirmative defenses, drafting discovery and motion practice, and ethical considerations in foreclosure practice.

In every case, both the sponsoring organizations and the Fellows themselves reported that the project was an enormous success, although some participants also had a few suggestions for further improvement or enhancements. At present, however, the Fellowship is in hiatus due to our inability to raise

outside funding to continue the program. Instead, in January 2010, the Law School sponsored a traditional law-student-staffed clinic concentrating on tenants' rights, in partnership with Legal Services of Greater Miami. The student-staffed clinic focuses on a different set of needs (those of renters rather than homeowners), but has the advantages of being less expensive and contributing more directly to the Law School's core educational mission.

Dade Fellows

Fellows Francisco Cieza, Jaclyn Gonzalez, Siobhan Grant, Yolanda Paschal, Bradley Shapiro and Matthew Weintraub worked at Legal Services of Greater Miami, Inc. (LSGMI). The Fellows placed with LSGMI were such a success that when the fellowship ended, LSGMI extended the Fellows' terms by six months with IOTA funds from the Florida Bar Foundation.

LSGMI assigned each Fellow to a supervising attorney. In most cases, potential clients first met with a LSGMI paralegal who conducted an intake interview. If the client met LSGMI eligibility guidelines, the client then met with a Fellow for a substantive legal interview. The Fellows then conducted intensive factual and legal assessments of each claim, including verifying information given by the client and obtaining bank records and credit reports, and then took those assessments back to the senior attorney to decide whether the client qualified for representation. The majority of clients did not make it past this stage. Some foreclosures lacked arguable legal defects; other clients were in such extreme financial difficulty that they were neither able to file for bankruptcy nor seek a loan modification. The Fellows gave extensive legal advice to these clients about their options, and referrals to other organizations which might be able to help them, but did not file suit or enter an appearance on their behalf.

Fellows spent one day a week meeting with clients to "work up" the factual and legal assessments of their claim. The other two days, Fellows worked on their open cases. They communicated with banks and lawyers and also drafted motions and answers. Fellows also gathered financial documents for clients, conducted research, and occasionally attended court. Ms. Cypen described the Fellows' role as being like that of junior associates in a law firm. Indeed, all the cases begun by Fellows were still in progress when the six-months Fellowships ended, which is not surprising given the slow pace of contested foreclosures.

The Fellows' work allowed LSGMI to substantially increase its foreclosure-related caseload at a time of greatly increased demand. The number of people requesting aid from Legal Services increased by approximately 160% in the first four months of 2010, according to Executive Director Marcia Cypen. During the 10 months from October 2009 to July 2010, the office opened 585 mortgage foreclosure cases, according to Deputy Director Margaret Zehren, an increase of about 60% from the same period the previous year. Ms. Zehren said this 60% increase was a result of both increased need and the Fellows' assistance, which allowed the office to see more clients. The increased capacity also allowed Legal Services to open their intake during the Fellowship to include single people and middle-age couples with grown children, where previously LSGMI was only able to provide representation to the elderly or those with minor children in the household.

Ms. Zehren explained that Legal Services originally had reservations about the Fellowship because starting attorneys are typically not given a foreclosure defense case load for the first two to three years, but Legal Services changed this model to accommodate the Fellows. Ms. Zehren reported that placing each Fellow with a senior attorney was successful, and other units within Legal Services are now trying to adopt this system for their starting attorneys. Ms. Zehren felt the Fellowship was successful in part because the School of Law allowed Legal Services to interview applicants as if they were hiring a new attorney. Legal Services identified students with the skills they needed, and this ensured the organization's confidence that the Fellows chosen were the right fit.

Ms. Cypen said the Fellows allowed Legal Services to respond to the increased demand for legal aid by shifting the more routine work from the senior attorneys to the Fellows so that the senior attorneys could handle the more complex work. Her main suggestion for improving any future program was to consider the financial advantages of having fewer Fellows working full time for more pay with benefits, as she believed the very limited monthly stipend put the Fellows in financial difficulties. Ms. Cypen commended the School of Law for its creativity and openness in initiating the Fellowships.

Fellows Francisco Cieza, Siobhan Grant, Bradley Shapiro, and Matthew Weintraub still work for Legal Services, which used IOTA funds to extend their Fellowships until December of 2010. Fellow Yolanda Paschal is now an Associate at Carlton Fields, while Fellow Jaclyn Gonzalez works at Put Something Back, a joint pro bono project of the Eleventh Judicial Circuit and the Dade County Bar Association. Ms. Grant suggested that April Charney's training seminar would have been more valuable if they Fellows had first had their initial training at LSGMI, rather than starting with the advanced course.

Broward Fellows

The Broward program was smaller than the Miami-Dade program, but also very successful.

Fellows James Duffy and Berbeth Foster worked at Legal Aid Service of Broward under the supervision of Consumer Unit Supervisor Jennifer Harley. The two handled approximately 75 full cases during their six month Fellowship, although they interviewed many more during the intake phase of representation. The Fellows interviewed clients, drafted pleadings and memoranda, and organized and drafted client paperwork. They explained legal matters to clients about banks and foreclosures, and corresponded with their clients. They negotiated with note-holders in order to obtain loan modifications. The Broward fellows also supervised clients who had received grant money for reinstatements to ensure they met their grant obligations. In the course of counseling clients about their mortgage debts, the Fellows also advised clients on other debt issues contributing to their inability to make their house payments.

Fellows began representations by interviewing clients. Broward Legal Aid took only a fraction of the potential clients encountered during intake. Some clients had neither a discernable legal defense nor any income at all – making negotiating a repayment plan impossible. The Fellows referred these clients to other organizations which can provide rental assistance or, sometimes, government grants for rentals for homeowners losing their homes.

For the more hopeful cases, Fellows employed an active defense strategy. Common tactics included forcing the opposing party to prove that it had standing to bring the action, that it actually owned the note, and that the assignment of the note was valid. For clients with less than a week before their home was to be foreclosed, the Fellows filed a motion to stay – but also informed the clients about what to do if the motion failed. Options included moving to homeless shelters, and applying for food stamps and medical benefits. Of the cases that the Fellows litigated, none made it past the discovery stage during the six months the Fellows worked at the Broward office.

The rate of success in foreclosure defense can often be very low because many people who refinanced their homes took on adjustable rate debt. When the payments increased, they could no longer afford the loans. In these situations, the lawyer's goal is often to get a loan modification or some other feasible plan to allow the client to make payments. The loan modification process can be difficult, but the Fellows were able to secure loan modifications in a large percentage of the cases in which they sought them. (The Fellows also worked on a handful of cases where the clients ended up filing for bankruptcy.)

Overall, Ms. Harley, the students' supervisor, reported that Legal Aid Service of Broward was "incredibly satisfied" with the Fellow program. She rated the program as "extremely effective," because having two Fellows qualified to do legal work allowed her office to meet the needs of more clients and to take more cases. Ms. Harley's main suggestion for improving the Fellows program was to "send more Fellows." She said that "if Duffy and Foster were any indication of the caliber of students the University of Miami School of Law produces, more Fellows could only mean more success in helping the clients and the community, as well as helping the students gain valuable experience themselves."

Ms. Harley also suggested that there might be a role for traditional law school clinics staffed by law students in helping people facing foreclosure. Clients need help gathering documents and writing hardship letters. Law students could assist clients articulate the reasons they are in jeopardy of losing their home and explain a plan for saving the home, both things clients often have trouble doing on their own.

Fellow Berbeth Foster reported that what stood out most to her was that most clients did not understand the foreclosure process and believed the bank could just show up at the house and kick them out. The Legal Aid Service of Broward Senior Citizen Unit hired Ms. Foster to do foreclosure defense work under a grant that lasts until September 2010, but which they hope will be renewed. Ms. Foster's suggestion for improving the Fellowship program was for greater involvement by the School of Law after the Fellows were assigned.

Fellow James Duffy emphasized that since a never-ending stream of people came through the door needing legal help and advice, the program's success was a matter of numbers—more fellows would mean more work could be done, which would mean that more South Florida citizens could be helped. Mr. Duffy, who is now working at a securities litigation and arbitration firm in Jupiter, Florida, suggested that the program would benefit from some centralized resources, such as a single database of documents where Fellows could find drafts of motions, pleadings, discovery, and answers, which would ultimately keep them from having to start from scratch on every case.

The Foreclosure Project Fellows

The Foreclosure Project is a pro bono organization created by leaders of the South Florida Bar and seeks to provide lower- and middle-class families facing foreclosure with legal representation equal to what wealthy clients receive. The organization reports that it has defended more than 300 people and to date has lost no homes to foreclosure.

The three Fellows working at the Foreclosure Project—Jessica Davis, Amish Jethwa, and James Walter—had a different substantive experience from the Fellows working in LSGMI and Broward Legal Aid, but also one that proved very successful. The Foreclosure Project Fellows participated in more than 200 federal and state cases, with foreclosure issues ranging from securing loan modifications from local lenders to suing trusts for predatory lending procedures. A large part of the Fellows' work involved a class action suit that is still being litigated. In addition to cases actually in court, the three Fellows worked on approximately 100 other cases. Some of these cases were resolved through loan modifications before the Fellowships ended, but most of these matters are still ongoing. Only those few homeowners who chose to abandon their cases – usually overwhelmed by the stress of the foreclosure process -- lost their homes.

The Fellows tuned their strategies to the facts of the case. For homeowners with few resources and large debts, the Fellows pursued an active defense by filing counterclaims and alleging violations of HUD and SEC laws. Counterclaims are effective because some banks are not pursuing foreclosures aggressively, leaving many cases at a standstill. In such cases, clients with legal representation are much more likely to receive loan modifications.

The Fellows' cases extended over all of South Florida, from Homestead to West Palm Beach. As a private pro bono initiative, The Foreclosure Project is not subject to the strict income caps that apply to LSGMI and Legal Aid. As a result, the Fellows could assist a wider variety of clients, including retirees, firemen and policemen, state employees and professionals. Fellow James Walter noted that the foreclosure crisis harms the community and breaks up families because money is the most common reason for divorce. Banks write letters designed to increase stress and pressure on the homeowner, which often destroys families. The pressure, he said, is undoubtedly even higher for those without legal representation.

Richard Burton, a founder of The Foreclosure Project, reported that the Fellows' work increased respect for the organization. Because the School of Law supported the Fellowship, The Foreclosure Project gained credibility with judges, which allowed the organization's lower- and middle-class clients to receive the same treatment as those with highly paid legal counsel. Mr. Burton's strategy for foreclosures is always aggressive—he taught the Fellows to force the opposing party to show documents proving that party owned the note. Clients often had claims against them by multiple parties, and once these parties had to prove they had the right to service the mortgage, the claims frequently disappeared. Judges would hold the plaintiffs in contempt when they stalled on producing proof of ownership, and the case would be dismissed. Mr. Burton said that law schools must fund programs like the Fellowship to emphasize the importance of public service. He also suggested that the University of Miami School of Law use its prestige in the community to make clear that short sales are not the answer during this foreclosure crisis. No one profits when banks take homes for 19% of the value, rather than receiving 50% of the value over time by allowing the family to remain in the home.

The Fellows reported that their work was effective in assisting the South Florida community during the foreclosure crisis. Mr. Walter said that he believes he learned more during his Fellowship than he did throughout all of law school.

After the Fellowship ended, Mr. Walter and Ms. Davis were hired by The Foreclosure Project, and they continue to work there. Mr. Jethwa dropped out of the Fellowship before completing the academic year. Mr. Walter suggested that law schools should create more externship opportunities in foreclosure defense, especially with Certified Legal Interns (CLIs) who can prepare motions and conduct research. Mr. Walter's biggest criticism of the Fellowship program was that the Law School failed to promote itself properly. He said that as the largest law school in South Florida, the University of Miami should have done more to promote its concern about the foreclosure crisis in the South Florida. More advertising might have led to more funding, which could have secured another round of Fellowships for the School of Law's 2010 graduates. Given the nature of the economy and the large number of balloon mortgages coming due soon, South Florida's foreclosure crisis is likely to get worse before it gets better.

Next Steps

Despite the Fellows' successes, the law school was not able to raise the \$110,000 needed to repeat the program, much less the nearly \$250,000 that would have been required to expand the program to full-year fellowships or the \$375,000 or more needed to fund the Fellows for five days a week for a whole year. The program is now in hiatus, but the law school remains committed to finding ways to help those in the community faced with foreclosures so there is reason to hope the hiatus is only temporary.

Meanwhile, in January 2010, the School of Law inaugurated a Tenants' Rights Clinic housed at LSGMI. There, law students – rather than recent graduates admitted to the Bar –assist tenants in public and subsidized housing. Typically, these cases are less complex than foreclosure defense. Tenant cases usually take place over a five-day period, allowing students to handle more cases and attend court proceedings more

often. A student-staffed clinic, which trains future JDs as well as helping clients, best fits the Law School's core educational mission

Appendix - Media Coverage

Broward Housing Partnership, *The University of Miami School of Law Announces Foreclosure Defense Fellowships* (10/1/2009),
<http://www.browardhousingpartnership.org/index.php?src=news&submenu=Resources&srctype=detail&category=PR&refno=245>

Tim Padgett, *Where Are All the Foreclosure Lawyers?*, (10/24/2009) TIME,
<http://www.time.com/time/nation/article/0,8599,1932075,00.html>.

South Florida Lawyers, *UM's Foreclosure Fellowship Program Gets National Attention* (10/26/2009),
<http://southfloridalawyers.blogspot.com/2009/10/ums-foreclosure-fellowship-program-gets.html>

Elie Mystal, *University of Miami Law School Puts Some Money into Public Service* (10/26/2009) Above the Law,
<http://abovethelaw.com/2009/10/university-of-miami-law-school-puts-some-money-into-public-service-/>.

Debra Cassens Weiss, *Miami Law Grads Get \$10K Foreclosure Fellowships to Fill Legal Services Gap* (10/26/2009) ABA Journal,
<http://www.abajournal.com/news/article/miami-law-grads-get-10k-fellowships-to-help-homeowners-in-foreclosure/>

Micaela Hood, *New Lawyers Help Fight Foreclosures*, (11/8/2009) The Miami Herald,
http://www.miamiherald.com/2009/11/08/1313286_new-lawyers-help-fight-foreclosures.html.

Annie Butterworth Jones, *UM Program Puts Grads to Work for Legal Aid Programs* (4/15/2010) The Florida Bar News,
<http://www.floridabar.org/divcom/jn/jnnews01.nsf/8c9f13012b96736985256aa900624829/d4c8ec68a0486d22852576fd00452fed!OpenDocument>



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THE University of Miami School of Law Announces Foreclosure Defense Fellowships

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Coral Gables, FL (October 1, 2009) – LawFuel.com – The South Florida community is ground zero for the national foreclosure crisis. In response, the University of Miami School of Law has created Foreclosure Defense Fellowships that will enable newly minted lawyers to give free help to local residents caught in the foreclosure crisis. The School of Law is one of the first schools in the nation to create a program of this kind in response to the crisis that is sweeping the country. Recent UM graduates will acquire real-world work experience and address a serious need in the community at the same time.

The foreclosure crisis is overwhelming the Miami-Dade legal system. One in every 28 homes in Miami-Dade County is in a state of foreclosure. Last year 56,656 foreclosures were filed in Miami-Dade County alone. Almost a third involve "owner-occupied homestead property" (residential homestead mortgage foreclosures) and a very large number of owners are unrepresented. The UM Foreclosure Defense Fellows will work to fill the gaps that this legal crisis has created within the South Florida community.

"These Fellowships engage the Law School and its recent graduates in a difficult but rewarding process that serves a great public need," said Dean Patricia D. White.

Eight UM Law graduates were the winners of these fellowships. Six fellows – Siobhan Grant, Yolanda Paschal, Matthew Weintraub, Jaclyn Gonzalez, Francisco Cieza, and Bradley Shapiro – will work for the Legal Services of Greater Miami, Inc. (LSGMI). Two additional fellows – James Duffy and Berbeth Foster -- will work at the Legal Aid Service of Broward County, Inc. They will receive a limited grant totaling \$10,000 in exchange for working at least three days a week for 27 weeks, commencing in early October. The fellows will receive intensive training on October 2nd at a foreclosure workshop hosted by the UM School of Law, featuring April Charney, JD '80, a consumer lawyer and nationally recognized foreclosure defense expert. The workshop will be held at the Whitten Learning Center on the University of Miami campus from 8:00 a.m. to 5:00 p.m.

In addition, three students from the School of Law's LL.M. in Real Property Development – Jessica Davis, Dushyant Amish Jethwa, and James Walter – will inaugurate a clinical track in that program by providing 15 hours per week of free foreclosure defense representation. The LL.M students will work under the supervision of local lawyers who also will be working without pay. These fellows will be placed at "The Foreclosure Project," created by Richard Burton, JD '74, which provides free legal representation to homeowners facing foreclosure in Dade and Broward counties.

UM law professor A. Michael Fromkin describes how he came to create the Foreclosure Defense program: "Last fall, I was standing in front of the courthouse one evening talking to a local lawyer who was telling me about the thousand of foreclosure cases stacking up in the judges' chambers, many with unrepresented parties who had valid defenses that were not being made because they didn't have a lawyer." Fromkin recalls that the lawyer stated, "Someone should do something." And, right there, I decided that if no one else would do it, that it would be me."

About Legal Services of Greater Miami

Legal Services of Greater Miami, Inc. provides innovative, effective legal services to help thousands of individuals in Miami-Dade and Monroe counties each year, creating a positive impact on the community as a whole. LSGMI is the largest provider of broad-based civil legal services for the poor in Miami-Dade and Monroe counties, and is recognized in the state and in the nation as a model legal services law firm. Its diverse staff provides clients with legal services in three languages from its main, regional and neighborhood offices.

According to Carolina Lombardi, LSGMI Senior Attorney who oversees the Mortgage Foreclosure Defense Project, "There is an unprecedented need for legal assistance for homeowners facing the loss of their homes through foreclosure and we cannot help everyone who asks for our assistance. Legal Services of Greater Miami, Inc. is thrilled to have recent UM law school graduates working with us so that we can provide legal help to more homeowners."

Despite being staffed by six full time staff attorneys, LSGMI is only able to represent a fraction of the low income home owners in Miami-Dade County who are facing the loss of their family home. The addition of the University of Miami School of Law Mortgage Foreclosure Defense Fellows will expand the number of low income homeowners LSGMI is able to assist while at the same time training new attorneys to address this serious community need.

About Legal Aid Service of Broward County

Legal Aid Service of Broward County, Inc. (LAS) has provided free civil legal services to the poor in Broward County for over 35 years. In 2005, a regional office in Collier County was opened to serve the civil legal needs of the disadvantaged population in Collier County. Despite having an experienced, culturally diverse staff of 60, including 21 attorneys in Broward County, LAS can only meet the needs of 40% of the clients who seek their help.

"In Broward County, we have seen over a 600% increase in foreclosure case filings since 2006," said Legal Aid Service of Broward County, Inc. Director of Advocacy Shawn Boehringer. "Even before the foreclosure crisis, we had insufficient resources to address foreclosures. We certainly have not seen a 600% increase in funding to assist clients since 2006. We applaud Professor Froomkin and UM Law School for starting this pilot and we are looking forward to working with the talent they have provided us. UM is a great law school, and our clients will benefit tremendously from the assistance the fellows will provide."

Note to editors: Bios on the fellows are available on request. Further details are available on the application form at <http://www.law.miami.edu/4close/application.pdf> or by contacting Professor Michael Froomkin at Froomkin@law.miami.edu or 305-752-2900. For more information about the Legal Services of Greater Miami, contact Margaret F. Zehren, Esq at MZehren@LSGMI.org. For more information about "The Foreclosure Project," visit www.theforeclosureproject.org.

The University of Miami's mission is to educate and nurture students, to create knowledge, and to provide service to our community and beyond. Committed to excellence and proud of our diversity of our University family, we strive to develop future leaders of our nation and the world. www.miami.edu.

The University of Miami School of Law's mission is to foster the intellectual discipline, creativity, and critical skills that will prepare its graduates for the highest standards of professional competence in the practice of law in a global environment subject to continual – and not always predictable – transformation; to cultivate a broad range of legal and interdisciplinary scholarship that, working at the cutting edge of its field, enhances the development of law and legal doctrine, and deepens society's understanding of law and its role in society; and to fulfill the legal profession's historic duty to promote the interests of justice. www.law.miami.edu.

Legal Services of Greater Miami, Inc. has a long history of providing representation and community education to homeowners facing the loss of their home due to foreclosure and predatory lending. LSGMI's Mortgage Foreclosure Defense Project provides the full range of legal services to assist homeowners at risk of mortgage foreclosure, and to defend mortgage foreclosure actions, including initiation of Chapter 13 bankruptcy cases, loan modifications and rescission actions pursuant to the Home Owner Equity Protection Act and the Truth in Lending Act, representation to resolve mortgage fraud problems such as mortgage cancellation and rescission, quiet title actions and Unfair and Deceptive Trade Practices Act cases. LSGMI attorneys identify and systemically challenge patterns of fraudulent or abusive mortgage foreclosure practices. Additionally, LSGMI has coordinated the training and recruitment of pro bono attorneys to provide mortgage foreclosure defense representation.

Legal Aid Service of Broward County (LAS) helps to advance housing justice for the poor for both low-income homeowners and tenants by preventing foreclosures and evictions, increasing and preserving the supply of decent affordable housing; improving existing housing conditions, including physical conditions and management practices; and by expanding and enforcing low-income tenants' rights.

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Tim Padgett, Where Are All the Foreclosure Lawyers?, (10/24/2009)
TIME,
<http://www.time.com/time/nation/article/0,8599,1932075,00.html>.



Where Are All the Foreclosure Lawyers?

By **TIM PADGETT / MIAMI** Saturday, Oct. 24, 2009



A foreclosure sign stands in front of a home in Miami Beach

Joe Raedle / Getty

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Home foreclosure isn't a legal abstraction for Yolanda Paschal, a recent graduate of the University of Miami School of Law. Her parents are facing foreclosure on the Miami house she grew up in. They're luckier than others, since they have another home to fall back on, but the experience has convinced Paschal how acute the crisis is in Florida, which now has the nation's highest mortgage foreclosure rate, at 17%. "I'm part of this community," says Paschal, 25. "I can't escape how deeply this is affecting not just my neighbors but me as well."

Paschal plans to practice business litigation next fall once she joins the firm that hired her. In the meantime, she will put her legal education to use for South Floridians like her family thanks to a \$10,000 foreclosure-defense fellowship she received from the

UM law school. The innovative new grant program has sent out eight recent grads this month to help local residents navigate one of the law's most labyrinthine arenas.

(See pictures of Cleveland's struggle with the housing crisis.)

But as much as Paschal and her UM colleagues can help a little, they represent only a drop in the bucket: with foreclosures continuing to rise, the shortage of lawyers available to represent homeowners trying to save their most precious asset has reached emergency proportions.

(See a video of Joel Stein exploring the foreclosures of Las Vegas.)

Unlike similar legal fields such as bankruptcy, foreclosure is rarely a full-time practice and is often handled by real estate attorneys or legal-aid-services agencies. Still, more than 3 million property foreclosures were filed in the U.S. last year; South Florida is expected to see more than 150,000 this year, compared to fewer than 25,000 three years ago. And while mortgage modifications had been on the upswing in recent months, the Boston-based National Consumer Law Center reported this week that many large banks and other mortgage servicers have decided it's cheaper to foreclose than to offer more affordable loan terms. Making matters even worse, as many as 86% of foreclosure victims in hard-hit areas didn't have legal counsel last year, according to the Brennan Center for Justice at the NYU School of Law, which released a report earlier this month.

If those numbers don't draw more attorneys into foreclosure law, if only as a short-term specialty until the crisis subsides, homeowner advocates hope it will at least motivate some of them to shift more of their pro bono work in that direction. In hard-hit counties like Miami-Dade, bar associations are responding by holding foreclosure-defense clinics for local lawyers. Otherwise, the fear is that far more people than necessary stand to lose homes, possibly slowing economic recovery and clogging a civil-court system already ravaged by states' budget cuts.

(See a video of people facing foreclosure in Tampa.)


That specter of judicial paralysis helped spur UM law professor Michael Froomkin to create the foreclosure-defense program. It places fledgling attorneys like Paschal with legal-aid-service organizations to help tackle the backlog of cases — more than 50,000 foreclosure filings so far this year in Miami-Dade County alone. Many homeowners don't know what legal defenses are available to them as they battle lenders to keep their properties — or at least make foreclosure less painful and less costly.

"Potentially, one of the most significant [defenses] is that the lender, because so many home loans were securitized during the housing boom, often doesn't even know who owns the mortgage anymore," says Froomkin. That, he adds, could throw into question the lender's right to bring the foreclosure case in the first place.

Carolina Lombardi, a senior attorney at Legal Services of Greater Miami Inc., which is mentoring some of the UM fellows, says foreclosure defendants also need attorneys to help them fend off all-too-frequent lender practices like exorbitant escrow claims. "Homeowners who have lawyers are usually prevailing in those cases," says Lombardi. But she notes that unless homeowners fall below the federal poverty line (\$22,000 for a family of four), they can't qualify for the free legal aid that agencies like hers provide. That creates an obstacle for most foreclosure defendants, who aren't impoverished but because of job loss and other circumstances that brought them to the brink of losing their home, often can't afford a lawyer.

Another impediment is foreclosure law itself, a bureaucratically convoluted field worthy of a Dickens novel. "It's a labor-intensive area of practice," says Paschal. "It involves a ton of paperwork." Yet another is the relatively low pay attorneys usually reap from defending foreclosure clients. Melanca Clark, counsel at the Brennan Center and co-author of this month's study, urges Congress and state legislatures to create incentives, like more funding for foreclosure legal representation, that "level the playing field" against lenders and their comparatively well-paid lawyers. Restrictions on government funding for legal services should be relaxed, she says, especially rules that don't let victorious foreclosure defendants collect attorney fees, as prevailing parties in most other kinds of civil litigation do. "We need structural reforms as badly as we need more [foreclosure defense] lawyers," says Clark.

A growing number of court jurisdictions are attempting to reduce the need for lawyers, as well as the glut of cases, by mandating mediation between lenders and homeowners. Courts that cover Miami-Dade now require such arbitration, as do courts in cities like Philadelphia. But the efforts to modify mortgage terms or find other ways to avoid full-blown foreclosure don't always work, and many cases still end up in court. State bar associations like Florida's are also promoting pro bono foreclosure work. The effort is helped, says Lombardi, by a new awareness among many



lawyers who once deemed foreclosure victims foolish, lazy or unethical borrowers but who now realize "this is often about decent, hardworking people who fell prey" to loans whose conditions weren't always clear.

Still, law schools like Miami's may be one of the best untapped sources. Other programs, like Yale Law School's ROOF Project, also send students into local communities to aid foreclosure cases, but UM's is one of the first to create a paid fellowship. It also makes sense, says Paschal, since so many law firms today are trimming costs by delaying the start date for new hires by a year or more. That gives law grads time to pursue this kind of work — whose complexity, Paschal adds, is ideal for cutting young legal teeth. Says Froomkin: "It's a great opportunity to give recent graduates some invaluable experience and help your neighbors through this enormous spike in foreclosures," if not help end it sooner.



South Florida Lawyers, UM's Foreclosure Fellowship Program
Gets National Attention (10/26/2009),
<http://southfloridalawyers.blogspot.com/2009/10/ums-foreclosure-fellowship-program-gets.html>

MONDAY, OCTOBER 26, 2009

UM's Foreclosure Fellowship Program Gets National Attention



It's nice to see a good idea reach fruition, as is the case with [UM Law Professor Michael Froomkin's Foreclosure Fellowships](#), which received national attention in [this Time article](#):


That specter of judicial paralysis helped spur UM law professor Michael Froomkin to create the foreclosure defense program. It places fledgling attorneys like Paschal with legal aid service organizations to help tackle the backlog of cases – more than 50,000 foreclosure filings so far this year in Miami-Dade County alone. Many homeowners don't know what legal defenses are available to them as they battle lenders to keep their properties – or at least make foreclosure less painful, and costly. "Potentially, one of the most significant [defenses] is that the lender, because so many home loans were securitized during the housing boom, often doesn't even know who owns the mortgage anymore," says Froomkin. That, he adds, could throw into question the lender's right to bring the foreclosure case in the first place.

Carolina Lombardi, senior attorney at Legal Services of Greater Miami Inc., which is mentoring some of the UM fellows, says foreclosure defendants also need attorneys to help them fend off all too frequent lender practices such as exorbitant escrow claims. "Homeowners who have lawyers are usually prevailing in those cases," says Lombardi. But she notes that unless homeowners fall below the federal poverty line (\$22,000 for a family of four), they can't qualify for the free legal aid that agencies like hers provide. That creates an obstacle for most foreclosure defendants, who aren't impoverished but, due to job loss and other circumstances that brought them to the brink of losing their home, often can't afford a lawyer.

Another impediment is foreclosure law itself, a bureaucratically convoluted field worthy of a Dickens novel. "It's a labor-intensive area of practice," says Paschal. "It involves a ton of paperwork." Yet another is the relatively low pay attorneys usually reap from defending foreclosure clients. Melanca Clark, counsel at the Brennan Center and co-author of this month's study, urges Congress and state legislatures to create incentives, like more funding for foreclosure legal representation, that "level the playing field" against lenders and their comparatively well paid lawyers. Restrictions on government funding for legal services should be relaxed, she says, especially rules that don't let victorious foreclosure defendants collect attorney fees, as prevailing parties in most other kinds of civil litigation do. "We need structural reforms as badly as we need more [foreclosure defense] lawyers," says Clark.

The Professor also points to [this NYT article from Saturday](#) on how some judges are holding banks' feet to the fire on producing the underlying mortgage documents, which in one case led a federal judge to dismiss a claim based on a securitized mortgage where the alleged assignee could not provide proof that it owned the underlying note, effectively wiping out a \$461k debt.

I'm fine with all that, provided the Judge who dismissed the case did so [without the slightest hint of compassion](#).

Posted by South Florida Lawyers at [1:18 PM](#) 

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[University of Miami Law School Puts Some Money into Public Service](#)

By [Elie Mystal](#)

Plenty of law schools talk about producing attorneys who are able to serve their community. But a new program at the [University of Miami School of Law](#) actually puts a little bit of money behind the commitment to public service. Time magazine [featured](#) the school's new Foreclosure Defense Fellowship this weekend (gavel bang: [ABA Journal](#)). The article highlights Miami's attempts to get recent graduates into the business of serving one of the constituencies that actually needs *more* attorneys.



Unlike similar legal fields such as bankruptcy, foreclosure is rarely a full-time practice and is often handled by real estate attorneys or legal aid services agencies. Still, more than 3 million property foreclosures were filed in the U.S. last year; South Florida is expected to see more than 150,000 this year compared to fewer than 25,000 three years ago. And while mortgage modifications had been on the upswing in recent months, the Boston-based National Consumer Law Center reported this week that many large banks and other mortgage servicers have decided it's cheaper to foreclose than to offer more affordable loan terms. Making matters even worse, as many as 86% of foreclosure victims in hard-hit areas didn't have legal counsel last year, according to the Brennan Center for Justice at the NYU School of Law, which released a report earlier this month.

Miami Law has given eight recent graduates a \$10,000 fellowship to do this important work. Obviously, \$10K isn't enough to live on. But instead of raising tuition and bemoaning the lack of public interest lawyers, Miami's fellowship program is giving its graduates a little bit of help in their efforts to give back to the community. Above the Law corresponded with Miami law professor [Michael Froomkin](#), who founded the program. More details about it, after the jump.

According to Professor Froomkin, there was a lot of competition for Miami's eight fellowships. Applicants had to commit to working at legal aid organizations three days a week for 27 weeks. Froomkin explained:

Application to the program was open to any 2009 graduate able to make the time commitment. It was competitive based on grades, relevant experience, and enthusiasm.

And while the fellowship money was only \$10K, some of the applicants already have Biglaw deferral stipends to live off of.

The foreclosure defense fellowship isn't the only Miami program aimed at matching its graduates with the needs of the community:

We actually had 2 programs, both aimed at last year's grads: one gave eight Fellowships and placed people in Legal Aid/Legal Serv. The other smaller one gave three scholarships to JD's who took the LLM in Real Property and agreed to do 15 hours / wk pro bono. They were placed in a private non-profit that is doing foreclosure defense.

And the school is looking at ways to allow its current students to serve those facing foreclosure proceedings:

[T]he current plan is to start a student-staffed clinic next year that might be housed at Legal Services of Greater Miami (LSGMI) which would deal with housing issues in order to institutionalize the law school's efforts to help people with housing/foreclosure problems.

The recession has created a huge need for legal services. And it has created a glut of laid off or unemployed lawyers. But matching the attorneys to the work is difficult because it is tough to pay off law school debts by helping low income families fight off foreclosure proceedings. Miami's programs aren't going to fix that fundamental disconnect between the cost of law school and the need for legal services.

But the school has taken a nice step in the right direction. The fellowship stipend might not be much, but it is infinitely more valuable than lip service.

[Where Are All the Foreclosure Lawyers?](#) [Time]

[Miami Law Grads Get \\$10K Foreclosure Fellowships to Fill Legal Services Gap](#) [ABA Journal]



Debra Cassens Weiss, Miami Law Grads Get \$10K Foreclosure
Fellowships to Fill Legal Services Gap (10/26/2009) ABA
Journal,
[http://www.abajournal.com/news/article/
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Miami Law Grads Get \$10K Foreclosure Fellowships to Fill Legal Services Gap

Posted Oct 26, 2009 8:41 AM CDT

By [Debra Cassens Weiss](#)

New legal tactics are showing promise for some homeowners in foreclosure, if only they had lawyers to help.

The shortage of foreclosure lawyers has reached “emergency proportions,” [Time](#) magazine reports. As many as 86 percent of homeowners in foreclosure in hard-hit areas last year didn’t have a lawyer, according to a report by the Brennan Center for Justice at New York University law school.

Bar associations, legal-aid agencies and at least one law school are scrambling to provide lawyers for homeowners facing foreclosure who can’t afford representation.

A new program sponsored by the University of Miami School of Law aims to help. It is providing \$10,000 foreclosure defense fellowships for eight graduates to help legal aid groups tackle backlogs of cases. Miami law professor Michael Froomkin says many homeowners aren’t aware of legal defenses, including the claim that it’s unclear which company owns the securitized mortgage.

The [New York Times](#) reports that the proof of ownership claim succeeded in a recent bankruptcy case in the Southern District of New York. On Oct. 9, Judge Robert Drain eliminated a \$461,263 mortgage debt on property because PHH Mortgage couldn’t show it owned the note. PHH also admitted that it had levied an improper \$450 foreclosure fee and had overcharged interest, according to the story.

Carolina Lombardi, a senior lawyer at Legal Services of Greater Miami Inc., told Time that lenders often make exorbitant escrow claims in foreclosure cases, and lawyers are needed to protect homeowners.

The [Wall Street Journal](#) (sub. req.) reports on another legal tack. Some homeowners are asking courts to force mortgage servicers to consider them for the government’s foreclosure-rescue program. One federal lawsuit in Minnesota is asking for a halt in foreclosures until the Obama administration adopts a formal appeals process for homeowners who say they were wrongly excluded from the program.


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Micaela Hood, New Lawyers Help Fight Foreclosures,
(11/8/2009) The Miami Herald,
http://www.miamiherald.com/2009/11/08/1313286_new-lawyers-help-fight-foreclosures.html.

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RECESSION SURVIVAL

New lawyers help fight foreclosures

The University of Miami School of Law offers free legal help to homeowners in trouble while giving newly-minted lawyers caseload experience.

BY MICAELA HOOD
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As foreclosures in South Florida continue to skyrocket, more and more homeowners are turning to lawyers for legal help.

And thanks to a new program at the University of Miami School of Law, graduates who recently passed the Florida Bar Exam are offering free help to people caught in the foreclosure crisis.

“People don't realize what options are available; they don't have to roll over and take whatever is happening to them,” Barbeth Foster said.

Foster and five other newly-trained lawyers are working out of the Legal Services of Greater Miami and Legal Aid Service of Broward County. They've been taught to represent clients in court and offer other alternatives. Some options: negotiating with a lender or settling for a short sale of the home.

“When the foreclosure happens, the number of important legal defenses that may be available are not always obvious to people without legal training,” said Michael Froomkin, a University of Miami law professor who heads the Foreclosure Defense Fellowship.

“Some of these options will buy you time, and some of these will do a lot more . . . even those that buy you time are a way of getting a lender's attention and stimulating a negotiation,” he said.

In addition, the university has selected a handful of graduates who are studying for their master's degrees in law to work closely with local lawyers on a program called the Foreclosure Project. Created by Aventura real estate lawyer Richard Burton, the project offers free defense representation to people in need.

Burton and his team of lawyers supervise the three law students, who signed up to work 15 hours per week.

Froomkin, who specializes in Internet law, said he spearheaded the effort to create a foreclosure fellowship after a lawyer told him about the thousands of foreclosure cases stacking up at courthouses in Miami-Dade and Broward counties.

“Many people who can't afford to pay their mortgages usually can't afford an attorney,” Froomkin said. “If there wasn't a free service, they probably wouldn't have a lawyer and may go unnoticed.”

The program benefits homeowners at the same time it helps the new lawyers' careers. In addition to gaining work experience, each fellow is awarded \$10,000 for completing the six-month fellowship.

“It's a unique opportunity that not many attorneys get straight out of law school,” Foster said. “I'm learning how to carry my own caseload, which will make a difference in how other [attorneys] view me.”



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Annie Butterworth Jones, UM Program Puts Grads to Work for
Legal Aid Programs (4/15/2010) The Florida Bar News,
[http://www.floridabar.org/divcom/jn/
jnnews01.nsf/8c9f13012b96736985256aa900624829/
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April 15, 2010

UM program puts grads to work for legal aid programs

Fellowship helps new lawyers gain experience while searching for that first job

By Annie Butterworth Jones

Associate Editor

Despite her best efforts, Berbeth Foster ended her tenure at the University of Miami School of Law with only a diploma — no job offer — in hand. It wasn't the start of the law career she had hoped for.

"Very few people enter law school thinking they are going to have a problem finding a job after graduation," said Foster. "I felt frustrated."

Foster isn't alone. The nation's graduates face a bleak reality on graduation day: a stumbling economy with few jobs, even for the most talented students. Jobs that are available go to those with more experience, something Foster didn't have.

"I was not only competing with my graduating class, but with seasoned attorneys who had been previously laid off from their jobs," said Foster. "I just felt as though there were so many better qualified persons ... fighting for the same few jobs."

Without any viable options on the horizon, Foster sought help from the University of Miami, where she received her law degree in the spring of 2009. A newly launched fellowship program sponsored by the university gave Foster the break she had been waiting for.

The six-month long program partners the university with two prominent legal services organizations in the community: Legal Services of Greater Miami and Legal Aid Service of Broward County. The university provided funding for eight fellowship positions awarded to recent graduates of the law school; in turn, those graduates help alleviate the influx of foreclosure cases burdening legal services agencies in this part of the state. Foster became one of two fellows assigned to Legal Aid Service.

"This was the perfect opportunity to gain some experience in the real estate field while providing a much-needed service to my community," said Foster.

Foster and other program fellows do everything a first-year associate would do. They draft and file motions and pleadings; they perform client intakes. Sometimes they are even able to write a letter to opposing counsel on behalf of a client.

"Having passed the bar, they can do everything that a lawyer can do, and they can do it under the supervision of capable lawyers in our program," said Anthony Carriuolo, executive director for Legal Aid Service of Broward. "They're learning, and they're performing, and they're going to make themselves more marketable for when they leave us."

The part-time work — at least three days a week — allows the young attorneys to continue their job search while they acquire the experience they need to secure a full-time position in the legal world. That experience opens their eyes to an area of law often ignored by recent graduates.

"It's given me a much greater appreciation and respect for the work that public interest attorneys do," said Foster. "I see how much impact my legal degree can have on the average citizen's life."

And the fellows are making an impact.

"Now we can provide more services to more clients," said Legal Aid attorney Jennifer Harley, who supervises the two fellows at Legal Service of Broward County. "I myself can take in more files because I have their assistance."

"Sometimes when you do programs like this, they're just not effective. This is effective."

Those are the words Patricia White, dean of UM's School of Law, has waited to hear. Because the fellowships are entirely university-funded, a lot is riding on their success.

"The program's future, in some sense, depends on grant funding," said White. "We just thought that the work was so important. But whether or not it's something we can continue to finance is something I don't know the answer to."

Development of the foreclosure defense fellowship began with UM Professor Michael Froomkin who, along with Assistant Dean for Law Development Georgina Angones, Dean of Career Development Marcelyn Cox, and others, designed the program to be a collaborative effort with legal services agencies.

"We sent them talented and committed young attorneys," said White, "and I know those attorneys are delighted to have the opportunity to give back to their community."

With only a few more weeks remaining until the initial program comes to a close, Foster believes the fellowship has done its job.

"A program like this provides . . . real- world legal experience. It is more than theory or analysis," said Foster.

Harley, Foster's boss, agrees.

"The [job] market's not great," admitted Harley. "But this way they get valuable experience and can help in the foreclosure crisis."

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